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SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

THE PUYALLUP TRIBE OF INDIANS, a federally  
recognized Indian Tribe,

Petitioner,

v.

CITY OF TACOMA, a Washington Municipal  
Corporation; PUGET SOUND ENERGY, Inc., a  
Washington Corporation; PORT OF TACOMA, a  
Washington Special Purpose District; WSP USA, Inc.;  
and WASHINGTON DEPARTMENT OF  
ECOLOGY,

Respondents.

NO. \_\_\_\_\_

THE PUYALLUP TRIBE OF INDIANS’  
PETITION FOR REVIEW CONCERNING  
CITY OF TACOMA’S DECISION ON  
REVISION TO SHORELINE  
SUBSTANTIAL DEVELOPMENT  
PERMIT NO. SHR2-15-40000246123

**I. INTRODUCTION**

This case concerns the City of Tacoma’s permitting determination under Washington’s Shoreline Management Act, ch. 90.58, RCW. As such, this matter is properly before Washington’s Shoreline Hearings Board (“SHB”). WAC 461-08-335(1); *see also State of Washington, Department of Ecology, Appellant v. Jefferson County and Pleasant Harbor Corporation D/b/a Pleasant Harbor Marina, Respondents*, 1999 WL 825754, at \*5.

In 2016, the Puyallup Tribe of Indians (Tribe) challenged the City of Tacoma’s (City) issuance of a Shoreline Substantial Development Permit (SSDP) in SHB Case No. 16-002. In that case, the SHB determined “[t]he Tribe presented evidence establishing a significant and active interest in

1 maintaining and improving the environmental health of Commencement Bay in general and the  
2 Hylebos and Blair Waterways in particular.” SHB No. 16-002, Findings of Fact, Conclusions of Law,  
3 and Order (July 18, 2016), Conclusion of Law (COL) 6. The Board further concluded “[t]he Project  
4 site is within the Tribe's usual and accustomed treaty area.” *Id.* at COL 6. Ultimately, the Board  
5 concluded as follows in SHB No. 16-002: “the Board concludes that the Tribe has standing to appeal  
6 the SSDP and rejects the request to deny the appeal on that ground.” *Id.* at COL 8.

7 This appeal concerns the City’s decision to allow a revision, pursuant to WAC 173-27-100, to  
8 the SSDP at issue in SHB No. 16-002 (SSDP Revision). The SSDP Revision at issue authorizes PSE  
9 to perform overwater construction that will enable the fueling of non-TOTE vessels with liquefied  
10 natural gas (LNG) as well as enable bunkering of LNG onto bunker barges in the Blair Waterway.  
11 Just as the City’s issuance of the SSDP impacted, and was injurious to, the Tribe, so too does its SSDP  
12 Revision. Among other impacts, increased vessel traffic consisting of bunker barges carrying LNG  
13 has the potential to cause significant adverse environmental impacts that cannot be mitigated. Impacts  
14 include increased frequency of incidents such as vessel collisions and allisions, groundings, spills,  
15 fires, and explosions.

16 As it was in 2016, the Tribe is a federally recognized Indian tribe with its Reservation located  
17 in Tacoma, Washington. The Tribe, through the Treaty of Medicine Creek, has treaty rights  
18 concerning the environmental health of Commencement Bay and the Blair Waterway, both of which  
19 are impacted by the City’s SSDP Revision. Indeed, bunker barges calling on Commencement Bay  
20 and the Blair Waterway impact the waters, shorelines, habitat, and surrounding shoreline properties  
21 and uses that go to the heart of the Tribe's culture and livelihood with potential impacts to fish, other  
22 wildlife, air quality, and natural resources.

23 **II. NAME AND ADDRESS OF APPEALING PARTY**

24 Appealing Party: Puyallup Tribe of Indians  
25 3009 E. Portland Avenue  
26 Tacoma, WA 98038  
(253) 573-7000

1  
2 Representatives: Lisa A. Anderson  
3 Attorney  
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### 20 III. IDENTIFICATION OF THE OTHER PARTIES

21 1. City of Tacoma (City). The City is named as a party because it is the agency whose  
22 decision is being appealed.

23 2. Puget Sound Energy (PSE) is named as a party because it is an entity to whom the  
24 City's decision is directed.

25 3. The Port of Tacoma (Port) is named as a party because it was also a recipient of the  
26 original SSDP and thus, ostensibly, is an entity to whom the City's decision is directed with regard to  
the revision granted by the City.<sup>1</sup> The Port was also a party in SHB No. 16-002.

