CENWS-OD-RG

MEMORANDUM FOR RECORD

REFERENCE: NWS-2008-260, Pacific International Terminals, Inc.
NWS-2011-325, BNSF Railways

DATE: 3 July 2013

SUBJECT: U.S. Army Corps of Engineers Scope of Analysis and Extent of Impact Evaluation for National Environmental Policy Act Environmental Impact Statement.

AGENCIES: The U.S. Army Corps of Engineers, Seattle District (Corps) is the Federal lead agency. The U.S. Environmental Protection Agency, U.S. Coast Guard, and U.S. Department of Transportation/Federal Railroad Administration are Federal cooperating agencies.

1. ACTION SUMMARY: Pacific International Terminals (PIT) proposes to construct and operate the Gateway Pacific Terminal (GPT), a multimodal marine terminal for export of multiple dry-bulk commodities including a deep-draft wharf with access trestle and other associated upland facilities. The PIT project would be developed on approximately 350 acres of a 1,500-acre site and would include a three-berth, deep-water wharf. The new wharf would be 2,980 feet long and 105 feet wide with access provided by an approximately 1,100-foot-long and 50-foot-wide trestle built on approximately 730 steel piles, each 48 inches in diameter. Upland facilities would include two commodity storage areas, each serviced by a rail loop. Each area would contain support facilities, such as roads, maintenance buildings, and stormwater treatment systems. A shared services area would connect the rail loops to the access trestle and wharf and would contain a roadway, conveyors, and service buildings. Commodities would be delivered to the PIT project site by rail via the existing BNSF Railway (BNSF) Custer Spur line off the Bellingham subdivision main line. The initial targeted commodity is coal from Powder River basin sources for export to Asian markets. Other bulk commodities include but are not limited to grains, potash, calcined petroleum coke, and ores.

Interrelated to the PIT project, the existing 6.2-mile-long Custer Spur extending from the BNSF mainline down into the Cherry Point Industrial Urban Growth Area would be upgraded to support increased traffic. The upgrades to the existing rail spur are proposed to service multiple industrial users in the Cherry Point area, but the Corps considers BNSF's proposed project "connected" to the PIT's proposed project because the PIT project cannot proceed without the BNSF project. See Title 40, Code of Federal Regulations (CFR), Part 1508.25. Upgrades would involve installation of receiving/departure tracks on the south side of the BNSF's Custer Spur (a.k.a. Cherry Point Subdivision line) starting from BNSF's Bellingham Subdivision Custer Wye through the Intalco Yard, across Valley View Road, and to Ham Road. Work includes new rail embankments, tracks, bridges and drainage structures; installation of a new main line adjacent to the Cherry Point main line from the Custer Wye about 6 miles in length to the proposed PIT project connection point; and installation of new terminal lead connecting tracks to include

improvements to BNSF's Elliot Yard to support rail connectivity to the proposed new PIT project.

The proposed PIT project would involve work or structures in or affecting the course, condition, location, or capacity of navigable waters of the U.S.; namely, the Strait of Georgia. In addition, both the PIT and BNSF projects will involve discharges of dredged and fill materials into waters of the U.S. (wetlands and tributaries). Therefore, both projects require authorization by a Department of the Army (DA) permit. The permit actions will be taken under authority delegated to the District Engineer from the Secretary of the Army and the Chief of Engineers by 33 CFR, Part 325.8, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act.

The National Environmental Policy Act (NEPA) requires Federal agencies to analyze the environmental impacts of "Federal actions" and to prepare an Environmental Impact Statement (EIS) for any "major Federal action significantly affecting the quality of the human environment." See 40 USC 4332(C). In this case, the Federal action is the decision to issue, issue with conditions, or deny a DA permit to PIT and/or BNSF for the activities under Corps jurisdiction. On 2 June 2011, the Corps determined that the combined PIT/BNSF projects may have significant impacts and that issuance of DA permits would be major Federal actions significantly affecting the quality of the human environment and therefore requiring preparation of an EIS to comply with NEPA.

2. PROJECT SETTINGS: The following is a brief description of the project sites, their setting on the landscape, and aquatic resources:

a. PIT Project.

Location - The proposed project site is located in the Cherry Point Industrial Urban Growth Area (UGA) located northwest of Ferndale and south of Birch Bay, in the northwest portion of Whatcom County, Washington. See Attachment 1 - Project Setting Map.

Site Size and Upland Description - The overall project site is approximately 1,500 acres in size and is comprised of a mixture of pastures, hayfields, mowed utility corridors, and forest and scrub/shrub areas.

Watershed - Most of the project site lies in a small coastal basin of approximately 2,200 acres, referred to as the "Project Basin," which drains via two streams into the Strait of Georgia. The northwest corner of the site is part of a sub-basin of the Terrell Creek watershed identified as the "Industrial Tributary" sub-basin. The Industrial Tributary drains a 7.7-square-mile area within the 17 square mile Terrell Creek watershed (HUC# 171100020402) which drains to Birch Bay. See Attachment 2 - Project Watersheds and Basins.

Aquatic Features - The project site features two second-order streams--Streams 1 (WRIA 1 # 01.0100) and 2 (WRIA 1 # 01.0101)--and their tributaries. The outlets to Streams 1 and 2 flow through a shallow coastal wetland and into the Strait of Georgia. Natural drainage in the Project Basin has been altered by historic development activities. In addition to the two streams, other

surface water features in the project area include roadside ditches (Drainages 1 through 9) and approximately six agricultural ditches occurring throughout the property. These drainage features are directly connected to Streams 1 or 2. Wetlands comprise approximately 605 acres of the project area. All on-site wetlands drain to Stream 1 or 2 or directly to the Strait of Georgia.

