Emails pertaining to Gateway Pacific Project for November 26 – December 2, 2011
Hi All.

This week's Weekly Update (#47) has now been posted to https://secureaccess.wa.gov/ofm/iprmt24/DesktopModules/Articles/ArticlesView.aspx?tabID=0
&alias=1357&ItemID=121&mid=38796&wversion=Staging.&alias=1357&ItemID=121&mid=38796&wversion=Staging.

Highlights include:

- MAP Team Meeting #4 agenda.

- Executive Team Briefing agenda.

- Library, Correspondence -- Letter from 13 WA Senators and Ecology's response.

Please contact either Jane or Scott with any questions or issues.

Also, the GPT MAP Team website is now more easily accessible and involves only one step to sign-up. Please share this link with anyone who's interested: <http://iprmt.ora.wa.gov> http://iprmt.ora.wa.gov.

Thanks!

Jane and Scott

__________________________________
From: "Dewell, Jane (ORA)" <jane.dewell@ora.wa.gov>
To: "Kelly, Alice (ECY)" <AKEL461@ECY.WA.GOV>, "Perry, Randel J NWS" <Randel... 
Date: 11/28/2011 10:52 AM
Subject: GPT MAP Mtg Planning
Attachments: GPT MAP Questions dft1.docx; Agenda_MAP No 4 details.docx

All,

I'd like to have another hour of your time next week, Thursday, to prepare for the MAP meeting (12/13) and see what assistance I can provide for the Executive (12/8) meeting (please see the e-mail I sent 11/22).

If we could have a phone call either 8:30-9:30 or 10:30-11:30 (on either side of the call w/ Alice) I'd appreciate it.

I am attaching a detailed agenda for the MAP Team meeting FYI, and a beginning list of questions (these are ones that Scott and I threw together a few weeks ago). Ari and group are also planning to submit questions by next week, and it will be open to the MAP team to provide written questions by 12/6 (but we would also take new questions during the meeting). These questions will allow for more up-front planning for the 12/13 meeting and I'd like to work with you on that.

Let me know when (8:30 or 10:30) works for 12/1. Thanks, Jane

****************************************
Jane Dewell, Regional Lead
Governor's Office of Regulatory Assistance
3190 160th Ave SE
Bellevue, WA 98008-5452
(425) 649-7124 or (425) 577-8445
NEPA/SEPA Questions
Multi-agency Permit (MAP) Team
Gateway Pacific Terminal (GPT) Project
December 13, 2011

1. What is the status of the Corps NOI and County DS?
2. How will the MAP Team and EIS consultant communicate?
3. What limits will there be on MAP Team and EIS consultant interaction and communications?
4. Review of preliminary, pre-decisional, internal documents: what and how will information be shared beyond the MAP Team?
5. How will the EIS consultant selection process work?
   a. Who will review applicants?
   b. Who will select the consultant?
6. EIS schedule – will there be incentives for completing work in a defined time-frame?
   a. How will it be developed?
   b. How will it be kept on track?
   c. Who will be responsible for keeping it on track?
7. Scoping process:
   a. How will MAP Team, other agencies (local government) be involved?
   b. Can MAP Team have a scoping meeting?
   c. Who else would need to be included?
8. How will ‘regions of influence’ be developed for various EIS elements?
9. How broadly will non-MAP agencies be included in the EIS process?
10. How will the MAP agencies support technical specialties needed for EIS?
### Agenda

**Gateway Pacific Terminal (GPT), Multi-agency Permit (MAP) Team**  
**MAP #4 Team Meeting**  
**Tuesday, December 13, Noon – 4:00 p.m.**

### Meeting Locations

<table>
<thead>
<tr>
<th>Location</th>
<th>Address</th>
<th>Contact</th>
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<tr>
<td>Bellingham - Field Office (Groucho Room)</td>
<td>1440 - 10th Street, Suite 102, Bellingham, WA 98225</td>
<td><a href="mailto:jane@ora.wa.gov">Presentation Location (Jane)</a></td>
</tr>
<tr>
<td>Bellevue - Northwest Regional Office (Room 2A)</td>
<td>3190 - 160th Ave. SE, Bellevue, WA 98008</td>
<td><a href="mailto:sheila@ora.wa.gov">Sheila</a></td>
</tr>
<tr>
<td>Lacey - Headquarters/Southwest Regional Office (Room R3A-07)</td>
<td>300 Desmond Drive SE, Lacey, WA 98503</td>
<td><a href="mailto:scott@ora.wa.gov">Scott</a></td>
</tr>
</tbody>
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### Meeting Purpose

1. Provide project updates since May
2. Engage MAP team in active discussion of NEPA/SEPA process and next steps
3. Define next MAP team meetings

### Attendance

MAP Team

<table>
<thead>
<tr>
<th>Time</th>
<th>Topic</th>
<th>Facilitator/Presenter</th>
<th>Agenda Details</th>
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<tr>
<th>Time</th>
<th>Session</th>
<th>Facilitator</th>
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<tbody>
<tr>
<td>12 – 12:20 pm</td>
<td>Introductions</td>
<td>Jane</td>
<td>Focus on introductions, new attendees (WSDOT, UTC, Health, DAHP)</td>
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<td></td>
<td>Sound and light check – speakers</td>
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<td>identify selves</td>
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<td></td>
<td>GROUND RULES REVIEW – quickly</td>
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<td></td>
<td>HANDOUTS:</td>
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<td>Agenda, More?</td>
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<td></td>
<td>ACTION ITEMS:</td>
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<td>Outstanding issues from past meetings?</td>
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<tr>
<td>12:20 – 1:20 pm</td>
<td>Project Updates</td>
<td>Jane</td>
<td>Discuss major milestones &amp; accomplishments, Executive meeting</td>
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<td></td>
<td>MAJOR MILESTONES &amp; ACCOMPLISHMENTS</td>
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<td>(handout from Executive meeting) – Jane</td>
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<td></td>
<td>BRIEFING ON EXECUTIVE MEETING</td>
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<td>(5 min highlights) – Jane</td>
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<td></td>
<td>PERMIT STATUS HIGHLIGHTS</td>
<td>Tyler, Randel</td>
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<td>VESSEL TRAFFIC STUDY</td>
<td>Alice</td>
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<td></td>
<td>BNSF REPORT</td>
<td>Skip Kalb</td>
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<td>SSA ECONOMIC STUDIES</td>
<td>Ari</td>
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<td></td>
<td>VIOLATION AND FIELD WORK</td>
<td>Tyler, Randel</td>
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<td></td>
<td>SETTLEMENT AGREEMENT STATUS</td>
<td>Jane (other)</td>
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<td>PUBLIC INTEREST</td>
<td>Jane</td>
<td>(CommunityWise, Salish Land Policy) – Jane</td>
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<tr>
<td>Time</td>
<td>Session Description</td>
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| 1:20 - 2:20 pm | NEPA/SEPA Co-lead Agencies: Presentation on Questions and Issues Raised by MAP Team | SET UP: Panel in Bellingham, some questions provided in advance (by 11/29 and 12/6, as well as time for more during Q&A) | KEY POINTS: NEPA/SEPA team prepare
  - Priorities and next steps
  - Roles & responsibilities
  - Schedule
  DISCUSSION: Facilitated Q&A and discussion from MAP team |       |
| 2:20 – 2:35 pm | Break                                      | same                                                                   | DISCUSSION: Facilitated Q&A and discussion from MAP team | WRAP UP: Re-cap parking lot issues, action items |
| 2:35 – 3 pm   | NEPA/SEPA Co-lead Agencies: Questions & Discussion | same                                                                   |       |
| 3:00 – 3:45 pm | MAP Meeting Planning & Schedule            | Jane – facilitate                                                      | DISCUSSION:
  - ID future meeting topics (from ‘parking lot’ and ‘action items’ – have some already prepared)
    - Agency scoping meeting
    - Technical meetings – wetlands and mitigation, settlement agreement details, ?
  - Go through what’s needed prior to meetings – response to comments, materials, what? |       |
| 3:45 – 4 pm   | Action Items & Wrap Up                     | Jane – facilitate                                                      | ACTION ITEMS – ID
  - Who and what – input from Scott and Sheila
  - Parking lot issues
  ANNOUNCEMENTS
  - Draft notes to be distributed by xx |       |

www.ora.wa.gov  360-407-7037  800-917-0043  help@ora.wa.gov
MEETING PREPARATION

- Review website documents, including:
  - Memorandum of Understanding (NEPA/SEPA agencies, 10/17/2011)
  - Permit Decisions and Regulatory Actions (‘Decisions’ tab on website) – agencies have completed documents since our last meeting in May
  - Applicant Documents (‘Library’ tab on website) – a variety of documents have been posted since May
  - Correspondence (‘Library’ tab on website) – a few letters from public and agency responses have been posted since May

- Provide issues that you want addressed during Project Updates (send to Jane by 12/6)
- Provide questions you’d like addressed during NEPA/SEPA session (send to Jane by 12/6, or bring to meeting)

Other items for discussion

- Response to agency comments on PID (and 2/28 reports) from April/May
- Keeping information up to date
  - Technical reports that company is working on
  - Completed and pending milestones
  - Permits and process (regulatory diagram)

- Scoping process
  - Details, questions, etc
  - Agencies that will be invited – broader than MAP, local government, how far away?

Future MAP meetings

- NEPA/SEPA Scoping
  - Who attends – broader array of agencies, local government
  - When
  - Role of NEPA/SEPA consultant
• Aquatic Reserve Plan
  o How it works w/ studies, permits
  o DNR present
• Wetlands – mitigation, delineation
  o Who attend, preparation (reading materials, response to agency comments)
  o Whole MAP team or subcommittee
  o Corps-Ecology
  o BNSF
  o SSA & mitigation
• Company reports
  o Account for comments received on PID
  o Schedule
  o Expectations for review and comment
  o How fit with NEPA/SEPA
  o Comments received and how to respond or address

SUPPLIES:
BFO: Flip chart easels & white board
  Flip chart paper (have some)
  Lightening & sound check
  Food: hot water, cups, trays, napkins, coffee filters

TAKE: Color markers
Handouts: agenda
Sign-in sheet w/ pen
Flip chart paper (more)
Food: water, coffee, tea, candies
Labeled flip charts: GROUND RULES

LACEY/BELLEVUE
Handouts (see 'Take')
Sign-in sheet w/ pen
Lightening & sound check
Food: water
Hi Amy,

I have added some explanatory comments below your comments on my answers. Feel free to call me, it might be easier.

Alice Kelly
Department of Ecology
Northwest Regional Office
425-649-7128
alice.kelly@ecy.wa.gov

From: Amy Glasser [mailto:amyglassermsw@yahoo.com]
Sent: Thursday, November 24, 2011 10:17 PM
To: Kelly, Alice (ECY)
Cc: Tyler Schroeder; Randel J NWSPerry; Cook, Cyrilla (DNR)
Subject: Re: Questions about scoping for GPT

Good day Ms. Kelly,

I am a bit confused about some of the responses you gave me. Please see my comments after each item you addressed. I appreciate your time in getting these responses but it sounds like the committees in charge can disregard everything we (the citizens affected) are concerned about and there is nothing we can do if the EIS scope is limited to the terminal area. How can we be assured that the train route and the human health consequences of transporting coal through our community will be addressed in the EIS? The mercury rate when down for the 3 weeks China shut down their coal powered factories when the Olympics was held there. Once the event was over and factories reopened, the level went back up. That mercury rate was in Vancouver BC, not China. I think we can assume that mercury in BC has similar rates to Whatcom County and we want to send coal to China. Thank you in advance for clarifying your comments for me.

Amy Glasser

1. How much notice will the public get before the hearings begin?

The public meetings for scoping will be well publicized. Notice will be provided prior to the start of the 30-day comment period, and the meetings are usually held in the middle or toward the end of the comment period. In that 30 day period, who is involved in comments before the public makes their comments? Is there a specific amount of time (days or hours) that is public comment period and will it be extended if more people want to comment publically?

During the 30-day comment period, anyone, including the public, can comment by mailing or emailing comments. If the agencies get requests to extend the comment period, we will take that into consideration.

The co-lead agencies will place ads in local newspapers and post the information on our websites. Whatcom County’s website is
The US Army Corps will publish the “Notice of Intent (to prepare an EIS)” in the Federal Register that will also include time and location of the scoping meetings.

2. How long will the hearing last for? If 1000 people want to submit testimony and references, will someone listen?

Scoping meetings provide information on the project and the elements/studies that the agencies have identified to date as relevant to the EIS. Often, agencies have displays set up around the room and people available to answer questions. We encourage people to submit scoping comments in writing, including e-mail. At the scoping meeting, an allotted time will be given to individuals who wish to speak.

Please note: Scoping meetings are not intended for hearing “testimony”, rather they are informal events meant to provide the responsible agencies with input when developing the scope of the EIS via public and agency comments.

I am very confused. I was under the impression that the Scoping is about getting public comments about what is relevant to the EIS and for us (the public) to bring up issues that we believe need to be addressed in the EIS. If the agencies have already determined (either by statute or by their own knowledge) what will be in the EIS, then the meeting sounds more like the agencies telling us (the public) what they will be including in the EIS. Also, if everyone who wants to speak cannot due to time contraints, then how can we be certain submitted letters and emails will be read and considered for the EIS? Will they all be posted on the MAP website?

During scoping, the agencies will start out by saying, “This is what we think should be in the EIS.” Anyone can then comment and say, “You forgot this” or “Here is an issue that should be included and here’s why.” The starting point is the agencies saying what they think goes in the EIS, then listening to comments and taking comments into consideration. As far as the time constraints, we will work to make sure everyone gets an opportunity to provide their input.

3. Once we submit our testimony, who decides what will be included in the EIS? I am concerned that the EIS will not include the train route and the cities along the route, which are certainly affected by the project. And of which most lawsuits will be file on behalf of those people, should health or safety be compromised and severely affected.

The co-lead agencies will decide the scope of the EIS as outlined in each of our respective statutes and regulations.

I was under the impression that because of statutes, the actual train route (traffic, dust, noise, emergency responder concerns, etc) was not going to be part of the EIS, nor will the communities in WA along the route. Can the agency leaders make the decision to include those issues and a health impact study even if statutes do not require it?

No decisions have been made. The scope of the EIS is not made until after the comment period and public meetings. I don’t know where your impressions come from, but please do not assume anything. The agencies will strive to listen to the issues and make our decisions after getting input – that is how the process is set up. We will follow the SEPA and NEPA laws, regulations, and guidance.
4. Will the public have another opportunity to submit testimony once the parameters of the EIS are determined?

After scoping, the consultant will produce a Draft EIS under the direction of the 3 co-lead agencies. There will be public hearings after the Draft EIS is released, and the public can submit comments at that time. Again, how can submitted comments be documented as being heard and read by the members of the team if we cannot say them publically?

All the comments will be documented and compiled. The agencies will work with the consultant to figure out how to do this if there are lots of verbal comments.

5. How can we be assured that the corporations that have all the money will not be able to influence what is in the EIS?

The co-lead agencies - Whatcom County, Department of Ecology, and the US Army Corps of Engineers - are in charge of writing the EIS. These agencies will complete the process in full accordance with all applicable NEPA and SEPA regulations. Neither the applicant or any other corporate interest has any input to the process over and above that of the public and other agencies and tribes, nor do they have any decision-making role. In addition, although they will provide funding (indirectly) for the contractor selected to assist the agencies in preparing the EIS, the applicant will not have any direct contact with the consultant.
Hi Tyler,

What are the names of the applications that PIT needs to submit for the GPT?

My guess is: Shoreline Substantial Development Permit and Master Development Permit.

Are there more County permits?

Alice
For the record.

>>> <Foxxlair@aol.com> 11/25/2011 12:41 PM >>>

Dear Whatcom County Executive Pete Kremen, and Whatcom County Executive Elect Jack Louws,

I have seen the impact and effect of coal trains (1 - 2 miles long) trundling through North Platte, Nebraska, often with intervals of less than ten minutes, hauling Wyoming east to furnaces in Ohio, Pennsylvania and West Virginia. This state-wide transit across the virtual prairie-industrial zoning that belts the land, indifferent to the rural environment, imposes arrest with regularity on a populations that wait endlessly at crossing hazards. To imagine an overlay of such calamitous restriction and intrusive danger spun over the burgeoning aspirations of Western Washington strikes me as nearly idiotic. Compromised infrastructure is as good as none; and the at-grade risk and bars suggest incalculable costs to the normal requirements of community. FOR ALL THESE REASONS, I RESPECTFULLY ASK THAT YOU DENY THE PERMITS TO PROCEED WITH THE GATEWAY PACIFIC TERMINAL AND ADDITIONAL COAL TRAINS THAT WILL THREATEN OUR HEALTH, POLLUTE OUR ENVIRONMENT, AND SERIOUSLY IMPERIL PROGRESS IN THE COMMUNITIES WE STRIVE TO IMPROVE.

Sincerely,
Bob Warfield
Lakewood, WA
253-588-5880
Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As a follow-up to our email below regarding the public need for appearance of fairness in the EIS consultant process for Gateway Pacific, we have two questions regarding an email I just reviewed on the County website. The email is from the project permitting consultant, Cliff Strong, to Tyler Schroeder, Whatcom County’s SEPA official. Mr. Strong, on behalf of the applicant, SSA/Pacific International Terminals, supplies draft language for a pre-notice to consultants announcing your forthcoming Request for Proposals (RFP) for the Gateway Pacific Terminal EIS. Even though this is a pre-notice, we ask the following:

1) Why is the applicant being asked to draft any language associated with the RFP? Shouldn’t the agencies conduct an RFP/consultant search independently of the applicant’s suggestions or involvement, based on the agency’s expertise and objectives for the environmental review process? It was our understanding the applicant would not have any role in the EIS process, other than frankly to pay the bills submitted by the agencies.

2) Why would the proposed notice to potential EIS consultants direct them only to the applicant’s promotional website for “background.” This signals unfairness from the very outset of the EIS process. Objective and complete background information for this project is best obtained from the County website, the DOE website and the ORA website, not the applicant’s promotional website which contains selective information and press releases!

If SSA’s website is to be promoted in the RFP pre-notice, shouldn’t the pre-notice also promote coaltrainfacts.org or a similar website, to ensure the EIS consultant sees information that is selectively omitted from the GPT website? The following information is omitted from the GPT website: (a) letters of strong concern from 13 state senators, the cities of Bellingham, Burlington, Mt. Vernon and Marysville; (b) the record of forest practices, grading, wetland fill, and archeological preservation violations; (c) our letters to ORA and DOE; and (d) the entire range of correspondence from the public, provided on the County’s website.

In light of Mr. Strong’s correspondence with Mr. Schroeder and these comments, we trust the County will not be recommending that the applicant shape the EIS process in any way, including the selection of a consultant.

Thank you for your consideration of these questions. While it may seem a small matter at this juncture, it is actually quite important from our perspective, as this is the first surfacing of any public announcement to consultants who might end up writing the EIS. Fairness, thoroughness, and impartiality will be essential to preserving the public confidence in this process.
Mr. Strong's email follows. Below is my original email to you this morning.

Tom Ehrlichman  
Salish Land Policy Solutions  
(425) 268-5553

To: Tyler Schroeder <tschroed@co.whatcom.wa.us>  
Date: 11/8/2011 1:44 PM  
Subject: GPT - Pre-notice of Availability of RFP  
Attachments: Draft NOTICE TO CONSULTANTS - 20111108.docx

Tyler, here's the draft language for the pre-notice of availability of the RFP you asked for. As we mentioned, it will take qualified consultants quite a bit of effort and time to put together good proposals, so we suggest this pre-notice be issued as soon as possible in the DJC. Pacific International Terminals, Inc. will cover the cost of publication of this notice.

Thanks,

Cliff Strong  
Senior Land Use/Environmental Planner  
and Office Sustainability Coordinator  
email: cliff.strong@amec.com

Direct: 425.368.0952  
Cell: 360.631.7918  
Office: 425.368.1000  
Fax: 425.368.1001
NOTICE TO CONSULTANTS

Future Request for Proposals for Gateway Pacific Terminal Combined NEPA/SEPA EIS

Notice Date: 11/XX/2011

This is a notice of future availability. A request for proposals is planned to be announced in the Daily Journal of Commerce the first week in December 2011. Whatcom County, the Washington Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request proposals from qualified consultants to prepare the Gateway Pacific Terminal Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have expertise and experience in preparation of EISs for the full breadth of social and environmental elements, including multi-modal traffic analysis, marine and terrestrial natural resources, cultural resources, and other elements applicable to industrial development. No inquires to any of the colead Agencies or to the project proponent will be accepted at this time. Background information on the project is available now at www.gatewaypacificterminal.com/resources.

From: Tom Ehrlichman [mailto:tom@salishlpsolutions.com]
Sent: Tuesday, November 29, 2011 9:46 AM
To: 'Tschoed@co.whatcom.wa.us'; 'Randel.J.Perry@usace.army.mil'; alice.kelly@ecy.wa.gov
Cc: 'Faith.Lumsden@GOV.WA.GOV'; 'Barbara Dykes'; Cyrilla.Cook@dnr.wa.gov
Subject: Emailing: AECOM Investor Relations Investor FAQ.htm

Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As I’m sure you are actually aware, the selection process for an EIS consultant on the Gateway Pacific facility will be closely watched by the public, with special attention to possible conflicts of interest between the consultant and either BNSF, Peabody Energy, or Carrix, Inc. (the parent company for SSA Marine and Pacific International Terminals) or any of their respective major shareholders. Prior business dealings of a direct or substantial nature are indicators of a conflict of interest because of both past compensation and the potential for future business dealings between the same entities. Issues of
confidentiality and public disclosure also arise under circumstances involving past and/or future business dealings.

Because of the high level of public concern over the integrity of the review process for the Gateway Pacific terminal facility, we believe the test for determining the objectivity of an EIS consultant should be the potential for a conflict of interest, even if you determine that an actual conflict may not exist.

To give a real world example, we noticed that Tyler Schroeder had received an email inquiry from AECOM, inquiring about the RFP process for the EIS. Under item four from the “Investor FAQ” provided at http://investors.aecom.com/phoenix.zhtml?c=131318 &p=iol-faq_pf (copied verbatim below), please be aware that AECOM has had significant prior business dealings with what has been reported to be a 49% shareholder of Carrix, Goldman Sachs. Thus, in the event they apply under the RFP for the EIS, we trust you will consider rejecting their application based on a potential conflict of interest.

At this early stage in the EIS preparation process, we also strongly urge Whatcom County, DOE and the U.S. Army Corps of Engineers to ensure that the RFP for the EIS be issued simultaneously with clear written guidelines for determining the existence of a possible conflict of interest so that your bidding consultants have fair warning, prior to submitting detailed packages. More importantly, this will give the public an opportunity to review your criteria for determining whether a conflict of interest exists.

By this email, we are requesting a copy of any RFP’s and/or contracts issued or executed to date by any agency for any studies or work related to the Gateway Pacific Terminal, including any conflict of interest policies or guidelines. We understand that, at a minimum, an RFP may have been issued and a contract negotiated related to a vessel traffic study. We are requesting this and any other RFPs and contracts.

Thank you for considering this information as you proceed forward with your review of a possible RFP for the project. We also appreciate your soonest possible response to our request for records.

Tom Ehrlichman
Salish Land Policy Solutions

(425) 268-5553
Investor FAQ

1. Where is AECOM’s corporate headquarters? <>

2. When was AECOM incorporated and in which state? <>

3. On which exchange does AECOM trade and under what stock symbol? <>

4. When did AECOM complete its initial public offering? <>

5. When does AECOM’s fiscal year end? <>

6. When is the annual meeting of stockholders? <>

7. How can I purchase AECOM stock? <>

8. Does AECOM pay dividends? <>

9. Does AECOM offer a direct stock purchase program? <>

10. What is AECOM’s SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform
11. How do I contact AECOM’s Transfer Agent?

12. Who are AECOM’s Independent Auditors?

13. Who do I contact about stock certificate matters?

14. How can I be added to AECOM’s e-mail alerts list to receive press releases and/or SEC filings?

15. How do I contact AECOM’s investor relations or request additional information about AECOM?

1. Where is AECOM’s corporate headquarters?

AECOM’s headquarters are located in Los Angeles, California.

2. When was AECOM incorporated and in which state?

AECOM was incorporated in 1990 in Delaware.
3. On which exchange does AECOM trade and under what stock symbol?

AECOM trades on the New York Stock Exchange (NYSE) under the symbol “ACM.”

4. When did AECOM complete its initial public offering?

AECOM completed its initial public offering of common stock in May 2007. The offering was for 35.15 million shares at $20 per share for net proceeds of $371.4 million. Morgan Stanley, Merrill Lynch & Co., and UBS Investment Bank acted as joint book running managers for the IPO. Goldman, Sachs & Co., Credit Suisse and D.A. Davidson & Co. acted as co-managers on the transaction.

5. When does AECOM’s fiscal year end?

AECOM’s fiscal year end is September 30.

6. When is the annual meeting of stockholders?

The stockholders’ meeting was held on March 3, 2011, at 9:00 a.m. local time at The Millennium Biltmore Hotel, 506 South Grand Avenue, Los Angeles, California 90071.

7. 
How can I purchase AECOM stock?

AECOM stock can be bought or sold through a stockbroker, bank or financial institution that provides brokerage services.

8.

Does AECOM pay dividends?

AECOM does not currently pay dividends.

9.

Does AECOM offer a direct stock purchase program?

At this time stock cannot be purchased directly from the Company.

10.

What is AECOM’s SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number?

The SIC Code is: 8711 - Services-Engineering Services
The CUSIP number is: 00766T100

11.

How do I contact AECOM’s Transfer Agent?
12.

Who are AECOM's Independent Auditors?

Ernst & Young LLP

13.

Who do I contact about stock certificate matters?

Computershare Investor Services
www.computershare.com
Telephone:
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By Mail:
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Providence, RI 02940-3078
United States of America

By Overnight Delivery:
Computershare Investor Services
250 Royall Street
Canton, MA 02021
United States of America
14.

How can I be added to AECOM’s e-mail alerts list to receive press releases and/or SEC filings?

Please select the following link and fill out the requested information:
http://investors.aecom.com/phoenix.zhtml?c=131318
<http://investors.aecom.com/phoenix.zhtml?c=131318&p=irol-alerts%0d%0a> &p=irol-alerts

15.

How do I contact AECOM’s investor relations or request additional information about AECOM?

Please contact:

Paul Cyril
Vice President
Investor Relations
Phone: 212-973-2982
E-mail: paul.cyril@aecom.com

Paul Gennaro
Senior Vice President
Corporate Communications
Chief Communications Officer
Phone: 212-973-2982
E-mail: paul.gennaro@aecom.com
Jane,

Attached is the version of the update and NEPA/SEPA panel discussion questions we discussed at our planning meeting last week. Let me know if you have any questions or comments.

Thanks,

Ari
Input to MAP Team Status and Questions for MAP Team Meeting Panel Discussion by NEPA/SEPA Agencies

1. Revised Schedule – GPT Technical Reports

Technical reports will be finalized and distributed to the MAP team prior to commencement of scoping.

2. Incorporation of comments provided by MAP TEAM members

MAP Team members have provided comments on the initial documents submitted by the PIT. These comments have been reviewed and have provided to further PIT efforts as follows:

Project Information Document (PID) – Comments on the project description portion of the PID have been considered and may be reflected as revisions to the PID. If the PID project description is amended it will be submitted as part of the supplemental submittal to Whatcom County in response to the County’s request for additional information for the Major Project Permit application.

Comments on those portions of the PID describing site resources and potential project impacts have been considered and have been incorporated where appropriate into the field investigations study plans that were subsequently reviewed by appropriate MAP Team members prior to implementation of field programs. Specifically, the marine habitat survey and the sediment survey field protocols were reviewed by agency staff who provided valuable input. Other comments related to technical study reports that have not yet been issued have been considered and will be reflected in the final version of those reports.

Conceptual Wetlands Mitigation Plan – PIT has continued development of the Conceptual Wetlands Mitigation Plan including considering agency comments on the initial draft of the plan. The plan submitted with the JARPA application was subsequently reviewed by several MAP Team members who also participated in a special meeting that focused on the contents of the initial plan. Input provided by the MAP Team members has been considered during further development of the plan. A revised plan will be submitted to Whatcom County as part of the supplemental information for the Major Project Permit application.


Management of DEIS/FEIS Preparation

1. What responsibilities and decision-making authority will be assigned to the Corp, County and Ecology EIS leads?
2. Who will direct the day to day activities of the 3rd Party consultant?
3. How will the 3rd Party contractor budget be managed?
4. What is the anticipated duration schedule for producing the DEIS?, the FEIS?
5. How will schedule progress on preparation of the DEIS and FEIS by the 3rd Party contractor be maintained?
6. How will schedule progress on reviews by participating agencies of preliminary drafts of the DEIS and FEIS be maintained?
7. Will the 3rd Party consultant initiate technical studies prior to completion of the scoping?
8. How will the three co-lead agencies use internal resources (technical/logistic)?

**Co-Lead Agency Coordination**

1. How will disagreements over scope, technical approach, results and mitigation requirements between the three co-lead agencies be resolved?
2. Who will have final editorial decision-making?
3. How will co-lead agency legal review of the DEIS and FEIS be conducted?

**Contractual Relationships**

1. What will be the contracting relationship between the 3rd Party consultant and the co-lead agencies?
2. What will be the contracting relationship between the applicant, the co-lead agencies and the 3rd Party consultant?
3. How will the applicant review and approve expenditures for DEIS/FEIS preparation by the 3rd Party consultant and co-lead agency personnel?

**Scoping**

1. How will the scope of the DEIS be determined?
2. How will the scoping process be conducted?
3. Who will collect, collate and process scoping comments?
4. How many scoping meetings will be held?
5. Who will be invited to the agency scoping meeting?
6. Will the County and Ecology accept scoping comments after the close of the public scoping period? If so, how will late comments be incorporated into the process?
7. Will the USACE accept scoping comments after the close of the public scoping period? If so, how will late comments be incorporated into the process?
8. How will alternatives to the proposed action be identified and defined? Will the applicant be consulted during formulation of alternatives?

**Applicant Support of DEIS/FEIS Preparation**

1. How will 3rd Party contractor questions to the agencies be answered?
2. How/when will data requests to the applicant be formulated and what interaction between the 3rd Party Contractor with the applicant during preparation of data responses is anticipated?
3. Will the applicant be engaged to discuss measures to avoid, minimize or compensate for impacts during development of the Administrative Draft EIS so that agreed upon measures can be integrated into the project description?
4. Will the applicant have an opportunity to review and comment on the administrative draft purpose/need, project description, description of alternatives and existing environment portions of the DEIS?

**Communications**

1. Will an internal/external communication plan/protocol be implemented?
2. What form of public outreach other than scoping and public comment review is anticipated and who will provide it?
3. Will a project website be established, if so how will it be maintained?
Tyler, I was going to respond with following email. Let me know if I should send it as written.

Dear Tom,

1) The only proposed changes that I am aware of have to do with the mitigation of stream and wetland buffer impacts through the Birch Bay Habitat Mitigation Fund. The proposal is part of the Birch Bay Watershed Action Plan not related to the Gateway Pacific export facility. The provisions of the Action Plan only apply to the areas draining to Birch Bay, with the exception being; the option of mitigating buffer impacts through the Habitat Mitigation Fund would include the Cherry Point Industrial District. The entire CP District was included due to the limited opportunity for habitat mitigation in the small basin south of BP Cherry Point.

