

1 **BEFORE THE DIRECTOR**
2 **CITY OF TACOMA**

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4 **In the Matter of:**)
5)
6 **Shoreline Development Application**) **ORDER PARTIALLY GRANTING**
7 **File Number SHR2015-40000246123**) **RECONSIDERATION AND**
8 **Larry Tornberg, Puget Sound Energy,**) **MODIFYING CONDITIONS OF**
9 **and Tony Warfield, Port of Tacoma,**) **APPROVAL**
10 **Applicants**)
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11 By decision dated November 19, 2015, the Director issued a Shoreline Substantial
12 Development permit for the development of a natural gas liquefaction and
13 storage facility. Work in shoreline jurisdiction includes a barge loading facility in
14 the Hylebos Waterway and fueling equipment for Totem Ocean Trailer Express
15 in the Blair Waterway, to include demolition, stormwater outfall maintenance,
16 and site preparation. The site is located at 1001 E Alexander Ave and 3115 E
17 11th Street, within the “S-10” Shoreline District – Port Industrial and “S-13”
18 Shoreline District – Marine Waters of the State, and is located on the Blair and
19 Hylebos Waterways. The decision is marked as Exhibit “A”¹ to this Order.
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21 On December 3, 2015, a request for reconsideration was timely filed by Lisa
22 Brautigam, legal representative for the Puyallup Tribe of Indians. The request
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26 ¹ Exhibit “A” is contained in Planning and Development Services Department File No. SHR2015-40000246123. It is
27 referenced and incorporated herein as though fully set forth.
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1 is attached as Exhibit "B"². The request includes many assertions disputing the
2 City's technical analysis and refers back to reports and application materials.

3
4 In summary, the Director understands the applicant's request for reconsideration is
5 based on the following assertions:

- 6 • The application and decision fail to account for impacts of the project from
7 significant contamination on the site, groundwater, and surrounding
8 properties and sediments. In particular, work within the Hylebos Waterway
9 has the potential to disturb contaminated sediments and disrupt ecological
10 function, as well as contaminate further areas. Without the ability to remove
11 piling from contaminated areas, the potential for mitigation is restricted and
12 the project's viability is therefore called into question.
- 13 • Impacts to the ecological function in the vicinity of the project have not been
14 analyzed or addressed. Of particular concern is the presence of a
15 restoration area (mudflats) directly across the waterway from the proposed
16 barge dock, and the failure of the Shoreline Permit to address these
17 restoration areas.
- 18 • The stormwater system installation work and future operation lacks
19 information on the contamination issues present and risks involved. Site
20 sampling has been inadequate and does not provide the necessary
21 response to the TSMP criteria for ecological protection.
- 22 • The impacts of the future use and operations cannot be analyzed fully
23 without consideration of the activities the permitted construction will allow or
24 promote. This includes a more detailed analysis of future barge traffic in the
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26 ²Exhibit "B" is contained in Planning and Development Services Department File No. SHR2015-40000246123.

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Hylebos Waterway, and operational characteristics that may further affect ecological function and contamination risks.

- The mitigation measures in the permit are speculative at best due to lack of adequate analysis of site conditions and impacts. As noted in the comment letter from the Environmental Protection Agency, further characterization of contaminants at the site is necessary before the project can be permitted.
- Cultural resource impacts fail to recognize the likelihood of cultural resource finds; even though the site is predominately fill materials, resource finds are common in fill areas.

Having considered the issues brought forward in the request, the Director finds as follows regarding the request for reconsideration:

The application for the proposal was determined to be complete on May 6, 2015.

The application was consistently held to the standards of the *Tacoma Shoreline Master Program (TSMP)* and *Tacoma Municipal Code (TMC)* regulations in effect at that time.

A Final Environmental Impact Statement (FEIS) related to the entirety of the proposal (of which the work in the shoreline jurisdiction is a part) was issued on November 9, 2015. That FEIS contains detailed analysis of the project as well as placing conditions on the permitted work. Agency comments (including those from Department of Ecology and the United States Environmental Protection Agency) were made related to the EIS but also were applicable to the Shoreline

1 Substantial Development Permit.³ The Shoreline Permit and *all* future permits
2 related to the proposal are reviewed in light of the FEIS and must show
3 compliance with the findings and conditions therein.
4