Marine Waters - The wharf and trestle portion of the project site would occupy approximately 30 acres of intertidal and subtidal waters of the Strait of Georgia.

b. BNSF Custer Spur Project.

Location - The proposed project corridor consists of the width of the BNSF Custer Spur right-of-way (255 feet) between its connection point with the Bellingham Subdivision line near Custer, Washington to the end of the proposed work at the PIT project site. The Custer Spur continues beyond the project corridor south to its terminus at the Phillips 66 Refinery near Ferndale, Washington. See Attachment 1 - Project Setting Map.

Site Size and Upland Description - The overall corridor is approximately 6.50 miles long (approximately 200 acres) and is comprised of an existing dual rail line, switchyards, road crossings, and adjacent pastures, forests, and scrub/shrub areas.

Watershed - The project corridor is located in portions of the Terrell Creek and California Creek watersheds. The 17-square-mile Terrell Creek watershed (HUC# 171100020402) drains to Birch Bay while the 23-square-mile California Creek watershed (part of Dakota Creek HUC # 171100020401) drains to Drayton Harbor. See Attachment 2 - Project Watersheds and Basins.

Aquatic Features - The project corridor contains approximately 9 stream crossings and 35 acres of wetlands. These surface water features, including trackside ditches in the project corridor, drain into the Terrell Creek (WRIA 1 # 01.0089) or California Creek (WRIA 1 # 01.0045) systems.

3. ENVIRONMENTAL REVIEW PROCESS: The Corps has entered into an agreement with Whatcom County Planning and Development Services (County) and the Washington State Department of Ecology (Ecology)--jointly the co-lead agencies--to prepare a joint EIS pursuant to the requirements of NEPA and Washington's State Environmental Policy Act (SEPA). The Corps will serve as the lead agency for compliance with NEPA, and Whatcom County Planning and Development Services and the Washington State Department of Ecology will serve as lead agencies for compliance with SEPA.

The NEPA process is intended to assist the Corps in identifying and assessing the potentially significant environmental impacts of a proposed action before a decision on the proposed action is made. The Corps is responsible for ensuring compliance with NEPA and related environmental statutes for the proposed action requiring a DA permit decision. CH2M Hill, serving as third-party contractor, is assisting in preparation of the EIS pursuant to 40 C.F.R. § 1506.5 and 33 C.F.R. Part 325 Appendix B Section 8(f)(1). The co-leads are directing, supervising, and independently evaluating the preparation of the EIS to meet the requirements of each of the co-lead agencies. The U.S. Environmental Protection Agency (EPA), U.S. Coast

Guard (USCG), and U.S. Department of Transportation/Federal Railroad Administration (FRA) are cooperating agencies, pursuant to 40 C.F.R. § 1501.6. The Corps will decide whether or not to issue permits to PIT and/or BNSF pursuant to Section 404 of the Clean Water Act (33 U.S.C. §§ 1251-1376, as amended) and/or Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). Ecology will decide whether or not to issue a Water Quality Certification under Section 401 of the Clean Water Act, Coastal Zone Management Consistency Determinations (18 U.S.C. §§ 1451-1466), and National Pollution Discharge Elimination System permits under Section 402 of the Clean Water Act. The County will decide whether or not to issue Major Project Permits (Whatcom County Code 20.88) and a Substantial Shoreline Development Permit (Whatcom County Code 23.60).

As part of the NEPA review, the Corps is gathering and analyzing environmental information and data that will be used to compare the potential environmental effects of possible project alternatives and the "no action" alternative in the EIS. After issuance of this Memorandum for the Record determination, the Corps and other co-lead agencies, with input from the cooperating agencies, will prepare a Draft EIS (DEIS) for the proposed actions. Each co-lead agency may consider issues differently because of their specific regulatory authority. As such, the coverage of the joint SEPA/NEPA EIS document as a whole may be different than the Corps' NEPA analysis which is set forth in this memorandum. The joint DEIS will include an analysis of the combined requirements of all of the co-lead agencies, but it is up to each co-lead agency to determine the relevance and weight that information in the EIS will be given in making its respective agency determination. The DEIS will identify the potential environmental impacts from the proposed projects and alternatives and address those environmental issues identified during the scoping process as detailed in the co-lead agencies' determinations. The DEIS will distinguish between the analysis required pursuant to the different agencies' roles under NEPA and SEPA and the subset of information which the Corps will utilize for to inform its decision under NEPA. It will also discuss a reasonable range of alternatives to the proposed action, including a no-action alternative, and recommend environmental mitigation measures as appropriate.

The DEIS will be made available upon completion for review and comment by the public, government agencies, and affected Tribes. A Final EIS (FEIS) will then be prepared that will respond to the public, agency, and Tribal comments received on the DEIS and include further analysis if needed. In reaching final permit decisions on the PIT and BNSF proposals, the Corps will take into account those portions of the environmental record--including the DEIS, the FEIS, and public, agency, and Tribal comments received--that the Corps determines is germane to its specific regulatory authorities.

4. THE SCOPE OF ANALYSIS: In determining the scope of analysis for the EIS, the Corps must identify the Corps' action under consideration and must decide for the purposes of NEPA, whether the agency has "control and responsibility" for activities outside of waters of the U.S. such that issuance of a permit would amount to approval of those activities. See 33 CFR Part 325 Appendix B, Par. 7(b)(1). In this case, the proposed action to be taken by the Corps is the decision to issue, issue with conditions, or to deny a permit for various activities within the Corps' jurisdiction for the PIT and BNSF proposed projects.