2) I have attached the draft code for your convenience. The only section of this code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp

3) There is a second public hearing on the Birch Bay Watershed Action Plan scheduled for Dec. 8, at 6:30 in the County Courthouse.

4) Would you like to be added to the Birch Bay Watershed Action Plan email distribution list?

Kind regards,

>>> "Tom Ehrlichman" <tom@salishlpsolutions.com> 11/29/2011 9:13 AM >>>

Dear Tyler and Peter,

As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility ("Gateway Pacific").

It has recently come to our attention that there may be a planning commission review on December 8 concerning changes to some regulations that could affect development within the Cherry Point industrial UGA. We have a couple of questions for you and would appreciated your soonest possible reply so that we can prepare for the meeting if necessary:

1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA ("amendments")?

2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?
3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm – Salish Land Policy Solutions – on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.

Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664
ARTICLE 9
BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN – HABITAT MITIGATION FUND

16.16.910 Purpose
The purpose of this article is to provide a watershed-based management plan, pursuant to the requirements of WCC 16.16.260.E, that provides an alternative approach to mitigating impacts to wildlife habitat functions resulting from alterations to stream buffers and/or wetland buffers established in Articles 6 and 7 of WCC Chapter 16.16. The Birch Bay watershed-based management plan, hereby called the Habitat Mitigation Fund (HMF), provides a framework for the management and operation of an off-site buffer habitat mitigation program. Details of the HMF are provided in Appendix F. The HMF is specifically designed to achieve all of the following:

A. Provide for a landscape-based approach to mitigation that restores watershed processes and provides high-quality wildlife habitat;
B. Create a voluntary in-lieu fee program whereby permit applicants can pay into an off-site buffer mitigation fund as an alternative to implementing on-site and/or permittee-responsible mitigation;
C. Enable the County, together with a designated HMF co-sponsor, to collect and use buffer mitigation fees to implement buffer mitigation in a way that creates greater wildlife habitat benefits to the Birch Bay watershed than could be achieved through on-site, permittee-responsible mitigation;
D. Restore habitat functions in areas that can provide the greatest ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);
E. Encourage development practices that minimize impacts to critical areas, habitat and water quality;
F. Establish provisions for administering the HMF off-site mitigation program;
G. Establish a HMF contribution schedule;
H. Establish a project review procedure.

16.16.920 Application
A. The provisions contained in this Article are specific to the mitigation of wetland and stream buffer impacts and are provided as an alternative to the following buffer mitigation requirements within this Chapter:
1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)
5. Wetland Buffer Averaging (WCC 16.16.650)
6. Compensatory Wetland Mitigation Plan (WCC 16.16.690)
7. Stream Buffer Reduction Requirements (WCC 16.16.740.D.1)
10. Mitigation Standards for Stream Buffers (WCC 16.16.760)
B. Use of the HMF is voluntary; permit applicants not wishing to participate have the option of meeting the standard critical area buffer requirements.

C. Use of the HMF is limited to projects that meet the minimum criteria for enrollment in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis if s/he has reason to believe that the proposed development project has minimal effects on water quality and quantity.

D. Projects that do not meet the criteria stated in sub section C above must conform to the standard wetland and stream buffer widths in Articles 6 and 7 of WCC 16.16.

E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007 - 019 or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.

F. The HMF cannot be used to mitigate for direct wetland or stream channel impacts.

G. The HMF cannot be used for to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Title 23).

16.16.930 Minimum Buffer Widths

A. Projects which meet the application criteria in WCC 16.16.920 and which utilize the HMF for off-site habitat mitigation shall be afforded greater relief from the standard wetland and stream buffer requirements in WCC 16.16.630 and 16.16.740. The minimum on-site wetland and stream buffer widths for such projects shall be as follows:

1. The minimum buffer of a Category I or II wetland shall be 65 percent of the standard buffer or 40 feet, whichever is greater.
2. The minimum buffer of a Category III or IV wetland shall be 40 percent of the standard buffer, or 25 feet, whichever is greater.
3. The minimum stream buffer shall be 65 percent of the standard buffer, or 33 feet, whichever is greater.

B. The habitat impacts of the additional 10% buffer reduction shall be mitigated off-site through the HMF. The fee for the off-site mitigation shall be determined in accordance with WCC 16.16.950.

C. Projects that impact the buffer of the main stem of Terrell Creek or the main stem of Fingalson Creek shall be subject to the following requirements in addition to the requirements in 16.16.930.A:

4. If the impacts are to the Terrell Creek main stem buffer, the HMF mitigation site must be located within the main stem Terrell Creek buffer.
5. If the impacts are to the Fingalson Creek main stem buffer, the HMF mitigation site must be located within either the main stem Terrell or Fingalson Creek buffers.
6. In the event that the HMF co-sponsors have not secured suitable restoration sites to meet the above criteria, the applicant must mitigate stream buffer impacts, per WCC 16.16.760

16.16.940 Location of Mitigation.
Mitigation for loss of wetland and stream buffer habitat functions shall be located at priority sites within the watershed that have been identified by the fund sponsors as having the greatest mitigation value. The HMF co-sponsors shall maintain a list of possible mitigation sites within
the Birch Bay watershed using the best available information about site conditions. The HMF co-sponsors shall select from the list one or more mitigation sites for each wetland and/or stream buffer impact according to the following criteria, which are listed in order of priority:

A. The off-site mitigation provides equal or improved buffer wildlife habitat functions than on-site buffer mitigation;

B. The mitigation site helps to achieve the watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study.()

C. In the event that there is more than one site that meets the above criteria, the mitigation site located closest to the impact site shall be the preferred site.

16.16.950 HMF Contribution Schedule

A. Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the Habitat Mitigation Fund (Appendix F) shall pay a base fee of $2.90 per square foot of buffer impact, where the area of buffer impact (square feet) is the difference between the minimum buffer allowed per WCC 16.16.630 or 16.16.740 and the reduced buffer allowed per WCC 16.16.930.

B. In order to reflect the findings of the Birch Bay Watershed Characterization Pilot Study and provide equivalent or greater habitat quality at the mitigation receiving site, the base fee will be increased under these situations:

1. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay Habitat Mitigation Fund (Appendix F), the base fee will be increased by 20%.

2. If a buffer impact area crosses sub-basin boundary line, only that portion of impact area that lies within a “protection” or “restoration” sub-basin is subject to the 20% base fee increase.

3. The base fee will be increased by an additional 20% for buffer alterations that result in removal of trees greater than 4 inches DBH.

4. The additional 20% is calculated based upon the square feet of areal tree canopy reduction resulting from tree removal.

A. To simplify the cost structure and accounting, the minimum fee will be the greater of $2,250.00, or the amount calculated according to the Contribution Schedule.
B. Mitigation Fund Contribution Schedule

<table>
<thead>
<tr>
<th></th>
<th>No tree canopy removal</th>
<th>Tree canopy removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base fee</strong> (for impacts within “development” sub-basins)</td>
<td>$ 2.90 per SF</td>
<td>$ 3.48 per SF</td>
</tr>
<tr>
<td><strong>Base fee</strong> (for impacts with “protection” or “restoration” sub-basins)</td>
<td>$ 3.48 per SF</td>
<td>$ 4.05 per SF</td>
</tr>
</tbody>
</table>


If enrolled in the Birch Bay Low Impact Development program (WCC 20.50), applicants have the option of paying into the HMF to mitigate development-related habitat alterations to wetland and stream buffers, in lieu of typical on-site mitigation. The steps below describe how an applicant would utilize the program:

A. If there are critical areas onsite contact Whatcom County Planning and Development Services for a predevelopment site inspection to determine if a wetland delineation and/or Habitat Conservation Area assessment report is required (WCC 16.16.250).

B. Complete an assessment report according to WCC 16.16.255, and habitat checklist as provided by Whatcom County Planning and Development Services.

C. When designing the proposed development site plan, follow the avoidance criteria listed in WCC 16.16.260(A).

D. If the proposed development results in buffer impacts, the assessment report shall also include the following information:

1. Submit plans showing the proposed buffer impact area(s) in order to calculate the square footage of buffer impact. Provide calculations for alteration resulting in tree canopy removal separate from areas lacking in tree canopy. Clearly designate areas of tree canopy removal (if present) on the site plan.

2. Determine if the buffer impact area is located in a “development,” “protection,” or “restoration” sub-basin, as identified in Appendix F.

3. Calculate the dollar contribution to the Fund, based upon the most current Fund fee schedule, available from the County.

E. Submit a complete development application to WCPDS.

F. With notice of an approved permit application, pay appropriate fee into Fund.

G. Proceed with development project upon issuance of permit.

16.16.970 Wetland Mitigation Sequencing

A. Projects enrolled in the Birch Bay Low Impact Development program (WCC 20.50), shall be considered to have met the impact avoidance and requirements defined in WCC
16.16.260.A. Such projects shall be allowed to compensate for impacts to certain low-functioning wetland areas by providing appropriate replacement wetlands in accordance with the requirements of WCC 16.16.680. This allowance shall only apply to Category III or IV wetlands, with habitat function scores of less than 20 points, which are located within a “development” sub-basin as identified in the Birch Bay Habitat Mitigation Fund (Appendix F).

16.16.980 Program Evaluation and Re-Authorization

The HMF shall be evaluated by the County no later than January 1, 2017, with County Council action taken to renew, modify, or remove the standards. Criteria used by the County to evaluate the HMF shall include, but not be limited to:

A. Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.

B. Total number of applicants that have utilized the HMF for wetland and/or stream buffer mitigation, as compared to number of applicants that met the application criteria of WCC 16.16.920 but chose not to utilize the Fund.

C. Effectiveness of LID stormwater controls to retain and treat stormwater flowing into wetlands and streams with alterations permitted under the HMF, as indicated by water quality trends.

D. Wildlife habitat features at mitigation receiving areas, connectivity of sites, diversity of habitat, and any qualitative wildlife observation data collected during mitigation site monitoring visits.

E. Advances in habitat restoration science, and changes in relevant federal and state regulations.

F. Adequateness of fee structure to provide sufficient funds for restoring mitigation receiving sites, which results in no net loss of habitat functions.

16.16.990 Definitions.

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as hour and one-half feet (1.27m) above ground on the uphill side of the tree.

“Tree canopy” means the area of cover provided by conifer or hardwood tree(s) greater than four inches DBH (diameter at breast height). Tree canopy excludes the portion of the tree cover that overlies impervious surface areas.
From: "Tom Ehrlichman" <tom@salishlpsolutions.com>
To: 
CC: 
Date: 11/29/2011 6:02 PM
Subject: Applicant Special Access at the Start of the Gateway Pacific Terminal EIS Process

Dear Tyler,

Thank you for your reply and clarification that the applicant's website is not listed in the pre-RFP. We appreciate the change the County made deleting the applicant's suggested website and the copy of the draft notice, prior to publication.

Our email registered a strong concern about impartiality at the very first stage of the Gateway EIS process, because the applicant clearly was consulted on the notice. Cliff Strong's email suggests plainly that you asked him for the draft language:

"Tyler, here's the draft language for the pre-notice of availability of the RFP you asked for."

The language in the final RFP for publication is identical to the language suggested to you by Mr. Strong. His email is attached below, under your email.

One conclusion one might take from all of this is that Whatcom County does not intend to exclude the applicant from the EIS consultant selection process. We asked for a clarification on that point. Your reply simply states that the agencies have final say. In our judgment, that is far from saying the applicant will not influence the process. Public confidence in the process is weakened substantially at the outset of the EIS process with what appears to be special access for the applicant. The public is not offered the same opportunity for input on the choice of consultant.

Now that you have released the draft RFP notice for our review, we suggest adding language requiring that the consultants also have expertise in evaluating adverse economic impacts along the entire rail line, since this type of analysis is required under the NEPA review. Nothing is said in the list of qualifications about the need for experience analyzing adverse economic impacts to businesses and properties along the rail line. We ask that you and the other two co-lead agencies withdraw this notice and add the requirement for economic impact analysis.

We urge the County, the Corps and DOE to immediately reassess this process of consulting with the applicant. We ask that you ensure that all notices reflect the requirements of NEPA review. And we ask that all notices be crafted by the agencies only, unless the process is opened equally to the public and the applicant. Only by doing that now, and going public, can the agencies demonstrate to the public that they truly "are taking great care in developing the bidding documents to ensure that we have a fair process and we get a well-qualified consultant pool" (from DOE's response to us dated November 14, 2011).

Obviously, this concern with special access by the applicant will become increasingly an issue if the practice is not changed. A draft EIS reviewed and refined through applicant suggestions prior to public release will not meet the basic test of fairness that underlies our state and federal legal requirements for environmental review of large proposals with region-wide impacts.

Faith Lumsden and Scott Boetcher are copied here because we understand ORA now will also play a role in the framing of the NEPA/SEPA process. We have faith that the Governor's office will insist upon absolute impartiality in the EIS consultant process and notices that reflect the requirements of a combined NEPA/SEPA review. The appearance of impartiality starts by showing the public that the agencies are not consulting with the applicant on substance or allowing them to draft notices describing consultant qualifications.

This kind of behind the scenes work with the applicant was the hallmark of this project in its early review stages over a year ago during the unpublicized ORA meetings. While we had come to believe that ORA,
the County and agencies had opened up their process to the public, i.e., witness the County's website and decision on incomplete applications, this recent event raises the question of whether we are returning to the days of less-than-transparent work with the applicant on matters shaping the upcoming public permit process.

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
Bellingham, WA  98225
(425) 268-5553
(360) 224-8664

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, November 29, 2011 2:46 PM
To: alice.kelly@ecy.wa.gov; tom@salishlpsolutions.com; Randel.J.Perry@usace.army.mil
Cc: Sam Ryan; Royce Buckingham; Cyrilla.Cook@dnr.wa.gov; 'Faith Lumsden';
Kevin.Ranker@leg.wa.gov; 'Barbara Dykes'; ScottB@sbgh-partners.com
Subject: Re: Appearance of Fairness and the Start of the Gateway Pacific Terminal EIS Process

Mr. Ehrlichman,

Please see the actual notice provided to the Daily Journal of Commerce (DJC) for use in their publication to alert consultants of the up-coming RFP.  This document was provided to the DJC late last week and is expected to be ran, in notice format or article format, sometime in early December.  I want to be clear that the decision to give consultant's notice of the anticipated RFP was made solely by the Co-Lead Agencies.

The applicant was not asked to draft any language.  The Co-Lead Agencies have final decision making authority in all aspects of the EIS and the RFP process. As you can see from the attached notice, the final version is not the version provided by the Applicant and does direct interested consultants to the County's and ORA's website for additional information.

Regards,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> "Tom Ehrlichman" <tom@salishlpsolutions.com> 11/29/2011 1:31 PM
>>> 
Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,
As a follow-up to our email below regarding the public need for appearance of fairness in the EIS consultant process for Gateway Pacific, we have two questions regarding an email I just reviewed on the County website. The email is from the project permitting consultant, Cliff Strong, to Tyler Schroeder, Whatcom County’s SEPA official. Mr. Strong, on behalf of the applicant, SSA/Pacific International Terminals, supplies draft language for a pre-notice to consultants announcing your forthcoming Request for Proposals (RFP) for the Gateway Pacific Terminal EIS. Even though this is a pre-notice, we ask the following:

1) Why is the applicant being asked to draft any language associated with the RFP? Shouldn’t the agencies conduct an RFP/consultant search independently of the applicant’s suggestions or involvement, based on the agency’s expertise and objectives for the environmental review process? It was our understanding the applicant would not have any role in the EIS process, other than frankly to pay the bills submitted by the agencies.

2) Why would the proposed notice to potential EIS consultants direct them only to the applicant’s promotional website for “background.” This signals unfairness from the very outset of the EIS process. Objective and complete background information for this project is best obtained from the County website, the DOE website and the ORA website, not the applicant’s promotional website which contains selective information and press releases!

If SSA’s website is to be promoted in the RFP pre-notice, shouldn’t the pre-notice also promote coaltrainfacts.org or a similar website, to ensure the EIS consultant sees information that is selectively omitted from the GPT website? The following information is omitted from the GPT website: (a) letters of strong concern from 13 state senators, the cities of Bellingham, Burlington, Mt. Vernon and Marysville; (b) the record of forest practices, grading, wetland fill, and archeological preservation violations; (c) our letters to ORA and DOE; and (d) the entire range of correspondence from the public, provided on the County’s website.

In light of Mr. Strong’s correspondence with Mr. Schroeder and these comments, we trust the County will not be recommending that the applicant shape the EIS process in any way, including the selection of a consultant.

Thank you for your consideration of these questions. While it may seem a small matter at this juncture, it is actually quite important from our
perspective, as this is the first surfacing of any public announcement to consultants who might end up writing the EIS. Fairness, thoroughness, and impartiality will be essential to preserving the public confidence in this process.

Mr. Strong’s email follows. Below is my original email to you this morning.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 268-5553

To: Tyler Schroeder <tschroed@co.whatcom.wa.us>
Date: 11/8/2011 1:44 PM
Subject: GPT - Pre-notice of Availability of RFP
Attachments: Draft NOTICE TO CONSULTANTS - 20111108.docx

Tyler, here’s the draft language for the pre-notice of availability of the RFP you asked for. As we mentioned, it will take qualified consultants quite a bit of effort and time to put together good proposals, so we suggest this pre-notice be issued as soon as possible in the DJC. Pacific International Terminals, Inc. will cover the cost of publication of this notice.

Thanks,

Cliff Strong
Senior Land Use/Environmental Planner
and Office Sustainability Coordinator
NOTICE TO CONSULTANTS

Future Request for Proposals for Gateway Pacific Terminal Combined NEPA/SEPA EIS

Notice Date: 11/XX/2011

This is a notice of future availability. A request for proposals is planned to be announced in the Daily Journal of Commerce the first week in December 2011. Whatcom County, the Washington Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request proposals from qualified consultants to prepare the Gateway Pacific Terminal Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have expertise and experience in preparation of EISs for the full breadth of social and environmental elements, including multi-modal traffic analysis, marine and terrestrial natural resources, cultural resources, and other elements applicable to industrial development. No inquires to any of the colead Agencies or to the project proponent will be accepted at this time. Background information on the project is available now at www.gatewaypacificterminal.com/resources.

From: Tom Ehrlichman [mailto:tom@salishlpsolutions.com]
Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As I’m sure you are actually aware, the selection process for an EIS consultant on the Gateway Pacific facility will be closely watched by the public, with special attention to possible conflicts of interest between the consultant and either BNSF, Peabody Energy, or Carrix, Inc. (the parent company for SSA Marine and Pacific International Terminals) or any of their respective major shareholders. Prior business dealings of a direct or substantial nature are indicators of a conflict of interest because of both past compensation and the potential for future business dealings between the same entities. Issues of confidentiality and public disclosure also arise under circumstances involving past and/or future business dealings.

Because of the high level of public concern over the integrity of the review process for the Gateway Pacific terminal facility, we believe the test for determining the objectivity of an EIS consultant should be the potential for a conflict of interest, even if you determine that an actual conflict may not exist.

To give a real world example, we noticed that Tyler Schroeder had received an email inquiry from AECOM, inquiring about the RFP process for the EIS. Under item four from the “Investor FAQ” provided at http://investors.aecom.com/phoenix.zhtml?c=131318<br>&p=irol-faq_pf (copied verbatim below), please be aware that AECOM has had significant prior business dealings with what has been reported to be a 49% shareholder of Carrix, Goldman Sachs. Thus, in the event they apply under the RFP for the EIS, we trust you will consider rejecting their application based on a potential conflict of interest.

At this early stage in the EIS preparation process, we also strongly urge Whatcom County, DOE and the U.S. Army Corps of Engineers to ensure that the RFP for the EIS be issued simultaneously with clear written guidelines for determining the existence of a possible conflict of interest so that your bidding consultants have fair warning, prior to submitting detailed packages. More importantly, this will give the
public an opportunity to review your criteria for determining whether a conflict of interest exists.

By this email, we are requesting a copy of any RFP’s and/or contracts issued or executed to date by any agency for any studies or work related to the Gateway Pacific Terminal, including any conflict of interest policies or guidelines. We understand that, at a minimum, an RFP may have been issued and a contract negotiated related to a vessel traffic study. We are requesting this and any other RFPs and contracts.

Thank you for considering this information as you proceed forward with your review of a possible RFP for the project. We also appreciate your soonest possible response to our request for records.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 268-5553

Investor FAQ

1. Where is AECOM’s corporate headquarters? <>

2. When was AECOM incorporated and in which state? <>
On which exchange does AECOM trade and under what stock symbol? <>

4.

When did AECOM complete its initial public offering? <>

5.

When does AECOM’s fiscal year end? <>

6.

When is the annual meeting of stockholders? <>

7.

How can I purchase AECOM stock? <>

8.

Does AECOM pay dividends? <>

9.

Does AECOM offer a direct stock purchase program? <>

10.

What is AECOM’s SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number? <>

11.

How do I contact AECOM’s Transfer Agent? <>

12.

Who are AECOM’s Independent Auditors? <>

13.

Who do I contact about stock certificate matters? <>
14.

How can I be added to AECOM’s e-mail alerts list to receive press releases and/or SEC filings? <>

15.

How do I contact AECOM’s investor relations or request additional information about AECOM? <>

1.
Where is AECOM’s corporate headquarters?

AECOM’s headquarters are located in Los Angeles, California.

2.
When was AECOM incorporated and in which state?

AECOM was incorporated in 1990 in Delaware.

3.
On which exchange does AECOM trade and under what stock symbol?

AECOM trades on the New York Stock Exchange (NYSE) under the symbol “ACM.”
4. When did AECOM complete its initial public offering?

AECOM completed its initial public offering of common stock in May 2007. The offering was for 35.15 million shares at $20 per share for net proceeds of $371.4 million. Morgan Stanley, Merrill Lynch & Co., and UBS Investment Bank acted as joint book running managers for the IPO. Goldman, Sachs & Co., Credit Suisse and D.A. Davidson & Co. acted as co-managers on the transaction.

5. When does AECOM’s fiscal year end?

AECOM’s fiscal year end is September 30.

6. When is the annual meeting of stockholders?

The stockholders’ meeting was held on March 3, 2011, at 9:00 a.m. local time at The Millennium Biltmore Hotel, 506 South Grand Avenue, Los Angeles, California 90071.

7. How can I purchase AECOM stock?

AECOM stock can be bought or sold through a stockbroker, bank or financial institution that provides brokerage services.
8. Does AECOM pay dividends?

AECOM does not currently pay dividends.

9. Does AECOM offer a direct stock purchase program?

At this time stock cannot be purchased directly from the Company.

10. What is AECOM’s SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number?

The SIC Code is: 8711 - Services-Engineering Services
The CUSIP number is: 00766T100

11. How do I contact AECOM’s Transfer Agent?

Computershare Investor Services
www.computershare.com
Telephone:
+1-800-662-7232 (toll-free within the United States)
+1-781-575-4238 (outside of the United States)
Fax:
+1-781-575-3605
12.

Who are AECOM’s Independent Auditors?

Ernst & Young LLP

13.

Who do I contact about stock certificate matters?

Computershare Investor Services
www.computershare.com
Telephone:
+1-800-662-7232 (toll-free within the United States)
+1-781-575-4238 (outside of the United States)
Fax:
+1-781-575-3605

By Mail:
P.O. Box 43078
Providence, RI 02940-3078
United States of America

By Overnight Delivery:
Computershare Investor Services
250 Royall Street
Canton, MA 02021
United States of America
14. How can I be added to AECOM's e-mail alerts list to receive press releases and/or SEC filings?

Please select the following link and fill out the requested information: http://investors.aecom.com/phoenix.zhtml?c=131318&p=irol-alerts

15. How do I contact AECOM’s investor relations or request additional information about AECOM?

Please contact:

Paul Cyril  
Vice President  
Investor Relations  
Phone: 212-973-2982  
E-mail: paul.cyril@aecom.com