5 As discussed in the FEIS, the site is adjacent to the Occidental Chemical Site and
6 the Alexander Avenue Petroleum Tank Facility, both of which have contaminant
7 plumes extending near or onto the subject site. The area of the site proposed
8 for soil stabilization and construction is outside the identified plume footprint
9 and work in that area will not interfere with continued upland cleanup efforts. A
10 Materials Management Plan (MMP) and Stormwater Pollution Prevention Plan
11 (SWPPP) will be developed that describe procedures for handling materials
12 with visual or olfactory signs of potential contamination encountered within the
13 construction footprint. These plans will also address reporting of construction-
14 related releases and measures to prevent such releases, and will be required
15 as part of any development permit at the site.
16

17 The bulk of the Puyallup Tribe's concerns are with the proposed development of
18 the barge-loading dock in the Hylebos Waterway. It should be noted that the
19 Hylebos facility has not been presented as a core component of the project: the
20 purpose of the project is to provide fuel directly to the TOTE facility and to
21 provide utility peak-shaving. Other components (the barge loading in the
22 Hylebos and the potential for truck loading) are secondary. However, the
23 concerns about the Hylebos waterway are responded to herein.
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26 ³ The EPA Comment letter on the DEIS is Exhibit "C" to this Reconsideration Decision and is included
27 here for reference regarding the discussion of contaminants in the Hylebos Waterway.
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1 Work within the Hylebos Waterway has the potential to disturb contaminated
2 sediments, as identified by both Ecology and the EPA. Typically shoreline
3 permits carry a condition that all other agency permits be secured (or
4 compliance otherwise demonstrated) before development (i.e., building)
5 permits are issued by the City of Tacoma. This condition was omitted from the
6 subject SSDP and should be included in conditions of the permit. Compliance
7 with any required state or federal permit will ensure that potential impacts from
8 in-water work are avoided or mitigated.

9
10 The City and the applicant both recognize the presence the restoration area across
11 the waterway from the proposed barge dock. In addition, the permit application
12 and decision acknowledge the need for additional sediment testing for both
13 construction and operation of the barge dock in the waterway. This testing will
14 be required prior to federal and state permitting, which are prerequisite to local
15 building permit issuance. If contaminants cannot be addressed in a way that
16 avoids or mitigates all impacts both on and off-site, the project may not
17 proceed. This condition is unclear in the issued SSDP and should be modified
18 for clarity.

19
20 The stormwater system installation work will meet all requirements of both the City
21 of Tacoma's and Department of Ecology's stormwater management
22 regulations, including a National Pollutant Discharge Elimination System
23 (NPDES permit for both construction and operation of the facility. In addition to
24 the above-noted materials management plan and construction SWPPP,
25 compliance with NPDES will include water quality and quantity for normal runoff
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1 at the site. The NPDES requires monitoring and recertification on a regular
2 basis, ensuring compliance over time.

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4 The impacts of the future use and operations will need to comply with all water
5 quality as well as safety requirements of all applicable permits and authorities.
6 This information will need to be provided prior to development permitting; this is
7 clarified in the revised condition.

8
9 The assertion regarding the adequacy of mitigation measures in the permit is a
10 matter not of fact or procedure but of substance, and is more appropriately
11 suited for review under appeal. It should be noted that the shoreline permit
12 authorizes the applicant to pursue development permits at the site subject to
13 the overall shoreline authorization and the conditions therein. Each
14 development permit will have separate review and must comply with both the
15 conditions of the SSDP as well as any other conditions of the permit and its
16 regulatory basis. The conditions include requirements for mitigation and if the
17 mitigation cannot be accomplished due to EPA CERLCA restrictions for work in
18 the Hylebos Waterway, the applicant would be required to modify the permit
19 with a new mitigation proposal.

20
21 Cultural resource impacts are considered to be unlikely, but are possible in the
22 course of site preparation and construction. Both the Port of Tacoma and Puget
23 Sound Energy operate all contracts with an Unanticipated Discovery Plan
24 (UDP) in the event that cultural or archaeological resources are encountered.
25 The UDP sets forth actions to be taken, including halting work in the area of
26 discovery and contact of all appropriate authorities.

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Based on the above, the Director finds that the following Conditions of Approval should be amended:

Conditions:

1. No construction materials or debris shall be allowed to enter waters of the State.
2. Best Management Practices shall be used throughout the demolition and construction process as set forth in the permit request, to address soil contamination, erosion control, noise impacts, and water quality.
3. All work waterward of the ordinary high water mark/line will follow the restrictions and criteria approved by WDFW.
4. For all development permits, the applicant shall either demonstrate that no additional federal or state permits are necessary, or shall provide copies of the approved permit(s) to the City prior to issuance of development permit. Such permits include but are not limited to approvals from The Environmental Protection Agency, Army Corps of Engineers, Washington State Department of Ecology, Washington State Department of Fish and Wildlife and the US Coast Guard.
5. Work within the Hylebos Waterway may not proceed until the applicant demonstrates that further sediment testing has been completed and that the project will be constructed and operated in compliance with all applicable water quality regulations.
6. Best management practices and construction techniques outlined in the JARPA must be followed. Any changes or modifications must be approved prior to commencement of the activity.
7. The applicant shall pay the fee-in-lieu for public access prior to the completion of work. The amount of the fee will be calculated when building permits are requested, based upon the valuation of the work in that permit. Permit values for all work authorized under this Shoreline Substantial Development Permit shall be cumulative.
8. A planting plan for those portions of the 50' marine buffer at the Tacoma LNG Facility, which are not needed for direct water access, will be submitted and approved by Planning and Development Services before final sign-off of construction permits by the City Building Inspector. The plan will include a planting schedule and monitoring plan for a minimum of 5 years. Bonding for the installation (performance bond) and monitoring (maintenance and monitoring bond) of the planting area will also be submitted and approved at this time.
9. Mitigation as outlined in Finding 18 of "Attachment C" is required. Any modification of the mitigation as proposed will require additional review and approval.

1 **Advisory Notes:**

2 The below notes are meant to provide additional information to the applicant
3 relative to the specific development proposal. These notes are not conditions of
4 the permit nor do they constitute a complete review of the project.

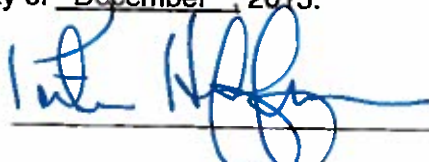
- 5 1. The decision set forth herein is based upon representations made and
6 information submitted, including development plans and proposals, submitted to
7 the Director. Any substantial change(s) or deviation(s) in such development
8 plans, proposals, or conditions of approval imposed shall be subject to the
9 approval of the Director, and may require additional permitting and public
10 notification and comment.
- 11 2. The City of Tacoma is not the only reviewing agency with jurisdiction over the
12 project area. The Environmental Protection Agency, Army Corps of Engineers,
13 Washington State Department of Ecology and Washington State Department of
14 Fish and Wildlife have requirements regarding work within regulated waters that
15 may be applicable to the project. Please coordinate directly with these agencies
16 to obtain project approval [prior to requesting development permits from the City of Tacoma.](#)
- 17 3. The authorization(s) granted herein is/are subject to all applicable federal, state
18 and local laws, regulations, and ordinances. By accepting this/these approvals,
19 the applicant represents that the developments and activities allowed will comply
20 with such laws, regulations, and ordinances. If, during the term of the approvals
21 granted, the developments and activities permitted do not comply with such
22 laws, regulations, or ordinances, the applicant agrees to promptly bring such
23 developments or activities into compliance.
- 24 4. This permit is only applicable to the proposed project as described above and
25 based upon the information submitted by the applicant. Future activities or
26 development within the regulated marine waters or buffer may be subject to
27 further review and additional permits or exemptions as required in accordance
28 with *TMC* 13.10.
5. This permit may be rescinded pursuant to *RCW* 90.58.140(8) of the Shoreline
 Management Act of 1971 and Section 13.10.2 of the *Tacoma Municipal Code* in
 the event the permittee fails to comply with any condition thereof.
6. Construction shall be commenced within two (2) years after the effective date of
 the permit. Local government may, however, authorize a single extension for a
 period not to exceed one year based on reasonable factors, if a request for
 extension has been filed before the expiration date. Authorization to conduct
 development activities shall terminate five years after the effective date of a
 shoreline permit, however, a single extension for a period not to exceed one
 year may be granted by local government if a request for extension has been
 filed before the expiration date.

- 1 7. Construction pursuant to this permit will not begin or is not authorized until
2 twenty-one (21) days from the "date of filing" with the Washington State
3 Department of Ecology, as that term is defined in WAC 173-27-130, or until all
4 review proceedings initiated within twenty-one (21) days from the "date of filing"
5 have been terminated.
- 6 8. The applicant shall apply for and receive approval of any required building
7 permit from the City of Tacoma Planning and Development Services Department
8 prior to any work.

9 **RECONSIDERED DECISION:**

10 Based upon the above, the Director hereby grants the request for reconsideration,
11 affirms the original decision dated November 19, 2015, and modifies the
12 conditions of approval as stated above.

13 **DATED** this 30th day of December, 2015.