The specific activity requiring a Corps permit may, at times, be merely one component of a larger project. As a general rule, the Corps extends its scope of analysis beyond waters of the U.S. where the environmental consequences of upland elements of the project may be considered products of either the Corps permit action or the permit action in conjunction with other Federal involvement (33 CFR Part 325 Appendix B, Para. 7(b)(2)). When determining the extent to which the Corps is considered to have control and responsibility for portions of the project outside waters of the U.S., there are four typical factors set forth by regulation to consider. As previously mentioned, while both the PIT and BNSF proposals will be subject to separate DA permit decisions, the Corps has determined that it considers the BNSF project "connected" to the PIT project for purposes of the NEPA analysis and, thus, the Corps evaluation for these factors connects both projects into a single analysis.

These four factors as considered for the combined PIT Gateway Pacific Terminal and the BNSF Custer Spur projects are:

a. *Whether or not the regulated activity comprises "merely a link" in a corridor-type project*: There are no other proposed actions by either applicant outside of the combined project areas. The combined Gateway Pacific Terminal and Custer Spur project is a "stand alone" project and is not a link or component of any linear or corridor project.

b. *Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity:* For the combined PIT/BNSF projects, aspects of the proposed upland facilities would affect the location and configuration of the regulated activities. For the Gateway Pacific Terminal, the rail and commodity handling and storage facilities (plus attendant features) would need to be constructed in reasonable proximity to the proposed wharf to facilitate the transfer of commodities onto oceangoing vessels. However, while there appears to be a strong relationship between the locations of the wharf and commodity handling facilities based primarily on cost and logistics, the extent of that relationship has not been fully determined at this time. Wetlands and uplands on the Gateway Pacific Terminal project site are distributed in a mosaic pattern. Given the minimum area the applicant states it needs, constructing a functional commodity receiving, handling, and storage facility on upland portions of the project site could probably not be accomplished without impacting neighboring waters of the U.S., including wetlands. Expansion of the Custer Spur would occur within the existing BNSF right-of-way, which contains a mixture of uplands, stream crossings, and wetlands. Given the narrow, linear nature of the BNSF project area and the need to construct a continuous track the length of this corridor, there is a strong relationship among the locations of proposed work in uplands and associated work in streams and wetlands.

c. *The extent to which the entire project will be within the Corps' jurisdiction*: The proposed Gateway Pacific Terminal project would include installing structures in the Strait of Georgia, a navigable water of the U.S. Both projects involve the discharge of fill material into waters of the U.S. (wetlands and tributaries) requiring a DA permit. Approximately 50% of the Gateway Pacific Terminal onshore facilities would occur in waters of the U.S. (wetland fill). The other onshore portions of the project are dependent on the portions occurring in the Corps' jurisdiction. Approximately 12% of the Custer Spur project would occur in waters of the U.S.

d. *The extent of cumulative Federal control and responsibility*: For the proposed construction of the Gateway Pacific Terminals, the Corps has authority under Clean Water Act Section 404 and Rivers and Harbors Act Section 10. For the proposed construction of the Custer Spur rail facilities, the Corps has authority under Clean Water Act Section 404. There are no other Federal agencies with control or responsibility over any other aspect of the proposed shipping terminal and/or rail improvement projects. The purpose of the Gateway Pacific Terminal is to export dry bulk-goods commodities which would be delivered to the site via BNSF rail lines. When considered in accordance with applicable laws and regulations, many of the activities of concern to the public, such as rail traffic, coal mining, shipping coal outside of U.S. waters and burning of coal overseas, are outside the Corps' control and responsibility. These activities are too attenuated and distant from the proposed activities being evaluated by the Corps to be considered effects of the Corps' permit actions. While other Federal agencies may have some regulatory oversight over certain aspects of a commodity's extraction or production, those activities are already occurring and will continue to be independent of the proposed projects under review by the Corps. There is limited Federal oversight of existing rail lines and traffic and no pending Federal approval or funding anticipated related to the proposed project.[1] Federal oversight of existing rail lines is limited to FRA authority over rail safety. There is, thus, not sufficient Federal control and responsibility over either existing main rail lines or use of the Custer Spur to substantiate the inclusion of these non-jurisdictional areas; therefore, portions of the Custer Spur and other rail systems (Bellingham Subdivision, etc.) outside the identified project corridor of the work requiring a DA permit are not included in the Corps' scope of analysis. There is limited Federal oversight for marine vessel traffic associated with the Gateway Pacific Terminal project. Federal oversight is limited to U.S. Coast Guard authority over vessel traffic and safety in territorial waters of the U.S. Vessel traffic is already occurring in U.S. waters along routes potentially used by vessels related to the Gateway Pacific Terminal, and use of these waters will continue independent of the proposed projects under review by the Corps. There is, thus, not sufficient Federal control and responsibility over vessel traffic to substantiate the inclusion of vessel routes out to the extent of territorial boundaries (12 miles); therefore, non-project portions of marine waters are not included in the Corps' scope of analysis.

Determination of the Scope of Analysis for the Draft EIS. Based on the analysis above, the scope of analysis includes both project sites (see Attachment 1 for project boundaries) and any offsite areas that might be used as compensatory mitigation for project impacts.[2]

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[1] If transportation of coal requires new rail lines, the Surface Transportation Board (STB) would be responsible for approving new rail lines that might be needed to move coal to its ultimate destination. For example, the STB recently issued a Notice of Availability for the Final Scope of Study for an EIS for proposed construction of an 83-mile long rail line in Montana. 78 Fed. Reg. 17752 (March 22, 2013). The Corps, Omaha District, is a cooperating agency in this EIS in order to assess potential impacts to jurisdictional waters. The purpose of the proposed rail line is to transport coal out of the Powder River Basin to utilities in Montana and the Midwest. The Federal Register notice also states that the coal could be transported to export markets in Asia or Europe or through ports on the Atlantic Coast, the Pacific Coast, the Gulf Coast, or through the Great Lakes. *Id.* at 17753. In the Notice, the STB states that it will use "modeling and other available information to project economically reasonable and feasible transportation movements" in order to inform the public and "take the requisite hard look at the environmental effects....". *Id.* at 17756.