Paul Gennaro  
Senior Vice President  
Corporate Communications  
Chief Communications Officer  
Phone: 212-973-2982  
E-mail: paul.gennaro@aecom.com
See attached.

~~~~~~~~~~~~~~~~~~~~~~~~~~~
Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
Fwd: DJC story... Coal terminal RFP expected in January
From: Stephanie Drake
To: Tyler Schroeder
Date: 11/30/2011 11:27 AM
Subject: Article

should have probably written as: "The agencies overseeing the EIS for the....."  Hope that doesn't cause confusion

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
FYI - attached is the article that ran in the DJC.

Thanks,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA 98225

>>> Tyler Schroeder 11/17/2011 11:19 AM >>>
Please retract my last email.

To all,

Attached is the GPT RFP Notice to Consultants that the County will run in the DJC in the coming week. Please let me know if you have comments.

Thanks,

Tyler
From: Stephanie Drake
To: Tyler Schroeder
Date: 11/30/2011 11:26 AM
Subject: Fwd: DJC story... Coal terminal RFP expected in January
Attachments: Fwd: DJC story... Coal terminal RFP expected in January

See attached.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
From: MAUDE SCOTT <maudes@djc.com>
To: <SDrake@co.whatcom.wa.us>
Date: 11/30/2011 11:21 AM
Subject: Fwd: DJC story... Coal terminal RFP expected in January
Team,

The meeting agenda for the next MAP Team meeting on 12/13 is now posted:
https://secureaccess.wa.gov/ofm/iprmt24/site/alias__1357/22878/map_team.aspx

The following preparation is suggested for the meeting (reprinted here for easy access):

* Review website documents, including:
  o Memorandum of Understanding ('Decisions' tab on website, 'Regulatory Actions,' NEPA/SEPA agencies, 10/17/2011)
  o Permit Decisions and Regulatory Actions ('Decisions' tab) - completed documents since our last meeting in May
  o Applicant Documents ('Library' tab on website) - variety of documents posted since May
  o Correspondence ('Library' tab on website) - letters from public and agency responses posted since May
  o MAP Team Tools ('Tools' tab) - updates to Regulatory Process Diagram and Completed and Pending Milestones

* Provide issues that you want addressed during Project Updates (send to Jane by 12/6)

* Provide questions you'd like addressed during NEPA/SEPA session (send to Jane by 12/6, or bring to meeting)

Also, please RSVP to the meeting notice if you have not done so. (Outlook notice was sent on 10/14 at 8:35 AM.) I will assume you are attending the location nearest your office, but if that's not the case, please let me know so we can be prepared.

If there are any questions, please don't hesitate to let me know. Thanks, Jane

************************************************
Jane Dewell, Regional Lead
Governor's Office of Regulatory Assistance
3190 160th Ave SE
Bellevue, WA 98008-5452
(425) 649-7124 or (425) 577-8445
Tyler,

Good morning,

I am just checking to see if the County has a date of when they expect to release the RFP for Pacific Gateway Terminal Project and I was also wondering if the County was going to issue separate tasks orders for specific projects. For example, we expect air quality to be a major issue and may require a air quality permit and atmospheric dispersion modeling to determine compliance with the NAAQS.

Would air quality permitting and dispersion modeling be part of the EIS or would this be a separate project.

Thanks for your time,

Greg Hildebrand

On Fri, Oct 28, 2011 at 9:50 AM, Gregory Hildebrand <gregahildebrand@gmail.com> wrote:

> Tyler,
> 
> Good morning,
> 
> This is Greg Hildebrand, we just spoke regarding the EIS RFP for the Pacific Gateway Terminal project. Per our conversation, Hildebrand & Associates is interested in the project and would like to be added to the RFP EIS roster so that we may receive a copy of the RFP.
> 
> Thanks for your time,
> Greg Hildebrand - Principal Scientist
>
> Hildebrand & Associates, LLC
> 4623 E Pegasus Ct
> Boise, ID 83716
> (208) 761.5121
> www.hildebrandandassociatesllc.com
> 
> --

Greg Hildebrand - Principal Scientist

Hildebrand & Associates, LLC
4623 E Pegasus Ct
Boise, ID 83716
(208) 761.5121
www.hildebrandandassociatesllc.com
Gentlemen:

In development of the Request for Proposals for the NEPA/SEPA EIS, the question has arisen on the roles of both PIT and BNSF. For funding of the 3rd Party Contractor (3PC), will SSA be the lead between your two companies, with BNSF making its own arrangements with SSA for financial support?

There will be "applicant" involvement in the selection of the 3PC. Again, will SSA take the lead on this, or will both of your companies be represented.

Randel Perry  
Army Corps of Engineers  
Regulatory Branch, NW Field Office  
360-734-3156 (Office)  
360-393-2867 (Cell)

Classification: UNCLASSIFIED  
Caveats: NONE
Hey Jane - In response to your request for issues related to Project Updates below, I would like an update of the following:

Status and summary of progress made to date regarding:

1. Marine sediment sampling effort
2. Benthic Photographic Survey
3. Wave and current study
4. Vessel traffic safety study
5. Other baseline data gathering including:
   a. marine WQ (caged mussel/herring embryo/SPMDs) for water column during herring spawning period
   b. marine WQ for standard parameters on a summer/winter basis i.e. metals, pesticides, PCB, VOC, SVOC, PCP, Conventional. Includes salinity, DO, pH, turbidity.
   c. Marine continuous temperature monitoring
   d. Seasonal freshwater creek - quarterly sampling for baseline i.e. temp, salinity, DO, pH, turbidity, metals, PAHs.
   e. Herring virus sampling and analysis - during herring spawning period for 3-yr initial timeline.

Thanks!

Barry A. Wenger
Senior Environmental Planner
Washington State Dept. of Ecology
Bellingham Field Office
1440 10th Street Suite 102
Bellingham, WA 98225
(360) 715-5220
Team,

The meeting agenda for the next MAP Team meeting on 12/13 is now posted:
https://secureaccess.wa.gov/ofm/iprmt24/site/alias__1357/22878/map_team.aspx

The following preparation is suggested for the meeting (reprinted here for easy access):

* Review website documents, including:
  o Memorandum of Understanding ('Decisions' tab on website, 'Regulatory Actions,' NEPA/SEPA agencies, 10/17/2011)
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* Provide issues that you want addressed during Project Updates (send to Jane by 12/6)

* Provide questions you'd like addressed during NEPA/SEPA session (send to Jane by 12/6, or bring to meeting)

Also, please RSVP to the meeting notice if you have not done so. (Outlook notice was sent on 10/14 at 8:35 AM.) I will assume you are attending the location nearest your office, but if that's not the case, please let me know so we can be prepared.

If there are any questions, please don't hesitate to let me know. Thanks, Jane

***************************************************************

Jane Dewell, Regional Lead
Governor's Office of Regulatory Assistance
3190 160th Ave SE
Bellevue, WA 98008-5452
(425) 649-7124 or (425) 577-8445
Randel,

Thanks for checking.

The answer to your first question is yes—For funding of the 3rd Party Contractor (3PC), SSA will be the lead between our two companies, with BNSF making its own arrangements with SSA for financial support.

On your second question, both companies will be represented as “applicants” relative to involvement in the selection of the 3PC.

Skip Kalb
Director Strategic Development
BNSF Railway Company
(817)867-6133
Cell: (817)271-3057

From: Perry, Randel J NWS [mailto:Randel.J.Perry@usace.army.mil]
Sent: Thursday, December 01, 2011 01:00 PM
To: Kalb, F E Skip; Skip Sahlin <Skip.Sahlin@SSAMarine.com>
Cc: Tyler Schroeder <Tschroed@co.whatcom.wa.us>
Subject: PIT & BNSF (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Gentlemen:

In development of the Request for Proposals for the NEPA/SEPA EIS, the question has arisen on the roles of both PIT and BNSF. For funding of the 3rd Party Contractor (3PC), will SSA be the lead between your two companies, with BNSF making its own arrangements with SSA for financial support?

There will be “applicant” involvement in the selection of the 3PC. Again, will SSA take the lead on this, or will both of your companies be represented.

Randel Perry
Army Corps of Engineers
Regulatory Branch, NW Field Office
360-734-3156 (Office)
360-393-2867 (Cell)
Tyler, I have revised based on more information. Let me know what you think.

Dear Tom,

1) The Birch Bay Watershed Action Plan came out of the 2007 Watershed Characterization and Planning Pilot Study, and earlier plans (BBay Community Plan - 2004, BBay Stormwater Plan - 2006) asking for Low Impact Development and watershed based management of critical areas. This is the second hearing on the proposal, the first being May 15, 2011.

One part of this proposal includes the use of the Habitat Mitigation Fund for buffer impacts within the Birch Bay watershed and the Cherry Point Industrial Urban Growth Area. Use of the Fund does not equate to no buffers, only mitigation through alternative means. The entire Cherry Point Industrial Urban Growth Area was included due to the limited opportunity for habitat mitigation in this area and the potential for improved mitigation results through the Habitat Mitigation Fund.

2) I have attached the draft code. The section of code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: [http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp](http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp)

3) There is a second public hearing on the Birch Bay Watershed Action Plan scheduled for Dec. 8, at 6:30 in the County Courthouse. See the attached notice.

4) Would you like to be added to the Birch Bay Watershed Action Plan email distribution list?

5) Send with name and suggested changes, noting code sections to pgill@co.whatcom.wa.us or PDS_Planning_Commission@co.whatcom.wa.us

Kind regards,

>>> “Tom Ehrlichman" <tom@salishlpsolutions.com> 11/29/2011 9:13 AM >>>

Dear Tyler and Peter,

As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility (“Gateway Pacific”).

It has recently come to our attention that there may be a planning commission review on December 8 concerning changes to some regulations that could affect development within the Cherry Point industrial UGA. We have a couple of questions for you and would appreciated your soonest possible reply so that we can prepare for the meeting if necessary:

1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA (“amendments”)?
2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?

3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm – Salish Land Policy Solutions – on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.

Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA  98225
(425) 268-5553
(360) 224-8664
ARTICLE 9
BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN – HABITAT MITIGATION FUND

16.16.910 Purpose
The purpose of this article is to provide a watershed-based management plan, pursuant to the requirements of WCC 16.16.260.E, that provides an alternative approach to mitigating impacts to wildlife habitat functions resulting from alterations to stream buffers and/or wetland buffers established in Articles 6 and 7 of WCC Chapter 16.16. The Birch Bay watershed-based management plan, hereby called the Habitat Mitigation Fund (HMF), provides a framework for the management and operation of an off-site buffer habitat mitigation program. Details of the HMF are provided in Appendix F. The HMF is specifically designed to achieve all of the following:

A. Provide for a landscape-based approach to mitigation that restores watershed processes and provides high-quality wildlife habitat;
B. Create a voluntary in-lieu fee program whereby permit applicants can pay into an off-site buffer mitigation fund as an alternative to implementing on-site and/or permittee-responsible mitigation;
C. Enable the County, together with a designated HMF co-sponsor, to collect and use buffer mitigation fees to implement buffer mitigation in a way that creates greater wildlife habitat benefits to the Birch Bay watershed than could be achieved through on-site, permittee-responsible mitigation;
D. Restore habitat functions in areas that can provide the greatest ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);
E. Encourage development practices that minimize impacts to critical areas, habitat and water quality;
F. Establish provisions for administering the HMF off-site mitigation program;
G. Establish a HMF contribution schedule;
H. Establish a project review procedure.

16.16.920 Application
A. The provisions contained in this Article are specific to the mitigation of wetland and stream buffer impacts and are provided as an alternative to the following buffer mitigation requirements within this Chapter:
   1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)
   5. Wetland Buffer Averaging (WCC 16.16.650)
   6. Compensatory Wetland Mitigation Plan (WCC 16.16.690)
   7. Stream Buffer Reduction Requirements (WCC 16.16.740.D.1)
   10. Mitigation Standards for Stream Buffers (WCC 16.16.760)
B. Use of the HMF is voluntary; permit applicants not wishing to participate have the option of meeting the standard critical area buffer requirements.

C. Use of the HMF is limited to projects that meet the minimum criteria for enrollment in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis if s/he has reason to believe that the proposed development project has minimal effects on water quality and quantity.

D. Projects that do not meet the criteria stated in sub section C above must conform to the standard wetland and stream buffer widths in Articles 6 and 7 of WCC 16.16.

E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007-019 or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.

F. The HMF cannot be used to mitigate for direct wetland or stream channel impacts.

G. The HMF cannot be used for to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Title 23).

16.16.930 Minimum Buffer Widths

A. Projects which meet the application criteria in WCC 16.16.920 and which utilize the HMF for off-site habitat mitigation shall be afforded greater relief from the standard wetland and stream buffer requirements in WCC 16.16.630 and 16.16.740. The minimum on-site wetland and stream buffer widths for such projects shall be as follows:

1. The minimum buffer of a Category I or II wetland shall be 65 percent of the standard buffer or 40 feet, whichever is greater.

2. The minimum buffer of a Category III or IV wetland shall be 40 percent of the standard buffer, or 25 feet, whichever is greater.

3. The minimum stream buffer shall be 65 percent of the standard buffer, or 33 feet, whichever is greater.

B. The habitat impacts of the additional 10% buffer reduction shall be mitigated off-site through the HMF. The fee for the off-site mitigation shall be determined in accordance with WCC 16.16.950.

C. Projects that impact the buffer of the main stem of Terrell Creek or the main stem of Fingalson Creek shall be subject to the following requirements in addition to the requirements in 16.16.930.A:

4. If the impacts are to the Terrell Creek main stem buffer, the HMF mitigation site must be located within the main stem Terrell Creek buffer.

5. If the impacts are to the Fingalson Creek main stem buffer, the HMF mitigation site must be located within either the main stem Terrell or Fingalson Creek buffers.

6. In the event that the HMF co-sponsors have not secured suitable restoration sites to meet the above criteria, the applicant must mitigate stream buffer impacts, per WCC 16.16.760

16.16.940 Location of Mitigation.

Mitigation for loss of wetland and stream buffer habitat functions shall be located at priority sites within the watershed that have been identified by the fund sponsors as having the greatest mitigation value. The HMF co-sponsors shall maintain a list of possible mitigation sites within
the Birch Bay watershed using the best available information about site conditions. The HMF co-sponsors shall select from the list one or more mitigation sites for each wetland and/or stream buffer impact according to the following criteria, which are listed in order of priority:

A. The off-site mitigation provides equal or improved buffer wildlife habitat functions than on-site buffer mitigation;
B. The mitigation site helps to achieve the watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study.
C. In the event that there is more than one site that meets the above criteria, the mitigation site located closest to the impact site shall be the preferred site.

16.16.950 HMF Contribution Schedule

A. Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the Habitat Mitigation Fund (Appendix F) shall pay a base fee of $2.90 per square foot of buffer impact, where the area of buffer impact (square feet) is the difference between the minimum buffer allowed per WCC 16.16.630 or 16.16.740 and the reduced buffer allowed per WCC 16.16.930.

B. In order to reflect the findings of the Birch Bay Watershed Characterization Pilot Study and provide equivalent or greater habitat quality at the mitigation receiving site, the base fee will be increased under these situations:
   1. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay Habitat Mitigation Fund (Appendix F), the base fee will be increased by 20%.
   2. If a buffer impact area crosses sub-basin boundary line, only that portion of impact area that lies within a “protection” or “restoration” sub-basin is subject to the 20% base fee increase.
   3. The base fee will be increased by an additional 20% for buffer alterations that result in removal of trees greater than 4 inches DBH.
   4. The additional 20% is calculated based upon the square feet of areal tree canopy reduction resulting from tree removal.

A. To simplify the cost structure and accounting, the minimum fee will be the greater of $2,250.00, or the amount calculated according to the Contribution Schedule.
B. Mitigation Fund Contribution Schedule

<table>
<thead>
<tr>
<th></th>
<th>No tree canopy removal</th>
<th>Tree canopy removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base fee</strong> (for impacts within “development” sub-basins)</td>
<td>$2.90 per SF</td>
<td>$3.48 per SF</td>
</tr>
<tr>
<td><strong>Base fee</strong> (for impacts with “protection” or “restoration” sub-basins)</td>
<td>$3.48 per SF</td>
<td>$4.05 per SF</td>
</tr>
</tbody>
</table>

If enrolled in the Birch Bay Low Impact Development program (WCC 20.50), applicants have the option of paying into the HMF to mitigate development-related habitat alterations to wetland and stream buffers, in-lieu of typical on-site mitigation. The steps below describe how an applicant would utilize the program:

A. If there are critical areas onsite contact Whatcom County Planning and Development Services for a predevelopment site inspection to determine if a wetland delineation and/or Habitat Conservation Area assessment report is required (WCC 16.16.250).

B. Complete an assessment report according to WCC 16.16.255, and habitat checklist as provided by Whatcom County Planning and Development Services.

C. When designing the proposed development site plan, follow the avoidance criteria listed in WCC 16.16.260(A).

D. If the proposed development results in buffer impacts, the assessment report shall also include the following information:

1. Submit plans showing the proposed buffer impact area(s) in order to calculate the square footage of buffer impact. Provide calculations for alteration resulting in tree canopy removal separate from areas lacking in tree canopy. Clearly designate areas of tree canopy removal (if present) on the site plan.

2. Determine if the buffer impact area is located in a “development,” “protection,” or “restoration” sub-basin, as identified in Appendix F.

3. Calculate the dollar contribution to the Fund, based upon the most current Fund fee schedule, available from the County.

E. Submit a complete development application to WCPDS.

F. With notice of an approved permit application, pay appropriate fee into Fund.

G. Proceed with development project upon issuance of permit.

16.16.970 Wetland Mitigation Sequencing
A. Projects enrolled in the Birch Bay Low Impact Development program (WCC 20.50), shall be considered to have met the impact avoidance and requirements defined in WCC
16.16.260.A. Such projects shall be allowed to compensate for impacts to certain low-functioning wetland areas by providing appropriate replacement wetlands in accordance with the requirements of WCC 16.16.680. This allowance shall only apply to Category III or IV wetlands, with habitat function scores of less than 20 points, which are located within a “development” sub-basin as identified in the Birch Bay Habitat Mitigation Fund (Appendix F).

16.16.980 Program Evaluation and Re-Authorization

The HMF shall be evaluated by the County no later than January 1, 2017, with County Council action taken to renew, modify, or remove the standards. Criteria used by the County to evaluate the HMF shall include, but not be limited to:

A. Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.

B. Total number of applicants that have utilized the HMF for wetland and/or stream buffer mitigation, as compared to number of applicants that met the application criteria of WCC 16.16.920 but chose not to utilize the Fund.

C. Effectiveness of LID stormwater controls to retain and treat stormwater flowing into wetlands and streams with alterations permitted under the HMF, as indicated by water quality trends.

D. Wildlife habitat features at mitigation receiving areas, connectivity of sites, diversity of habitat, and any qualitative wildlife observation data collected during mitigation site monitoring visits.

E. Advances in habitat restoration science, and changes in relevant federal and state regulations.

F. Adequateness of fee structure to provide sufficient funds for restoring mitigation receiving sites, which results in no net loss of habitat functions.

16.16.990 Definitions.

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as hour and one-half feet (1.27m) above ground on the uphill side of the tree.

“Tree canopy” means the area of cover provided by conifer or hardwood tree(s) greater than four inches DBH (diameter at breast height). Tree canopy excludes the portion of the tree cover that overlies impervious surface areas.
(2x545) The Whatcom County Planning Commission will hold a public hearing regarding proposed changes to the Zoning Code and the Critical Area Ordinance. The proposed addition to the Title 20 (WCC 20.45) establishes a rating system for projects that wish to qualify as Low Impact Development. The amendment to the Critical Area Ordinance (WCC 15.56) establishes a management program for development near Critical Areas. Public comments are being accepted through December 12, 2005. For more information contact Cathy Craver at (360) 891-3487. The hearing will be held Thursday, December 8, 2005, at 8:00 a.m. at the Whatcom County Council Chambers, 111 Grand Avenue, Bellingham. The public is invited to submit written comments and/or attend the hearing to provide oral comments. Written comments may be submitted by December 8, 2005, to the Whatcom County Planning Commission, 111 Grand Avenue, Suite 500, Bellingham, WA 98225. Small: P.O. Box 3453, Bellingham, WA 98227. How to keep a background check is found on our web site: http://www.wwplanning.com. How to take a background is provided by the website provided by Bellingham.
Randel,

Just a small clarification. Skip K is absolutely right on the structure; however it technically should be Pacific International Terminals, Inc. (PIT) as the lead for funding of the 3rd Party Contractor (3PC), with BNSF making arrangements with PIT for financial support. The second question, Skip K is right again. Pacific International Terminals, Inc. is the “applicant” but both PIT and BNSF will be involved (or have representation) in the selection of the 3PC as the Corps and Whatcom County see fit.

Skip Sahlin

From: Kalb, F E Skip [mailto:F.Kalb@BNSF.com]
Sent: Thursday, December 01, 2011 1:22 PM
To: 'Randel.J.Perry@usace.army.mil'; Skip Sahlin
Cc: 'Tschroed@co.whatcom.wa.us'; Mark Knudsen
Subject: Re: PIT & BNSF (UNCLASSIFIED)

Randel,

Thanks for checking.

The answer to your first question is yes--For funding of the 3rd Party Contractor (3PC), SSA will be the lead between our two companies, with BNSF making its own arrangements with SSA for financial support.

On your second question, both companies will be represented as “applicants” relative to involvement in the selection of the 3PC.

☐

Skip Kalb
Director Strategic Development
BNSF Railway Company
(817)867-6133
Cell: (817)271-3057
--------------------------
Sent from my BlackBerry Wireless Handheld

From: Perry, Randel J NWS [mailto:Randel.J.Perry@usace.army.mil]
Sent: Thursday, December 01, 2011 01:00 PM
To: Kalb, F E Skip; Skip Sahlin <Skip.Sahlin@SSAMarine.com>
Cc: Tyler Schroeder <Tschroed@co.whatcom.wa.us>
Subject: PIT & BNSF (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

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There will be “applicant” involvement in the selection of the 3PC. Again, will SSA take the lead on this, or will both of your companies be represented.

Randel Perry
Army Corps of Engineers
Regulatory Branch, NW Field Office
360-734-3156 (Office)
360-393-2867 (Cell)
Classification: UNCLASSIFIED
Caveats: NONE
I think we ought to add a very brief statement in the RFP about the financial arrangement between PIT and BNSF. County will contract with PIT for funds; BNSF will contract with PIT to provide their share.

In the matter of the contractor selection involvement as described below, both parties should be referred to as "applicants" for NEPA. But does this mean that BNSF needs to submit an application to Whatcom Co. and Ecology to participate in contractor selection under SEPA?

Randel

-----Original Message-----
From: Skip Sahlin [mailto:Skip.Sahlin@SSAMarine.com]
Sent: Thursday, December 01, 2011 2:50 PM
To: Perry, Randel J NWS
Cc: 'Tschroed@co.whatcom.wa.us'; Mark Knudsen; 'Kalb, F E Skip'
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Dear Tom,

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One provision of this proposal includes the use of the Habitat Mitigation Fund for buffer impacts within the Birch Bay watershed and the Cherry Point Industrial Urban Growth Area. Use of the Fund does not preclude the requirement to provide buffers for critical areas, only that impacts to buffers can be mitigated through alternative means.

2) I have attached the draft code. The section of code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: [http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp](http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp)

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5) Send with name and suggested changes, noting code sections to pgill@co.whatcom.wa.us or PDS_Planning_Commission@co.whatcom.wa.us

Kind regards,

Peter Gill
Natural Resources Division
Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
pgill@co.whatcom.wa.us

>>> “Tom Ehrlichman” <tom@salishlpsolutions.com> 11/29/2011 9:13 AM >>>

Dear Tyler and Peter,

As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility (“Gateway Pacific”).

It has recently come to our attention that there may be a planning commission review on December 8 concerning changes to some regulations that could affect development within the Cherry Point industrial
UGA. We have a couple of questions for you and would appreciated your soonest possible reply so that we can prepare for the meeting if necessary:

1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA (“amendments”)?

2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?

3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm – Salish Land Policy Solutions – on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.

Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664
ARTICLE 9
BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN – HABITAT MITIGATION FUND

16.16.910 Purpose
The purpose of this article is to provide a watershed-based management plan, pursuant to the requirements of WCC 16.16.260.E, that provides an alternative approach to mitigating impacts to wildlife habitat functions resulting from alterations to stream buffers and/or wetland buffers established in Articles 6 and 7 of WCC Chapter 16.16. The Birch Bay watershed-based management plan, hereby called the Habitat Mitigation Fund (HMF), provides a framework for the management and operation of an off-site buffer habitat mitigation program. Details of the HMF are provided in Appendix F. The HMF is specifically designed achieve all of the following:

A. Provide for a landscape-based approach to mitigation that restores watershed processes and provides high-quality wildlife habitat;
B. Create a voluntary in-lieu fee program whereby permit applicants can pay into an off-site buffer mitigation fund as an alternative to implementing on-site and/or permittee-responsible mitigation;
C. Enable the County, together with a designated HMF co-sponsor, to collect and use buffer mitigation fees to implement buffer mitigation in a way that creates greater wildlife habitat benefits to the Birch Bay watershed than could be achieved through on-site, permittee-responsible mitigation;
D. Restore habitat functions in areas that can provide the greatest ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);
E. Encourage development practices that minimize impacts to critical areas, habitat and water quality;
F. Establish provisions for administering the HMF off-site mitigation program;
G. Establish a HMF contribution schedule;
H. Establish a project review procedure.

16.16.920 Application
A. The provisions contained in this Article are specific to the mitigation of wetland and stream buffer impacts and are provided as an alternative to the following buffer mitigation requirements within this Chapter:
1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)
5. Wetland Buffer Averaging (WCC 16.16.650)
6. Compensatory Wetland Mitigation Plan (WCC 16.16.690)
7. Stream Buffer Reduction Requirements (WCC 16.16.740.D.1)
10. Mitigation Standards for Stream Buffers (WCC 16.16.760)
B. Use of the HMF is voluntary; permit applicants not wishing to participate have the option of meeting the standard critical area buffer requirements.

C. Use of the HMF is limited to projects that meet the minimum criteria for enrollment in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis if s/he has reason to believe that the proposed development project has minimal effects on water quality and quantity.

D. Projects that do not meet the criteria stated in sub section C above must conform to the standard wetland and stream buffer widths in Articles 6 and 7 of WCC 16.16.

E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007-019or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.

F. The HMF cannot be used to mitigate for direct wetland or stream channel impacts.

G. The HMF cannot be used for to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Title 23).
the Birch Bay watershed using the best available information about site conditions. The HMF co-sponsors shall select from the list one or more mitigation sites for each wetland and/or stream buffer impact according to the following criteria, which are listed in order of priority:

A. The off-site mitigation provides equal or improved buffer wildlife habitat functions than on-site buffer mitigation;

B. The mitigation site helps to achieve the watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study ().

C. In the event that there is more than one site that meets the above criteria, the mitigation site located closest to the impact site shall be the preferred site.

16.16.950 HMF Contribution Schedule

A. Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the Habitat Mitigation Fund (Appendix F) shall pay a base fee of $2.90 per square foot of buffer impact, where the area of buffer impact (square feet) is the difference between the minimum buffer allowed per WCC 16.16.630 or 16.16.740 and the reduced buffer allowed per WCC 16.16.930.

B. In order to reflect the findings of the Birch Bay Watershed Characterization Pilot Study and provide equivalent or greater habitat quality at the mitigation receiving site, the base fee will be increased under these situations:

1. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay Habitat Mitigation Fund (Appendix F), the base fee will be increased by 20%.

2. If a buffer impact area crosses sub-basin boundary line, only that portion of impact area that lies within a “protection” or “restoration” sub-basin is subject to the 20% base fee increase.

3. The base fee will be increased by an additional 20% for buffer alterations that result in removal of trees greater than 4 inches DBH.

4. The additional 20% is calculated based upon the square feet of areal tree canopy reduction resulting from tree removal.

A. To simplify the cost structure and accounting, the minimum fee will be the greater of $2,250.00, or the amount calculated according to the Contribution Schedule.
B. Mitigation Fund Contribution Schedule

<table>
<thead>
<tr>
<th></th>
<th>No tree canopy removal</th>
<th>Tree canopy removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base fee</strong> (for impacts within “development” sub-basins)</td>
<td>$2.90 per SF</td>
<td>$3.48 per SF</td>
</tr>
<tr>
<td><strong>Base fee</strong> (for impacts with “protection” or “restoration” sub-basins)</td>
<td>$3.48 per SF</td>
<td>$4.05 per SF</td>
</tr>
</tbody>
</table>

If enrolled in the Birch Bay Low Impact Development program (WCC 20.50), applicants have the option of paying into the HMF to mitigate development-related habitat alterations to wetland and stream buffers, in-lieu of typical on-site mitigation. The steps below describe how an applicant would utilize the program:

A. If there are critical areas onsite contact Whatcom County Planning and Development Services for a predevelopment site inspection to determine if a wetland delineation and/or Habitat Conservation Area assessment report is required (WCC 16.16.250).

B. Complete an assessment report according to WCC 16.16.255, and habitat checklist as provided by Whatcom County Planning and Development Services.

C. When designing the proposed development site plan, follow the avoidance criteria listed in WCC 16.16.260(A).

D. If the proposed development results in buffer impacts, the assessment report shall also include the following information:

1. Submit plans showing the proposed buffer impact area(s) in order to calculate the square footage of buffer impact. Provide calculations for alteration resulting in tree canopy removal separate from areas lacking in tree canopy. Clearly designate areas of tree canopy removal (if present) on the site plan.

2. Determine if the buffer impact area is located in a “development,” “protection,” or “restoration” sub-basin, as identified in Appendix F.

3. Calculate the dollar contribution to the Fund, based upon the most current Fund fee schedule, available from the County.

E. Submit a complete development application to WCPDS.

F. With notice of an approved permit application, pay appropriate fee into Fund.

G. Proceed with development project upon issuance of permit.

16.16.970 Wetland Mitigation Sequencing
A. Projects enrolled in the Birch Bay Low Impact Development program (WCC 20.50), shall be considered to have met the impact avoidance and requirements defined in WCC
16.16.260.A. Such projects shall be allowed to compensate for impacts to certain low-functioning wetland areas by providing appropriate replacement wetlands in accordance with the requirements of WCC 16.16.680. This allowance shall only apply to Category III or IV wetlands, with habitat function scores of less than 20 points, which are located within a “development” sub-basin as identified in the Birch Bay Habitat Mitigation Fund (Appendix F).

16.16.980 Program Evaluation and Re-Authorization

The HMF shall be evaluated by the County no later than January 1, 2017, with County Council action taken to renew, modify, or remove the standards. Criteria used by the County to evaluate the HMF shall include, but not be limited to:

A. Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.

B. Total number of applicants that have utilized the HMF for wetland and/or stream buffer mitigation, as compared to number of applicants that met the application criteria of WCC 16.16.920 but chose not to utilize the Fund.

C. Effectiveness of LID stormwater controls to retain and treat stormwater flowing into wetlands and streams with alterations permitted under the HMF, as indicated by water quality trends.

D. Wildlife habitat features at mitigation receiving areas, connectivity of sites, diversity of habitat, and any qualitative wildlife observation data collected during mitigation site monitoring visits.

E. Advances in habitat restoration science, and changes in relevant federal and state regulations.

F. Adequateness of fee structure to provide sufficient funds for restoring mitigation receiving sites, which results in no net loss of habitat functions.

16.16.990 Definitions.

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as hour and one-half feet (1.27m) above ground on the uphill side of the tree.

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| 2001-2007 Legal Notice Registry Corporation (LARCC) solely responsible for the work done on LARCC.

The Whatcom County Planning Commission will hold a public hearing regarding proposed changes to the Zoning Code and the Critical Area Ordinance. The proposed addition to the Title 20 (WCC 20.05) establishes a zoning system for projects that will qualify as Low Impact Development. The amendment to the Critical Area Ordinance (WCC 18.16) establishes a Government Approved Designated Development (GADD) program. The GADD program is a design review process for development projects that will have a minimum of 5000 square feet of development. These development regulations are intended to encourage developers and builders within the development process to reach a sustainable level of development. The Low Impact Development program is being proposed as a pilot program and is an optional method to meeting stormwater and critical area requirements. For more information contact Cathy Crowner at (360) 671-8097. More background information can be found on our website: http://www.bellinghamherald.com/bellingham/2007/05/21/10514.aspx. For more information contact Cathy Crowner at (360) 671-8097. This hearing will be held Thursday, December 6, 2001, at 9:00 a.m. at the Whatcom County Council Chambers, 311 3rd Avenue, Bellingham. The public is invited to submit written comments and/or attend the hearing to provide oral comments. Written comments may be submitted to the Planning Commission at 902 Bay Avenue, Bellingham, WA 98225. Email: POG_Planning_Commission@city.bellingham.wa.us. More background information can be found on our website: http://www.bellinghamherald.com/bellingham/2007/05/21/10514.aspx. More background information can be found on our website: http://www.bellinghamherald.com/bellingham/2007/05/21/10514.aspx.
Dear Peter (and Tyler):

Thank you for your reply to some of our inquiries. Much appreciated. Would you kindly forward to us any SEPA determination that has been issued for these Birch Bay amendments at any time? Could you please forward that to us via email or provide us a web-link?