14 _____
15 **Peter Huffman**

16 **Director, Planning and Development Services**

17 **TRANSMITTED** this 30th day of December, 2015, by first class* and/or electronic
18 mail* to parties of record:

19
20 Lisa Brautigam**, Attorney, Puyallup Tribe of Indians, 3009 E Portland Ave, Tacoma,
21 WA 98404, lisa.brautigam@puyalluptribe.com

22 Larry Tornberg**, Puget Sound Energy, PO Box 97034 EST 09E, Bellevue, WA 98009-
23 9734, larry.tornberg@pse.com

24 Tony Warfield**, Port of Tacoma, PO Box 1837, Tacoma, WA 98401-9443,
25 twarfield@portoftacoma.com

26 Kerry Carroll*, Department of Ecology, kstr461@ecy.wa.gov

27 Matt Curtis*, Washington Department of Fish and Wildlife, matthew.curtis@dfw.wa.gov

1 Pierce County Office of the Assessor-Treasurer⁺, Darci Brandvold,
dbrandv@co.pierce.wa.us
2 Citizens for a Healthy Bay⁺, Melissa Malott, mmalott@healthybay.org
3 Brad Harp⁺, Tacoma-Pierce County Health Department, Bharp@tpchd.org
4 John Parrott*, Totem Ocean Trailer Express, 32001 32nd Ave S, Ste 200, Federal Way,
5 WA 98001
6 Gary Brackett*, Tacoma-Pierce County Chamber of Commerce, 950 Pacific Ave, Ste
300, Tacoma, WA 98401
7 Mark Martinez*, Pierce County Building & Construction Trades Council, AFL-CIO, 3049
8 S 36th St #220, Tacoma, WA 98409
9 Tanja Leek*, 6623 Eastside Drive NE, Browns Point, WA 98422
10 Michael Weinman⁺, Weinman Consulting, LLC, mweinman@comcast.net

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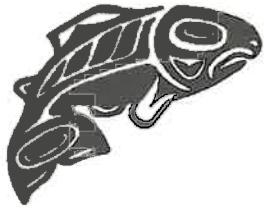
**APPEAL PROCEDURE FOR
RECONSIDERED DECISION OF THE
DIRECTOR**

**The decision of the Director is now considered final and will be delivered by hand
and mailed via certified mail to the Department of Ecology on
December 31, 2015.**

APPEAL TO SHORELINE HEARINGS BOARD:

The decision of the Director of Planning and Development Services may be appealed by any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW 90.58.140, who may seek review from the shorelines hearings board by filing a petition for review within twenty-one (21) days of the date of filing of the decision as defined in RCW 90.58.140(6), which states that the "date of filing" is "the date of actual receipt by the department of the local government's decision".

Information on filing an appeal of a Shoreline Substantial Development Permit may be obtained by contacting the State of Washington's Environmental and Land Use Hearings Office at www.eho.wa.gov, or PO Box 40903, Olympia WA 98504-0903, (360) 664-9160, email: eluh@eluh.wa.gov



LAW OFFICE
of the
PUYALLUP INDIAN TRIBE



December 3, 2015

VIA HAND DELIVERY

Mr. Peter Huffman
Director
Planning and Development Services Department
City of Tacoma
Tacoma Municipal Building
747 Market Street
Tacoma, WA 98402

RE: Request for Reconsideration of the Decision on the Shoreline Substantial Development Permit, File No. SHR2015-40000246123, for Puget Sound Energy and Port of Tacoma

Dear Mr. Huffman:

I am writing on behalf of the Puyallup Tribe of Indians to request reconsideration of the Director's decision on the Shorelines Substantial Development Permit for Puget Sound Energy and the Port of Tacoma, File No. SHR2015-40000246123. The Tribe has standing to request reconsideration because the Tribe owns property which is held in trust by the United States and in fee that is maintained in conservancy status to provide essential fish habitat directly across Hylebos Waterway from the proposed project. Furthermore, the Tribe has a substantial interest, as a sovereign nation, in the quality of the aquatic environment, impact from contamination in the Hylebos Waterway, and safety of its members. The Tribe also has an interest in protecting its Treaty Right to Fish, which is compromised or diminished if fish, particularly salmon, health, habitat, life cycles, breeding, feeding or foraging is impacted by the proposed action. Lastly, the Tribe is entitled to notice under TMC 13.05.020.

The Tribe requests reconsideration of the decision as a whole, including findings, conclusions, conditions, and mitigation measures based upon the errors identified below.

1. **Failure to account for impacts of the project from significant contamination on the site, groundwater, and surrounding properties and sediments.**

The project upland site and marine waters where both future operations and work will occur are located in an area that is listed as a Superfund Site. The Hylebos Waterway, along with groundwater at the upland site and under the waterway, and the sediment within the waterway, are significantly contaminated and the subject of ongoing characterization to reach a remediation strategy as part of the Commencement Bay Nearshore/Tideflats Superfund site. The permit findings, conclusions, and conditions fail to mention the significant contamination and impacts the work will have on the surrounding area with regard to loss of ecologic function as a result of the proposed work and use of the site.