[2] While this document does not establish a specific precedent for any other Department of the Army application review, the Corps intends to utilize similar criteria and apply it to the unique facts associated with the Millennium

5. PUBLIC PARTICIPATION, AGENCY CONSULTATION, AND GOVERNMENT-TO-GOVERNMENT CONSULTATION: Public input through the scoping process as required by 40 CFR § 1501.7 is a necessary step to inform the direct, indirect, and cumulative impacts analyzed in the EIS. As part of the environmental review process to date, the Corps, in cooperation with the other co-lead agencies, conducted a broad outreach effort to inform the public, Tribes, and government agencies about the proposed action and to facilitate participation in the NEPA process. The co-lead agencies have completed a public scoping process to obtain information and recommendations on the scope of the EIS. The scoping comment period ran from 24 September 2012 to 21 January 2013 and included seven public meetings and one agency meeting. More than 9,000 people participated in public scoping meeting and close to 125,000 total comments with 14,687 being non-form letters were received during the scoping period, including comments from Federal, State, and local government agencies, Tribes, and non-governmental organizations.

The Corps has consulted and will continue to consult Federal, State, and local agencies, Tribes, affected communities and all interested parties to gather information about the proposal. As part of that process, the Corps initiated government-to-government consultation with federally-recognized Tribal Governments to seek, discuss, and consider the views of the Tribes regarding the proposed action and alternatives.

6. SUMMARY OF SCOPING COMMENTS: The document titled, *Scoping Summary Report*, dated 29 March 2013, prepared under the direction of the co-lead agencies by CH2M Hill, summarizes the comments collected during the scoping period by issues of concern. The report can be found at http://www.eisgatewaypacificwa.gov/resources/scoping-report. Scoping comments requested that the EIS include an analysis of the combined projects' potential impacts to water resources, wetlands, geology and soils, terrestrial wildlife and vegetation, aquatic species and habitats, water quality, climate change/greenhouse gases, transportation including rail traffic, vessel traffic and navigation, land use, shoreline, and recreation, agriculture, human health, cultural, historical, and archaeological resources, Tribal treaty rights including Indian fishing and fishing treaty rights, economics and energy policy. Commenters also requested evaluation of a wide variety of impacts related to train traffic, including noise and vibration, dust, and hazards and risks to public safety. Additionally many people requested that the EIS evaluate impacts from the mining of coal to burning coal in China and that an "Area-Wide" EIS be developed to evaluate the cumulative impacts from all proposed coal export facilities. All comments can be found in the Scoping Summary Report. The Corps has reviewed all comments and considered the recommendations when making the following determinations.

7. EXTENT OF DIRECT, INDIRECT, AND CUMULATIVE IMPACT EVALUATIONS FOR THE EIS: Based on the above stated scope of analysis and public input provided during the scoping period, the following is a preliminary assessment of the extent of impact evaluation to be discussed in the EIS for NEPA.

Bulk Terminals - Longview, LLC (MBTL) coal export terminal proposal. The Corps intends to seek public comment on the MBTL proposal through a public scoping process in the late summer/early fall of 2013. See 40 CFR 1501.7. The Corps plans on including a Scope of Analysis determination for MBTL in its Federal Register notice announcing the scoping process.

Proposed Actions: The EIS will address activities associated with the construction and operation of the proposed Gateway Pacific Terminal dry bulk-goods export facility and the Custer Spur serving the Cherry Point Industrial UGA and their potential environmental impacts, as discussed below:

Impact Categories: The EIS will analyze potential direct, indirect, and cumulative impacts for each of the following elements of the natural and human environment from the construction and operation of PIT's proposed Gateway Pacific Terminal and BNSF's Custer Spur expansion. The analysis will consider a range of reasonable alternatives, as well as the no-action alternative. The EIS will also include a discussion of mitigative actions to address identified impacts under each reasonable alternative and the no-action alternative.

As previously stated, the coverage of the draft and final EIS documents will be determined by combining the requirements of each co-lead agency pursuant to their specific regulatory authorities. What is set forth below is the Corps' extent of impact evaluation that will be considered under NEPA. The extent of evaluation for direct, indirect, and cumulative impacts provided in this document indicates the Seattle District Engineer's current assessment of available information; while the Corps' scope of analysis is established, the extent of impact evaluation is subject to modification to the extent that new information is made available throughout the remainder of the NEPA EIS development process.

The determinations for the extent of direct, indirect, and cumulative impacts[3] have been made based on the Corps' extent of control and responsibility, project information, information from scoping comments, experience from consultations with local, State, and Federal agencies for past Corps actions and the Corps' expertise in evaluating environmental impacts. Determinations for the extent of evaluation for direct impacts are based on factors discussed in Section 4 above. Determinations for indirect and cumulative impacts are given in the descriptions below in most cases. At this point, the geographic extent for some indirect and cumulative impacts could not be stated precisely. In these cases, the extent has been stated using terms such as "immediate vicinity". Further refinement of the extent of impact evaluation for these items will be made once potential impacts have been further evaluated during the development of the draft and final EIS.

<u>The extent of impact evaluation for each of the following NEPA elements of the environment is as follows</u>:

a. Water Resources. The EIS will describe the existing surface water and groundwater resources within the combined project areas as defined in Section 4--including streams, ponds, wetlands, and floodplains--and analyze the potential impacts on these resources resulting from the construction and operation of the proposed projects.

[3] Direct effects are those which are caused by the action and occur at the same time and place. Indirect effects are those which are caused by the action and are later in time or farther removed in distance but are still reasonably foreseeable (40 CFR Sec. 1508.8). Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions (40 CFR Sec. 1508.7).