Your reply did not respond to my question as to whether there are any other amendments under consideration (please see my email below for definitions). Those inquiries obviously were not limited to the Birch Bay issues.

Those were requests made on November 29, 2011 under the Public Disclosure Act. In addition to that first request, please provide documents responsive to a second request: All communications with the applicant for the Gateway Pacific Terminal or its representatives or with the ORA or any other state agency regarding any of the amendments described in our first request.

Thank you for your earliest possible reply to our first and second inquiries.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 68-5553

---

Dear Tom,

1) The Birch Bay Watershed Action Plan came out of the 2007 Watershed Characterization and Planning Pilot Study and earlier plans (BBay Community Plan - 2004, BBay Stormwater Plan - 2006) that asked for Low Impact Development and watershed based management of critical areas. This is the second hearing
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Kind regards,

Peter Gill
Natural Resources Division

Whatcom County Planning & Development Services
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Sincerely,

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Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664
BELLINGHAM - The agencies overseeing the $500 million Gateway Pacific coal terminal project at Cherry Point will seek consultants to prepare an environmental impact statement.

A request for proposals will be published in the Daily Journal of Commerce in January.

The terminal would be used by Pacific International Terminals to load coal, minerals, grain and other items onto ships for transport to Asia. Work will involve new rail loop tracks, covered and open terminal storage areas and a pier and trestle connection to the terminal storage area.

The lead agencies are Whatcom County, the state Department of Ecology and the U.S. Army Corps of Engineers. They are not yet accepting inquiries about the EIS, but more information is available at bit.ly/sV81MU and iprmt.ora.wa.gov.
Randel,

Actually, although PIT is the applicant for the proposed Gateway Pacific Terminal itself, BNSF is also the applicant for the proposed Custer Spur Improvements, per previous advice and discussions. Just wanted to make sure that we’re all clear on that point; namely, BNSF and SSA are both "applicants" under section 404 as to their respective actions.

Skip Kalb  
Director Strategic Development  
BNSF Railway Company  
(817)867-6133

Skip Sahlin

Just a small clarification. Skip K is absolutely right on the structure; however it technically should be Pacific International Terminals, Inc. (PIT) as the lead for funding of the 3rd Party Contractor (3PC), with BNSF making arrangements with PIT for financial support. The second question, Skip K is right again. Pacific International Terminals, Inc. is the "applicant" but both PIT and BNSF will be involved (or have representation) in the selection of the 3PC as the Corps and Whatcom County see fit.

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Director Strategic Development  
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Caveats: NONE

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Randel Perry

Army Corps of Engineers

Regulatory Branch, NW Field Office

360-734-3156 (Office)

360-393-2867 (Cell)

Classification: UNCLASSIFIED

Caveats: NONE
Hi Roxanne,

Due to the unintended excitement this issue has caused, I would recommend we put a statement out ASAP. Attached is a draft.

Peter
Memorandum

TO: Whatcom County Planning Commission
FROM: Peter Gill
DATE: December 8, 2011
SUBJECT: Suggested Changes - Birch Bay Watershed Action Plan

Concern: Based on recent concern over the intended use of the Habitat Mitigation Fund, PDS requests that Planning Commission modify WCC 16.16.920 E to remove the area of the Cherry Point Industrial/Port UGA, outside of the Birch Bay watershed boundary, from participation in this program.

Proposed Change: 16.16.920 E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007 – 019 or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off site buffer habitat mitigation with approval of the Director of Planning and Development Services.

Discussion: Although this program was set in motion in 2007, long before to the Gateway Pacific Terminal proposal, the perception is that the Habitat Mitigation Fund was set up to enable this project. This has made was an intended to be a ecological windfall for the protection of freshwater and marine resources into a negative.

The success of the Habitat Mitigation Fund is not dependent on the inclusion of the area, and is not likely to see much use within the Cherry Point UGA, as industrial uses cannot qualify as Low Impact Development (under WCC 20.50.030), a prerequisite to utilizing the Habitat Mitigation Fund. It is distracting from the environmental and operational benefits of the program. Therefore, the sentence noted above should be removed.

Please consider this change along with the others submitted during your work session.
I have changed "requests" to "recommends" and changed the second sentence under discuss. Please read and let me know if it is ready. I will .pdf and then send to Pam for posting and the Ad hoc group. Roxanne, will you send to Stark and Planning Commission?

Peter Gill
Natural Resources Division
Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
pgill@co.whatcom.wa.us
TO: Whatcom County Planning Commission  
FROM: Peter Gill  
DATE: December 8, 2011  
SUBJECT: Suggested Changes - Birch Bay Watershed Action Plan

Concern: Based on recent concern over the intended use of the Habitat Mitigation Fund, Planning and Development Services recommends that Planning Commission modify WCC 16.16.920 E to remove the area of the Cherry Point Industrial/Port UGA, outside of the Birch Bay watershed boundary, from participation in this program.

Proposed Change: 16.16.920 E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007 – 019 or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.

Discussion: Although this program was set in motion in 2007, long before the Gateway Pacific Terminal proposal, the perception is that the Habitat Mitigation Fund was set up to enable this project. While this Fund was intended to be a windfall for the ecological protection of freshwater and marine resources, its potential use in this area has become a drawback to the overall program.

The success of the Habitat Mitigation Fund is not dependent on the inclusion of the area, and is not likely to see much use within the Cherry Point UGA, as industrial uses cannot qualify as Low Impact Development (under WCC 20.50.030), a prerequisite to utilizing the Habitat Mitigation Fund. It is distracting from the environmental and operational benefits of the program. Therefore, the sentence noted above should be removed.

Please consider this change along with the others submitted during your work session.
We were aware that both parties are "applicants", just needed to define the roles.

Randel Perry  
Army Corps of Engineers  
Regulatory Branch, NW Field Office  
360-734-3156 (Office)  
360-393-2867 (Cell)

-----Original Message-----  
From: Kalb, F E Skip  
Sent: Friday, December 02, 2011 8:41 AM  
To: Skip Sahlin; Perry, Randel J NWS  
Cc: 'Tschroed@co.whatcom.wa.us'; Mark Knudsen  
Subject: RE: PIT & BNSF (UNCLASSIFIED)

Randel,

Actually, although PIT is the applicant for the proposed Gateway Pacific Terminal itself, BNSF is also the applicant for the proposed Custer Spur Improvements, per previous advice and discussions.

Just wanted to make sure that we’re all clear on that point; namely, BNSF and SSA are both "applicants" under section 404 as to their respective actions.

Skip Kalb  
Director Strategic Development  
BNSF Railway Company  
(817)867-6133

From: Skip Sahlin  
Sent: Thursday, December 01, 2011 4:50 PM  
To: 'Randel.J.Perry@usace.army.mil'  
Cc: 'Tschroed@co.whatcom.wa.us'; Mark Knudsen; Kalb, F E Skip
Randel,

Just a small clarification. Skip K is absolutely right on the structure; however it technically should be Pacific International Terminals, Inc. (PIT) as the lead for funding of the 3rd Party Contractor (3PC), with BNSF making arrangements with PIT for financial support. The second question, Skip K is right again. Pacific International Terminals, Inc. is the “applicant” but both PIT and BNSF will be involved (or have representation) in the selection of the 3PC as the Corps and Whatcom County see fit.

Skip Sahlin

From: Kalb, F E Skip [mailto:F.Kalb@BNSF.com]
Sent: Thursday, December 01, 2011 1:22 PM
To: 'Randel.J.Perry@usace.army.mil'; Skip Sahlin
Cc: 'Tschroed@co.whatcom.wa.us'; Mark Knudsen
Subject: Re: PIT & BNSF (UNCLASSIFIED)

Randel,

Thanks for checking.

The answer to your first question is yes--For funding of the 3rd Party Contractor (3PC), SSA will be the lead between our two companies, with BNSF making its own arrangements with SSA for financial support.

On your second question, both companies will be represented as “applicants” relative to involvement in the selection of the 3PC.

☐

Skip Kalb
Director Strategic Development
BNSF Railway Company
(817)867-6133
Cell: (817)271-3057
--------------------------
Sent from my BlackBerry Wireless Handheld

From: Perry, Randel J NWS [mailto:Randel.J.Perry@usace.army.mil]
Sent: Thursday, December 01, 2011 01:00 PM
To: Kalb, F E Skip; Skip Sahlin <Skip.Sahlin@SSAMarine.com>
Cc: Tyler Schroeder <Tschoed@co.whatcom.wa.us>
Gentlemen:

In development of the Request for Proposals for the NEPA/SEPA EIS, the question has arisen on the roles of both PIT and BNSF. For funding of the 3rd Party Contractor (3PC), will SSA be the lead between your two companies, with BNSF making its own arrangements with SSA for financial support?

There will be “applicant” involvement in the selection of the 3PC. Again, will SSA take the lead on this, or will both of your companies be represented.

Randel Perry

Army Corps of Engineers

Regulatory Branch, NW Field Office

360-734-3156 (Office)

360-393-2867 (Cell)
Hi Tom,

Please find the attached memo from PDS on the Cherry Point UGA issue. I have also included a link to the SEPA determination per your email requests:

I cannot respond to (I just don't know) whether there are code changes that affect the Cherry Point UGA beyond the Birch Bay Watershed Action Plan. I suggest reviewing the annual Docket found here for 2011: http://www.co.whatcom.wa.us/council/2011/res/res2011-009.pdf

Kind regards,

Peter Gill
Natural Resources Division
Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
pgill@co.whatcom.wa.us

>>> “Tom Ehrlichman" <tom@salishlpsolutions.com> 12/2/2011 12:52 PM >>>

Do you have a new memo on this issue? I haven’t seen it.
12:52 p.m. Friday
Tom

From:Peter Gill [mailto:pgill@co.whatcom.wa.us]
Sent: Thursday, December 01, 2011 3:17 PM
To: tom@salishlpsolutions.com
Cc: Tyler Schroeder; 'Faith Lumsden'; 'Barbara Dykes'
Subject: Re:Cherry Point amendments?

Dear Tom,

1) The Birch Bay Watershed Action Plan came out of the 2007 Watershed Characterization and Planning Pilot Study and earlier plans (BBay Community Plan - 2004, BBay Stormwater Plan - 2006) that asked for Low Impact Development and watershed based management of critical areas. This is the second hearing on the proposal, the first being May 15, 2011.
One provision of this proposal includes the use of the Habitat Mitigation Fund for buffer impacts within the Birch Bay watershed and the Cherry Point Industrial Urban Growth Area. Use of the Fund does not preclude the requirement to provide buffers for critical areas, only that impacts to buffers can be mitigated through alternative means.

2) I have attached the draft code. The section of code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp

3) There is a second public hearing on the Birch Bay Watershed Action Plan scheduled for Dec. 8, at 6:30 in the County Courthouse. See the attached notice.

4) Would you like to be added to the Birch Bay Watershed Action Plan email distribution list?

5) Send with name and suggested changes, noting code sections to pgill@co.whatcom.wa.us or PDS_Planning_Commission@co.whatcom.wa.us

Kind regards,

Peter Gill

Natural Resources Division

Whatcom County Planning & Development Services

322 N. Commercial Street

Bellingham, WA 98225

360-676-6907 x50263

pgill@co.whatcom.wa.us

>>> “Tom Ehrlichman” <tom@salishlpsolutions.com> 11/29/2011 9:13 AM >>>
Dear Tyler and Peter,

As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility (“Gateway Pacific”).

It has recently come to our attention that there may be a planning commission review on December 8 concerning changes to some regulations that could affect development within the Cherry Point industrial UGA. We have a couple of questions for you and would appreciated your soonest possible reply so that we can prepare for the meeting if necessary:

1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA (“amendments”)?

2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?

3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm – Salish Land Policy Solutions – on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.

Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA  98225
(425) 268-5553
(360) 224-8664
Memorandum

TO: Whatcom County Planning Commission
FROM: Sam Ryan, Planning & Development Services Director
DATE: December 8, 2011
SUBJECT: Birch Bay Watershed Action Plan Public Hearing File #PLN2011-0012

The public hearing on December 8, 2011 is a chance to get input on changes made by the Birch Bay Ad hoc Stakeholder group since your last meeting on this topic, May 13, 2011. The proposal includes an option for managing stormwater using Low Impact Development principles and techniques. The proposal also contains an amendment to the Critical Areas Ordinance that will establish Birch Bay specific rules that alter buffer widths, provide clarity on wetlands impacts, and change how buffer mitigation is handled.

This will be the fifth full meeting of Planning Commission to review this proposal, at this work session discussion will focus on how the program has changed since your last review.

In your packet you will find:
- **Overview Handout** – This one page handout describes changes made by the Birch Bay Ad hoc Workgroup and describes the highlights of the program.

- **Staff Report** – Background, consistency with state and local law, reasons for action, and staff recommendation to Planning Commission. Please note the findings and then the conclusions beginning on page 11. The Commission recommendation will be forwarded to Council with a minority and majority report following this meeting.

  - Exhibit B – Birch Bay specific Critical Areas Ordinance amendment.
  - Exhibit C – Operation and Management of the Habitat Mitigation Fund.

More information, including tracked changes to the documents above:
http://www.co.wa.us/pln2011/0012/downloads.jsp
Birch Bay Watershed Action Plan Overview

The proposed changes under this program provide landowners with an alternative approach to developing property in the Birch Bay watershed. This optional program allows for stormwater solutions that are more economical and aesthetic than conventional practices and basin-specific critical area protection. This is a new approach to land use management for Whatcom County, and as such, it is being proposed as a pilot program to be evaluated by 2017.

Program Highlights

Making Low Impact Development Easy
• Provides "off the shelf" storm water solutions
• Stormwater facility Decision Tree
• Handbook to understand permitting and costs
• Free Screening meeting with LID Staff
• Design flexibility - parcel sizing, road widths, pavement options

Watershed Specific Critical Area Rules
• Reduced buffer widths with LID
• Mitigation of impacts through payment to Fund
• Clarity on avoidance of wetlands

Improved Outcomes
• Community supported - Modern development
• Cost effective, marketable housing
• Long term management of wildlife habitat
• Clean Water

Work with the Birch Bay Ad hoc Stakeholder group has resulted in changes:
• Simplified scoring for LID qualification
• Reduced buffer widths and criteria for wetland avoidance in "development" watersheds
• Continuity with State Stormwater standards
• Handbook to understand stormwater options and critical area protection
• Program will be a pilot, with evaluation by 2017
• Credits toward LID with off-site stormwater improvements
• Maintenance guidelines for LID Stormwater facilities
• Payment in-lieu-of mitigation focused on wildlife habitat
• Habitat evaluation data sheet for tracking impacts

Web Site: [http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/birchbaywatershedactionplan.jsp](http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/birchbaywatershedactionplan.jsp)
I. BACKGROUND INFORMATION

File #: PLN2011-00012

File Name: Birch Bay Watershed Action Plan

Applicant: Whatcom County Planning and Development Services Department

Public Notice: Legal notice was published in the Bellingham Herald on April 27, 2011 and a Planning Commission public hearing was held on May 12, 2011. A second public hearing is scheduled for December 8, 2011, and was published in the Bellingham Herald on November 25, 2011.

SEPA: A SEPA Checklist was submitted to the Whatcom County SEPA Official on April 20, 2011.

60 Day State Review: Notice of the proposed development regulation amendments was sent to Department of Commerce on April 25, 2011, pursuant to RCW 36.70A.106.

Summary of Request:
(1) Amend the Zone code WCC Title 20, by adding a new chapter, Chapter 20.50 to implement the Birch Bay Watershed Low Impact Development Overlay. Full text is provided in Exhibit A.

(2) Add WCC 16.16.900 to the Critical Areas ordinance, to provide for a fee in-lieu-of mitigation program for Habitat Conservation Areas buffers and wetland buffer impacts with the Habitat Mitigation Fund. Full text is provided in Exhibit B.

Location: The area included in the program includes the Birch Bay watershed, consistent with Birch Bay Watershed and Aquatic Resource Management District.

Background:
1. On September 28, 2004, the Whatcom County Council adopted the new Birch Bay Community Plan which includes goals, policies and action strategies recommending protection and enhancement of natural systems and wildlife habitat. The Community Plan also supports development and implementation of Low Impact Development (LID) standards to help protect water resources and prevent adverse impacts to the shellfish resource (see page 7).

2. The Critical Areas Ordinance adopted by Whatcom County Council on September 13, 2005 allows for alternative approaches to mitigation through a watershed-based management plan when it satisfies the requirements of WCC 16.16.260 (E).

3. In 2007, a collaborate group of local, state, and federal agencies worked with citizens to develop the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007). The study provided a watershed scale framework for guiding protection and restoration actions, and identifying areas most suitable for development. The watershed characterization methodology\(^1\) provided the science to help understand the most important and impaired ecological processes in each subbasin. The follow up management recommendations (i.e., protect, restore, develop) recognize the unique natural and built systems of each subbasin.

and recommend land use management actions to meet the goals in each.

4. Whatcom County Council authorized the creation of the Birch Bay Watershed and Aquatic Resources Management (BBWARM) District as the stormwater management district in 2009. Citizens of Birch Bay initiated the program in order to fund projects that would mitigate existing flooding and water quality problems from decades of development that required little or no stormwater mitigation measures.

5. The Birch Bay Shellfish Protection District was formed by the Whatcom County Council in 2009 after the Washington State Department of Health (DOH) prohibited harvesting of shellfish in a portion of Birch Bay due to risks to human health from pollution. DOH designated the District pursuant to RCW 90.72.045, due to water quality degradation caused by ongoing nonpoint sources of pollution.

6. In September 2008, Whatcom County Planning and Development Services received a grant to implement a watershed based approach to land use management based on the recommendations in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007).


8. Based on public input of the alternatives, an implementation program was developed to provide non-technical information to landowners regarding development techniques that can minimize the negative effects of development on the environment, provide pre-sized stormwater practices for small projects, and an offsite mitigation program for buffer impacts.

9. The Birch Bay Watershed Low Impact Development Overlay (Exhibit A) provides an optional approach to development regulations that awards credits to a combination of construction, minimization, and avoidance techniques in order to meet the minimum LID requirements rather than a conventional prescriptive approach.

10. The Habitat Mitigation Fund (Exhibit B) is a watershed-based management plan for consolidating impacts to buffers into more significant projects in areas that provide the greatest chance for ecological lift, consistent with the analysis provided in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007).

11. A Birch Bay Ad hoc Stakeholder Group was formed in June of 2011 to address concerns of the Planning Commission regarding technical review, complexity, and consistency with WA State Low Impact Development Standards. The group consisted of citizens and staff with backgrounds in engineering, policy, land use, environmental, and biological review. The group met six times between June 16, and October 25, 2011.


13. There have been three Planning Commission Work Sessions on drafts and public comments to the drafts on: Oct. 28, 2010, Feb. 10, 2011, and March 10, 2011. A public hearing was held on May 12, 2011 and again on Dec. 8, 2011.
II. POLICY ANALYSIS OF THE PROPOSED AMENDMENTS

Factors to be considered when evaluating a rezone application are found in WCC 20.90.050 and case law. These factors are set forth and discussed below.

A. Whether the initiated rezone or text amendment conforms to the requirements of the GMA, is internally consistent with the Comprehensive Plan and is consistent with County-Wide Planning Policies and any interlocal planning agreements executed pursuant to the GMA.

Growth Management Act

The LID Manual and Habitat Mitigation Fund work toward achieving the following planning goals of the Growth Management Act:

1. RCW 36.70A.020 (2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.
2. RCW 36.70A.020 (6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.
3. RCW 36.70A.020 (7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.
4. RCW 36.70A.020 (9) Open space and recreation. Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities.
5. RCW 36.70A.020 (10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.
6. RCW 36.70A.020 (11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.


Whatcom County Comprehensive Plan (May 2009) Appendix C, pg C-12
Section N. Water Quality and Quantity

2. The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. Where there are potential conflicts with designations required by the Growth Management Act, such as natural resource lands and critical areas, water resource protection shall generally have priority.

3. Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County.

6. All jurisdictions should maximize reduction of water pollutants from stormwater runoff and combined sewer overflows.
Whatcom County Comprehensive Plan

This section provides a list of Whatcom County Comprehensive Plan goals, policies and action items directly related to the proposed zoning code and Critical Areas Ordinance amendments.

Chapter 2 – LAND USE

**GOAL 2F:** Give a high priority to the use of a comprehensive incentive program to encourage achievement of land use goals.

Policy 2F-1: Develop a set of incentives, including economic, which encourages property owners to achieve land use goals.

Policy 2F-2: Base incentive programs on suggestions from citizens, government officials, and experts in the field.

Policy 2F-3: Revise regulations to include incentive programs.

**Goal 2H:** Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources.

Policy 2H-1: Review and retain regulations that serve to protect the public welfare, health, and safety.

**Goal 2M:** Protect and encourage restoration of habitat for fish and wildlife populations.

Policy 2M-1: Ensure that new land uses do not degrade habitat of threatened and endangered species.

Policy 2EE-5: Promote better land use practices and protect water quality by encouraging landowners and developers to investigate and implement innovative subdivision, septic system designs, and stormwater management.

Chapter 11 - ENVIRONMENT

**Goal 11A:** Protect natural resource and systems, life and property from potential hazards.

Policy 11A-2: Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

Policy 11A-4: Manage designated Environmentally Critical Areas (ECAs) as needed, to minimize or protect against environmental degradation and reduce the potential for losses to property and human life.

Policy: 11B-6: Provide clear, timely, appropriate and understandable direction to citizens, developers, and property owners.

**GOAL 11B:** Ease the burden of excessive and confusing regulations, in instances when they are clearly identified, relating to the identification, delineation, and protection of environmental features.
Policy: 11B-1: Develop, as a primary component of a comprehensive environmental management program, non-regulatory measures that include voluntary activity, education, incentives, restoration, acquisition, mitigation, and intergovernmental coordination.

Policy 11B-2: Provide incentives for good stewardship of the land through the use of nonregulatory and innovative land use management techniques.

Goal 11E: Protect and enhance water quality and promote sustainable and efficient use of water resources.

Policy 11E-3: Pursue the most effective methods for protecting water quality, through both regulatory (e.g. zoning, enforcement, fines) and non-regulatory approaches (education, incentives, and technical/financial assistance). Emphasis should be placed on non-regulatory approaches where possible and effective.

Goal 11G: Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.

Policy 11G-1: Manage stormwater runoff to minimize surface water quality and quantity impacts and downstream impacts on channel morphology, property owners, and aquatic habitats.

Policy 11G-2: Maintain or enhance, when appropriate, natural drainage systems and natural water storage sites in order to better protect water quality, moderate water quantity, minimize environmental degradation, and reduce public costs.

Policy 11G-3: Limit the alteration of natural drainage systems and natural water storage sites without acceptable mitigating measures. Such measures should not significantly degrade water quality or fish and wildlife habitat, and should not increase hazards to the community.

Policy 11G-8: Encourage the use of Low Impact Development Strategies. Minimize the amount of impervious surface whenever practicable by using natural engineering design methods such as the use of open, grassed street swales instead of curbs and gutters. Where feasible, encourage alternate surfacing options and other techniques associated with low impact development.

Policy 11G-10: Develop and administer regulations and incentives such that there is no net loss of areas that ecological functions and values as of wetlands and fish and wildlife habitats.

Goal 11H: Protect and enhance natural systems which provide economic, ecological, aesthetic, and cultural benefit.

Policy 11H-4: Where feasible incorporate fish and wildlife habitats into public capital improvement projects, and consider for incorporation into mitigation banking program.
Policy 11H-5: Provide measures to mitigate water quality and quantity impacts from both public and private alterations of natural drainage systems.

Policy 11H-12: Support design and development of residential and industrial development that minimizes disturbance to rivers, streams, and functioning riparian areas.

Goal 11J: Protect and enhance natural systems that support native fish and wildlife populations and habitat.

Policy 11J-4: Support protection and enhancement of fish and wildlife habitat through site design in new development.

Policy 11J-7: Encourage native vegetation and soils retention and plantings which provide or maintain the beneficial uses and functions of streams, rivers, lakes, and marine shorelines.

Policy 11K-4: Encourage land development that avoids or mitigates wetland impact. Impacts to important wetlands should be contingent upon full mitigation measures that equitably compensate for wetlands impacts, on a case by case basis. Strongly discourage alteration of land that results in the degradation of significant wetlands.

Goal 11L: Protect and enhance marine resources in Whatcom County.

Goal 11M: Protect and enhance shellfish habitat in commercial and recreational areas in order to ensure a productive resource base for long-term use.

Policy 11M-2: Restore degraded waters within the drainage basins of shellfish growing areas to a level that allows/supports shellfish harvesting.

Policy 11M-3: Protect shellfish resources by means of prevention. This should include surface and ground water monitoring for early detection of pollution which will minimize the damage and cost of resource restoration.

Policy 11M-5: Develop Low Impact Development standards in shellfish habitat areas.

Policy 11M-6: Identify stormwater treatment systems that will help reduce fecal coliform bacteria levels in stormwater that discharges directly into shellfish habitat areas and encourage their use and construction.

Action Plan for Environmental Goals: B. Non-regulatory Action (6) Develop a comprehensive and streamlined system of permitting and approval of building and land development projects which incorporates environmental protection. All effort should be made to make the permitting process accessible and understandable to the public. To this end, the application and permitting process should be housed in one accessible location. Additionally, a uniform, step-by-step procedure should be developed for the permitting process. This procedure should be available as a printed handout to prospective applicants and other interested parties.
**Birch Bay Community Plan**

**Chapter 7 - Critical Areas**

**Goal CA 1:** To commit to conservation and enhancement of critical areas for long-range benefit to all concerned.

**Policy CA-1b:** Ensure the continued existence and enhancement of fish and wildlife populations by protecting and conserving valuable fish and wildlife habitat.

**Chapter 10 - Utilities**

**Goal SW 1:** Protect water resources and natural drainage systems by controlling the quality and quantity of stormwater runoff.

**Policy SW-1b:** Develop Low Impact Development standards to encourage narrow streets, preservation of pervious surfaces, retention of trees, natural vegetation and on-site stormwater infiltration.

**Goal SW-1e:** Avoid stormwater infiltration adjacent to eroding bluffs in areas where increased stormwater infiltration would exacerbate slope instability problems.

**Goal SW 2:** Implement stormwater management policies and strategies which recognize the value of wetland areas in solving stormwater problems.

**Action Strategy 9:** Develop Low Impact Development standards for Birch Bay and other sensitive watersheds. Low Impact Development regulations should consider allowance or requirement of narrower streets, limitations on impervious surfaces, tree retention policies, with the goal of retaining or replanting 65% tree cover in sensitive areas, and stormwater management techniques such as rain gardens and bioswales designed to increase stormwater retention and infiltration.

**Summary:** The collective goals, policies and action items/strategies of the Growth Management Act, County-Wide Planning Policies, Comprehensive Plan, and the Birch Bay Community Plan support this incentive based program to minimize the impacts of development on water resources and improve mitigation for Whatcom County's critical area buffers. Based upon the above referenced goals, policies and action items/strategies, the proposed amendments have been determined to conform to the objectives of the GMA and to be internally consistent with the objectives of adopted County plans and policies.

**B.** The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the Comprehensive Plan.

The proposed amendments are not anticipated to have a significant affect on the rate or distribution of population growth, employment growth, or land conversion within the Birch Bay Watershed as it is envisioned in the County-wide Comprehensive Plan.

**C.** The anticipated effect upon the ability of County and/or other service providers, as applicable, to provide adequate public facilities including transportation facilities.

It is not anticipated that the proposed amendments will create any adverse impacts to the abilities of county and/or other service providers to provide adequate public facilities or services within the Birch Bay Watershed. As the Birch Bay watershed is not served by a regional...
stormwater facility, aside from County roadside ditches, it is anticipated that the proposed amendments will improve stormwater quantity and quality management within the watershed by controlling potential sources of nutrients, sediments, and pollutants at their source. New stormwater facilities will need to be privately maintained according to maintenance contract.

D. **Anticipated effect upon critical areas and resource lands.**

Land clearing and development activities can significantly affect water quality, basin hydrology, stream channel morphology and habitat quality/aquatic ecology increasing runoff from development sites to receiving water bodies. Erosion and sedimentation associated with stormwater runoff are of concern for a number of reasons including their impacts on water quality for beneficial uses such as fish and wildlife habitat, commercial and recreational shellfish harvesting, and recreation. These impacts can directly affect the fisheries resources by depositing silt and debris into spawning beds and altering the physical processes that create functional habitats for fish life-stages.

The proposed Low Impact Development Overlay amendment to WCC Title 20 is intended to help reduce potential development impacts to critical areas and resource lands by simulating pre-development hydrology and treating runoff to remove pollutants. Low Impact Development techniques, including bioretention, amended soils, and dispersion treat pathogens and heavy metals prior to entering receiving waters. Pervious pavement, infiltration, and rain-water harvest are Low Impact Development practices that are have been shown to decrease the potential erosion to creeks and attenuate floodwaters from stormwater runoff on poorly drained soils in Birch Bay.²

Impacts to Critical Area buffers are permissible if an applicant can show they have taken measures to avoid and minimize the impact. Permitting agencies require compensatory mitigation when applicants cannot reasonably avoid all impacts to wetlands and their functions and values. Studies of environmental mitigation in Washington and other states have shown that mitigation projects often fail to restore environmental functions³. The principal reasons cited in these reports are inappropriate mitigation sites, poor design and construction standards, and inadequate maintenance.⁴ Whatcom County policies and practices have over-emphasized the need to replace lost functions at or near impact site, rather than choosing mitigation sites that best fit with the mitigation goals of the project and its contributing basin. The Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007) provides the technical analysis to change this approach.

When Low Impact Development principles are employed to mitigate the hydrologic and water quality impacts of a development on-site, buffer width can be decreased with mitigation for lost wildlife and habitat functions. Mitigation for the encroached buffer will be mitigated for off-site through the Habitat Mitigation Fund.

As compared to typical on-site, permittee responsible mitigation for critical area impacts, the Habitat Mitigation Fund can offer improve mitigation success and increase flexibility to permittees for the following reasons:

- The sponsors of the mitigation program will identify the most high-priority wildlife habitat restoration areas within the watershed, based on habitat connectivity, wildlife corridors, species diversity and community development plans;
- Flexibility to combine mitigation needs from small project impacts into larger, regionally

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² CH2M Hill. 2006. Birch Bay Comprehensive Stormwater Plan, Low Impact Development Feasibility and Effectiveness Review
significant restoration areas;

- Provides the County a better opportunity at mitigation success by having a sponsor experienced in completing mitigation projects, and implementing the mitigation plan;
- Provides permanent protection – the plan requires mechanisms for long-term protection, management, and maintenance of the project sites.

Impacts to Category III and IV wetlands with a low habitat score will be allowed with when a project qualifies as Low Impact Development. This only applies in sub-watersheds targeted for “development.” The benefit of this approach is premised on the idea that maximizing development in these sub-watersheds that provide limited ecological function will be better for the watershed as a whole than sprawling development into the watersheds that provide a high level of function. It also assumes that the functions of these marginal wetlands can be adequately replaced. The mitigation ratios of the Critical Areas Ordinance WCC 16.16.680 (C) for Category III wetlands are 2:1 when wetlands are recreated and 8:1 if mitigation is enhancement.

E. The amendment must be based on changed conditions or further studies.

Changed conditions within the Birch Bay Watershed include:

1. Recent County permit data and the 2010 U.S. Census indicate that the Birch Bay UGA population and associated development activities are increased rapidly between 2000 and 2010. The proposed amendments are intended to address potential stormwater and Critical Areas impacts associated with continued growth and development.

2. The warm shallow waters and extensive mudflats of Birch Bay provide excellent conditions for shellfish. It is the largest recreational shellfish harvesting area in Whatcom County, and one of the largest in the state. A 2007 shoreline survey of Birch Bay conducted by Washington State Department of Health (DOH) recommended a closure around the mouth of Terrell Creek due to fecal coliform bacteria. In October 2008, DOH closed a 670-yard radius around the mouth of Terrell Creek to commercial shellfish harvest. (DOH also recommends against recreational harvest at the site.) The proposed amendments are intended to provide such a management measure that will contribute to the protection of Birch Bay for long-term shellfish harvesting.