The applicants, in their limited environmental assessment, fail to recognize or disclose the history of the portions of the waterway where they intend to construct the new pier and conduct barge loading with tug assists. The shoreline in that area was utilized by the U.S. Navy, and there are significant concerns regarding the extent of the contamination in that area. Instead the applicants erroneously claim all the contamination cleanup is completed in Hylebos Waterway without regard to the significant likelihood of contamination existing in the area of the proposed project and consideration of the history of the site that would lead other resource agencies to a contrary conclusion.

The sediments in the waterway where in water work and future use of barges with tug boat assists are proposed are part of a “no action” or “monitored natural recovery” area and, according to EPA, were expected to be left undisturbed so that future sedimentation would occur “capping” the contaminated sediments in place and isolating them from disturbance and dispersal into the water column. Throughout the permit documents, the applicants disclose that the sediments are part of a monitored natural recovery area and assert that cleanup of the sediments in the Hylebos Waterway is complete. However, the applicants fail to disclose that the intention of the designated monitored natural recovery area is to leave contaminated sediments undisturbed. Cleanup of sediments, by removal of contaminated sediments, has not occurred in the proposed work area or waterway adjacent to the site. EPA has identified significant concerns with the proposed work, stating without further testing demonstrating no risk of releasing the contaminated sediments, it is uncertain, and even unlikely, that pile removal is appropriate. With pile removal being identified as a mitigating measure in this permit, this leaves mitigation at best uncertain or, worse, highly unlikely.

The contaminants found in the sediments are of significant concern, and include PCB's, metals, and Dioxins/furans. EPA has, in fact, determined and disclosed to the applicants in June of 2015, that without further testing to adequately characterize the sediments in the work area, it is impossible to determine the impacts the proposal will have on the critical areas, water quality,

and essential habitat for species listed under the Endangered Species Act. EPA notified the applicants that recent testing throughout the waterway where sediments were not dredged for cleanup but rather left to monitored natural recovery show dioxin/furan compounds. This is not discussed or evaluated in any of the permit application documents or in the findings of the permit. Furthermore, EPA has determined that there is no guarantee, absent additional characterization work on the sediments, that the proposed design, work plan, conditions, or mitigation measures are appropriate or adequate to meet permitting requirements. Mitigation cannot be quantified and evaluated without a clear understanding of the contaminants in the sediments. For additional information on what is, in fact, known regarding contamination in the area can be found through the Department of Ecology at www.ecy.wa.gov/programs/hwtr/cleanupsites/Occidental. The cleanup of the area is merely at the stage of a public comment period for the Remedial Investigation. The notice regarding the draft remedial investigation is attached as Exhibit 1. The Tribe is gravely concerned that the characterization work has not been completed, no mention is made of the extent of contamination potentially present, and the impacts to the shorelines, waters of the state, essential fish habitat and the restoration sites in the vicinity have not been analyzed. Such failures result in a failure to meet the requirements of the Shorelines Management Act.

2. **Impacts to the ecological function in the vicinity of the project have not been analyzed or addressed.**

In addition to the contamination elements not addressed and leading to the inability to appropriately analyze the impacts or adequacy of mitigation, the materials supporting the permit fail to mention that directly across the Hylebos Waterway from the project are the last remnant mudflats in Commencement Bay. These areas are restoration sites and conservancy areas owned and maintained by the Tribe and a restoration site named the Occidental Site which is maintained as part of the Natural Resources Damage Assessment Settlement with the Trustees for Commencement Bay. These sites are essential for outmigrating fish from both Hylebos Creek and the Puyallup River as they provide feeding grounds and resting sites as salmon species, which are listed under the Endangered Species Act, continue to adjust to the transition from freshwater to saltwater.

The FEIS, Biological Evaluation, JARPA, and even the City's own impact analysis for critical areas fail to mention the restoration sites across the waterway and the importance of those sites as the last remaining high functioning mudflats in Commencement Bay. The materials and the City's analysis call out the existence of the Tribe's Marina only, not mentioning the other restoration sites. It is inferred the presence of the marina is something that demonstrates the degraded nature of the area. However, the materials fail to disclose or recognize that the Tribe's

marina was constructed at -8 ft below ordinary high water to be far enough from shore to provide near shore mudflat conservancy area to benefit fish. Coupled with the lack of sufficient information on the contamination in the sediments or uplands, the lack of consideration of the ultimate use along the Hylebos Waterway of barges with tug assists and resulting prop wash and disturbance of sediments, the absence of any discussion in the permit applications, supporting documents or findings and conclusions for the permit regarding the impacts these conditions impose on the restoration sites and conservancy areas presents a fatal flaw in the permit decision.

