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

4 FRIENDS OF GRAYS HARBOR,)
5 SIERRA CLUB, SURFRIDER)
6 FOUNDATION, GRAYS HARBOR)
7 AUDUBON, AND CITIZENS FOR A)
8 CLEAN HARBOR)

SHB No. _____

PETITION FOR REVIEW

Appellants,)

9 v.)

10)
11 CITY OF HOQUIAM, WASHINGTON)
12 DEPARTMENT OF ECOLOGY, and)
13 WESTWAY TERMINAL COMPANY)
14 LLC,)

Respondents)

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16
17 **I. APPEALING PARTIES AND REPRESENTATIVE¹**

18 Friends of Grays Harbor
19 Sierra Club
20 Surfrider Foundation
21 Grays Harbor Audubon
22 Citizens for a Clean Harbor

23 C/o Smith & Lowney PLLC
24 Knoll Lowney, WSBA 23457
25 2317 E. John St.
26 Seattle WA 98122
27 (206) 860-2883 (telephone)
(206) 860-4187 (fax)
knoll@igc.org

28 ¹ Descriptions of the Petitioners are contained in their comments on the Mitigated Determination of Nonsignificance,
29 attached hereto.

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II. DECISIONS SUBJECT TO APPEAL

Petitioners hereby appeal the following decisions of the City of Hoquiam and the Washington State Department of Ecology ("WDOE"):

(1) Mitigated Determination of Non-Significance, issued March 14, 2013, by the City of Hoquiam and WDOE ("MDNS");

(2) Shoreline Substantial Development Permit, issued by the City of Hoquiam, dated April 26, 2013 ("SDP").

Copies of these decisions are attached.¹

III. STATEMENT OF FACTS

The "crude-by-rail" proposal of Westway Terminal Company LLC ("Westway") is one of three crude-by-rail facilities proposed along the north shore of Grays Harbor Estuary in Hoquiam Washington. The proposed facilities of Westway and Imperium Terminal Services LLC are directly adjacent to each other on Port of Grays Harbor property and would share certain facilities. Details of these proposals are contained in their permit applications including their environmental checklists. The third and potentially the largest proposal is located at Terminal 3, which is adjacent to the Grays Harbor National Wildlife Refuge.

On December 3, 2012, Westway filed a Joint Aquatic Resources Permit Application with the City of Hoquiam for a permit to expand its existing bulk liquid storage terminal at the Port of Grays Harbor to accept, store, and then ship crude oil. The Westway proposal would accept crude oil brought to the facility by rail, store it in large tanks, and then load the crude onto ships

¹ The full application, including the SEPA checklist, is being submitted to the Board as an attachment to the Petition for Review of the Quinault Indian Nation.

1 and barges that would take it to U.S. refineries, presumably in Washington or California. The oil
2 will likely come by train from North Dakota, *see* Westway SEPA Checklist Appendix B, but it
3 could also come from “a variety of locations throughout the U.S. and Canada.” Port of Grays
4 Harbor, CBR Fact Sheet (Jan. 30, 2013).¹

5
6 Westway proposes four large new storage tanks with a combined storage capacity of
7 800,000 barrels (33,600,000 gallons) of crude oil. Westway estimates that the terminal would
8 receive 9,600,000 barrels of oil per year by rail, equaling two, 120 car trains (one loaded with oil
9 on the way in, one empty on the way out) every three days, although the proposal will lead to a
10 total of 76 loading/unloading spots, which gives the facility the capacity for larger daily
11 deliveries. The company estimates 120 ship/barge transits through Grays Harbor per year.

12
13 The property is protected by the City of Hoquiam Shoreline Master Program (“SMP”),
14 the Shoreline Management Act (“SMA”), and the Hoquiam Critical Areas Ordinance (“CAO”).
15 The property is designated as a shoreline of statewide significance.

16 17 **IV. ISSUES FOR APPEAL²**

18 1. Did the City's approvals of the MDNS and the SDP suffer from procedural errors,
19 including failure to give proper notice, failure to consider public comments, and failure to obtain
20 required and/or sufficient information on which to base its decisions?

21
22 2. Did the application and SDP contain insufficient detail to determine its
23 consistency with the SMA, its implementing regulations, the SMP, SEPA, and the CAO?
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27 ¹ Available at <http://www.portofgraysharbor.com/about/CBR-Project.php>.

28 ² Petitioners reserve the right to amend or add to this list when it submits its preliminary list of issues on the schedule
29 set by the Board.

1 3. Did the decision-makers err in not requiring a pre-approval analysis of critical
2 environmental issues, including but not limited to seismic and tsunami hazards, archeological
3 resources, shipping and train impacts, and oil spill hazards?

4 4. Were the permit application, public notice, and environmental information
5 inadequate, thus depriving the public of sufficient information about the project to participate in
6 the permitting process and violating rights of due process?

7 5. Was the environmental checklist inadequate?

8 6. Is the SDP inconsistent with the Shoreline Management Act (SMA), its
9 implementing regulations, and the City of Hoquiam's Shoreline Master Program (SMP)?
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11 7. Did the City fail to consider and comply with the applicable laws and regulations
12 relating to impacts to shorelines of statewide significance?
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14 8. Did the City fail to consider and comply with applicable laws and regulations
15 relating to ocean management and ocean uses, including the requirements of Hoquiam Municipal
16 Code 11.04.065, 11.04.180(6), RCW Chapter 43.143, and WAC 173-26-360?¹ Does the project
17 meet all requirements applicable to ocean management and ocean uses?
18

19 9. Is the SDP inconsistent with design regulations in the SMP?