3. Over the last 10 years, Low Impact Development concepts have moved from a progressive and somewhat experimental level to mainstream acceptance by the environmental community, engineering community, and urban planners for stormwater management and control. In order to keep up with this changing technology it is necessary to update and amend goals and/or policies related to LID.

4. Science⁵ and regulations⁶ have improved in regards to their understanding and acceptance of offsite mitigation when done according to a watershed approach.⁷

5. New science based technical analysis are available that will support the watershed-based management plan, including:


Processes (Ecology, 2005):
- Based upon the findings of the "Pilot Study," Identification and Prioritization of Aquatic Habitat Restoration Projects at a Watershed Scale, Birch Bay, Washington (Merrill, 2010), provides a site-specific restoration study for wetland and stream habitats in the watershed;
- Riparian Vegetation Inventory and Function Assessment of Tributaries and Marine Shoreline, Northwest Whatcom County, Anchor, QEA Inc. June 2010.

F. The amendment must bear a substantial relationship to the public health, safety, morals, or welfare.

Existing and potential sources of erosion and stormwater runoff associated with development within the watershed could significantly impact the quantity and quality of water necessary to sustain viable fish and wildlife habitat, as well as impact the long-term economic and recreational viability of shellfish harvest areas. The amendments are intended to:

1) Manage and preserve surface water quantity and quality to sustain recreational and commercial shellfish harvesting capabilities within Birch Bay;
2) Protect downstream property owners from off-site stormwater runoff impacts from adjacent properties; and
3) Protect Birch Bay’s surface waters and nearshore areas for public enjoyment, recreation, and tourism.

It is anticipated that increased land use conditions and thresholds related to stormwater management and critical areas buffer mitigation will likely reduce potential development impacts, therefore serving to protect the public health, safety and welfare within the Birch Bay Watershed.
III. PROPOSED FINDINGS OF FACT AND REASONS FOR ACTION

1. The Birch Bay Watershed Action Plan amendments were docketed by Whatcom County Council on March 15, 2011.

2. The population of the Birch Bay Census Area grew by 10.1% from 2000 to 2010, the highest growth rate of any unincorporated area in Whatcom County. The Birch Bay UGA and UGA Reserve contain sufficient residential land for a population growth of approximately 4,329 new residents by 2029.

3. On September 28, 2004, the Whatcom County Council adopted the Birch Bay Community Plan which includes goals, policies and action strategies recommending protection and enhancement of natural systems and wildlife habitat, stormwater management, and development and implementation of Low Impact Development Standards.

4. Stormwater runoff from roofs, paved and graveled roadways, highways, parking lots, lawns, playfields and other surfaces is often polluted with toxic metals, organic compounds, and bacterial and pathogens that can harm human health, drinking water, fish habitat, and shellfish resources.

5. Erosion, bacteria, phosphorous and other pollutants associated with increased land clearing and development are of concern for a number of reasons including their potential impacts on water quality, basin hydrology, stream channel morphology, beneficial uses such as fish and shellfish habitat, and drinking water.

6. Clean water is necessary to maintain viable recreational and commercial shellfish harvesting areas within Birch Bay and to protect Birch Bay’s waters and nearshore areas for public enjoyment, recreation, and tourism.

7. Low Impact Development stormwater management options can help prevent measurable harm to streams, lakes, wetlands and other natural aquatic systems resulting from commercial, residential, or industrial development.

8. Low Impact Development is a stormwater management and land development strategy that can be applied to projects at all scales. This strategy emphasizes conservation, and the use of on-site natural features combined with engineered, small-scale hydrologic controls to closely mimic pre-development hydrology.

9. Whatcom County Comprehensive Plan Goal 11G identifies protection of water resources and natural drainage systems by controlling the quantity and quality of stormwater runoff as an objective of Whatcom County.

10. Whatcom County Comprehensive Plan Goals 11L and 11M identify protection and enhancement of marine and shellfish habitat through Low Impact Development standards, improves stormwater management and restoration of wetlands as objectives of Whatcom County.

11. Adoption of the Birch Bay Low Impact Development Manual will allow the use of stormwater management techniques that can complement regulations protecting critical areas by protecting water quality and controlling sedimentation and erosion.

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9 Whatcom County Urban Growth Area Review, Executive Recommendations, Table 11, 8/17/2009

Section III – Findings of Fact
12. Whatcom County Comprehensive Plan Goal 2F gives a high priority to the use of a comprehensive incentive program to encourage achievement of land use goals.

13. The proposed Chapter 20.50 (Exhibit A) provides credits for various construction and avoidance techniques that count toward applicant benefits, including: variation to standard code requirements, access to the Habitat Mitigation Fund, and Whatcom County Staff assistance.

14. Each development site has a unique set or limitations and potential for mitigating impacts, such that one set construction technique or stormwater method cannot be universally applied with positive results.

15. The proposed Chapter 20.50 provides site specific flexibility for meeting LID objectives through a point system. Points are based on measurable attributes of: tree retention, revegetation, impervious surface coverage, stormwater management, and soil amendments.

16. Wetlands are regulated by Federal, State, and local agencies. Buffers to protect wetlands and streams are regulated by Whatcom County.

17. Based on an inventory for the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolphson, 2007), wetlands and streams are abundant in the Birch Bay Watershed: approximately 25% of the Urban Growth Area, 60% of the Urban Reserve, and 35% of the Rural Designated areas are mapped as wetland.

18. Much of the dry upland areas of the watershed are already built upon, permitting of future development, consistent with community plans and the policies of the Whatcom County Comprehensive Plan will be a challenge.

19. Maintaining ecological processes within the watershed while facilitating community supported growth is dependent on a watershed approach to mitigation where projects have the best chance for success and have certainty over long term protection.

20. Impacts to low quality wetlands in sub-watersheds targeted for development may be allowed with LID projects when the functions of those wetlands will be mitigated according to the mitigation ratios of the Critical Areas Ordinance (WCC 16.16).

21. Since 2005 there have been forty four (44) permittee responsible mitigation plans approved by Whatcom County Planning and Development Services in the Birch Bay Watershed that are independently tracked by staff.

22. County authorization for establishing a watershed-based management plan derives from WCC 16.16.260.E. This Critical Areas provision allows permit applicants to satisfy mitigation requirements for critical area impacts through a watershed-based management plan.

23. A Birch Bay Ad hoc Stakeholder Group was formed in June of 2011 to address concerns of the Planning Commission regarding technical review, complexity, and consistency with WA State Low Impact Development Standards.

24. The Birch Bay Ad hoc Stakeholder Group met six times between June and October in order to refine the proposal and tie it closer to the science of the 2007 Watershed Characterization Pilot Study.

26. A determination of non-significance was issued under the State Environmental Policy Act (SEPA) on May 13, 2011.

27. Planning Commission public hearings were held on May 12, and December 8, 2011.
IV. PROPOSED CONCLUSIONS

1. The amendments were initiated in accordance with WCC 20.90.030.

2. The amendments to WCC, Title 20 include alternative standards for tree retention, revegetation, impervious surfaces, and on-site stormwater management that are necessary to address potential adverse impacts from development activities, as well as avoid future degradation of the Birch Bay Watershed, the shellfish resource and any associated harm to the health, safety and welfare of the public.

3. As an optional program, applicants that take additional measures to minimize site impacts and mitigate runoff beyond the existing code requirements, are eligible for incentives through Whatcom County.

4. The proposed Chapter 20.50 provides an innovative approach to defining a Low Impact Development project that provides flexibility through a credit system for avoidance, minimization, and mitigation construction techniques.

5. The proposed Critical Areas amendment, 16.16.900, provides an alternative approach to managing critical areas specific to the Birch Bay Watershed. The approach to managing wetlands, buffers, and mitigation is supported through the science of the Birch Bay Watershed Characterization and Planning Pilot Study.

6. The use of Low Impact Development stormwater controls that will adequately mitigate for water quality and hydrologic impacts allow for a reduced wetland and stream buffer width.


8. This pilot program contains provisions to measure performance, with evaluation to be completed by January 1, 2017.

9. The text amendments presented in Exhibit A and B are consistent with the goals and policies of the Growth Management Act, Whatcom County Comprehensive Plan, the County-Wide Planning Policies, and the Birch Bay Community Plan.

V. STAFF RECOMMENDATION

Based upon the above analysis, findings of fact and reasons for action, and conclusions, Planning and Development Services recommends that the proposed amendments, attached as Exhibits A, B, and C, be approved by the Planning Commission.

VI. ATTACHMENTS

Exhibit A: Proposed Amendments to the Zoning Code, Chapter 20.50
Exhibit B: Proposed Amendments to the Critical Areas Ordinance, WCC 16.16.900
Exhibit C: Habitat Mitigation Fund: Watershed Based Management Plan (Appendix F of the Critical Areas Ordinance)
Chapter 20.50

BIRCH BAY WATERSHED LOW IMPACT DEVELOPMENT OVERLAY

Sections:
20.50.010 Purpose.
20.50.020 Definitions.
20.50.030 Area and applicability.
20.50.040 Conformance.
20.50.050 Program Evaluation.
20.50.100 Low Impact Development Qualification.
20.50.110 Applicant Benefits.
20.50.120 Review Process.
20.50.130 Protective Measures.
20.50.140 Site Plan and Supporting Textual Information.
20.50.400 Tree and Forest Vegetation Retention.
20.50.410 Credit Table: Percentage of Existing Forest Cover to be Preserved on the Property.
20.50.420 Scoring Criteria.
20.50.430 Development Requirements.
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20.50.500 Revegetation.
20.50.510 Credit Table: Percentage of Property Revegetated with Native Trees and Shrubs.
20.50.515 Credit Table: Percentage of Degraded Wetland/Stream Buffer to be Revegetated.
20.50.520 Scoring Criteria.
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20.50.610 Credit Table: Percent Area of Impervious Surface.
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20.50.620 Development Requirements.
20.50.621 Parking space dimensions.
20.50.622 Parking requirements.
20.50.623 Alternative surfacing methods.
20.50.624 Vehicular access.
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20.50.626 Green Roof.
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20.50.700 LID Stormwater Design.
20.50.710 Credit Table: Percentage of Stormwater Runoff Treated Onsite, Using LID BMPs.
20.50.715 Scoring Criteria.
20.50.720 Small Scale Stormwater design.
20.50.721 Applicability.
20.50.725 General Standards.
20.50.726 Development Requirements and sizing charts.
20.50.727 Protection and Maintenance.
20.50.730 Large Scale Stormwater LID Project.
20.50.731 Applicability.
20.50.735 Development Requirements.
20.50.736 Protection and Maintenance.
20.50.800 Native Soil Protection and Amendment.
20.50.810 Credit Table: Portion of Site that Receives Soil Amendment.
20.50.830 Development Requirements.

20.50.010 Purpose.

The Birch Bay Low Impact Development (LID) Standards are intended to conserve and use existing natural site features, to integrate distributed, small-scale stormwater controls, and to prevent measurable harm to streams, lakes, wetlands, and other natural aquatic systems from commercial or

Draft November 2, 2011
residential development sites. The purpose of this section is to establish a scoring system for low impact developments in the Birch Bay and Terrell Creek watershed. While enrollment in this program is not required, all project applicants are encouraged to use LID techniques in their projects. This chapter is intended to fulfill the following purposes:

1. Manage stormwater through a land development strategy that emphasizes conservation and use of on-site natural features integrated with engineered, small-scale hydrologic controls to more closely mimic predevelopment hydrologic conditions.
2. Encourage creative and coordinated site planning, the conservation of natural conditions and wildlife corridors, the use of appropriate new technologies and techniques, and the efficient layout of streets, utility networks, and public recreational improvements.
4. Encourage the creation or preservation of permanent forested space and native vegetation.
5. Promote innovative site and housing design.
6. Provide standards for development practices that will earn credits toward incentives.
7. Provide incentives for project proponents whose project exceeds the standards of existing development regulations.
8. Implement a scoring system that provides flexibility in methods used to achieve the stated purpose rather than use a prescriptive approach.
9. Further the goals and the implementation of the policies of the Birch Bay Community Plan, Birch Bay Stormwater Plan, and the Whatcom County Comprehensive Plan.

20.50.020 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as hour and one-half feet (1.27m) above ground on the uphill side of the tree.

“Alternative Surfaces” including, but not limited to, bark or wood mulch, washed gravel, grid/lattice systems, permeable interlocking pavers, pervious concrete, porous asphalt, and other similar approved materials. Surfaces shall be considered impervious surfaces unless the following conditions are met:

1. Bark, wood mulch, and washed gravel shall be designed and installed so that all rain water falling upon the alternative surface will be infiltrated directly beneath the alternative surface without generating surface runoff based on the one-year, 24-hour storm event.
2. Other alternative surface methods shall be designed and installed in accordance with the guidelines in the current edition of the Low Impact Development Technical Guidance Manual for Puget Sound, as applicable.

“Hard surfaces.” For use in estimating review thresholds, hard surfaces include impervious surfaces, alternative surfaces, and vegetated roofs.

“Low Impact Development Best Management Practices” (BMPs) are distributed stormwater management practices, integrated into a project design, that emphasize pre-disturbance hydrologic processes of infiltration, filtration, storage, evaporation and transpiration. LID BMPs include, but are not limited to, bioretention/rain gardens, permeable pavements, dispersion, soil quality and depth, minimal excavation foundations, vegetated roofs, and water re-use.

“Tree canopy” means the area of cover provided by conifer or hardwood tree(s) greater than four inches DBH (diameter at breast height). Tree canopy excludes the portion of the tree cover that overlies impervious surface areas.
20.50.030 Area and applicability.
(1) The LID program applies to development proposals in the unincorporated areas of the Birch Bay watershed (Res. 2008-049 § 1 (Exh. A § 2)).
(2) These optional standards apply to development that qualifies under in 20.50.100.
(3) The benefits are available to residential and commercial development, as well as short subdivisions and long subdivisions, and binding site plans.
(4) The provisions of this chapter do not apply within the jurisdiction of the Shoreline Management Program.

20.50.040 Conformance.
The provisions of this chapter overlay other permit and approval requirements of the Whatcom County Code. All development under this chapter shall comply with all current adopted Whatcom County codes and ordinances, including but not limited to:
(1) Whatcom County Code, Title 20, Zoning, except as modified by this chapter;
(2) The International Building and Fire Codes;
(3) Whatcom County Critical Area Ordinance 16.16;
(4) Flood Damage Prevention, Title 17;
(5) Subdivision, Title 21;
(6) Stormwater Special District, 20.80.636, except as modified by this chapter;
(7) Whatcom County Development Standards - Stormwater, Chapter 2, except as modified by this chapter;
(8) Whatcom County Development Standards, Stormwater Special Districts, Chapter 22, except as modified by this chapter;
(9) 20.80.735 Water resource special management areas;
(10) Whatcom County Code, Title 23, Shoreline Management Program;
(11) Whatcom County Code, Title 24 Health Code; and
(12) All other applicable official controls.

Review Note: This section is intended to show other relevant code sections and where this code allows deviation. The other code would apply except where in conflict with this.

20.50.050 Program Evaluation.
The Birch Bay LID standards in Chapter 20.50 shall be evaluated by the County no later than January 1, 2017, with Council action taken to renew, modify, or remove the LID standards. Criteria used by the County to evaluate the program shall include, but not be limited to:

1) Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.
2) Total number of development applications in the Birch Bay Watershed that have enrolled in the program, as compared to total number of applications that have not.

3) Effectiveness of LID stormwater controls to retain and treat stormwater in the Birch Bay Watershed, as indicated by water quality trends and changes in flooding extent and frequency.

4) Effectiveness of the program to create/preserve permanent, forested open space and wildlife corridors in developing areas, as indicated by changes in land cover.

5) Advances in LID technology and science, and changes in relevant federal and state regulations.

Review Note: Should the code expire or just require evaluation as described?

20.50.100 Low Impact Development Qualification.
Where a low impact development (LID) approach to stormwater management is required by code, or where incentives are provided to encourage its use, projects shall be evaluated based on the LID points they achieve and meeting the minimum requirements. Points are scored based on the area of the project that utilizes any of the five LID practices contained in this chapter. The project area is the boundaries of the parcel or parent parcel of common ownership. The following shall be the minimum thresholds used to identify a low impact development:

(1) A development project must achieve fifty five points, out of a hundred possible points, through any combination of development practices described in this chapter; and
(2) Use LID best management practices (BMPs) to manage the stormwater runoff of a 24 hour storm with a six month return frequency, or 91% of annual stormwater runoff volume as indicated in WCC 20.50.700.

Review Note: Points threshold requires application of 3 of the 5 LID practices in addition to the prerequisites. Points are based on the ecological benefit of the practice and its cost to implement. Stormwater prerequisite (2) will meet the draft State LID performance standard.

20.50.110 Applicant Benefits.
By implementing LID techniques, users of this chapter can earn several benefits, based on a sliding point scale.

(1) Free LID screening meeting. Whatcom County will provide a free screening meeting for those interested in pursuing LID credits. An LID specialist from staff will help evaluate whether this program makes sense for the project and describe how the process works. If an applicant decides to pursue a Low Impact Development project, the benefits of WCC 20.50.110(2) are intended to create incentives.

(2) Projects that qualify as LID under WCC 20.50.100 can take advantage of the following Benefits
(a) Use of Birch Bay Habitat Mitigation Fund. Whatcom County code requires mitigation for wetland buffer and Habitat Conservation Area buffer impacts. This mitigation is typically performed on the site where the development impacts occur, and the applicant is required to post a performance bond, and construct, monitor, and maintain the mitigation project for several years. Projects that qualify per WCC 20.50.100 and do not have suitable mitigation on-site per WCC 16.16.900, shall be able to avoid these obligations by paying into a fund, which fund sponsors would use to implement mitigation at priority restoration sites in the watershed. By scoring points through this LID program and meeting the minimum stormwater prerequisite, and thus mitigating the water quality and hydrology impacts onsite, an applicant can participate in this off-site habitat mitigation program.

(b) Reduction in Critical Area Buffer Size. Projects that are designated LID in WCC 20.50.100 are eligible for wetland buffer and stream buffer reductions consistent with Critical Area provisions in WCC 16.16.900.

(c) Design Standards. The creation of new building lots shall be subject to the design standards of the existing zoning district, subject to the following exceptions:

   (i) Lot size. Design objective: Minimize area of site disturbance. The minimum lot size of the underlying zone district may be reduced up to 15% to achieve the purposes in WCC 20.50.010.
   (ii) Lot frontage width. Design objective: Reduce impervious surfaces by minimizing street length. The minimum width of lots that directly abut streets may be reduced to achieve the purposes in the section.
   (iii) Front yard setbacks shall be as follows: State Highways and Major Collectors or Arterials shall have a minimum setback of 30 feet; and Minor Collectors, Local Access Streets and Neighborhood Collectors shall have a minimum setback of 20 feet, as measured from the abutting road right-of-way; provided, that the road right-of-way meets the minimum standard for road rights-of-way pursuant to the Whatcom County Development Standards. Stormwater BMPs shall be allowed within front yard setbacks.
   (iv) Zero lot line side yard setbacks may be approved within the Urban Growth Area, by the zoning administrator for single-family attached dwelling units along the common property line where the dwellings share a common wall when it is demonstrated:
      (a) That compensating design and/or structural measures are used to ensure the protection of the users and inhabitants (of the development) health, safety and welfare, including but not necessarily limited to visual and acoustical privacy, and adequate light and air.
   (v) Roof overhangs: or other overhanging architectural features shall not project further than 18 inches into the side or rear yard setbacks. Such overhangs may extend three feet into the front yard setback; however, in no case shall they extend more than one-half the depth of the front yard setback.
   (vi) An additional 10 feet in building height above the maximum allowed by zoning, provided that:
      (1) The floor area ratio does not exceed 2:1; or
      (2) the project is not within shoreline jurisdiction.
   (vii) Does not allow a gross density greater than what would otherwise be allowed or required under existing county regulations.

(d) Use of the Special District Streets found in WCDS Chapter 5.
(e) Reduced commercial parking requirements and space dimensions as described in WCC 20.50.600.

Review Note: Is this flexibility we can work with? We Don’t have design standards for cottage housing or townhomes, but this language is intended to allow better clusters and less impervious without increasing zoning densities. Should there be more caveats: fire walls, minimum spacing of 10 feet between units, etc.

20.50.120 Review Process

Authorizations required under this chapter overlay other permit and approval requirements of the Whatcom County Code. Low Impact Development pursuant to this chapter shall be conducted as part of the underlying permit or approval. All review must comply with the procedural requirements of Chapter 2.33 WCC. The following outlines the major steps that users of this chapter must follow to receive the benefits in section WCC 20.50.110.

1. Optional LID Screening and technical assistance meeting:
   (a) Applicant has option to receive a free consulting meeting with a county LID specialist. This is a chance to discuss conceptual plans, describe how LID scoring and benefits work, whether the program is appropriate for the intended project, and discuss LID techniques that may be most suitable on the project site.

2. If a pre-application meeting is required pursuant to WCC 2.33, such as subdivision, short subdivision, and commercial applicants:
   (a) Applicant indicates to county staff that their project will qualify as LID, and where their project may deviate from standard requirements in order to achieve the purposes in WCC 20.50.010. County staff prepare findings.
   (b) Applicant submits documentation as described in WCC 20.50.140, and other applicable development regulations, initiating the formal review process.
   (c) County staff review submittals and determine if the project is in compliance with this chapter. If the project does not qualify as LID, no more than one additional round of resubmittal and review may occur at this stage without additional fees.

3. The application process for projects exempt from pre-application review per 2.33.020 is as follows:
   (a) As part of construction permit submittals, such as clearing, or building permit, applicant submits documentation as required under section 20.50.140, initiating the formal review process.

4. Modifications to the LID plan. Requests for modifications of preliminary or final development plans shall be made in writing and shall be submitted to the planning department.
   (a) Modifications shall be deemed minor if the proposal remains consistent with the purpose and design criteria of this chapter and does not change the overall score of the project and any of the following:
      (i) Land use;
(i) Density, number of dwelling units or lots;
(ii) The amount of parking;
(iii) The elimination of LID practices to treat stormwater.

(b) Examples of minor modifications include, but are not limited to lot line adjustments associated with a subdivision, minor relocations of buildings or landscaped areas, minor changes in phasing and timing, minor changes in building design, and minor changes in elevations of buildings. Other modifications may be deemed minor if approved by the technical administrator.

(c) Major modifications are those which, as determined by Planning and Development Services, substantially change the basic design, density, open space or other similar requirements or provisions. Major adjustments to the development plans shall be reviewed under the same process as the original approval.

20.50.130 Protective Measures

(1) To ensure that LID features provide durable benefits to the watershed, these features must be protected using one of the following mechanisms:

(a) Notice on Title. The owner of the LID project for which a development permit is about to be issued shall record a notice with the county auditor real estate records in a format approved by the technical administrator and provide a copy of the filed notice to the planning and development services department at the time the permit is issued. See subsections in this chapter for specific requirements; or

(b) Placement in a separate non-building tract owned in common by all lots within a subdivision. Covenants, Conditions and Restrictions shall be recorded on the face of the plat with an Auditor file number consistent with land division requirements of WCC 21.04.170, and establish the same limitations on actions as described above under notice on title; or

(c) Placement in a conservation easement or parcel, dedicated to the county or a public or private land trust organization.

(2) A consolidated site plan that documents and displays all protective measures of a LID project, consistent with 20.50.140, can be substituted for multiple individual covenants with approval of the technical administrator.

20.50.140 Site plan and Supporting Text.

At the screening LID meeting, applicants should bring a conceptual site plan and any supporting graphics, and maps to show existing conditions and an overview of the proposed LID project. At the time of application the site plan and supporting text in combination shall provide a level of detail appropriate to the scale of the project and sufficient to demonstrate how the project complies with the provisions of this chapter. Specific requirements shall be consistent with existing permit requirements, and at a minimum shall contain:

(1) Proposed name of the development, north point, a common engineering scale, date and address, and telephone number of the preparer of the site plan/supporting maps.
(2) Critical Areas and their buffers.
(3) Tree and Forest Retention Areas.
(4) Area of canopy removal.
(5) Revegetation Areas.
(6) Proposed conservation easements
(7) Driveway, parking area, building footprints, and other impervious areas.
(8) For Subdivisions: Roads, parking areas, sidewalks and other in-common pervious and impervious developed areas, stormwater facilities and infrastructure.

(9) Areas of disturbed soils to be amended.

(10) Textual information of the proposed LID project including:
   (a) Project narrative showing how the project fulfills the overall goals and each purpose statement in WCC 20.50.010;
   (b) Total gross area of the site;
   (c) Total project area (total gross site area minus open space/reserve area);
   (d) Total area of designated development area;
   (e) Total area of tree and forest cover retention area;
   (f) Total area of revegetation area;
   (g) Total units proposed;
   (h) Proposed number of dwelling units by type;
   (i) Maximum impervious surface proposed for each lot;
   (j) Lot sizes and dimensions;
   (k) Total area of impervious surfacing;
   (l) Proposed ownership of land areas within the LID project both during and after construction;
   (m) Requested dimensional modifications to standard code requirements;
   (n) Development schedule indicating the approximate date when construction of the LID project or stages of the LID project can be expected to begin and be completed.
   (o) Copy of all existing deeds, restrictive covenants, or other legal restrictions which apply to the project site. The applicant may submit a copy of any proposed restrictive covenants that have been drafted.

20.50.400 Tree and Forest Retention Area.

20.50.410 Percentage of Forest Cover to be Preserved on the Property.

<table>
<thead>
<tr>
<th>Within UGA</th>
<th>10 – 20 %</th>
<th>&gt; 20 %</th>
<th>Conservation Easement or Non-Building Tract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of UGA</td>
<td>35 – 65 %</td>
<td>&gt; 65 %</td>
<td>Points Received 6 points 12 points + 6 points</td>
</tr>
</tbody>
</table>

20.50.420 Scoring Criteria.
Vegetation comprised of plant species, other than noxious weeds, that are indigenous to the coastal region of the Pacific Northwest and which reasonably could have been expected to naturally occur on the site. Examples include trees such as Douglas fir, Western Hemlock, Western Red Cedar, Alder, Big-leaf Maple, and Vine Maple; shrubs such as willow, elderberry, and salmonberry; and herbaceous plants such as sword fern, foam flower, and fireweed. Species, such as Himalayan Blackberry, Scotch Broom, or Reed Canary grass are not considered native species.

(1) Tree and Forest Retention Area shall be measured from the outside of the tree canopy.

(2) The total area below the tree canopy shall have at least 30% of the surface area covered by native vegetation containing a dense growth of trees, plants, and underbrush.

(3) Tree and Forest Retention Areas can be discontinuous.
(4) Preserved Tree and Forest Retention Areas shall count toward landscaping requirements.

(5) Critical areas and their buffers may be counted towards this standard so long as they contain existing forest cover (e.g., a steep slope with Douglas fir may be counted while one with Himalayan blackberry may not). Land below an ordinary high water mark shall not be counted towards the required forest cover area.

(6) The applicant shall receive an additional 6 credits if area is protected in a conservation easement or a non-building tract owned in common by all lots within a subdivision consistent with WCC 20.50.130.

20.50.430 Development Requirements.

(1) Trees to be retained shall be healthy and free of disease.

(2) Healthy trees should be retained to the maximum extent possible.

(3) Trees shall be retained in stands or clusters, or if protection of dispersed, individual trees is necessary to meet objectives, specific trees selected for protection should have live crown ratios greater than 30%.

(4) Development within the Tree and Forest Retention Area is consistent with requirements for critical areas in WCC 16.16.230 and 16.16.235.

(5) Prior to any clearing activity or development activity, any tree canopy area designated for retention shall be delineated by temporary fencing, tape, or other indicators around the outer dripline of the trees. Temporary fencing, tape, or other indicators shall be clearly visible and shall be maintained for the duration of the proposed clearing or development activity. Any tree canopy areas designated for retention shall be field verified by the technical administrator before clearing activities begin. Trees within canopy areas designated for retention shall not be damaged by clearing, excavation, ground surface level changes, soil compaction, or any other activities that may cause damage to roots or trunks. Machinery, impervious surfaces, fill and storage of construction materials shall be kept outside of the dripline of the tree canopy areas designated for retention.

20.50.440 Protection and Maintenance.

(1) Protection shall include a notice on title consistent with Protective Native Growth Area covenant requirements in WCDS Chapter 2, Section 221, or a conservation easement consistent with WCC 20.50.130.

(2) Tree canopy areas may be modified under the following circumstances:

(a) Fire prevention methods when supported by the county fire marshal;

(b) Hazard trees, as defined in WCC 16.16.900, are identified (an evaluation and determination by a licensed arborist or forester may be required);

(c) Limited window or view trimming is allowed for view purposes consistent with WCC 16.16.235.(G)
20.50.500 Revegetation.
The following outlines the scoring criteria for the landscaping and revegetation LID technique.

### 20.50.510 Percentage of Property Revegetated with Native Trees and Shrubs

<table>
<thead>
<tr>
<th>Within UGA</th>
<th>2 – 5 %</th>
<th>&gt; 5 – 15 %</th>
<th>&gt; 15 – 30 %</th>
<th>&gt; 30 %</th>
<th>Conservation Easement or Non-Building Tract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of UGA</td>
<td>1-2 %</td>
<td>&gt; 2-5 %</td>
<td>&gt; 5-25 %</td>
<td>&gt; 25 %</td>
<td></td>
</tr>
</tbody>
</table>

Points Received

- 6 points
- 8 points
- 12 points
- 18 points
+ 6 points

### 20.50.515 Percentage of Degraded Wetland/Stream Buffer to be Revegetated.

<table>
<thead>
<tr>
<th>10 – 50 %</th>
<th>&gt; 50 %</th>
</tr>
</thead>
</table>

Additional Points Received

- + 5 points
- + 10 points

### 20.50.520 Scoring Criteria

1. The area of revegetation is based upon the percentage of the development parcel(s) that is revegetated through planting.
2. Additional points are earned if the revegetation area contains wetland and/or stream buffer that is degraded due to clearing activity, invasive species, agricultural operations, or prior development.
   - a) If revegetation of Critical areas or buffer is done as part of compensatory mitigation, no credits shall be awarded.
3. The applicant receives an additional 6 credits if the area is protected in a conservation easement or a non-building tract owned in common by all lots within a subdivision consistent with WCC 20.50.130.

### 20.50.530 Revegetation Requirements.

1. Revegetation areas shall meet the following standards:
   - a) Native vegetation areas shall be replanted with species indigenous to the Northwest or suitable for the Pacific Northwest climate:
     - i) Native vegetation list see Appendix C of Stormwater Special District standards, WCDS Section 221.
   - b) Reforested areas shall be replanted with a minimum of 25% deciduous species and 50% coniferous species, and 25% shrub species.
(c) Planting should be done during the rainy season in the early spring or middle to late fall, in order to increase plant survival rates.

20.50.530 Protection and Maintenance.
   (1) Protection shall include a notice on title consistent with Protective Native Growth Area covenant requirements in WCDS Chapter 2, Section 221, or a conservation easement consistent with WCC 20.50.130.

20.50.600 Impervious Surface.
The following outlines the scoring criteria for impervious surface coverage. The impervious surface point score is based upon the percentage of impervious area of the entire development parcel(s).

20.50.610 Percent of Project Area to be Impervious Surface

<table>
<thead>
<tr>
<th>Within UGA</th>
<th>&lt; 45 %</th>
<th>10 – 35 %</th>
<th>&lt; 10 %</th>
<th>Development that decreases the existing area of impervious surface &gt;150 ft²</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of UGA</td>
<td>&lt; 15 %</td>
<td>5 – 10 %</td>
<td>&lt; 5 %</td>
<td>Points Received</td>
</tr>
</tbody>
</table>

20.50.615 Scoring Criteria
   (1) The area of the parcel that is located waterward of the ordinary high water mark shall not be used in impervious/permeable surface calculations.
   (2) Any portion of a roof overhang or other overhanging architectural feature which projects further than three feet from the footprint of a structure, except green roofs, shall be calculated as impervious surface.
   (3) Alternative surface methods described in WCC 20.50.623 shall be counted as pervious area unless an underdrain is used.
   (4) Green roofs described in WCC 20.50.626 shall be counted as pervious area.
   (5) Points shall be given for the area of a parcel that is impervious, or for the redevelopment of a parcel, not both.

20.50.620 Development Requirements.

.621 Parking space dimensions.
A standard parking space shall have the rectangular dimensions of 10 feet in width and 20 feet in length; provided, that for any parking area of six or more spaces, 50 percent of all spaces may have the rectangular dimensions of eight feet in width and 15 feet in length; and further provided, that these spaces are marked for use by compact automobiles. Except in single-family residential areas, all dimensions shall be exclusive of driveways, aisles and other circulation areas required under WCC 20.80.560 and 20.80.570.