(1) Wetlands. For direct impacts, the extent of impact evaluation will be the combined PIT project site and the BNSF project corridor. For indirect and cumulative impacts of the PIT project, the geographic extent will be the Project Basin (Stream 1 and 2 sub-basins) and the Industrial Tributary sub-basin of the Terrell Creek watershed. The latter is based on only a small portion of the project site occurring in the Industrial Tributary basin and the location of the sub-basin in relation to the overall Terrell Creek watershed. For indirect and cumulative impacts of the BNSF project, the geographic extent will be the project corridor, the Terrell Creek watershed, and the upper reaches of California Creek watershed (upstream of Kickerville Road crossing) based on hydrological subdivisions within the watershed.

(2) Water Quality. For direct impacts, the extent of impact evaluation will be the entire PIT project site and the mixing zone extending 300 feet waterward of all points of discharge into marine waters and the entire BNSF project corridor and 300 feet downstream of the project boundary for all stream crossings (for suspended sediment and turbidity during construction). For indirect and cumulative impacts of the PIT project, the extent will be the entire Project Basin, the Industrial Tributary sub-basin of the Terrell Creek watershed, and marine waters off the Cherry Point Industrial UGA (from Phillips 66 Refinery to BP Refinery). For indirect and cumulative impacts of the BNSF project, the extent will be the Terrell Creek and California Creek watersheds. Indirect and cumulative impact extents are based on the potential to affect water quality downstream from the project locations.

(3) Surface Water (streams, etc.). For direct impacts, the extent of impact evaluation will be the PIT project site and the BNSF project corridor including 300 feet downstream of the project boundary for all stream crossings. For indirect and cumulative impacts of the PIT project, the extent of impact evaluation will be the Project Basin (Stream 1 and 2 sub-basins) and the Industrial Tributary sub-basin of the Terrell Creek watershed. For indirect and cumulative impacts of the BNSF project, the extent of impact evaluation will be the Terrell Creek and California Creek watersheds. Indirect and cumulative impact extents are based on the potential to affect water quantity and flow regimes downstream from the project locations.

(4) Floodplains. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts of the PIT project, the extent of impact evaluation will be the Project Basin (Stream 1 and 2 sub-basins) and the Industrial Tributary sub-basin of the Terrell Creek watershed. For indirect and cumulative impacts of the BNSF project, the extent of impact evaluation will be the Terrell Creek and California Creek floodplains. Indirect and cumulative impact extents are based on the potential to affect floodplain functions and values.

(5) Groundwater. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts of the PIT project, the extent of impact evaluation will be the Project Basin (Stream 1 and 2 sub-basins) and the Industrial Tributary sub-basin of the Terrell Creek watershed. For indirect and cumulative impacts of the BNSF project, the extent of impact evaluation will be the project corridor, the Terrell Creek watershed, and the upper reaches of California Creek watershed (upstream of Kickerville Road crossing) based on hydrological subdivisions within the watershed. Indirect

and cumulative impact extents are based on the potential to affect groundwater movements and groundwater support of downstream waterbodies (streams and wetlands).

b. Biological Resources. The EIS will describe the biological resources on the combined project sites and in the immediate vicinity--including vegetative communities, wildlife, fisheries, aquatic reserves, and Federal threatened or endangered species (including candidate species)--and analyze the potential impacts to these resources resulting from the construction and operation of the proposed projects.

(1) Fish and Aquatic Habitat. For direct impacts, the extent of impact evaluation will be the PIT project site and the footprint of construction in marine waters and the BNSF project corridor including 300 feet downstream of the project boundary for all stream crossings based on potential sediment and turbidity impacts during construction. For indirect and cumulative impacts of the PIT project, the extent will be the entire Project Basin, the Industrial Tributary sub-basin of the Terrell Creek watershed, and marine waters off the Cherry Point Industrial UGA including Washington State's Cherry Point Aquatic Reserve. For indirect and cumulative impacts of the BNSF project, the extent will be Terrell Creek and California Creek systems. Indirect and cumulative impact extents are based on the potential to affect species and habitat functions and features.

(2) Wildlife and Wildlife Habitat. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent of impact evaluation will be the PIT project site and the BNSF project corridor and adjacent habitats within 0.50 mile and connected by existing wildlife corridors (for potential disruption of wildlife movements). Indirect and cumulative impact extents are based on the potential to affect species and habitat functions and features.

(3) Terrestrial Vegetation Communities (forests). Forests represent the only large vegetation community in the combined projects' vicinity. All other vegetation communities have been altered or eliminated by development. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent of impact evaluation will be the combined project site/project corridor and adjacent, contiguous forested areas. Indirect and cumulative impact extents are based on the potential to affect continuity and function of large forested areas.

(4) Federal Threatened or Endangered Species. For direct impacts, the extent of impact evaluation will be the entire PIT project site and an area extending 0.50 mile around construction in marine waters (extent determined for noise impacts) and all streams in the BNSF project footprint affected by construction activities to 300 feet downstream from the crossings of Terrell Creek and California Creek (for sediment and turbidity impacts). For indirect and cumulative impacts of the PIT project, the extent will be the entire Project Basin, the Industrial Tributary sub-basin of the Terrell Creek watershed, and marine waters affected by wharf construction and (for marine mammals) vessel traffic to and from the site within the immediate vicinity based on the potential to affect species and habitat functions and features. For indirect and cumulative impacts of the BNSF project, the extent will be Terrell Creek and California Creek systems based on the potential to affect species and habitat functions and features.

c. Geology and Geographic Processes. The EIS will describe the geological resources within the combined project areas--including soils, physical processes (erosion, etc.), and geologically sensitive areas (unstable slopes, etc.)--and analyze the potential impacts to these resources resulting from the construction and operation of the proposed projects.