3. **The stormwater system installation work and future operation lacks information on the contamination issues present and risks involved.**

The stormwater work involves replacing stormwater system elements in areas of soil and groundwater contamination but yet does not address the risks involved or whether the applicant will perform a cleanup to prevent infiltration of contaminants into the system which would ultimately be discharged into the waterway.

The Applicant's own very limited site evaluation and sampling shows that there are contaminants above cleanup levels in the areas to be excavated both for the stormwater improvements and the bank cutback. *See* Appendix C to the FEIS. Yet there is no mention in the permit findings, conclusions, conditions or mitigation measures whether there will be further testing, cleanup, measures to prevent not only discharge of the contaminants to the environment, or measures employed to ensure human health and safety. A complete site characterization and cleanup plan should be in place prior to setting forth permit conditions or the mitigation required.

Furthermore, absent and complete characterization and the cleanup plan, it is both premature and purely speculative to conclude that the stormwater released as part of the use of the property will be of sufficient quality to avoid impacts to the ecologic functions of the site and surrounding shorelines.

4. **The impacts of the future use and operations cannot be analyzed fully without full consideration of the activities the permitted construction will allow or promote.**

The applicants fail to adequately disclose the full breadth of activities that will occur in the future use. The applicants only mention of the true nature of the use with regard to tug boat assists for the bunkering barges they seek to serve with the new pier on the Hylebos Waterway includes mention that the bunker barges and associated tug boats will be operated by a third party and be under the control of a third party. However, even without direct knowledge of tug boat

operating procedures, it is reasonable to foresee that tug assists will result in prop wash in the area. That prop wash is likely to impact sediments as the tug boats maneuver the bunker barge into place for fuel loading.

Given the known and suspected sediment contamination, prop wash impacts must be analyzed to determine the impacts on the shorelines and critical areas, adjacent essential habitat, the mudflats, fish, and other animals and wildlife that feed on marine organisms. As discussed above, EPA has significant concerns regarding the proposed project and whether the project will impact the contaminated sediments that were intended to be left in place and be “capped” over time. EPA has also raised concerns regarding relatively recent evidence in 2013 that the sediments in the waterway contain dioxin/furan compounds and such analysis has not been completed on the sediments at the proposed projects location. The absence of findings, conclusions, permit conditions, and mitigation with regard to the future use, and prop wash risks from that use, in the permit’s findings and conclusions is an error of fact by a glaring omission.

5. The mitigation measures in the permit are speculative at best due to lack of adequate analysis of site conditions and impacts.

As discussed above, the lack of technical information and findings, conclusions, or any discussion regarding site conditions and impacts due to operations result in the mitigation measures proposed being speculative at best, and perhaps impossible. In particular, removal of the creosote pilings could prove impossible without creating a release of hazardous substances.

Furthermore, the mitigation measures and conditions that rely on the use of BMP’s as described in the JARPA are inadequate at best, perhaps wholly inapplicable. The JARPA, as has been noted by EPA, was premature without further discussion and information on the contamination present on the site, disclosure of history and potential contamination, recognition and analysis of the intent that the sediments not be disturbed, and further testing to confirm contamination presence and levels in the sediments, particularly with regard to dioxin/furan compounds. The errors of fact found in the decision lead to inadequate or no mitigation.

6. Cultural resource impacts fail to recognize likelihood of cultural resource finds.

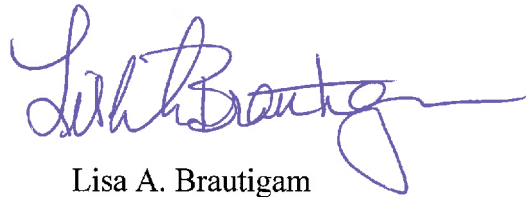
The applicants rely on the fact that the upland site was created with fill by the Port of Tacoma to summarily dismiss the likelihood of finding artifacts during the proposed work. However, the cultural resource report, which is the basis for the City’s analysis of cultural resource impacts, fails to recognize that there is a history of finding cultural resources in the fill

Mr. Peter Huffman
December 3, 2015
Page 6 of 6

used at the Port of Tacoma because it was local fill placed in a time where cultural resources were not necessarily impacts recognized in the permitting processes.

Due to the foregoing mistakes of fact the Puyallup Tribe requests that you reconsider the decision issued on November 19, 2015 and not transmitted to the Puyallup Tribe until Tuesday, November 24, 2015. Reconsideration of the subject permit must account for the mistakes of fact when analyzing the impacts to the applicable shorelines and marine waters under the Shorelines Management Act.