.622 Parking requirements.
Parking shall conform to the requirements of WCC 20.80.500 through 20.80.590 unless otherwise specified in this section. Minimum parking requirements may be reduced through any of the following methods:

(1) A shared parking agreement has been filed with the county auditor establishing a shared parking lot for land uses with noncompeting hours of operation, or for multitenant retail and commercial facilities; provided, the parking lot is not located further than 700 feet from any of the uses it is intended to serve.

   (a) The minimum required parking in shared facilities shall be based on the land use with the highest parking demand.

   (b) Mixed use developments with similar operating hours may be required to submit a parking demand study to determine if parking can be combined.

(2) A 20 percent reduction may be approved if an establishment is located within 1,000 feet of any regularly scheduled bus stop.

(3) The zoning administrator determines that a reduced requirement will reduce overall impervious surfaces while maintaining consistency with this title.

.623 Alternative surfacing methods.
Alternative surfacing methods may be approved for fringe or overflow parking areas; emergency parking areas, private roads, fire lanes, road shoulders, bike paths, walkways, patios, driveways, and easement service roads in residential or commercial zones unless site constraints make use of such materials detrimental to water quality. Utilization of alternative surfacing methods shall be subject to review and approval by the Whatcom County Public Works Department, the County Fire Marshal, and/or the county ADA coordinator for compliance with other applicable regulations and development standards.

.624 Vehicular access.
Driveways and curb cuts shall be minimized along all arterial and collector roads. Each existing lot shall be allowed only one driveway or curb cut; adjacent lots are encouraged to share access points. In new developments, lots or leased sites shall be oriented toward internal driveways, parking areas, or roads with limited access to arterial or collector roads.

.625 Roads, curbs, gutters and sidewalks.
The intent of this section is to reduce impervious surfaces and stormwater runoff. Innovative street sections, which do not compromise public safety, shall be encouraged in the watershed. The following shall be permitted with the approval of the Whatcom County public works department:

(1) Narrow streets and reduced sidewalk standards that satisfy pedestrian and vehicular circulation requirements may be implemented.

(2) For low volume streets with an average daily traffic volume up to 500, the Special District road standards of WCDS Chapter 5, or similar design.
.626 Green Roof
Green roofs shall be designed and constructed using the current edition of the LID Technical Guidance Manual for Puget Sound. Green roofs shall not be counted as impervious surface.

Review Note: Development Requirements were taken from Water Resource Protection Overlay District, except for Roads.

20.50.700 LID Stormwater Design.

20.50.710 Percentage of Stormwater Managed Onsite, Using LID BMPs.

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Prerequisite</th>
<th>91 – 95%</th>
<th>&gt; 95 – 98%</th>
<th>&gt; 98 – &lt; 100%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Points</td>
<td>8 points</td>
<td>10 points</td>
<td>14 points</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

20.50.715 Scoring Criteria.
As a prerequisite to qualifying for this program, small scale and large scale stormwater projects shall use LID best management practices (BMPs) to manage the stormwater runoff of a 24 hour storm with a six month return frequency, or 91% of annual stormwater runoff volume. Additional credits are awarded for projects that manage stormwater above the prerequisite, according to table WCC 20.50.710. Any runoff that passes through LID BMPs without overflow or bypassing the BMP is considered managed. LID BMPs located within the parcel or subdivision are considered onsite. Runoff that flows through bioretention media and is collected in an underdrain is considered to be managed, provided that downstream flow control requirements are met either solely through the LID BMP or downstream conventional stormwater controls where applicable.

Additional points may be awarded by the Technical Administrator for managing stormwater offsite according to table WCC 20.50.710, provided the applicant demonstrates the following:

1. The prerequisite stormwater management is provided onsite; and
2. Area or size of LID BMPs provided offsite is equal to or greater than the additional size above the prerequisite level that would be required to attain an equivalent point level onsite; and
3. Offsite stormwater management is provided within the Birch Bay Watershed; and
4. Protection and maintenance for offsite stormwater management meets the requirements in WCC 20.50.736.

20.50.720 Small Scale Stormwater LID Project.

20.50.721 Applicability:

1. The requirements of this section apply to all small development projects as defined:
   a. Individual detached single-family residences, duplexes and accessory development:
(i) Resulting in the creation or addition of less than 10,000 square feet of cumulative hard surfaces; and
(ii) Less than \( \frac{3}{4} \)-acre of clearing and grading; and
(iii) Less than 5,000 square feet of pollution generating impervious surface.

(b) All other development:
   (i) Resulting in the creation or addition of less than 5,000 square feet of hard surface area; and,
   (ii) Less than \( \frac{3}{4} \)-acre of clearing and grading.

Threshold to determine review process is based on “hard surfaces.” This ensures that a project with 20,000 sqft of pervious asphalt and 10,000 ft of green roof would still get engineering even though it is not impervious surface. See definition at beginning.

20.50.725 General Standards.
Runoff discharge toward or infiltration proposed within 200’ of a landslide hazard area must be evaluated by a geotechnical engineer or a qualified geologist. The discharge point may not be placed on or above slopes greater than 20% or above erosion hazard areas without evaluation by a geotechnical engineer or qualified geologist and Whatcom County approval.

20.50.726 Development Requirements.
Stormwater generated on-site from all new impervious surfaces shall be managed through any combination of LID best management practices (BMP) to treat at least 91% of annual stormwater runoff volume onsite.

(1) With a licensed professional engineer designed system, points will be given according to the thresholds established in WCC 20.50.710, using LID best management practices provided in the current edition of the LID Technical Guidance Manual for Puget Sound, or any other LID best management practices approved by Whatcom County.

(2) Without site specific engineering, stormwater management points shall be given according design specifications and sizing charts below.

   (a) Sites that can fully infiltrate or fully disperse per WCDS, Chapter 2, Sect. 221, are not required to otherwise provide runoff treatment and/or flow control BMPs.

   (b) BMPs shall be designed consistent with the applicable technical manual
      (i) Raingarden Handbook for Western Washington Homeowners (WSU, 2007), or

Should dispersion/infiltration standards be set to Whatcom County standards (2.(a)), or DOE stormwater manual requirements?
### Small Scale Stormwater LID Sizing Table

<table>
<thead>
<tr>
<th>Percentage of Stormwater Managed --&gt;</th>
<th>91-95%</th>
<th>&gt;95-98%</th>
<th>&gt;98-100%</th>
<th>100%</th>
</tr>
</thead>
<tbody>
<tr>
<td>LID BMP</td>
<td>Soil Group</td>
<td>Prerequisite</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rain Garden'</td>
<td>A 1.6%</td>
<td>2.0%</td>
<td>2.8%</td>
<td>7.0%</td>
</tr>
<tr>
<td></td>
<td>B 3.7%</td>
<td>4.9%</td>
<td>6.7%</td>
<td>14.0%</td>
</tr>
<tr>
<td></td>
<td>C 1.6%</td>
<td>4.9%</td>
<td>6.7%</td>
<td>14.0%</td>
</tr>
<tr>
<td></td>
<td>D 1.6%</td>
<td>4.9%</td>
<td>6.7%</td>
<td>14.0%</td>
</tr>
<tr>
<td>Infiltration Trench'</td>
<td>A 0.015</td>
<td>0.02</td>
<td>0.03</td>
<td>0.075</td>
</tr>
<tr>
<td></td>
<td>B 0.035</td>
<td>0.045</td>
<td>0.06</td>
<td>0.19</td>
</tr>
<tr>
<td></td>
<td>C/D N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>Dispersion Trench'</td>
<td>(all) 0.014</td>
<td>0.036</td>
<td>0.071</td>
<td>0.143</td>
</tr>
<tr>
<td>Dispersion Sheet Flow'</td>
<td>(all) 10</td>
<td>10</td>
<td>25</td>
<td>50</td>
</tr>
<tr>
<td>Dispersion Splash Block'</td>
<td>(all) 10</td>
<td>25</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>Cisterns '</td>
<td>(all) 1</td>
<td>1.25</td>
<td>1.9</td>
<td>2.5</td>
</tr>
</tbody>
</table>

(i) Sizing is expressed as percent rain garden area relative to tributary impervious area. Sizing is based on the underlying soil type, and the square footage of impervious area to be treated.

(ii) For soil groups C and D, an underdrain to a suitable dispersion area is required.

(iii) Sizing is expressed as length of trench (ft) relative to tributary impervious area. Infiltration trenches shall be sized based on the underlying soil type, and the square footage of impervious area to be treated. For hydrologic soil group C and D infiltration trenches are not allowed without engineered plans.

(iv) Sizing is expressed as length of trench (ft) relative to tributary impervious area.

(v) Sizing is expressed as length of downstream flow path through native vegetation or compost-amended soils.

(vi) The amount of stormwater that can be managed using a cistern depends upon the size of the cistern and the square footage of roof area to be treated.

### 20.50.727 Protection and Maintenance.

A declaration of covenant must be recorded for each property where stormwater BMPs exist. A draft of the proposed covenant must be reviewed and approved by Whatcom County prior to recording. All required covenants must be recorded prior to final construction approval for the proposed project.

(1) The Stormwater Facility Location covenant in Whatcom County Development Standards, Chapter 2, Section 221, or similar, can be used provided that it contains the following:

(a) Notice to future owners of the presence of stormwater BMPs on the lot and the responsibility of the owner to retain, uphold, and protect the devices, features, pathways, limits, and restrictions.

(b) Include as an attachment, a recordable version of the following information:

(i) a site plan showing all developed surfaces, impervious and pervious, and the location and dimensions of flow control and treatment BMP devices, features, flowpaths (if applicable), and limits of native growth retention areas (if applicable). This plan(s) must be of a common engineering scale and include site topography.

(ii) The stormwater BMP design and maintenance details for each BMP. This includes a diagram (if applicable) of each flow control and treatment BMP device or feature and written maintenance and operation instructions.
(c) Require that each flow control BMP be operated and maintained at the owner's expense.

20.50.730 Large Scale Stormwater LID Project.

20.50.731 Applicability. The requirements of this section apply to residential and nonresidential projects not meeting the threshold of a small development project above, in 20.50.721.

20.50.735 Development Requirements. Applicants shall use the LID best management practices (BMPs) provided in the current edition of the *LID Technical Guidance Manual for Puget Sound* as the first step and preferred method in meeting stormwater flow control, detention, and treatment requirements. LID projects shall use infiltration, dispersion, and bioretention to the maximum extent practicable and minimize the use of conventional detention to manage stormwater runoff generated on-site. LID points will be given when stormwater is managed beyond the standards of subsections (1) and (2) below, to the thresholds established in WCC 20.50.710.


(i) Flow control requirements may be reduced through implementation of LID Guidance Manual for Puget Sound, Section 7.2.2, or then-current equivalent, dispersion for all or part of the development site.

(2) Water quality. Low Impact Development treatment BMPs shall be designed to treat 91 percent of the annual runoff volume per *WSDOE Stormwater Management Manual for Western Washington*, outlined under runoff treatment minimum requirements.

(3) Sites that can fully infiltrate per *WSDOE Stormwater Management Manual for Western Washington* Volume III, Chapter 3 or fully disperse per *WSDOE Stormwater Management Manual for Western Washington* Volume V Chapter 5, BMP T5.30 are not required to otherwise provide runoff treatment and/or flow control facilities.

20.50.736 Protection and Maintenance.

(1) All projects shall provide a maintenance plan/program that has been approved by Whatcom County.

(2) A notice on title, or with plat covenants that protect the LID stormwater management facilities from:

(a) Cover by structures or impervious material;
(b) Soil compaction, for example by vehicular traffic; and
(c) Damage by soil removal and grade alteration.
20.50.800 Native soil protection and amendment.  
The following outlines the scoring criteria for the soil amendment LID technique. The LID point score is based upon the area of the development parcel(s) that is amended with compost.

20.50.810 Portion of Site that Receives Soil Amendment.

<table>
<thead>
<tr>
<th>All construction disturbed soils</th>
<th>Construction disturbed soils, plus additional 5 – 10% of site</th>
<th>Construction disturbed soils, plus additional &gt;10% of site</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 points</td>
<td>12 points</td>
<td>14 points</td>
</tr>
</tbody>
</table>

20.50.830 Development Requirements.

(1) Construction disturbed soils are those disturbed by the current development activity.
(2) The duff layer and native topsoil should be retained in an undisturbed state to the maximum extent practicable. In areas requiring grading, remove and stockpile the duff layer and topsoil on site in a designated, controlled area, not adjacent to public resources and critical areas, to be reapplied to other portions of the site where feasible.
(3) Soil quality and depth. All areas subject to clearing and grading that have not been covered by impervious surface, incorporated into a drainage facility or engineered as structural fill or slope shall, at project completion, shall demonstrate compliance with the Guidelines for Implementing Soil Quality and Depth (BMP T5.13 in Stormwater Management Manual for Western Washington - 2005 or as amended).
ARTICLE 9  
BIRCH BAY WATERSHED-BASED MANAGEMENT PLAN –  
HABITAT MITIGATION FUND  

16.16.910 Purpose  
The purpose of this article is to provide a watershed-based management plan, pursuant to the requirements of WCC 16.16.260.E, that provides an alternative approach to mitigating impacts to wildlife habitat functions resulting from alterations to stream buffers and/or wetland buffers established in Articles 6 and 7 of WCC Chapter 16.16. The Birch Bay watershed-based management plan, hereby called the Habitat Mitigation Fund (HMF), provides a framework for the management and operation of an off-site buffer habitat mitigation program. Details of the HMF are provided in Appendix F. The HMF is specifically designed achieve all of the following:  

A. Provide for a landscape-based approach to mitigation that restores watershed processes and provides high-quality wildlife habitat;  
B. Create a voluntary in-lieu fee program whereby permit applicants can pay into an off-site buffer mitigation fund as an alternative to implementing on-site and/or permittee-responsible mitigation;  
C. Enable the County, together with a designated HMF co-sponsor, to collect and use buffer mitigation fees to implement buffer mitigation in a way that creates greater wildlife habitat benefits to the Birch Bay watershed than could be achieved through on-site, permittee-responsible mitigation;  
D. Restore habitat functions in areas that can provide the greatest ecological lift, as described in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (2007);  
E. Encourage development practices that minimize impacts to critical areas, habitat and water quality;  
F. Establish provisions for administering the HMF off-site mitigation program;  
G. Establish a HMF contribution schedule;  
H. Establish a project review procedure.  

16.16.920 Application  
A. The provisions contained in this Article are specific to the mitigation of wetland and stream buffer impacts and are provided as an alternative to the following buffer mitigation requirements within this Chapter:  
1. Mitigation Monitoring and Maintenance (WCC 16.16.260.C)  
5. Wetland Buffer Averaging (WCC 16.16.650)  
6. Compensatory Wetland Mitigation Plan (WCC 16.16.690)  
7. Stream Buffer Reduction Requirements (WCC 16.16.740.D.1)  
10. Mitigation Standards for Stream Buffers (WCC 16.16.760)
B. Use of the HMF is voluntary; permit applicants not wishing to participate have the option of meeting the standard critical area buffer requirements.

C. Use of the HMF is limited to projects that meet the minimum criteria for enrollment in the Birch Bay Low Impact Development program (WCC 20.50). The Technical Administrator may waive this requirement on a case by case basis if s/he has reason to believe that the proposed development project has minimal effects on water quality and quantity.

D. Projects that do not meet the criteria stated in sub section C above must conform to the standard wetland and stream buffer widths in Articles 6 and 7 of WCC 16.16.

E. The HMF applies to the unincorporated areas of the Birch Bay watershed (Ordinance 2007 - 019or as amended). Projects within the Cherry Point Industrial District that impact stream and/or wetland buffers may utilize the HMF for off-site buffer habitat mitigation with approval of the Director of Planning and Development Services.

F. The HMF cannot be used to mitigate for direct wetland or stream channel impacts.

G. The HMF cannot be used for to mitigate impacts to shoreline buffers regulated under the Shoreline Management Program (WCC Title 23).

16.16.930 Minimum Buffer Widths

A. Projects which meet the application criteria in WCC 16.16.920 and which utilize the HMF for off-site habitat mitigation shall be afforded greater relief from the standard wetland and stream buffer requirements in WCC 16.16.630 and 16.16.740. The minimum on-site wetland and stream buffer widths for such projects shall be as follows:

1. The minimum buffer of a Category I or II wetland shall be 65 percent of the standard buffer or 40 feet, whichever is greater.

2. The minimum buffer of a Category III or IV wetland shall be 40 percent of the standard buffer, or 25 feet, whichever is greater.

3. The minimum stream buffer shall be 65 percent of the standard buffer, or 33 feet, whichever is greater.

B. The habitat impacts of the additional 10% buffer reduction shall be mitigated off-site through the HMF. The fee for the off-site mitigation shall be determined in accordance with WCC 16.16.950.

C. Projects that impact the buffer of the main stem of Terrell Creek or the main stem of Fingalson Creek shall be subject to the following requirements in addition to the requirements in 16.16.930.A:

4. If the impacts are to the Terrell Creek main stem buffer, the HMF mitigation site must be located within the main stem Terrell Creek buffer.

5. If the impacts are to the Fingalson Creek main stem buffer, the HMF mitigation site must be located within either the main stem Terrell or Fingalson Creek buffers.

6. In the event that the HMF co-sponsors have not secured suitable restoration sites to meet the above criteria, the applicant must mitigate stream buffer impacts, per WCC 16.16.760.

16.16.940 Location of Mitigation.
Mitigation for loss of wetland and stream buffer habitat functions shall be located at priority sites within the watershed that have been identified by the fund sponsors as having the greatest mitigation value. The HMF co-sponsors shall maintain a list of possible mitigation sites within
the Birch Bay watershed using the best available information about site conditions. The HMF co-sponsors shall select from the list one or more mitigation sites for each wetland and/or stream buffer impact according to the following criteria, which are listed in order of priority:

A. The off-site mitigation provides equal or improved buffer wildlife habitat functions than on-site buffer mitigation;

B. The mitigation site helps to achieve the watershed goals for water quality, flood or conveyance, habitat, or wetland functions established through the Birch Bay Watershed Characterization Pilot Study.

C. In the event that there is more than one site that meets the above criteria, the mitigation site located closest to the impact site shall be the preferred site.

16.16.950  HMF Contribution Schedule

A. Projects that meet the criteria for off-site mitigation in WCC 16.16.920 and 16.16.930, and choose to mitigate through the Habitat Mitigation Fund (Appendix F) shall pay a base fee of $2.90 per square foot of buffer impact, where the area of buffer impact (square feet) is the difference between the minimum buffer allowed per WCC 16.16.630 or 16.16.740 and the reduced buffer allowed per WCC 16.16.930.

B. In order to reflect the findings of the Birch Bay Watershed Characterization Pilot Study and provide equivalent or greater habitat quality at the mitigation receiving site, the base fee will be increased under these situations:

1. For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay Habitat Mitigation Fund (Appendix F), the base fee will be increased by 20%.

2. If a buffer impact area crosses sub-basin boundary line, only that portion of impact area that lies within a “protection” or “restoration” sub-basin is subject to the 20% base fee increase.

3. The base fee will be increased by an additional 20% for buffer alterations that result in removal of trees greater than 4 inches DBH.

4. The additional 20% is calculated based upon the square feet of areal tree canopy reduction resulting from tree removal.

A. To simplify the cost structure and accounting, the minimum fee will be the greater of $2,250.00, or the amount calculated according to the Contribution Schedule.
B. Mitigation Fund Contribution Schedule

<table>
<thead>
<tr>
<th></th>
<th>No tree canopy removal</th>
<th>Tree canopy removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base fee</strong> (for impacts within “development” sub-basins)</td>
<td>$ 2.90 per SF</td>
<td>$ 3.48 per SF</td>
</tr>
<tr>
<td><strong>Base fee</strong> (for impacts with “protection” or “restoration” sub-basins)</td>
<td>$ 3.48 per SF</td>
<td>$ 4.05 per SF</td>
</tr>
</tbody>
</table>

If enrolled in the Birch Bay Low Impact Development program (WCC 20.50), applicants have the option of paying into the HMF to mitigate development-related habitat alterations to wetland and stream buffers, in-lieu of typical on-site mitigation. The steps below describe how an applicant would utilize the program:

A. If there are critical areas onsite contact Whatcom County Planning and Development Services for a predevelopment site inspection to determine if a wetland delineation and/or Habitat Conservation Area assessment report is required (WCC 16.16.250).

B. Complete an assessment report according to WCC 16.16.255, and habitat checklist as provided by Whatcom County Planning and Development Services.

C. When designing the proposed development site plan, follow the avoidance criteria listed in WCC 16.16.260(A).

D. If the proposed development results in buffer impacts, the assessment report shall also include the following information:

1. Submit plans showing the proposed buffer impact area(s) in order to calculate the square footage of buffer impact. Provide calculations for alteration resulting in tree canopy removal separate from areas lacking in tree canopy. Clearly designate areas of tree canopy removal (if present) on the site plan.

2. Determine if the buffer impact area is located in a “development,” “protection,” or “restoration” sub-basin, as identified in Appendix F.

3. Calculate the dollar contribution to the Fund, based upon the most current Fund fee schedule, available from the County.

E. Submit a complete development application to WCPDS.

F. With notice of an approved permit application, pay appropriate fee into Fund.

G. Proceed with development project upon issuance of permit.

16.16.970 Wetland Mitigation Sequencing
A. Projects enrolled in the Birch Bay Low Impact Development program (WCC 20.50), shall be considered to have met the impact avoidance and requirements defined in WCC
16.16.260.A. Such projects shall be allowed to compensate for impacts to certain low-functioning wetland areas by providing appropriate replacement wetlands in accordance with the requirements of WCC 16.16.680. This allowance shall only apply to Category III or IV wetlands, with habitat function scores of less than 20 points, which are located within a “development” sub-basin as identified in the Birch Bay Habitat Mitigation Fund (Appendix F).

16.16.980 Program Evaluation and Re-Authorization

The HMF shall be evaluated by the County no later than January 1, 2017, with County Council action taken to renew, modify, or remove the standards. Criteria used by the County to evaluate the HMF shall include, but not be limited to:

A. Feedback from LID program enrollees, County staff, and Birch Bay Watershed residents.

B. Total number of applicants that have utilized the HMF for wetland and/or stream buffer mitigation, as compared to number of applicants that met the application criteria of WCC 16.16.920 but chose not to utilize the Fund.

C. Effectiveness of LID stormwater controls to retain and treat stormwater flowing into wetlands and streams with alterations permitted under the HMF, as indicated by water quality trends.

D. Wildlife habitat features at mitigation receiving areas, connectivity of sites, diversity of habitat, and any qualitative wildlife observation data collected during mitigation site monitoring visits.

E. Advances in habitat restoration science, and changes in relevant federal and state regulations.

F. Adequateness of fee structure to provide sufficient funds for restoring mitigation receiving sites, which results in no net loss of habitat functions.

16.16.990 Definitions.

“DBH” means diameter breast height, which means the outside bark diameter at breast height. Breast height is defined as hour and one-half feet (1.27m) above ground on the uphill side of the tree.

“Tree canopy” means the area of cover provided by conifer or hardwood tree(s) greater than four inches DBH (diameter at breast height). Tree canopy excludes the portion of the tree cover that overlies impervious surface areas.
Habitat Mitigation Fund: A Birch Bay Watershed-Based Management Plan

Whatcom County Planning & Development Services
Prepared by, ESA Adolfson
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1.0 INTRODUCTION

This document provides a watershed-based management plan for the development of a wetland and stream buffer habitat mitigation program in the Birch Bay watershed, located in Whatcom County. The Habitat Mitigation Fund (HMF), a Birch Bay Watershed-Based Management Plan, was developed in response to recommendations from the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007) (see Section 3.4), and is an optional habitat mitigation program for applicants enrolled in the Birch Bay Low Impact Development (LID) program WCC 20.50. Specifically, the HMF and the proposed Whatcom County Code (WCC) 16.16.900, provide permit applicants the opportunity to pay a fee to Whatcom County (County) in-lieu of completing buffer habitat mitigation on their own. The fees will be used to create the HMF. Money from the HMF will be used to implement regionally significant habitat restoration projects within the watershed.

The HMF is limited to providing buffer habitat mitigation, and is not intended to compensate for loss of buffer water quality and hydrologic functions. These functions would be mitigated for onsite, by the construction and use of LID stormwater facilities, as required for development proposals enrolled in the Birch Bay LID program (WCC 20.50.110).

Whatcom County Code (WCC) allows a watershed-based management plan to substitute for the standard mitigation requirements of WCC Chapter 16.16 when it is sponsored by a watershed improvement district or other special purpose district and it meets the general purpose and intent of the critical area regulations (WCC 16.16.260.E.2). The primary purpose of this document is to demonstrate that this plan complies with the requirements of WCC 16.16.260.E.2, provide a framework for implementation, and describe the role each of the co-sponsors.

2.0 CONSISTENCY WITH WHATCOM COUNTY CODE

Alternative mitigation programs are allowed under WCC 16.16.260.E.2, upon approval of a watershed-based management plan. This section summarizes how this plan meets the requirements of the WCC; more detailed information on the issues of interest is provided in the subsequent sections.

WCC 16.16.260.E.2:

The county shall facilitate review and/or approval of a watershed-based management plan sponsored by a watershed improvement district or other special purpose district when it meets the general purpose and intent of this chapter. Such plans may be used to satisfy the requirements of this chapter and provide relief from the specific standards and requirements thereof when it is demonstrated that all of the following circumstances exist:

a. The proponent(s) demonstrate the organizational and fiscal capability to carry out the purpose and intent of the plan;
The co-sponsors (Whatcom County and the Whatcom Conservation District) (see Section 5.0) have significant prior experience managing lands and administering environmental restoration projects within the county. The program will be self-funded by project applicant fees (see Section 10.0).

b. The proponent(s) demonstrate that long-term management, maintenance, and monitoring of the watershed will be adequately funded and effectively implemented;

This plan includes provisions for management, maintenance, and monitoring of the habitat mitigation receiving sites (see Section 9.0). The fees that permit applicants pay into the HMF will be used to offset the costs of implementing and administering the program.

c. There is a clear likelihood for success of the proposed plan based on demonstrated experience in implementing similar plans or supporting scientific information;

Whatcom Conservation District has a history of providing technical resources to implement the Conservation Enhancement Reserve Program (CREP). CREP is jointly administered by the Whatcom Conservation District and the USDA Farm Service Agency (FSA). Whatcom Conservation District has completed 286 CREP projects, on 1,990 acres.

d. The proposed project results in equal or greater protection and conservation of critical areas than would be achieved using parcel-by-parcel regulations and/or traditional mitigation approaches;

Scientific studies have shown that permittee-responsible mitigation projects are often unsuccessful (National Research Council, 2001). Science has improved in regards to understanding and acceptance of offsite mitigation when done according to a watershed approach (Stanley, 2005; Hruby, 2009). As a result, Washington state and federal agencies (USACE 2008) have issued guidance for “in-lieu fee” mitigation approaches, of which there are several local examples. The City of Mount Vernon currently offers an in-lieu fee program for buffer mitigation (Ecosystem Science & Natural Resources Management (2008). In addition, King County and the Puget Sound Partnership are developing in-lieu fee programs for wetland mitigation (King County, 2009; Puget Sound Partnership, 2010), in accordance with the 2008 federal rule governing in-lieu fee mitigation under Section 404 of the Clean Water Act. This plan is similar to these existing programs.

e. The plan is consistent with an approved watershed plan prepared pursuant to Chapter 90.82 RCW (the State Watershed Management Act) or the plan is prepared under other local or state authority that is consistent with the goals and policies of an applicable and approved watershed plan prepared pursuant to Chapter 90.82 RCW;
This plan is consistent with the findings and recommendations of the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007) (see Section 3.4), a plan that is consistent with the goals and policies of 90.82 RCW.

f. The plan shall contain relevant management strategies considered effective and within the scope of this chapter and shall document when, where, and how such strategies substitute for compliance with the specific standards herein; and

One of the primary goals of the County’s Critical Areas Ordinance (CAO) is to “[protect] the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property.” (WCC 16.16.100.A). As stated above, in-lieu fee mitigation programs typically result in better environmental outcomes, as compared to permittee-responsible projects.

g. The plan shall contain clear and measurable standards for achieving compliance with the purposes of this chapter, a description of how such standards will be monitored and measured over the life of the plan, and a fully funded contingency plan if any element of the plan does not meet standards for compliance.

Section 9 contains provisions for monitoring the success of mitigation projects (see Section 9.3), and a contingency plan (see Section 9.4).

### 3.0 Birch Bay Watershed Background

Birch Bay is part of a coastal watershed encompassing approximately 32 square miles between Drayton Harbor and Lummi Bay, in Water Resource Inventory Area (WRIA) 1 in Whatcom County (Figure 1). Located approximately twenty miles north of Bellingham, Washington, the Bay includes the marine shoreline from Birch Point south to Point Whitehorn, including Birch Bay State Park.
Aquatic areas within the Birch Bay watershed include numerous freshwater wetlands, Terrell Creek and several smaller drainages, and the bay itself. Birch Bay is a shallow water bay, which contains intertidal and shallow subtidal flats. Terrell Creek, which extends through the central portion of the watershed, is the primarily freshwater drainage into the Bay.

Approximately three-quarters of the land within the watershed is considered rural, in which the dominant land uses are agriculture, forestry, and low-density residential. The area surrounding unincorporated urban growth area (UGA) dominated by resort/commercial developments and moderate density single- and multi-family development. Other notable land uses in the watershed include the Lake Terrell Wildlife Area and heavy industry.
3.1 **Historic Conditions**

When the first European explorers reached the Birch Bay area in the late 1700s, the area was inhabited by the Semiahmoo tribe. Similar to other Native American tribes along the northwest coast, the Semiahmoo subsided on fish (particularly salmon), shellfish, waterfowl, wild game, fruits, and berries (Ames and Maschner, 1999). Prior to Euro-American settlement, inland areas of the Birch Bay watershed were dominated almost exclusively by upland and wetland forest. Settlers began to arrive in the mid-1800s and began extracting the timber and fishing. Settlers also drained wetlands to create arable farm land (Kask, 2004).

By the early 20th century the natural resource-based economy of the Birch Bay area experienced a significant downturn due to the depletion of timber resources and fish stocks. With the emergence of the automobile in the 1920s, local entrepreneurs began to market Birch Bay as a recreation resort. Birch Bay has since become a popular regional destination, containing hotels,
condominiums, mobile home and RV Parks, single-family vacation homes and cottages, and a golf course (ESA Adolfson, 2007).

Over time land clearing, home building, commercial and industrial development, and agricultural practices changed the character of the Birch Bay watershed (Figure 3). With these changes came reductions in the quality and diversity of habitat for plants and animals, water quality impacts, and impairments to the ecological processes that create and sustain wetlands, streams, and marine habitat. However, compared with many other watersheds in the Puget Sound lowland region, the ecological health or condition of the Birch Bay watershed is relatively good.
Bay Watershed Characterization and Watershed Planning Pilot Study (see Section 3.4) (ESA Adolfson, 2007).

The community is extremely active in planning for its future, drafting the Birch Bay Community Plan in 2004 and crafting design guidelines for commercial areas. This community has a cohesive vision for growth and residents have worked collaboratively to achieve their common goals and objectives. Birch Bay Water and Sewer District provides sanitary sewer and domestic water to the area. Fire protection services are provided by Fire District #21.

There are ten subwatersheds that comprise the Birch Bay watershed. These range in size from about 240 to 4380 acres. The amount of impervious surfaces in these subwatersheds varies from about 4 to 33 percent (Figure 4). Areas with the highest amounts of impervious surface are

![Land Cover Data](image)

Figure 4. Birch Bay Watershed Land Cover – Impervious Surface, Wetlands and Upland Forest by Subwatershed.

within the UGA and around the BP oil refinery. Wetland cover ranges from 9 to 30 percent of the subwatershed area and second-growth upland forest makes up roughly 20 to 50 percent of the subwatershed area.

The wetland, stream, and wildlife resources of the Birch Bay watershed have experienced increases in stormwater runoff and other development-related impacts (ESA Adolfson, 2007). Birch Bay is susceptible to elevated nutrient and pathogen levels caused by polluted runoff from
the adjacent lands. Shellfish harvesting in Birch Bay, as well as other sheltered bays in the area (such as Drayton Harbor) has been periodically prohibited due to water quality problems caused by bacteria.

The marine shoreline of Birch Bay between Birch Bay Village marina and Birch Point and around Point Whitehorn is characterized by feeder bluffs that supply sediment to the nearshore environment. Portions of the inner Bay and Point Whitehorn shoreline areas are bulkheaded, but the majority of the shore in this area is free of bulkheads. The nearshore areas support many different wildlife species including sand lance, surf smelt, and herring (Figure 5). The intertidal zone contains extensive eelgrass beds that provide important feeding and rearing habitat for salmonid fry and other fish species.

Terrell Creek, the primary freshwater drainage within the watershed, supports a variety of native fish species such as cutthroat trout and Coho salmon. However, native fish population numbers within this 17-square mile drainage have declined significantly in the past 50 years. This decline is attributed to habitat degradation (primarily within the lower portion of the watershed) including loss of riparian habitat, barriers to fish passage, and extreme low flow rates during dry periods of the year (CH2M HILL, 2006). Fifty-eight percent of the Terrell Creek riparian zone has been converted to non-forest cover (Smith, 2002). Most of the remaining cover is scrub-shrub, deciduous, and mixed forest stands. No large conifer stands remain along the stream. The declines in the quality of surface water conditions in the creek (e.g. fecal coliform and temperature) can be associated with past and present land use practices resulting from the previously mentioned increases in human population within the watershed over the last two decades.