1. The Washington Department of Ecology is named as a party because of its role in  
administering the SMA and because it was named as a party in SHB No. 16-002.

5. WSP USA, Inc. ("WSP") is named as a party because the City of Tacoma appears to  
have identified it as an applicant for the SSDP Revision at issue in this case.<sup>2</sup>

<sup>1</sup> If the Port is not a necessary party to these proceedings, that can be ascertained early in the proceedings and the Port can be dismissed (if appropriate).

<sup>2</sup> If WSP is not a necessary party to these proceedings, that can be ascertained early in the proceedings and WSP can be dismissed (if appropriate).

1 **IV. THE DECISION OR PERMIT APPEALED FROM**

2 The Tribe hereby appeals the Revision Decision issued by the City on November 28, 2023,  
3 and all related environmental reviews upon which it relies; a copy of that decision is attached as  
4 **Exhibit A.**<sup>3</sup>

5 **V. STATEMENT PURSUANT TO WAC 461-08-350(4)**<sup>4</sup>

6 1. The City’s SSDP Revision is contrary to law because it is inconsistent with the  
7 requirements and intent of the SMA. Under WAC 173–27–100, the City’s SSDP Revision is improper  
8 because it is not within the scope and intent of the original Substantial Development Permit (which  
9 was before the Board in SHB No. 16-002). The City’s SSDP Revision is improper for the additional  
10 reason that the SSDP expired (1) before the City granted the SSDP Revision and (2) before any  
11 extension of the SSDP was requested or granted.

12 2. Additionally, the City’s SSDP Revision violates the State Environmental Policy Act  
13 (“SEPA”).

14 3. The permit revision granted by the City is inconsistent with Washington’s  
15 Administrative Procedure Act for at least the following reasons: the granting of the Order is a  
16 misapplication and misinterpretation of the law; and the City’s final agency action is arbitrary and  
17 capricious as well as not supported by substantial evidence.

18 **VI. STATEMENT PURSUANT TO WAC 461-08-350(5)**

19 **A. The SSDP Revision is not within the scope and intent of the original permit because it**  
20 **fails to satisfy WAC 173-27-100(2).**

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23 <sup>3</sup> There may be other documents that the City considers to constitute its decision. While it may be most appropriate for  
24 the City to provide those documents that it believes constitute its decision, the Tribe will provide other documents if the  
25 Board so requests if/when the City indicates what other documents constitute its decision.

26 <sup>4</sup> The Tribe alleges that the SSDP violates its Rights and Entitlements under the Treaty of Medicine Creek. The Tribe does  
not raise these issues before the Board because the Tribe believes the Board lacks jurisdiction over these matters. The Tribe  
expressly reserves the right to raise such issues in the future in the proper forum and does not waive or otherwise relinquish  
any rights by filing this Appeal.

1 Changes to a project after the local government has issued a shoreline development permit are  
2 governed by WAC 173-27-100. A substantial development permit may be revised whenever the  
3 developer "proposes substantive changes to the design, terms or conditions of a project from that which  
4 is approved in the permit." WAC 173-27-100. Substantive changes, defined as changes that  
5 "materially alter the project in a manner that relates to its conformance to the terms and conditions of  
6 the permit," require formal review. *Id.*

7 "If local government determines that the proposed changes are within the scope and intent of  
8 the original permit, and are consistent with the applicable master program and the act, local  
9 government may approve a revision." WAC 173-27-100(1). Where proposed changes are not within  
10 the scope and intent of the original permit, however, a new shoreline development permit is required.  
11 *State of Washington, Department of Ecology, Appellant v. Jefferson County and Pleasant Harbor*  
12 *Corporation D/b/a Pleasant Harbor Marina, Respondents*, 1999 WL 825754, at \*5; *Todd & Kristi*  
13 *Hayes, Petitioners v. Mason County and David Morris, Respondents Stephen C. Bright, Petitioner*,  
14 2009 WL 434841, at \*8. *See also Twin Bridge Marine Park, L.L.C. v. State, Dep't of Ecology*, 162  
15 Wn.2d 825, 850, 175 P.3d 1062 (2008) ("If the proposed changes in and of themselves constitute a  
16 substantial development, a new permit is required."). A revision is within the scope and intent of the  
17 original permit under the following circumstances:

18 (a) No additional over water construction is involved except that pier, dock, or float  
19 construction may be increased by five hundred square feet or ten percent from the  
20 provisions of the original permit, whichever is less;

21 (b) Ground area coverage and height may be increased a maximum of ten percent from  
22 the provisions of the original permit;

23 (c) The revised permit does not authorize development to exceed height, lot coverage,  
24 setback, or any other requirements of the applicable master program except as  
25 authorized under a variance granted as the original permit or a part thereof;

26 (d) Additional or revised landscaping is consistent with any conditions attached to the  
original permit and with the applicable master program;

(e) The use authorized pursuant to the original permit is not changed; and

(f) No adverse environmental impact will be caused by the project revision.