Sincerely,



Lisa A. Brautigam

Attachments

cc: Shirley Schultz, City of Tacoma (via electronic mail)
Alisa O'Hanlon, City of Tacoma (via electronic mail)

EXHIBIT 1

Public Comment Notice

Hazardous Waste and Toxics Reduction Program



DEPARTMENT OF
ECOLOGY
State of Washington

Remedial Investigation at Occidental Chemical Corporation

The Washington Department of Ecology (Ecology) invites you to comment on a draft report, called a Remedial Investigation (RI), for Occidental Chemical Corporation's (Oxy) Tacoma Site. We will consider and respond to all comments before making the RI final. The data from the RI will be used to evaluate potential remedies to clean up contamination.

You are also invited to an informational meeting to learn more about the report findings and the next steps in the cleanup process. Staff from Ecology will be there to answer your questions.

Visit our website for more information:
www.ecy.wa.gov/programs/hwtr/cleanupSites/Occidental/

What's in the Report?

Oxy investigated contamination at its Tacoma site. The site is located at 605 Alexander Ave., Tacoma, WA. The investigation was overseen by Ecology and the federal Environmental Protection Agency (EPA).

Oxy found hazardous substances in the groundwater, soil, and sediment at the Site. The contamination is related to historical operations and waste disposal practices. The primary contaminants include:

- Chlorinated volatile organic compounds (CVOCs)
- Sodium hydroxide
- Salt (sodium chloride)
- Metals
- By-products of chlorinated solvent production
- Poly-chlorinated Biphenyls (PCB)
- Dioxins/furans

You can see the extent of the contamination in Figure 1 on page 3.

Public Comment Period

**October 23, 2015 through
December 19, 2015**

Comments must be postmarked, received by email, or hand delivered by **December 19, 2015** to be considered.

Submit comments to:

Kerry Graber
Department of Ecology
Hazardous Waste & Toxics
Reduction Program - SWRO
PO Box 47775
Olympia WA 98504-7775
Email:
kerry.graber@ecy.wa.gov
Phone: 360-407-0241

Public Meeting

Date: October 28, 2015
Time: 6:00-8:00 p.m.
Location: Center at Narpoint
4818 Nassau Ave NE
Tacoma, WA 98422

Document Repositories

Please call these locations for business hours.

Hazardous Waste & Toxics
Reduction Program - SWRO
PO Box 47600
Olympia, WA 98504-7600
360-407-6365

Citizens for a Healthy Bay
535 Dock Street, Suite 213
Tacoma, WA 98402
253-383-2429

Mary Rose Kobetich Library
212 Browns Point Blvd NE
Tacoma, WA 98422
253-248-7265

Impacts of Contamination

Occidental submitted a risk assessment that has not been formally approved by Ecology. The risk assessment predicts possible affects to the environment or people and is referred to in the draft RI. Ecology will work with a contractor, Ridolfi Environmental, to evaluate the quality of the risk assessment and exposure pathway information as the cleanup process moves forward.

Chemicals could enter the body three ways: breathing dust, touching contaminated soil, or swallowing contaminated soil or groundwater. Based on the current risk assessment, there is no direct risk to the public of exposure to these chemicals. Only authorized persons may enter the site area. Cleanup workers at the site follow a site safety plan developed and overseen by Oxy and its contractors. The plan limits the workers' direct contact with contaminated soil, groundwater, and sediment, or breathing in indoor air at the site and at the neighboring Port of Tacoma property. Air samples taken in the buildings in and near the site showed CVOC levels below industrial standards. This means, in an industrial setting, potential exposure is below a level that would pose a risk to adult humans.

People that consume resident fish and shellfish from the Hylebos creek may have an indirect risk of exposure. Ecology is addressing this indirect risk and will keep the public updated. Find more information about healthy fish consumption at Washington Department of Health's webpage: www.doh.wa.gov/CommunityandEnvironment/Food/Fish.

Shellfish harvesting is closed in Commencement Bay due to pollution. Find out more by visiting Tacoma-Pierce County Health Department's Safe Shellfish program: www.tpchd.org/environment/surface-water-lakes-beaches-shellfish/safe-shellfish-program/.

Contamination does not affect public drinking water. If you have a private well nearby, please contact Tacoma-Pierce County Health Department at 253-798-6470 for more information.

Join our Listserv for More Updates

If you are interested in learning more about this cleanup, join our email listserv by following this link: <http://listserv.wa.gov/cgi-bin/wa?SUBED1=OCCIDENTAL-CORRECTIVE-ACTION&A=1>.