Figure 5. Nearshore species and habitats in Birch Bay.
3.3 Threats

As identified in the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007), the Birch Bay watershed faces several threats including:

1. **Development, including residential, commercial, industrial, as well as roads, transportation and utility infrastructure.** As stated above, increased development would likely result in further alteration of terrestrial, freshwater, and marine habitats, habitat forming processes and food webs. Indirectly, increased development could conflict with potential restoration and habitat enhancement opportunities.

2. **Pollutant loading and runoff from the built environment.** As development increases, so do the threats posed by pollutant loading and runoff. Existing laws and regulations govern the design of systems to manage surface water loading/runoff for new development. However, diversion of surface water due to mandated stormwater treatment could deprive some aquatic systems of hydrologic input.

   Birch Bay is already experiencing problems associated with polluted runoff from adjacent lands. These problems include decreasing water quality, and localized flooding and erosion/sedimentation problems.

3. **Invasive species (terrestrial, freshwater, and marine).** Whether they are introduced deliberately or inadvertently, invasive species can out-compete native species for resources, prey upon native species, reduce the resiliency of ecosystems, and change the character of habitat. Climate change may exacerbate the threats posed by invasive species within the Birch Bay watershed.

   There are significant amounts of the invasive plant reed canary grass in the watershed, which chokes stream channels and out-completes native vegetation. In addition, *Spartina* has been found in the Bay, which competes with eelgrass.

4. **Climate change.** Increased temperatures and changes in volume and timing of precipitation would have major implications for in-stream flows, which are already seasonally low in Terrell Creek. Ecosystem health, fish and wildlife, and forests could also be affected. In addition, a rise in sea level is probable, which could cause increases in coastal erosion, landslides, inundation, and flooding.

Clearly, some of the threats to this watershed are beyond the scope of the HMF to address. For example, climate change is a global problem that mitigation through the HMF will be unable to fully ameliorate. However, by understanding how threats such as climate change will affect the watershed, mitigation activities can be planned for in the context of this threat. This may be particularly important for potential projects adjacent to, and near, the bay.
3.4 Birch Bay Watershed Characterization and Planning Pilot Study

In 2007, a collaborative group of local, state, and federal agencies developed the Birch Bay Watershed Characterization and Watershed Planning Pilot Study (ESA Adolfson, 2007). The study provided a watershed scale framework for guiding protection and restoration actions, and identifying areas most suitable for development. The watershed characterization (Ecology Publication #05-06-027) provided the science to help understand the most important and impaired ecological processes in each sub-basin. The follow up management recommendations (i.e., protect, restore, develop) recognize the unique situation in each sub-basin and recommend land use management actions to meet the goals in each. Results include specific restoration opportunities for each of the 32 sub-basins within the Birch Bay watershed. Recommended management actions in the plan include: identifying sending and receiving sites for compensatory mitigation, mechanisms for transferring development credits, analyzing and potentially modifying Urban Growth Areas and zoning densities, using in-lieu fee mitigation, and low impact development standards. Additional work to inventory riparian areas of Terrell Creek was completed in the Riparian Vegetation Inventory and Function Assessment of Tributaries and Marine Shoreline Northwest Whatcom County (Anchor QEA, 2010).

The results of the watershed planning study have been presented to citizen groups in the Birch Bay watershed and the Whatcom County Council. They have all indicated their support for the watershed management study (ESA Adolfson, 2007) and pursuing its implementation.

3.5 Restoration Site Identification Studies

Based upon the findings of the Birch Bay watershed planning study (ESA Adolfson, 2007), Merrill (2010) developed a site-specific restoration study for wetland and stream habitats in the watershed. The specific objectives of this study were: a) delineate and prioritize potential wetland and stream restoration sites within the watershed; b) prioritize the 32 sub-basins of the watershed for restoration potential based upon their potential to provide wildlife habitat, water quality improvement, and hydrologic functions; and c) suggest appropriate restoration techniques for the restoration units. Additional inventory of Terrell Creek and an assessment of the existing buffer condition and potential for restoration was completed in June of 2010 (Anchor QEA, 2010).

4.0 Program Overview

This plan provides an alternative compensatory mitigation program for wildlife habitat alteration resulting from wetland and stream buffer impacts. The program is limited to areas within the Birch Bay watershed boundary, as designated in Figure 2. Specifically, the program allows an applicant to pay a fee into the HMF in-lieu of completing buffer mitigation on their own. The program is not intended to compensate for buffer water quality and hydrologic functions. These functions will be compensated for by the use of LID stormwater facilities on the development
site, as required for development proposals enrolled in the Birch Bay LID program (WCC 20.50.110).

The program sponsors (see Section 5.0) will use the collected fees to create larger, regionally significant habitat restoration projects within the watershed, in identified priority wetland and riparian restoration areas. The HMF is intended to be an alternative to traditional on-site mitigation, and does not supersede the mitigation sequencing requirements of the county’s CAO (WCC 16.16.260.A):

When an alteration or impact to a critical area is proposed, the applicant shall demonstrate that all reasonable efforts have been taken to mitigate impacts in the following prioritized order:

a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.

b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.

c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.

d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.

e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.

For the purposes of this plan, minimizing adverse impacts can be achieved by meeting the Birch Bay Low Impact Development qualifying criteria in WCC 20.50.100. The fees collected in the HMF will be used to restore habitat at “receiving sites” elsewhere in the watershed (see Section 8.2). Use of the HMF is not applicable for direct wetland and stream mitigation, or marine shoreline buffers.

5.0 PLAN SPONSORS AND RESPONSIBILITIES

As stated in WCC 16.16.260.E.2, the sponsor of a watershed-based management plan must be “a watershed improvement district, or other special purpose district.” The HMF will be co-sponsored by the County and the Whatcom County Conservation District (WCD), which meets the WCC requirements of a “special purpose district.” As co-sponsors, the County the WCD will identify, fund, operate, maintain, and manage mitigation projects, as described in this document, and confirmed by an interlocal agreement between the sponsors.
Specifically, the County will be responsible for the following roles:

- Determining the eligibility of an applicant to use the HMF for buffer mitigation;
- Review and make public the annual progress reports and mitigation monitoring reports;
- Issuing permits for mitigation receiving sites when needed;
- Adjusting the Contribution Schedule based on progress reports and ledger;
- Providing the HMF evaluation at the conclusion of this pilot program per 16.16.900.

The WCD will be responsible for the following roles:

- Enrolling receiving sites in the HMF;
- Ensuring the success of compensatory mitigation for which fees have been collected. Maintaining accounting ledgers, tracking all fees collected and expenditures;
- Maintaining sufficient funds for the long-term management of mitigation projects;
- Annually progress reporting that includes financial accounting reports, credit transaction reports, status of long term management endowment account, amount of mitigation provided for authorized impacts/fees collected, and any changes in land ownership or transfer of long term management responsibilities.
- Providing mitigation receiving site monitoring reports;
- Acquiring property or rights to property (e.g. conservation easements) where the mitigation will occur, and ensuring that the restoration sites are protected in perpetuity;
- Providing mitigation plans for technical review; and
- Constructing, monitoring, and maintaining the restoration projects developed under the program.

6.0 MITIGATION SITE TECHNICAL REVIEW

The Whatcom Conservation District (WCD) will solicit third party technical review of mitigation plans. The third party reviewers will be chosen by RFQ or similar procurement procedure from the Whatcom County Qualified Professional list.

The third party technical review will be utilized on an as-needed basis by the WCD with the specific purposes of:
• Reviewing mitigation site plans for consistency with site selection and implementation criteria described in Sections 8 and 9;
• Review mitigation site plans for construction, maintenance, and contingencies as required by 16.16.260(B);
• Review mitigation site plans for adequacy of performance measures as described in Section 9.2; and
• Review the potential use of the of the HMF for preservation in lieu of habitat restoration (see Section 8.2.2).

7.0 DETERMINING FEES

The mitigation fees that will become the basis for the HMF will be based upon: 1) the cost that the sponsor incurs to restore the mitigation receiving site, 2) the area (square footage) of buffer that the applicant proposed to alter, and 3) the quality of the buffer impact area.

The Sponsor must collect a fee that is sufficient to pay for the costs of:

• Acquiring property or rights to property where the mitigation will occur;
• Designing the mitigation activity, such as developing planting plans and other design elements;
• Permitting the mitigation construction (if needed);
• Constructing the habitat mitigation including preparing the site, installing plant materials, installing irrigation, building habitat features, etc;
• Maintaining and adaptively managing the site including controlling weeds, minimizing herbivory and other forms of plant mortality, managing access, etc.;
• Monitoring the site over time (typically 10 years) to assess whether the performance measures have been met;
• Taking corrective actions such as replacing dead or damaged plants or other activities; and
• Administering the program over time.

The County, will establish the HMF fee schedule based upon the estimated costs and expenses of restoring mitigation receiving sites. The fee schedule will be codified, and subject to periodic adjustment (if needed) by the County Council (see WCC 16.16.970). A “base fee” (e.g., X dollars per SF of buffer impact) will be determined, reflecting the cost of providing buffer restoration at a minimum 1:1 areal ratio, in accordance with the CAO (WCC 16.16). In order to
provide mitigation that provides equivalent or greater buffer functioning and also reflects the Birch Bay watershed planning study (ESA Adolfson, 2007) management recommendations, the base fee will be increased under these situations:

- For buffer impacts that occur within a “protection” or “restoration” sub-basin, as identified in the Birch Bay watershed planning study (ESA Adolfson, 2007), the base fee will be increased by 20%. Under this scenario, this reflects the cost of providing buffer restoration at a minimum 1:1.2 areal ratio.

- The base fee will be increased by an additional 20% for buffer alterations that result in removal of tree canopy. The increase in the base fee will be used to offset the increased loss in habitat functions that results from forest habitat removal. Under this scenario, this reflects the cost of providing restoration at a minimum 1:1.2 areal ratio for buffer tree canopy removal within a “development” sub-basin, and a minimum 1:1.4 areal ratio for tree canopy removal within a “protection” or “restoration” sub-basin.

The table below shows the example fee schedule:

<table>
<thead>
<tr>
<th>Example Mitigation Fee Schedule Table</th>
<th>No tree canopy removal</th>
<th>Tree canopy removal</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Base fee</strong> (for impacts within “development” sub-basins)</td>
<td>$ (X) per SF</td>
<td>$ (X * 20%) per SF</td>
</tr>
<tr>
<td><strong>Base fee</strong> (for impacts with “protection” or “restoration” sub-basins)</td>
<td>$ (X * 20%) per SF</td>
<td>$ (X * 40%) per SF</td>
</tr>
</tbody>
</table>

The increase in the base fee will be used directly to restore additional habitat at the mitigation receiving sites. For example, an impact that occurs to a forested buffer in a “development” sub-basin would be charged at $ (X * 20%), which is equivalent to a 1:1.2 mitigation ratio. If just a portion of a buffer impact area involves removal of tree canopy, then only that portion of the impact area that contains tree canopy would be charged at the higher rate.

To simplify the cost structure and accounting, the County will require a minimum fee where impacts are approved.
8.0 **OFFSETTING IMPACTS THROUGH TARGETED MITIGATION**

8.1 **No Net Loss**

The HMF is designed to achieve “no net loss” of buffer habitat functions, based upon the following assumptions:

- The proposed restoration sites will be well designed and constructed by an experienced organization (i.e., the WCD), and will be monitored and maintained so that the sites will meet their identified restoration goals. The WCD is more likely to meet restoration goals and protect a site in perpetuity, as opposed to typical permittee-responsible mitigation.

- The use of LID stormwater controls will adequately mitigate for water quality and hydrologic impacts resulting from a decreased buffer width.

- As the HMF program is intended to mitigate only for habitat impacts, it would be acceptable to mitigate for stream buffer impacts with wetland buffer restoration, and vice-versa.

- The sponsors of the program will identify the most high-priority wildlife habitat restoration areas within the watershed, based upon the best available information.

- Impacts to non-forested buffers within “development” sub-basins can be adequately compensated for with a 1:1 mitigation ratio.

- Impacts to forested buffers within “development” sub-basins, and impacts to non-forested buffers within “protection” and “restoration” sub-basins, can be adequately compensated for with a 1:1.2 ratio.

- Impacts to forested buffers with within “protection” and “restoration” sub-basins can be adequately compensated for with a 1:1.4 ratio.

- As a pilot program the HMF will be reviewed by County staff and the Council in 5 years, and can be revised if need be.

- As the most important habitat areas in the watershed, Terrell and Fingalson Creek impacts must be mitigated for along Terrell or Fingalson creeks.

8.2 **Mitigation Receiving Site Selection**

One of the primary goals of this watershed-based management plan is to provide wildlife habitat compensation for buffer impacts that result in greater ecological benefit to the Birch Bay watershed than could be achieved through permittee-responsible mitigation. As described in
Sections 3.4 and 3.6, the *Birch Bay Watershed Characterization and Watershed Planning Pilot Study* (ESA Adolfson, 2007) identifies sub-basins that are the highest priority for wildlife habitat restoration, and the Merrill study (2010) contains a site-specific identification and prioritization of potential restoration sites in the watershed. According to these studies, the highest-priority candidate restoration sites for restoring wildlife habitat in the watershed:

- Contain a diversity of habitat types (wetland, stream, and upland buffer);
- Contain, or are adjacent to, areas that provide habitat for priority species (e.g. coho salmon and great blue heron);
- Have larger areas, as compared to lower-priority sites;
- Have been significantly altered by previous land uses, but are not developed;
- Contain invasive species infestations (e.g. Himalayan blackberry and reed canary grass); and
- Are located in the Terrell Creek Watershed Assessment Area, as identified in the Birch Bay watershed planning study (ESA Adolfson, 2007).

Based upon existing studies, mitigation will be directed to one or more of the receiving sites as funds become available in the HMF. Currently, the co-sponsors have not secured these sites. The WCD shall be responsible for acquiring rights to perform mitigation activities at the receiving sites through fee simple purchase or conservation easements (negotiated with willing land owners).

Along with the sub-basin and site-specific priorities studies, the WCD will also recognize the following factors when selecting receiving sites:

- Compatibility with adjacent land uses;
- Development trends;
- Anticipated land use changes;
- Habitat status and trends;
- Local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern);
- Land acquisition costs; and
- Stormwater and floodplain management goals.
The general procedure for mitigation site selection is as follows:

1) Based upon the studies and criteria listed above, the Sponsors will develop a list of potential mitigation receiving sites.

2) Analyze the wildlife habitat restoration potential of the selected sites, and investigate the potential of securing property rights to conduct restoration activities on the sites.

3) Secure the property rights needed to construct the mitigation project.

4) Present a mitigation plan for the selected site(s), and submit to third party technical review for comments.

5) Construct the mitigation project.

8.2.1 Advance Mitigation

Advance mitigation means any receiving site restoration actions that have been completed prior to the collection of fees. If funding is available, the co-sponsors may choose to construct advance habitat mitigation projects, based upon the projected volume of development activity in the watershed.

8.2.2 Preservation as Mitigation

The Critical Areas Ordinance (WCC 16.16) conditionally allows mitigation in the form of preservation, with prior approval from the Planning Director. “Preservation” is the protection (in perpetuity) of high value habitats that are under threat of destruction or adverse modification (i.e. conservation to residential development, commercial development, logging, or other activity that would significantly alter ecosystem functions and values). In cases where preservation is proposed, project planning and implementation funds may be used to secure the property to be preserved. The use of preservation as mitigation will be reviewed based on the following:

- Is the project located in a “protection” sub-basin, as identified in the Birch Bay watershed planning study, Section 12;

- the threat of impact from competing land uses to the resource;

- The extent to which proposed management activities within a preservation area promote the protection of high-quality habitat and watershed processes;

- The proximity of the area to be preserved to area of state or regional ecological significance, such as Birch Bay State Park and the Lake Terrell Wildlife Area; and

- The scarcity of the habitat provided by the proposed preservation area and the degree to which priority species use the area.
8.3 Matching up Impacts and Mitigation

Mitigation actions at the receiving site(s) will be focused on providing restoration of the highest-priority habitat restoration sites in sub-basins categorized as “restoration” or “protection” in the Birch Bay watershed planning study (ESA Adolfson, 2007), as described in Section 8.2. Therefore, there may be situations where stream buffer habitat is at least partially mitigated for with wetland buffer restoration, and vice-versa. In this way, the greatest functional lift can be obtained for any given impact. However, to maintain salmonid habitat quality in the watershed, projects that propose impacts to portions of the Terrell or Fingalson creek buffers are only eligible to use the HMF if a mitigation site has been secured within the Terrell Creek riparian corridor.

The general procedure for matching up impacts and mitigation is as follows:

1) Applicant submits a development plan that would result in wetland and/or stream buffer impacts. The County verifies that the impacts are allowed under the CAO (WCC 16.16).

2) The applicant pays the appropriate fee to the HMF (see Section 7.0).

3) The sponsors select an appropriate receiving site for the mitigation that is determined to have a high potential for increasing wildlife habitat, as described in Section 8.2. The WCD will secure the appropriate property rights to construct the restoration (see Section 9.1).

   a. If the impacts are to the main stem Terrell Creek buffer, the habitat mitigation site must be located within that riparian corridor.

   b. If the impacts are to the main stem Fingalson Creek buffer, the habitat mitigation site must be located within either the main stem Terrell or Fingalson Creek riparian corridors.

   c. As stated in Section 7.0, the sponsors will construct restoration at a minimum 1:1 areal ratio for non-forested buffer impacts within “development” sub-basins, a 1:1.2 aerial ratio for forested buffer impacts within a “development” sub-basin or non-forested buffer impacts within a “protection” or “restoration” sub-basin, and a 1:1.4 areal ratio for forested buffer impacts within a “restoration” or “protection” sub-basin.

4) The habitat mitigation is implemented at the receiving site(s).
9.0 IMPLEMENTING AND MAINTAINING MITIGATION SITES

9.1 Identifying Mitigation Actions at Specific Sites

The Merrill study (2010) documents potential mitigation actions for each identified potential restoration site in the watershed. These mitigation actions include:

- Remove fill/regrade site;
- Plug wetland drainages ditches;
- Restore stream morphology;
- Remove (or redesign) bank hardening structures;
- Add habitat elements/structures (e.g. large woody debris);
- Remove invasive plant species (e.g. reed canary grass and Himalayan blackberry); and
- Reestablish native vegetation communities.

Specific mitigation actions for a particular receiving site should be determined by an on-site study by a qualified professional, as defined in 16.16.800. The WCD will be responsible for developing a detailed mitigation plan for the site consistent with 16.16.260 (B).

9.2 Ecological Performance Standards and Monitoring

Monitoring shall be based on performance standards that are observable or measurable physical, chemical, and/or biological attributes. These attributes are monitored to determine if a mitigation project meets its objectives. Performance standards will be included in site mitigation plans and will relate to the objectives of the specific mitigation plan, so that the project can be evaluated through time to determine if it is generating the anticipated functional lift. Monitoring shall be conducted annually for the first three years, and then at year five and again at year ten. When performance measures are not being met, maintenance and contingency actions may be necessary.

Performance standards will be based on attributes that are measurable, and can be assessed in a practical manner. Specific performance standards for a given habitat mitigation site will depend on the type, scale, and scope of the proposed project, and will be outlined in detail in the mitigation plans developed for each site. Performance standards would identify a range or target attributes that the mitigation receiving site would achieve at different time intervals. Example performance standards include:
• In year 1, survival of planted woody vegetation at the restoration site will be 100%. If all dead plantings are replaced, the standard will be considered met.

• In year X, woody vegetation at the restoration site will achieve at least X% aerial cover.

• In year X, woody vegetation at the restoration site will have a stem density of at least X stems/acre.

• A minimum of X (number of) species of native shrubs or tree will be present in the restoration area in year X.

• Whatcom County-listed Class A noxious weeds and Himalayan blackberry, cutleaf blackberry, reed canarygrass, and purple loosestrife will not exceed X% aerial cover in the restoration area during all monitoring years.

• In year 1, wildlife habitat structures including X snags and X large woody debris piles will be installed in the restoration area.

• At the end of the monitoring period, X amount of overwater vegetation is established.

• At the end of the monitoring period, X amount of habitat continuity is added.

• At the end of the monitoring period, X amount of connectivity with adjoining habitats.

• During all monitoring years, critical area fencing and signage is in place, per project plans.

9.3 Monitoring Reports

Monitoring reports will provide qualitative and quantitative assessment of physical and biological characteristics of the project as appropriate, using scientifically appropriate analytical methods. The purpose of a monitoring report is to determine the level of compliance with ecological performance standards established in the site-specific mitigation plan. In addition, monitoring data will help to identify problems that may trigger maintenance activities, contingency plans, or adaptive management measures. Monitoring reports shall be provided annually for the first three years, and then at year five and again at year ten.

Example monitoring parameters include:

• Survival rates of vegetation;

• Aerial cover of plantings in mitigation areas;

• General plant health assessment;

• Wildlife features, habitat connectivity, and continuity;
• Documentation of the presence of undesirable plants (weedy and/or non-native species) with estimated percent cover;
• Assessment of protective fencing and NGPA signage;
• Photo documentation of site conditions; and
• Recording of any wildlife use of the area, both before restoration activities and at the end of the ten year monitoring period.

9.4 Contingency Plan / Adaptive Management

When fulfillment projects have been installed, they will be adaptively managed in response to the outcome of regular and routine maintenance and monitoring events. Should any monitoring report reveal the mitigation has failed in whole or in part, and should that failure be beyond the scope of the routine maintenance, a Contingency Plan will be submitted to the Review Team. Once approved by the Review Team, the contingency plan will be implemented by the WCD and will replace the approved mitigation plan. If the failure is substantial, the WCD will extend the maintenance and monitoring period for that project.

10.0 PROGRAM MANAGEMENT AND ACCOUNTABILITY

10.1 Program Account and Disbursement of Funds

A program account (at a FDIC/NCUA-insured bank or credit union) will be established solely for the use of the HMF. All interest and earning accruing to the program account will be used by the co-sponsors strictly for the purposes of providing compensatory mitigation. Once collected, the program account funds will be used for site selection, design, permitting, construction, maintenance, monitoring, adaptive management (contingencies), long-term management, program administration, and land acquisition.

10.2 Ledger

The Sponsors will maintain a report ledger to account for all fee transactions. The ledger will track fees that are collected, as well as fulfillment mitigation that has been performed. The ledger will also track expenditures for all aspects of implementing mitigation receiving projects, including, but not limited to the following categories:

• Administrative costs (staff time and overhead);
• design;
• permitting;
• construction;
• maintenance;
• property easements and acquisition; and
• monitoring.
In the case of a negative ledger balance, the Sponsor will be obligated to offset the loss through other mitigation projects, or utilize contingency funds and adaptive management measures. On balance, the HMF aspires to allocated funds towards a ‘neutral’ program account, neither progressing significantly into the black or red on the ledger. At a minimum, however, the WCD will maintain a fund balance to permit ongoing monitoring, maintenance, and long-term stewardship activities, as well as to implement any necessary contingency measures. The ledger will be made available to the public on Whatcom County’s web site.

10.3 Credit Fulfillment Schedule

Restoration activities at the receiving site will begin within 3 growing seasons of collecting impact fees. The co-sponsors, shall submit an annual report to the public which shall include, but not be limited to:

- Total HMF fees and expenditures by category (see Section 10.2);
- Review of mitigation fee and, in the case of a significant positive or negative ledger balance; justification for modifying the fee amount;
- Detail of property rights that have been secured;
- Summary of monitoring results from constructed projects;
- Amount and type of mitigation that has occurred;
- Area of buffer impact, that is to be mitigated through this program, by sub-basin; and
- Mitigation obligations that have yet to be completed, and a schedule for completing the restoration activities.

11.0 Glossary

Alteration: Means any human-induced change in an existing condition of a critical areas or its buffer. Alterations include, but are not limited to, grading, filling, channelizing, dredging, clearing (vegetation), draining, construction, compaction, excavation, or other activity that changes the character of the critical area (WCC 16.16.800).

Compensatory mitigation: Means a project for the purpose of mitigating, at an equivalent or greater level, unavoidable critical areas and buffer impacts that remain after all appropriate and practicable avoidance and minimization measures have been implemented. Compensatory mitigation includes, but is not limited to: wetland creation, restoration enhancement, and
preservation; stream restoration and relocation; rehabilitation; and buffer enhancement (WCC 16.16.800).

**Functional lift:** An overall increase in the quality of one or more watershed functions.

**Hydrologic:** Referring to the movement of water through the landscape (ESA Adolfson, 2007).

**In-kind compensation:** Means to replace critical areas with substitute areas whose characteristics and functions mirror those destroyed or degraded by a regulated activity (WCC 16.16.800).

**Mitigation:** means individual actions that may include a combination of the following measures, in order of preference (WCC 16.16.800):

1. Avoiding an impact altogether by not taking a certain action or parts of actions;
2. Minimizing impacts by limiting the degree or magnitude of an action and its implementation;
3. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;
4. Reducing or eliminating an impact over time by preservation and maintenance operations during the life of the action;
5. Compensating for an impact by replacing or providing substitute resources or environments; and
6. Monitoring the mitigation and taking remedial action when necessary.

**On-site mitigation:** Means to replace critical areas on the same site from which a critical area has been adversely impacted by a regulated activity (WCC 16.16.800).

**Priority species:** Species that are priorities for conservation and management, as defined by the Washington Department of Fish and Wildlife (WDFW, 2008).

**Qualified professional:** Means a person with experience and training with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4). A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, soil science, engineering, environmental studies, fisheries geology, geomorphology or a related field, and related work experience, and meet the following criteria:

1) A qualified professional for wetlands must have a degree in biology, ecology, soil science, botany, or a closely related field and a minimum of three years of professional experience in wetland identification and assessment associated with wetland ecology in the Pacific Northwest or comparable systems.

2) A qualified professional for habitat conservation areas must have a degree in wildlife biology, ecology, fisheries, or a closely related field and a minimum of three years of professional experience related to the subject species/habitat type.
Watershed characterization: The process of describing and assessing the form, function, and relationship between the physical and biological elements of the landscape to more thoroughly understand the character of the watershed. As used in this document, the term refers to the analysis of processes related to the movement of water, sediment, nutrients, chemical, energy or animals and plants at various scales (e.g., ecoregion, basin, sub-basin) (ESA Adolfson, 2007).

Watershed functions: means the delivery, movement, and loss of water, sediment, nutrients, toxins, pathogens, and large woody debris (Stanley et al., 2005).
12.0 MAP - 2007 WATERSHED CHARACTERIZATION AND PLANNING PILOT STUDY RESULTS
13.0 REFERENCES


Anchor QEA. 2010. *Riparian Vegetation Inventory and Function Assessment of Tributaries and Marine Shoreline Northwest Whatcom County*. Prepared for Whatcom County, Bellingham, WA.

CH2MHiIl. 2006. *Birch Bay Comprehensive Stormwater Plan*. Prepared for Whatcom County, Bellingham, WA.


King County. 2009. *Draft Instrument for the King County Mitigation Reserves Program*. King County Department of Natural Resources and Parks. Seattle, WA.


Puget Sound Partnership. 2010. *Puget Sound Partnership In Lieu Fee Mitigation Program Prospectus (Draft)*. Tacoma, WA.


Tyler Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
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Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

Hi Tyler,

What are the names of the applications that PIT needs to submit for the GPT?

My guess is: Shoreline Substantial Development Permit and Master Development Permit.

Are there more County permits?

Alice
Mr. Ehrlichman,

Please see the actual notice provided to the Daily Journal of Commerce (DJC) for use in their publication to alert consultants of the upcoming RFP. This document was provided to the DJC late last week and is expected to be run, in notice format or article format, sometime in early December. I want to be clear that the decision to give consultant's notice of the anticipated RFP was made solely by the Co-Lead Agencies. The applicant was not asked to draft any language. The Co-Lead Agencies have final decision making authority in all aspects of the EIS and the RFP process. As you can see from the attached notice, the final version is not the version provided by the Applicant and does direct interested consultants to the County's and ORA's website for additional information.

Regards,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
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Fax: (360)738-2525
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Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

As a follow-up to our email below regarding the public need for appearance of fairness in the EIS consultant process for Gateway Pacific, we have two questions regarding an email I just reviewed on the County website. The email is from the project permitting consultant, Cliff Strong, to Tyler Schroeder, Whatcom County's SEPA official. Mr. Strong, on behalf of the applicant, SSA/Pacific International Terminals, supplies draft language for a pre-notice to consultants announcing your forthcoming Request for Proposals (RFP) for the Gateway Pacific Terminal EIS. Even though this is a pre-notice, we ask the following:

1) Why is the applicant being asked to draft any language associated with the RFP? Shouldn't the
agencies conduct an RFP/consultant search independently of the applicant's suggestions or involvement, based on the agency's expertise and objectives for the environmental review process? It was our understanding the applicant would not have any role in the EIS process, other than frankly to pay the bills submitted by the agencies.

2) Why would the proposed notice to potential EIS consultants direct them only to the applicant's promotional website for “background.” This signals unfairness from the very outset of the EIS process. Objective and complete background information for this project is best obtained from the County website, the DOE website and the ORA website, not the applicant's promotional website which contains selective information and press releases!

If SSA's website is to be promoted in the RFP pre-notice, shouldn't the pre-notice also promote coaltrainfacts.org or a similar website, to ensure the EIS consultant sees information that is selectively omitted from the GPT website? The following information is omitted from the GPT website: (a) letters of strong concern from 13 state senators, the cities of Bellingham, Burlington, Mt. Vernon and Marysville; (b) the record of forest practices, grading, wetland fill, and archeological preservation violations; (c) our letters to ORA and DOE; and (d) the entire range of correspondence from the public, provided on the County's website.

In light of Mr. Strong's correspondence with Mr. Schroeder and these comments, we trust the County will not be recommending that the applicant shape the EIS process in any way, including the selection of a consultant.

Thank you for your consideration of these questions. While it may seem a small matter at this juncture, it is actually quite important from our perspective, as this is the first surfacing of any public announcement to consultants who might end up writing the EIS. Fairness, thoroughness, and impartiality will be essential to preserving the public confidence in this process.

Mr. Strong's email follows. Below is my original email to you this morning.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 268-5553

To: Tyler Schroeder <tschroed@co.whatcom.wa.us>
Tyler, here's the draft language for the pre-notice of availability of the RFP you asked for. As we mentioned, it will take qualified consultants quite a bit of effort and time to put together good proposals, so we suggest this pre-notice be issued as soon as possible in the DJC. Pacific International Terminals, Inc. will cover the cost of publication of this notice.

Thanks,

Cliff Strong
Senior Land Use/Environmental Planner
and Office Sustainability Coordinator
email: cliff.strong@amec.com
Direct: 425.368.0952
Cell: 360.631.7918
Office: 425.368.1000
Fax: 425.368.1001
AMEC Earth & Environmental, Inc.
11810 North Creek

NOTICE TO CONSULTANTS
Future Request for Proposals for Gateway Pacific Terminal Combined NEPA/SEPA EIS