(1) Soils and Geology (Geomorphology). For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent of impact evaluation will include the immediate vicinity surrounding the combined project site/project corridor. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(2) Coastal Areas and Shorelines (Physical Oceanography and Coastal Processes). Only the PIT project proposes work in coastal/shoreline areas. For direct impacts, the extent of impact evaluation will be the shoreline portion of the project site. For indirect and cumulative impacts, the extent of impact evaluation will be the drift cell extending from Point Whitehorn to the north, south to Sandy Point based on lateral sediment transport, erosive forces, and sediment contribution from Stream 1. Indirect and cumulative impact extents are based on the potential to disrupt shoreline processes.

(3) Geologically Unstable Areas. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent of impact evaluation will include the immediate vicinity surrounding the combined project site/project corridor. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

d. Air Quality. The EIS will describe the air quality within the combined projects' vicinity and analyze the potential impacts to air quality resulting from the construction and operation of the proposed projects.

Air Quality. For direct impacts, the extent of impact evaluation will be a 1-mile radius around the combined project site/project corridor. For indirect and cumulative impacts, the extent of impact evaluation will be the Georgia Basin/Puget Sound Airshed. This extent may be reduced after analyzing prevailing wind patterns and the nature of potential airborne emissions and contaminants.

e. Aesthetics. The EIS will describe the existing conditions within the project vicinity around the combined projects--including ambient noise levels, noise sources, light sources, and current viewshed--and analyze the potential impacts to aesthetics from the construction and operation of the proposed projects.

(1) Noise. For direct, indirect, and cumulative impacts, the extent of impact evaluation will be the immediate vicinity for 1 mile around the combined project site/project corridor based on potential noise transmission limits from the PIT project site and BNSF corridor.

(2) Visual Impacts, Light, and Glare. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the combined project site/project corridor and will include the shoreline of the Cherry Point Industrial UGA. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(3) Viewshed. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the scope will be the combined project site/project corridor and the viewshed of and from the shoreline of the Cherry Point Industrial UGA. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

f. Land Use. The EIS will describe existing land uses within the combined projects' vicinity--including types of land use, land use planning and policies--and analyze the potential impacts to transportation resulting from the construction and operation of the proposed projects.

(1) Land Uses, Land Use Plans, and Growth Management. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the immediate vicinity around the combined project site/project corridor within the Cherry Point Industrial UGA. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(2) Agricultural and Farmlands. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the immediate vicinity around the combined project site/project corridor. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(3) Recreation. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the immediate vicinity around the combined project site/project corridor including marine waters off the Cherry Point Industrial UGA and Washington State's Cherry Point Aquatic Reserve (waters used by recreational boaters and fishing). Indirect and cumulative impact extents are based on the potential to affect recreational use of the project vicinity.

g. Transportation. The EIS will describe existing transportation features in the vicinity of the combined projects--including surface roads, railroad facilities, and vessel traffic--and analyze the potential impacts to transportation resulting from construction and operation of the proposed projects.

(1) Vehicular Traffic. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be arterials and secondary roads to and from Interstate 5 utilized by vehicles associated with project construction and utilized by future operational employees for both projects. Indirect and cumulative impact extents are based on the potential of project-related traffic to affect local traffic patterns and volumes

(2) Rail Traffic. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the entire length of the Custer Spur. Indirect and cumulative impact extents are based on potential affects to rail traffic on the spur line.

(3) Vessel Traffic and Navigation. For direct impacts, the extent of impact evaluation will be the project site waters (extending 50 feet around the terminal's wharf footprint) affected by construction activities. Commercial vessels calling at the Gateway Pacific Terminal will be required to operate within the U.S. Coast Guard's designated vessel traffic lanes until they reach the vicinity of the GPT where they will maneuver to dock at the GPT wharf or move to a local anchorage. For indirect and cumulative impacts, the extent will be a 1-mile-radius area around the proposed wharf (based on docking and departing vessel maneuvers and moorage) and all vessel routes northward to the Canada/U.S. border and from the Gateway Pacific Terminal westward to a point 8 miles west of the J Buoy offshore of Cape Flattery. The latter extent is to the point where concentrated vessel traffic using the Strait of Juan de Fuca enters the Coast Guard's Vessel Traffic Separation Scheme area and disperses to ocean crossing routes.[4]

h. Cultural and Historic Resources. The EIS will identify historic buildings, structures, sites, objects, or districts listed, or eligible for listing, on the National Register of Historic Places (NRHP) and Native American cultural sites and resources within the Area of Potential Effect (APE) as identified through the National Historic Preservation Act section 106 consultation process and analyze the potential impacts to archeological, historic, and cultural resources resulting from the construction and operation of the proposed projects.

Cultural, Historical, Archaeological, and Tribal Resources. For direct and indirect impacts, the extent of impact evaluation will be the combined project site/project corridor APE. For cumulative impacts, the extent will be the Cherry Point Industrial UGA based on affects to related resources in the area (Native American sites, etc.).

i. Human Environment (per 40 CFR 1508.14). The EIS will analyze the socioeconomic effects of the proposed actions, including effects on employment and tax revenues, demand on public services and utilities, and impacts to local businesses.

(1) Employment. For direct effects, the extent of impact evaluation will be the Cherry Point Industrial UGA. For indirect and cumulative impacts, the extent will be Whatcom County. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

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[4] The extent of analysis for indirect and cumulative impacts from vessel traffic is consistent with the extent identified by the Corps for the DEIS currently being prepared for the BP Cherry Point Refinery Dock consistent with considerations applicable to the Magnusson Amendment to the Marine Mammal Protection Act 33 USC §476(A)(2). The determination is applicable to the subject of this Memorandum and does not set a precedent for the Corps' evaluation for any other actions.