1 WAC 173-27-100(2).

2 Here, the City's SSDP Revision being appealed is not within the scope and intent of the original  
3 permit because it fails to satisfy the criteria in subsections (a), (e), and (f). The City's SSDP Revision  
4 does not satisfy WAC 173-27-100(2)(a) because the work involves additional over the water  
5 construction and because the loading arm is not a pier, dock or float. The SSDP Revision does not  
6 satisfy WAC 173-27-100(2)(e) because the original SSDP did not authorize bunkering on the Blair  
7 Waterway or the fueling of non-TOTE vessels on the Blair Waterway.<sup>5</sup>

8 Last, the SSDP Revision does not satisfy WAC 173-27-100(2)(f) because it will cause  
9 additional environmental impacts, which impacts have not undergone any meaningful SEPA process  
10 or review. In fact, to the best of the Tribe's knowledge, PSE has failed to provide the City with  
11 materials required by SEPA's environmental review and documentation requirements. Nor, to the best  
12 of the Tribe's knowledge, did the City conduct any additional SEPA review of any kind to examine  
13 the potential risks and consequences of expanding the project to allow intensified use of the Blair  
14 Waterway and substantially expanded movement of dangerous fuel cargoes in Commencement Bay  
15 and Puget Sound. The change in the project, and new information pertinent to environmental effects,  
16 triggered the obligation to perform supplemental environmental review.

17 **B. The SSDP Revision is improper because the SSDP expired before any extension of it was**  
18 **requested or granted.**

19 "Authorization to conduct development activities shall terminate five years after the effective  
20 date of a shoreline permit." WAC 173-27-090(3). A "local government may authorize a single  
21 extension for a period not to exceed one year based on reasonable factors, if a request for extension  
22 has been filed before the expiration date and notice of the proposed extension is given to parties of  
23 record and to the department." *Id.*

24 The SSDP expired before the City granted the SSDP Revision on November 28, 2023. Indeed,  
25 the SSDP expired before PSE even requested an extension of it.

26 <sup>5</sup> Arguments to the contrary are barred by the doctrine of estoppel.

1 **VII. RELIEF REQUESTED**

2 The City’s SSDP Revision, and its shortcomings identified herein, have a direct impact on the  
3 Tribe, its properties, its members, and obligations owed it both by the United States, the State of  
4 Washington, and the City of Tacoma. The Tribe prays for the following relief cumulatively and  
5 alternatively:

6 A. That the Board immediately stay the effectiveness of the SSDP Revision pending a  
7 final decision by the Board. The Tribe reserves the right to seek such a stay by motion.

8 B. That the SSDP Revision granted by the City of Tacoma be reversed and/or vacated.

9 C. That the Board reverse the SSDP Revision, with instructions to the City to perform an  
10 adequate environmental review of the impacts of the revision, including the preparation of a  
11 supplemental environmental impact statement addressing the full range of environmental impacts  
12 occasioned by the SSDP Revision.

13 D. For such other relief as is required to comply with Washington’s Shoreline  
14 Management Act.

15 E. For such other relief as is required to ensure compliance with SEPA.

16 **VIII. SIGNATURE OF THE APPEALING PARTY OR ITS REPRESENTATIVE**

17 The Petitioner’s Representative, by their signature below, verifies that the signatory has read  
18 the notice of appeal and that it is consistent with civil rule 11.

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24 Dated this 12th day of December, 2023  
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PUYALLUP TRIBE OF INDIANS

By /s/ Lisa Anderson  
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OGDEN MURPHY WALLACE, P.L.L.C.

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Attorneys for Petitioner



**CERTIFICATE OF SERVICE**

The undersigned certifies under penalty of perjury under the laws of the State of Washington that, on the date given below, he caused to be served a copy of *Puyallup Tribe of Indians' Petition for Review* upon the following person(s) via the manner below:

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14 DATED this 12<sup>th</sup> day of December, 2023, at Seattle, Washington.

15 /s/Jace A. Fogleman  
16 Jace A. Fogleman  
17 Legal Assistant