Notice Date: 11/XX/2011
This is a notice of future availability. A request for proposals is planned to be announced in the Daily Journal of Commerce the first week in December 2011. Whatcom County, the Washington Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request proposals from qualified consultants to prepare the Gateway Pacific Terminal Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have expertise and experience in preparation of EISs for the full breadth of social and environmental elements, including multi-modal traffic analysis, marine and terrestrial natural resources, cultural resources, and other elements applicable to industrial development. No inquires to any of the colead Agencies or to the project proponent will be accepted at this time. Background information on the project is available now at www.gatewaypacificterminal.com/resources.

From: Tom Ehrlichman [mailto:tom@salishlpsolutions.com]
Sent: Tuesday, November 29, 2011 9:46 AM
To: 'Tschroed@co.whatcom.wa.us'; 'Randel.J.Perry@usace.army.mil'; alice.kelly@ecy.wa.gov
Cc: 'Faith Lumsden (Faith.Lumsden@GOV.WA.GOV)'; 'Barbara Dykes'; Cyrilla.Cook@dnr.wa.gov
Subject: Emailing: AECOM Investor Relations Investor FAQ.htm

Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As I’m sure you are actually aware, the selection process for an EIS consultant on the Gateway Pacific facility will be closely watched by the public, with special attention to possible conflicts of interest between the consultant and either BNSF, Peabody Energy, or Carrix, Inc. (the parent company for SSA Marine and Pacific International Terminals) or any of their respective major shareholders. Prior business dealings of a direct or substantial nature are indicators of a conflict of interest because of both past compensation and the potential for future business dealings between the same entities. Issues of confidentiality and public disclosure also arise under circumstances involving past and/or future business dealings.

Because of the high level of public concern over the integrity of the review process for the Gateway Pacific terminal facility, we believe the test for determining the objectivity of an EIS consultant should be the potential for a conflict of interest, even if you determine that an actual conflict may not exist.
To give a real world example, we noticed that Tyler Schroeder had received an email inquiry from AECOM, inquiring about the RFP process for the EIS. Under item four from the "Investor FAQ" provided at http://investors.aecom.com/phoenix.zhtml?c=131318 &p=irol-faq_pf (copied verbatim below), please be aware that AECOM has had significant prior business dealings with what has been reported to be a 49% shareholder of Carrix, Goldman Sachs. Thus, in the event they apply under the RFP for the EIS, we trust you will consider rejecting their application based on a potential conflict of interest.

At this early stage in the EIS preparation process, we also strongly urge Whatcom County, DOE and the U.S. Army Corps of Engineers to ensure that the RFP for the EIS be issued simultaneously with clear written guidelines for determining the existence of a possible conflict of interest so that your bidding consultants have fair warning, prior to submitting detailed packages. More importantly, this will give the public an opportunity to review your criteria for determining whether a conflict of interest exists.

By this email, we are requesting a copy of any RFP's and/or contracts issued or executed to date by any agency for any studies or work related to the Gateway Pacific Terminal, including any conflict of interest policies or guidelines. We understand that, at a minimum, an RFP may have been issued and a contract negotiated related to a vessel traffic study. We are requesting this and any other RFPs and contracts.

Thank you for considering this information as you proceed forward with your review of a possible RFP for the project. We also appreciate your soonest possible response to our request for records.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 268-5553

Description: http://media.corporate-ir.net/media_files/IROL/13/131318/AECOM_Logo.gif

Print Page <javascript:window.print()>  Close Window <javascript:window.close()>
1. Where is AECOM's corporate headquarters? <>

2. When was AECOM incorporated and in which state? <>

3. On which exchange does AECOM trade and under what stock symbol? <>

4. When did AECOM complete its initial public offering? <>

5. When does AECOM's fiscal year end? <>

6. When is the annual meeting of stockholders? <>

7. How can I purchase AECOM stock? <>

8. Does AECOM pay dividends? <>

9. Does AECOM offer a direct stock purchase program? <>

10. What is AECOM's SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number? <>

11.
How do I contact AECOM's Transfer Agent? <>

12. Who are AECOM's Independent Auditors? <>

13. Who do I contact about stock certificate matters? <>

14. How can I be added to AECOM's e-mail alerts list to receive press releases and/or SEC filings? <>

15. How do I contact AECOM's investor relations or request additional information about AECOM? <>

Description: http://media.corporate-ir.net/media_files/irol/global_images/spacer.gif

1. Where is AECOM's corporate headquarters?

AECOM's headquarters are located in Los Angeles, California.

2. When was AECOM incorporated and in which state?

AECOM was incorporated in 1990 in Delaware.
3.
On which exchange does AECOM trade and under what stock symbol?

AECOM trades on the New York Stock Exchange (NYSE) under the symbol "ACM."

4.
When did AECOM complete its initial public offering?

AECOM completed its initial public offering of common stock in May 2007. The offering was for 35.15 million shares at $20 per share for net proceeds of $371.4 million. Morgan Stanley, Merrill Lynch & Co., and UBS Investment Bank acted as joint book running managers for the IPO. Goldman, Sachs & Co., Credit Suisse and D.A. Davidson & Co. acted as co-managers on the transaction.

5.
When does AECOM's fiscal year end?

AECOM's fiscal year end is September 30.

6.
When is the annual meeting of stockholders?

The stockholders' meeting was held on March 3, 2011, at 9:00 a.m. local time at The Millennium Biltmore Hotel, 506 South Grand Avenue, Los Angeles, California 90071.
7. How can I purchase AECOM stock?

AECOM stock can be bought or sold through a stockbroker, bank or financial institution that provides brokerage services.

8. Does AECOM pay dividends?

AECOM does not currently pay dividends.

9. Does AECOM offer a direct stock purchase program?

At this time stock cannot be purchased directly from the Company.

10. What is AECOM’s SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number?

The SIC Code is: 8711 - Services-Engineering Services
The CUSIP number is: 00766T100
How do I contact AECOM's Transfer Agent?

Computershare Investor Services
www.computershare.com
Telephone:
+1-800-662-7232 (toll-free within the United States)
+1-781-575-4238 (outside of the United States)
Fax:
+1-781-575-3605

By Mail:
P.O. Box 43078
Providence, RI 02940-3078
United States of America

By Overnight Delivery:
Computershare Investor Services
250 Royall Street
Canton, MA 02021
United States of America

12.

Who are AECOM's Independent Auditors?

Ernst & Young LLP

13.

Who do I contact about stock certificate matters?

Computershare Investor Services
www.computershare.com
Telephone:
+1-800-662-7232 (toll-free within the United States)
+1-781-575-4238 (outside of the United States)
Fax:
+1-781-575-3605
14.

How can I be added to AECOM's e-mail alerts list to receive press releases and/or SEC filings?

Please select the following link and fill out the requested information:
http://investors.aecom.com/phoenix.zhtml?c=131318
&lt;http://investors.aecom.com/phoenix.zhtml?c=131318&p=irol-alerts%0d%0a &p=irol-alerts

15.

How do I contact AECOM's investor relations or request additional information about AECOM?

Please contact:

Paul Cyril
Vice President
Investor Relations
Phone: 212-973-2982
E-mail: paul.cyril@aecom.com

Paul Gennaro
Senior Vice President
Corporate Communications
Chief Communications Officer
Phone: 212-973-2982
E-mail: paul.gennaro@aecom.com
NOTICE TO CONSULTANTS

Future Request for Proposals for Gateway Pacific Terminal/BNSF Custer Spur Combined NEPA/SEPA EIS

Notice Date: 12/5/2011

This is a notice of future availability. A request for proposals is planned to be announced in the Daily Journal of Commerce in January 2012. Whatcom County, the Washington Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request proposals from qualified consultants to prepare the Gateway Pacific Terminal and BNSF Railway Custer Spur Modification Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have expertise and experience in preparation of EIS’s for the full breadth of social and environmental elements, including but not limited to multi-modal traffic analysis, marine and terrestrial natural resources, air quality impacts, cultural resources, and other elements applicable to industrial development. No inquiries to any of the co-lead Agencies or to the project proponent will be accepted at this time to ensure an equitable application process. Background information on the project is available now at Whatcom County's GPT website http://www.co.whatcom.wa.us/pds/plan/current/gpt-ssa/index.jsp or Washington State Office of Regulatory Assistance (ORA): http://iprmt.ora.wa.gov/.
Cliff,

Attached is the RFP pre-notice that the County sent to the DJC late last week. We anticipate that it will run sometime early December. We have asked the DJC to let us know what and when they decide to run the announcement.

Thanks,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
Fax: (360) 738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA 98225
NOTICE TO CONSULTANTS

Future Request for Proposals for Gateway Pacific Terminal/BNSF Custer Spur Combined NEPA/SEPA EIS

Notice Date: 12/5/2011

This is a notice of future availability. A request for proposals is planned to be announced in the Daily Journal of Commerce in January 2012. Whatcom County, the Washington Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request proposals from qualified consultants to prepare the Gateway Pacific Terminal and BNSF Railway Custer Spur Modification Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have expertise and experience in preparation of EIS’s for the full breadth of social and environmental elements, including but not limited to multi-modal traffic analysis, marine and terrestrial natural resources, air quality impacts, cultural resources, and other elements applicable to industrial development. No inquiries to any of the co-lead Agencies or to the project proponent will be accepted at this time to ensure an equitable application process. Background information on the project is available now at Whatcom County's GPT website http://www.co.whatcom.wa.us/pds/plan/current/gpt-ssa/index.jsp or Washington State Office of Regulatory Assistance (ORA): http://iprmt.ora.wa.gov/.
Tom,

Thanks for your additional suggestions and constructive critiques to the RFP process. I will discuss with the Co-Lead Agencies the process of consulting with the applicant in the very near future. Appropriate levels of involvement by the applicant can still happen in an open and transparent process.

Please contact me at 360.676.6907 ext. 50202 if you would like to discuss this further.

Thanks again,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> “Tom Ehrlichman“ <tom@salishlpsolutions.com> 11/29/2011 6:08 PM >>>
Dear Tyler,

Thank you for your reply and clarification that the applicant's website is not listed in the pre-RFP. We appreciate the change the County made deleting the applicant's suggested website and the copy of the draft notice, prior to publication.

Our email registered a strong concern about impartiality at the very first stage of the Gateway EIS process, because the applicant clearly was consulted on the notice. Cliff Strong's email suggests plainly that you asked him for the draft language:

"Tyler, here's the draft language for the pre-notice of availability of the RFP you asked for."

The language in the final RFP for publication is identical to the language suggested to you by Mr. Strong. His email is attached below, under your email.

One conclusion one might take from all of this is that Whatcom County does not intend to exclude the applicant from the EIS consultant selection process. We asked for a clarification on that point. Your reply simply states that the agencies have final say. In our judgment, that is far from saying the applicant will not influence the process. Public confidence in the process is weakened substantially at the outset of the EIS process with what appears to be special access for the applicant. The public is not
offered the same opportunity for input on the choice of consultant.

Now that you have released the draft RFP notice for our review, we suggest adding language requiring that the consultants also have expertise in evaluating adverse economic impacts along the entire rail line, since this type of analysis is required under the NEPA review. Nothing is said in the list of qualifications about the need for experience analyzing adverse economic impacts to businesses and properties along the rail line. We ask that you and the other two co-lead agencies withdraw this notice and add the requirement for economic impact analysis.

We urge the County, the Corps and DOE to immediately reassess this process of consulting with the applicant. We ask that you ensure that all notices reflect the requirements of NEPA review. And we ask that all notices be crafted by the agencies only, unless the process is opened equally to the public and the applicant. Only by doing that now, and going public, can the agencies demonstrate to the public that they truly "are taking great care in developing the bidding documents to ensure that we have a fair process and we get a well-qualified consultant pool" (from DOE's response to us dated November 14, 2011).

Obviously, this concern with special access by the applicant will become increasingly an issue if the practice is not changed. A draft EIS reviewed and refined through applicant suggestions prior to public release will not meet the basic test of fairness that underlies our state and federal legal requirements for environmental review of large proposals with region-wide impacts.

Faith Lumsden and Scott Boetcher are copied here because we understand ORA now will also play a role in the framing of the NEPA/SEPA process. We have faith that the Governor’s office will insist upon absolute impartiality in the EIS consultant process and notices that reflect the requirements of a combined NEPA/SEPA review. The appearance of impartiality starts by showing the public that the agencies are not consulting with the applicant on substance or allowing them to draft notices describing consultant qualifications.

This kind of behind the scenes work with the applicant was the hallmark of this project in its early review stages over a year ago during the unpublicized ORA meetings. While we had come to believe that ORA, the County and agencies had opened up their process to the public, i.e., witness the County’s website and decision on incomplete applications, this recent event raises the question of whether we are returning to the days of less-than-transparent work with the applicant on matters shaping the upcoming public permit process.

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664

Faith Lumsden and Scott Boetcher are copied here because we understand ORA now will also play a role in the framing of the NEPA/SEPA process. We have faith that the Governor’s office will insist upon absolute impartiality in the EIS consultant process and notices that reflect the requirements of a combined NEPA/SEPA review. The appearance of impartiality starts by showing the public that the agencies are not consulting with the applicant on substance or allowing them to draft notices describing consultant qualifications.

This kind of behind the scenes work with the applicant was the hallmark of this project in its early review stages over a year ago during the unpublicized ORA meetings. While we had come to believe that ORA, the County and agencies had opened up their process to the public, i.e., witness the County’s website and decision on incomplete applications, this recent event raises the question of whether we are returning to the days of less-than-transparent work with the applicant on matters shaping the upcoming public permit process.

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664

-----Original Message-----
From: Tyler Schroeder [mailto:Tschroed@co.whatcom.wa.us]
Sent: Tuesday, November 29, 2011 2:46 PM
To: alice.kelly@ecy.wa.gov; tom@salishlpsolutions.com; Randel.J.Perry@usace.army.mil
Cc: Sam Ryan; Royce Buckingham; Cyrilla.Cook@dnr.wa.gov; ‘Faith Lumsden’;
Kevin.Ranker@leg.wa.gov; ‘Barbara Dykes’; ScottB@sbgh-partners.com
Subject: Re: Appearance of Fairness and the Start of the Gateway Pacific Terminal EIS Process
Mr. Ehrlichman,

Please see the actual notice provided to the Daily Journal of Commerce (DJC) for use in their publication to alert consultants of the up-coming RFP. This document was provided to the DJC late last week and is expected to be ran, in notice format or article format, sometime in early December. I want to be clear that the decision to give consultant's notice of the anticipated RFP was made solely by the Co-Lead Agencies.

The applicant was not asked to draft any language. The Co-Lead Agencies have final decision making authority in all aspects of the EIS and the RFP process. As you can see from the attached notice, the final version is not the version provided by the Applicant and does direct interested consultants to the County's and ORA's website for additional information.

Regards,

Tyler

Tyler R. Schroeder
Current Planning Supervisor
Phone: (360) 676-6907 ext. 50202
Fax: (360)738-2525
Email: Tschroed@co.whatcom.wa.us
Address:
Whatcom County Planning and Development Services
5280 Northwest Dr.
Bellingham, WA  98225

>>> "Tom Ehrlichman" <tom@salishlpsolutions.com> 11/29/2011 1:31 PM
>>> Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As a follow-up to our email below regarding the public need for appearance of fairness in the EIS consultant process for Gateway Pacific, we have two questions regarding an email I just reviewed on the County website. The email is from the project permitting consultant, Cliff Strong, to Tyler Schroeder, Whatcom County's SEPA official. Mr. Strong, on behalf of the applicant, SSA/Pacific International Terminals, supplies draft language for a pre-notice to consultants announcing your forthcoming Request for Proposals (RFP) for the Gateway Pacific Terminal EIS. Even though this is a pre-notice, we ask the following:

1) Why is the applicant being asked to draft any language associated with the RFP? Shouldn't the agencies conduct an RFP/consultant search independently of the applicant's suggestions or involvement, based on the agency's expertise and objectives for the environmental review process? It was our understanding the applicant would not have any role
in the EIS process, other than frankly to pay the bills submitted by the agencies.

2) Why would the proposed notice to potential EIS consultants direct them only to the applicant's promotional website for "background." This signals unfairness from the very outset of the EIS process. Objective and complete background information for this project is best obtained from the County website, the DOE website and the ORA website, not the applicant's promotional website which contains selective information and press releases!

If SSA's website is to be promoted in the RFP pre-notice, shouldn't the pre-notice also promote coaltrainfacts.org or a similar website, to ensure the EIS consultant sees information that is selectively omitted from the GPT website? The following information is omitted from the GPT website: (a) letters of strong concern from 13 state senators, the cities of Bellingham, Burlington, Mt. Vernon and Marysville; (b) the record of forest practices, grading, wetland fill, and archeological preservation violations; (c) our letters to ORA and DOE; and (d) the entire range of correspondence from the public, provided on the County's website.

In light of Mr. Strong's correspondence with Mr. Schroeder and these comments, we trust the County will not be recommending that the applicant shape the EIS process in any way, including the selection of a consultant.

Thank you for your consideration of these questions. While it may seem a small matter at this juncture, it is actually quite important from our perspective, as this is the first surfacing of any public announcement to consultants who might end up writing the EIS. Fairness, thoroughness, and impartiality will be essential to preserving the public confidence in this process.

Mr. Strong's email follows. Below is my original email to you this morning.

Tom Ehrlichman
Salish Land Policy Solutions
Tyler, here's the draft language for the pre-notice of availability of the RFP you asked for. As we mentioned, it will take qualified consultants quite a bit of effort and time to put together good proposals, so we suggest this pre-notice be issued as soon as possible in the DJC. Pacific International Terminals, Inc. will cover the cost of publication of this notice.

Thanks,

Cliff Strong
Senior Land Use/Environmental Planner
and Office Sustainability Coordinator
e-mail: cliff.strong@amec.com
Direct: 425.368.0952
Cell: 360.631.7918
Office: 425.368.1000
Fax: 425.368.1001
AMEC Earth & Environmental, Inc.
11810 North Creek
NOTICE TO CONSULTANTS

Future Request for Proposals for Gateway Pacific Terminal Combined NEPA/SEPA EIS

Notice Date: 11/XX/2011

This is a notice of future availability. A request for proposals is planned to be announced in the

Daily Journal of Commerce the first week in December 2011. Whatcom County, the Washington

Department of Ecology, and USACE-Seattle District (co-lead Agencies) plan to request

proposals from qualified consultants to prepare the Gateway Pacific Terminal Project Combined NEPA/SEPA Environmental Impact Statement (EIS). Interested consulting teams should have

expertise and experience in preparation of EISs for the full breadth of social and environmental

elements, including multi-modal traffic analysis, marine and terrestrial natural resources, cultural

resources, and other elements applicable to industrial development. No inquires to any of the colead Agencies or to the project proponent will be accepted at this time. Background information on the project is available now at www.gatewaypacificterminal.com/resources.

From: Tom Ehrlichman [mailto:tom@salishlpsolutions.com]
Sent: Tuesday, November 29, 2011 9:46 AM
To: 'Tschoed@co.whatcom.wa.us'; 'Randel.J.Perry@usace.army.mil';
alice.kelly@ecy.wa.gov
Cc: 'Faith Lumsden (Faith.Lumsden@GOV.WA.GOV)'; 'Barbara Dykes';
Cyrilla.Cook@dnr.wa.gov
Subject: Emailing: AECOM Investor Relations Investor FAQ.htm
Dear Mr. Schroeder, Ms. Kelly and Mr. Perry,

As I’m sure you are actually aware, the selection process for an EIS consultant on the Gateway Pacific facility will be closely watched by the public, with special attention to possible conflicts of interest between the consultant and either BNSF, Peabody Energy, or Carrix, Inc. (the parent company for SSA Marine and Pacific International Terminals) or any of their respective major shareholders. Prior business dealings of a direct or substantial nature are indicators of a conflict of interest because of both past compensation and the potential for future business dealings between the same entities. Issues of confidentiality and public disclosure also arise under circumstances involving past and/or future business dealings.

Because of the high level of public concern over the integrity of the review process for the Gateway Pacific terminal facility, we believe the test for determining the objectivity of an EIS consultant should be the potential for a conflict of interest, even if you determine that an actual conflict may not exist.

To give a real world example, we noticed that Tyler Schroeder had received an email inquiry from AECOM, inquiring about the RFP process for the EIS. Under item four from the "Investor FAQ" provided at http://investors.aecom.com/phoenix.zhtml?c=131318<p&gt;&lt;/p&gt;&lt;p&gt;&lt;http://investors.aecom.com/phoenix.zhtml?c=131318&amp;p=irol-faq_pf&gt;&lt;/p&gt;&lt;p&gt;&lt;/p&gt;&lt;p&gt;(copied verbatim below), please be aware that AECOM has had significant prior business dealings with what has been reported to be a 49% shareholder of Carrix, Goldman Sachs. Thus, in the event they apply under the RFP for the EIS, we trust you will consider rejecting their application based on a potential conflict of interest.

At this early stage in the EIS preparation process, we also strongly urge Whatcom County, DOE and the U.S. Army Corps of Engineers to ensure that the RFP for the EIS be issued simultaneously with clear written guidelines for determining the existence of a possible conflict of interest so that your bidding consultants have fair warning, prior to submitting detailed packages. More importantly, this will give the public an opportunity to review your criteria for determining whether a conflict of interest exists.

By this email, we are requesting a copy of any RFP's and/or contracts issued or executed to date by any agency for any studies or work related
to the Gateway Pacific Terminal, including any conflict of interest policies or guidelines. We understand that, at a minimum, an RFP may have been issued and a contract negotiated related to a vessel traffic study. We are requesting this and any other RFPs and contracts.

Thank you for considering this information as you proceed forward with your review of a possible RFP for the project. We also appreciate your soonest possible response to our request for records.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 268-5553

Investor FAQ

1. Where is AECOM’s corporate headquarters? <>

2. When was AECOM incorporated and in which state? <>

3. On which exchange does AECOM trade and under what stock symbol? <>
4. When did AECOM complete its initial public offering?

5. When does AECOM's fiscal year end?

6. When is the annual meeting of stockholders?

7. How can I purchase AECOM stock?

8. Does AECOM pay dividends?

9. Does AECOM offer a direct stock purchase program?

10. What is AECOM's SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number?

11. How do I contact AECOM's Transfer Agent?

12. Who are AECOM's Independent Auditors?

13. Who do I contact about stock certificate matters?

14.
How can I be added to AECOM's e-mail alerts list to receive press releases and/or SEC filings? <>

15.
How do I contact AECOM's investor relations or request additional information about AECOM? <>

Description:
http://media.corporate-ir.net/media_files/irol/global_images/spacer.gif

1.
Where is AECOM's corporate headquarters?

AECOM's headquarters are located in Los Angeles, California.

2.
When was AECOM incorporated and in which state?

AECOM was incorporated in 1990 in Delaware.

3.
On which exchange does AECOM trade and under what stock symbol?

AECOM trades on the New York Stock Exchange (NYSE) under the symbol "ACM."
4. When did AECOM complete its initial public offering?

AECOM completed its initial public offering of common stock in May 2007. The offering was for 35.15 million shares at $20 per share for net proceeds of $371.4 million. Morgan Stanley, Merrill Lynch & Co., and UBS Investment Bank acted as joint book running managers for the IPO. Goldman, Sachs & Co., Credit Suisse and D.A. Davidson & Co. acted as co-managers on the transaction.

5. When does AECOM's fiscal year end?

AECOM's fiscal year end is September 30.

6. When is the annual meeting of stockholders?

The stockholders' meeting was held on March 3, 2011, at 9:00 a.m. local time at The Millennium Biltmore Hotel, 506 South Grand Avenue, Los Angeles, California 90071.

7. How can I purchase AECOM stock?
AECOM stock can be bought or sold through a stockbroker, bank or financial institution that provides brokerage services.

8.

Does AECOM pay dividends?

AECOM does not currently pay dividends.

9.

Does AECOM offer a direct stock purchase program?

At this time stock cannot be purchased directly from the Company.

10.

What is AECOM's SIC (Standard Industrial Classification) code and CUSIP (Committee on Uniform Securities Identification Procedures) number?

The SIC Code is: 8711 - Services-Engineering Services
The CUSIP number is: 00766T100

11.

How do I contact AECOM's Transfer Agent?
12.

Who are AECOM's Independent Auditors?

Ernst & Young LLP

13.

Who do I contact about stock certificate matters?

Computershare Investor Services
www.computershare.com
Telephone:
+1-800-662-7232 (toll-free within the United States)
+1-781-575-4238 (outside of the United States)
Fax:
+1-781-575-3605

By Mail:
P.O. Box 43078
Providence, RI 02940-3078
United States of America

By Overnight Delivery:
Computershare Investor Services
250 Royall Street
Canton, MA 02021
United States of America
14.

How can I be added to AECOM's e-mail alerts list to receive press releases and/or SEC filings?

Please select the following link and fill out the requested information: http://investors.aecom.com/phoenix.zhtml?c=131318
&p=irol-alerts

15.

How do I contact AECOM's investor relations or request additional information about AECOM?

Please contact:

Paul Cyril
Vice President
Investor Relations
Phone: 212-973-2982
E-mail: paul.cyril@aecom.com

Paul Gennaro
Senior Vice President
Corporate Communications
Chief Communications Officer
Phone: 212-973-2982
E-mail: paul.gennaro@aecom.com
FYI - attached is the article that ran in the DJC.

Thanks,

Tyler

Tyler R. Schroeder  
Current Planning Supervisor  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225

>>> Tyler Schroeder 11/17/2011 11:19 AM >>>
Please retract my last email.

To all,

Attached is the GPT RFP Notice to Consultants that the County will run in the DJC in the coming week. Please let me know if you have comments.

Thanks,

Tyler
See attached.

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~
Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
From: MAUDE SCOTT <maudes@djc.com>
To: <SDrake@co.whatcom.wa.us>
Date: 11/30/2011 11:21 AM
Subject: Fwd: DJC story... Coal terminal RFP expected in January
Cliff,

FYI - attached is the article that ran in the DJC.

Thanks,

Tyler

Tyler R. Schroeder  
Current Planning Supervisor  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschoed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225
See attached.

Stephanie Drake
Whatcom County Planning & Development Services
SDrake@co.whatcom.wa.us
(360) 676-6907 Ext. 50201
From: MAUDE SCOTT <maudes@djc.com>
To: <SDrake@co.whatcom.wa.us>
Date: 11/30/2011 11:21 AM
Subject: Fwd: DJC story... Coal terminal RFP expected in January
Peter,

This response looks good. I would look at re-wording the 2nd sentence in the 2nd paragraph, "Use of the Fund does not equate to no buffers"

Thanks,

Tyler

Tyler R. Schroeder  
Current Planning Supervisor  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA  98225

>>> Peter Gill 12/1/2011 1:31 PM >>>

Tyler, I have revised based on more information. Let me know what you think.

Dear Tom,

1) The Birch Bay Watershed Action Plan came out of the 2007 Watershed Characterization and Planning Pilot Study, and earlier plans (BBay Community Plan - 2004, BBay Stormwater Plan - 2006) asking for Low Impact Development and watershed based management of critical areas. This is the second hearing on the proposal, the first being May 15, 2011.

One part of this proposal includes the use of the Habitat Mitigation Fund for buffer impacts within the Birch Bay watershed and the Cherry Point Industrial Urban Growth Area. Use of the Fund does not equate to no buffers, only mitigation through alternative means. The entire Cherry Point Industrial Urban Growth Area was included due to the limited opportunity for habitat mitigation in this area and the potential for improved mitigation results through the Habitat Mitigation Fund.

2) I have attached the draft code. The section of code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp

3) There is a second public hearing on the Birch Bay Watershed Action Plan scheduled for Dec. 8, at 6:30 in the County Courthouse. See the attached notice.

4) Would you like to be added to the Birch Bay Watershed Action Plan email distribution list?

5) Send with name and suggested changes, noting code sections to pgill@co.whatcom.wa.us or PDS_Planning_Commission@co.whatcom.wa.us
Dear Tyler and Peter,

As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility ("Gateway Pacific").

It has recently come to our attention that there may be a planning commission review on December 8 concerning changes to some regulations that could affect development within the Cherry Point industrial UGA. We have a couple of questions for you and would appreciated your soonest possible reply so that we can prepare for the meeting if necessary:

1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA ("amendments")?

2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?

3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm - Salish Land Policy Solutions - on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.

Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA 98225
(425) 268-5553
(360) 224-8664
Can someone look into the PDR that Mr. Erlichman is referring to in the attached email? I will be back on Monday.

Thanks,

Tyler

Tyler R. Schroeder  
Current Planning Supervisor  
Phone: (360) 676-6907 ext. 50202  
Fax: (360)738-2525  
Email: Tschroed@co.whatcom.wa.us  
Address:  
Whatcom County Planning and Development Services  
5280 Northwest Dr.  
Bellingham, WA 98225
Dear Peter (and Tyler):

Thank you for your reply to some of our inquiries. Much appreciated. Would you kindly forward to us any SEPA determination that has been issued for these Birch Bay amendments at any time? Could you please forward that to us via email or provide us a web-link?

Your reply did not respond to my question as to whether there are any other amendments under consideration (please see my email below for definitions). Those inquiries obviously were not limited to the Birch Bay issues.

Those were requests made on November 29, 2011 under the Public Disclosure Act. In addition to that first request, please provide documents responsive to a second request: All communications with the applicant for the Gateway Pacific Terminal or its representatives or with the ORA or any other state agency regarding any of the amendments described in our first request.

Thank you for your earliest possible reply to our first and second inquiries.

Tom Ehrlichman
Salish Land Policy Solutions
(425) 68-5553

Dear Tom,

1) The Birch Bay Watershed Action Plan came out of the 2007 Watershed Characterization and Planning Pilot Study and earlier plans (BBay Community Plan - 2004, BBay Stormwater Plan - 2006) that asked for Low Impact Development and watershed based management of critical areas. This is the second hearing
on the proposal, the first being May 15, 2011.

One provision of this proposal includes the use of the Habitat Mitigation Fund for buffer impacts within the Birch Bay watershed and the Cherry Point Industrial Urban Growth Area. Use of the Fund does not preclude the requirement to provide buffers for critical areas, only that impacts to buffers can be mitigated through alternative means.

2) I have attached the draft code. The section of code that applies to the area you are interested in is the use of the Habitat Mitigation Fund (WCC 16.16.920.E). More information on the program is available here: http://www.co.whatcom.wa.us/pds/naturalresources/specialprojects/actionplan_downloads.jsp

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Kind regards,

Peter Gill
Natural Resources Division

Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
<mailto:pgill@co.whatcom.wa.us> pgill@co.whatcom.wa.us
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As you know, we represent a group of property and business owners in Whatcom County concerned about the process involved in the review of the proposed Cherry Point coal export facility (“Gateway Pacific”).

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1. Can you please confirm whether any department or body of County government is currently considering proposed amendments of any kind to development regulations, zoning map amendments, comprehensive plan text or map amendments, or amendments to shoreline management master program goals, policies or regulations applicable to the Cherry Point UGA (“amendments”)?

2. If any amendments are being considered, can you please email us a copy of all documents describing the current version of the proposed amendments?

3. If any public hearings or meetings are scheduled concerning any amendments, could you please provide us with a copy of the notice of the hearing, including the time and date?

4. Would you please permanently place me, my partner Barbara Dykes, and our firm – Salish Land Policy Solutions – on any mailing lists, email lists, lists of parties of record, lists of interested persons or any other lists that receive notice and/or copies of materials related to amendments affecting the Cherry Point UGA, on an ongoing basis if possible?

Perhaps we were mistaken, but it was our understanding that the County was already set up to send us and others concerned about the Gateway Pacific facility notices for any public process affecting the outcome of the proposal. We consider amendments to regulations or policies that would apply to the proposal to fall within that scope. In the event there are any amendments affecting the project under consideration, we respectfully request that you provide notice on your public website for the project and by email to those on your list of interested parties, at your earliest possible convenience.

As always, we appreciate your concern for public disclosure and an open and transparent process.
Sincerely,

Tom Ehrlichman
Barbara Dykes
Salish Land Policy Solutions
909 Harris Avenue, Suite 202A
Bellingham, WA  98225
(425) 268-5553
(360) 224-8664
Rox and Peter,

I concur with issuing the memo at this time. The 2nd sentence in the discussion section needs some work.

Thanks,

Tyler

-----Original Message-----
From: Peter Gill
Cc: Ryan, Sam <JRyan@co.whatcom.wa.us>
To: Michael, Roxanne <RMichael@co.whatcom.wa.us>
Cc: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>

Sent: 12/2/2011 9:31:19 AM
Subject: Memo to Planning Commission

Hi Roxanne,

Due to the unintended excitement this issue has caused, I would recommend we put a statement out ASAP. Attached is a draft.

Peter
Looks good to me.

-----Original Message-----
From: Peter Gill
Cc: Ryan, Sam <JRyan@co.whatcom.wa.us>
To: Michael, Roxanne <RMichael@co.whatcom.wa.us>
Cc: Drake, Stephanie <SDrake@co.whatcom.wa.us>
Cc: Schroeder, Tyler <Tschroed@co.whatcom.wa.us>

Sent: 12/2/2011 10:10:04 AM
Subject: memo rewrite

I have changed "requests" to "recommends" and changed the second sentence under discuss. Please read and let me know if it is ready. I will .pdf and then send to Pam for posting and the Ad hoc group. Roxanne, will you send to Stark and Planning Commission?

Peter Gill
Natural Resources Division
Whatcom County Planning & Development Services
322 N. Commercial Street
Bellingham, WA 98225
360-676-6907 x50263
pgill@co.whatcom.wa.us