(2) Local Tax Base. For direct effects, the extent of impact evaluation will be the Cherry Point Industrial UGA. For indirect and cumulative impacts, the extent will be Whatcom County. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(3) Public Services. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the Cherry Point Industrial UGA. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(4) Public Utilities. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the Cherry Point Industrial UGA which includes the Whatcom County PUD Number 1 water service area. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(5) Public Risk, Health, and Safety. For direct impacts, the extent of impact evaluation will be the combined project site/project corridor. For indirect and cumulative impacts, the extent will be the immediate vicinity of the combined project site/project corridor within the Cherry Point Industrial UGA. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

(6) Environmental Justice. For direct impacts, the extent of impact evaluation will be populations and communities in the combined project site/project corridor vicinity. For indirect and cumulative impacts, the extent will be Whatcom County. The determination of maximum extent will be refined following completion of initial analyses prepared for the DEIS.

j. Tribal Treaty Rights. The EIS will identify all Tribes with Treaty Rights in the combined projects' vicinity and analyze the potential impacts from the construction and operation of the proposed projects to all Treaty Rights, including fishing rights. For treaty fishing rights, the EIS will evaluate impacts to (1) access to usual and accustomed fishing grounds or with fishing activities or shellfish harvesting, (2) fish runs and habitat, and (3) the Tribes' ability to meet moderate living needs. Identification of impacts to other rights will be determined based on consultations with affected Tribes.

The extent of impact evaluation for evaluation for impacts to Treaty Rights will be determined by the Corps following consultations with affected Tribes and the administrative record for establishing Usual and Accustomed boundaries.

8. COMPLIANCE WITH OTHER FEDERAL LAWS AND RESPONSIBILITIES

The EIS will also address compliance with the following Federal laws:

a. Tribal Treaty and Trust Responsibilities - Government-to-Government consultation with affected Tribes.

b. Endangered Species Act - Formal consultation under Section 7 of the Act will be conducted.

c. Magnuson Stevens Fishery Conservation and Management Act - EFH consultation with the National Marine Fisheries Service will be conducted.

d. Marine Mammal Protection Act - Consultation with the National Marine Fisheries Service will be conducted.

e. Section 106 of the National Historic Preservation Act - Consultations with the Washington State Historic Preservation Officer and applicable Tribes will be conducted.

f. Coastal Zone Management Act - The State of Washington will review this work for consistency with the Washington Coastal Zone Management Program.

g. Section 401 of the Clean Water Act - The State of Washington will review this work for compliance with applicable State and Federal water quality standards.

h. Clean Air Act - The Corps will evaluate the proposed actions for conformity with regulations implementing Section 176(c) of the Clean Air Act.

9. ADDITIONAL IMPACT ANALYSES.

In addition to the analysis contained in the EIS, the Corps will analyze the proposals' potential direct, indirect, and cumulative impacts as part of its public interest review (see 33 CFR § 320.4(a)(1)); analyses required under Clean Water Act Section 404(b)(1) Guidelines compliance determination (see 40 CFR § 230); and evaluation of comments received in response to the public notice. These analyses will be documented in the Corps' Record of Decision