Join our dangerous waste facility email listserv to learn more about what's happening at our state's dangerous and hazardous waste facilities. Join here: <http://listserv.wa.gov/cgi-bin/wa?A0=DWFACILITIES-PUBLIC-NOTICE>.

OCCIDENTAL SITE CLEANUP TIMELINE



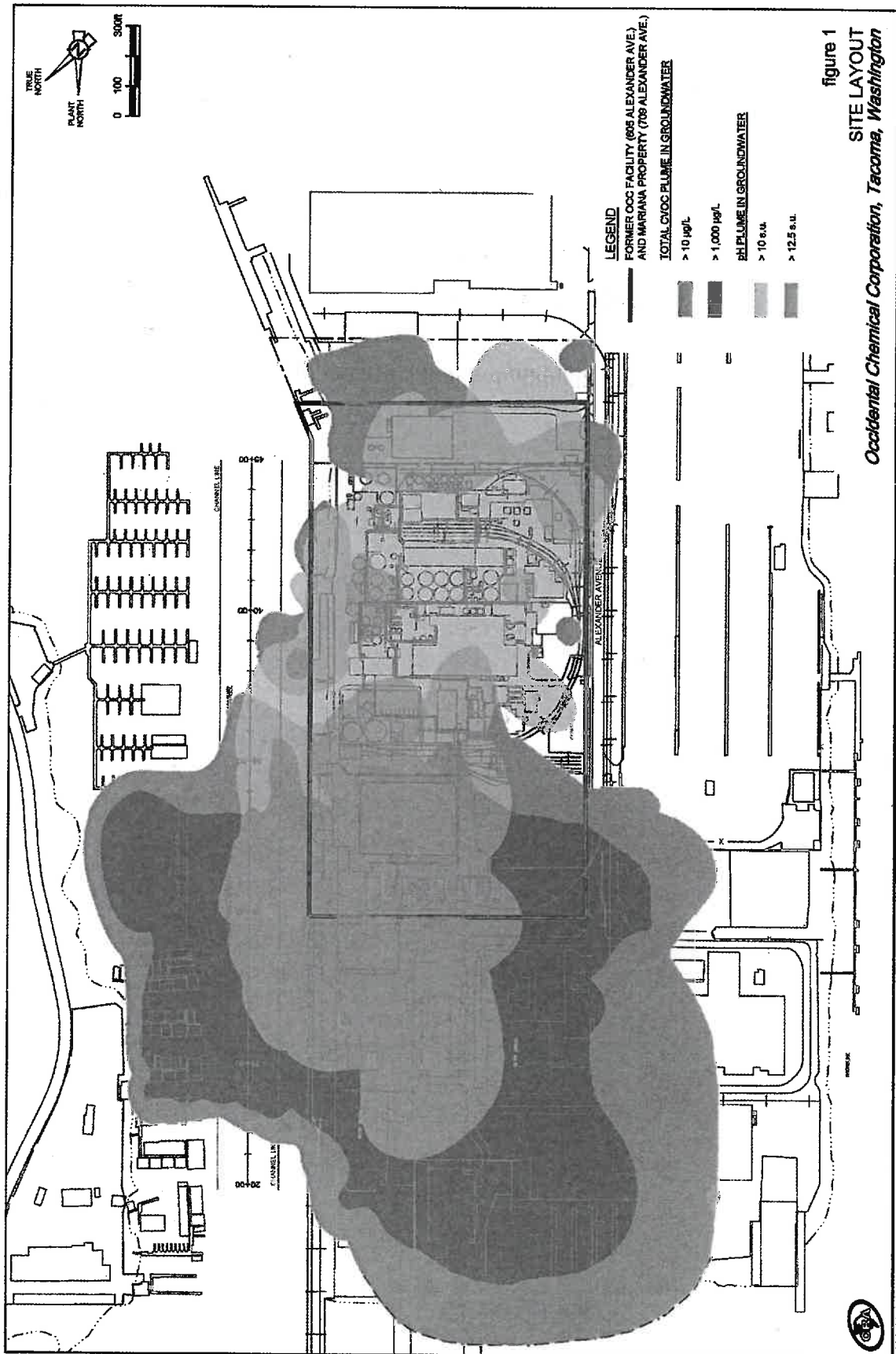


EXHIBIT 2

Proposed LNG Facility Site
 Mitigation Sites
 Pierce County Parcels (Pierce Co)
 Puyallup Tribal Lands
 Trust Status
 In Fee
 Tribal Trust

0 500 1,000 1,500 2,000
 Feet