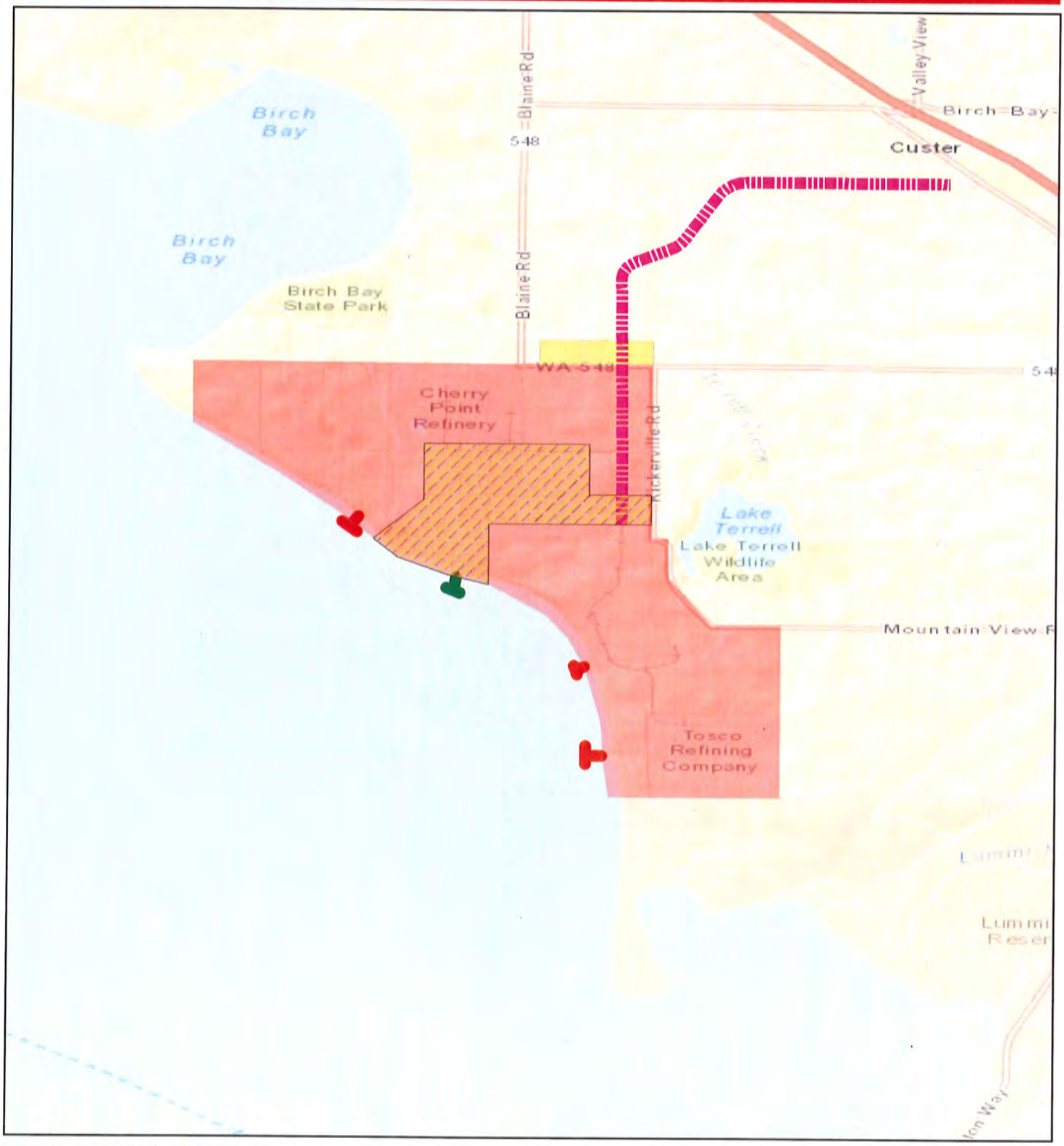
9 JUL 2013

Date

Bruce A. Estok
Colonel, Corps of Engineers
District Engineer

2 Attachments

ATTACHMENT 1 - PROJECT SETTING FOR PIT'S PROPOSED GPT



GPT Project Site

BNSF Project Corridor

Industrial Docks

GPT Wharf Footprint

Cherry Point UGA

Heavy Impact Industrial

Light Impact Industrial

0 0.275 0.55 1.1 Miles

N W E S

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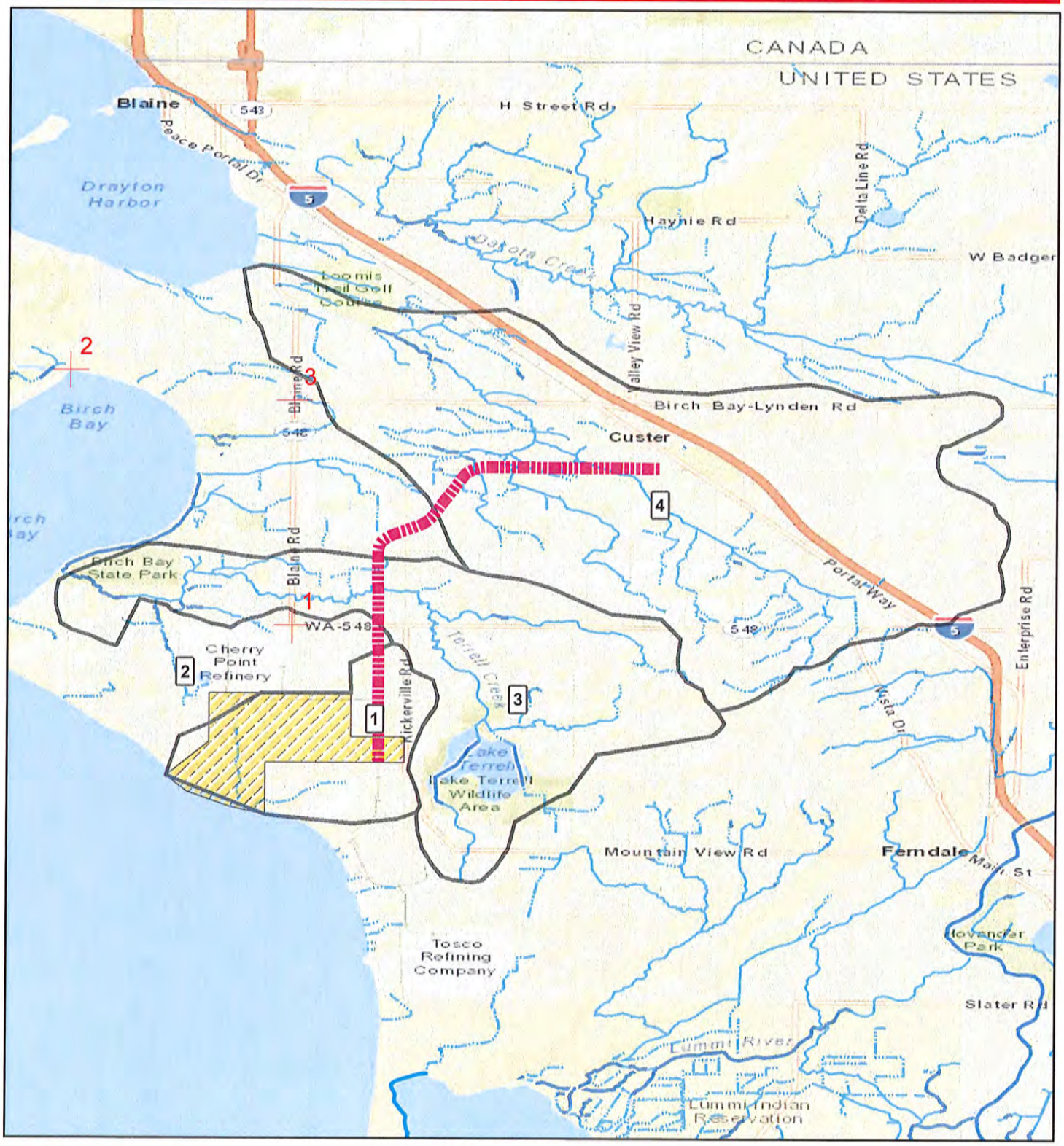
ATTACHMENT 2 - PROJECT WATERSHEDS AND BASINS



BNSF Project Corridor **Approximate Locations**

- GPT Project Site
- 1 Project Basin
- 2 Industrial Trib. Substation
- 3 Terrell Creek Watershed
- 4 California Creek Watershed

0 0.3 0.6 1.2 Miles

N W E S

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