20 10. Was the MDNS improper because the project is likely to have significant
21 environmental impacts on which an Environmental Impact Statement must be prepared? The
22 procedural and substantive deficiencies include those addressed in Petitioners' comments on the
23 MDNS, which is hereby incorporate by reference.
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28 ¹ The SMP requires compliance with WAC 173-16-064(6), which was recodified at WAC 173-26-360.

1 11. Was the MDNS improper because the decision-makers failed to consider
2 alternatives and failed to adequately condition the project?

3 12. Did the decision-makers fail to fully consider all impacts of the project(s),
4 including cumulative and indirect impacts, in issuing the MDNS and SDP?

5 13. Did the decision-makers err in failing to consider the cumulative and indirect
6 impacts of all three crude-by-rail proposals in issuing the MDNS and SDP?

7 14. Is the SDP inconsistent with the Grays Harbor Estuary Management Plan,
8 including but not limited to its protections of archaeological resources?

9 15. Has Westway complied with local, state and federal laws and regulations
10 applicable to the project?

11 16. Has Westway complied with laws relating to oil spill planning and prevention?

12 17. Is the project consistent with the Hoquiam Zoning Code, including its limitation
13 on the height of the project?

14 18. Is the project consistent with the Coastal Zone Management Act?

15 19. Has Westway complied with the requirements of RCW 88.40.025 relating to
16 guarantees of financial responsibility?

17 20. Does the project comply with procedural and substantive provisions of the Critical
18 Areas Ordinance, including but not limited to provisions relating to wetlands, seismic hazards,
19 and mandatory buffers?

20 21. Is the project consistent with the Hoquiam Comprehensive Plan?

22. Petitioners hereby incorporate by reference its comments on the MDNS and the Petition for Review filed with the SHB by the Quinault Indian Nation, and all appeal issues raised therein.

V. RELIEF REQUESTED

For the reasons stated herein, the above Petitioners request this Board to:

1. Vacate the Shoreline Substantial Development Permit issued to the applicant.
2. Hold that the Mitigated Determination of Non-Significance is inadequate and require the preparation of an Environmental Impact Statement for the project.
3. Provide such other relief as allowed by law.
4. Grant recovery of costs and attorneys fees to the extent allowed by law.

DATED this 16th day of May 2013.

SMITH & LOWNEY, P.L.L.C.

By:

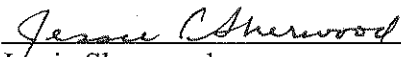
Knoll D. Lowney, WSBA 23457

Attorneys for Petitioners

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2 **CERTIFICATE OF SERVICE**

3 I declare under penalty of perjury under the laws of the State of Washington that on this
4 day I caused this document and attachments to be served via U.S. Mail on the respondents to this
5 action:

6
7 Dated this 16th day of May, 2013, in Seattle Washington:

8 
9 Jessie Sherwood

**CITY OF HOQUIAM AND WASHINGTON DEPARTMENT OF ECOLOGY
RESPONSIBLE OFFICIALS' AMENDMENTS TO THE
ENVIRONMENTAL CHECKLIST AND THRESHOLD DETERMINATION FOR
WESTWAY TERMINAL TANK FARM EXPANSION PROJECT**

The City of Hoquiam and the Washington Department of Ecology have agreed to act as Co-lead Agencies for the environmental review of the Westway Terminal Tank Farm Expansion Project proposal. The City of Hoquiam is the nominal lead for the SEPA review process.

Description of Proposal: Westway Terminal Company LLC proposes to expand its existing bulk liquid storage terminal to allow for the receipt of crude oil unit trains, storage of crude oil from these trains, and outbound shipment of crude oil by vessel and/or barge. The project would be located on leased property owned by the Port of Grays Harbor. The site is located adjacent to the Chehalis River in the City of Hoquiam at Section 18, Township 17 North, Range 9 West W.M., tax parcel number 056402300000 and in the City of Aberdeen in Section 7, Township 17 North, Range 9 West W.M., tax parcel number 029902000200.

File Reference: SEPA 12-05
SMA 12-07
CUP 12-01

Proponent: Westway Terminal Company LLC
Ken Shoemake, HSEQ Regional Manager
3128 Port Industrial Rd.
Hoquiam, WA 98550

Co-Lead Agencies: City of Hoquiam and Washington Department of Ecology

The Co-lead Agencies for this proposal have determined that it will not have probable significant impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the City of Hoquiam. This information is available to the public on request.

This Mitigated Determination of Non-Significance (MDNS) is issued under WAC 197-11-350(1). The Co-lead Agencies will not act on this proposal for 15 days from the date below. Comments or a written statement must be filed with the City of Hoquiam by April 19, 2013.

Responsible Official: Brian Shay, City Administrator, City of Hoquiam

Signature: _____

Responsible Official: Sally Toteff, Southwest Regional Director, Washington Department of Ecology

Signature: _____

Publication Date: April 4, 2013

To: All Permit and Review Authorities

ENVIRONMENTAL RECORD

The environmental review consisted of analysis based on the following documents included in the environmental record.

DOCUMENTS/REFERENCES:

- Environmental Checklist with attachments, received February 20, 2013
- Shoreline Substantial Development Permit Application, received December 03, 2012
- Conditional Land Use Permit Application, received December 03, 2012

Unless otherwise noted, the above documents are available for review at the City of Hoquiam, 609 8th Street, between the hours of 8 am to 5 pm Monday through Friday.

I. PROPOSAL DESCRIPTION

Westway proposes to expand its existing bulk liquid storage terminal to allow for the receipt of crude oil unit trains, storage of crude oil from these trains, and shipment of crude oil by vessel and/or barge from the Port of Grays Harbor Terminal #1. Four (4) internal floating roof storage tanks would be constructed on the site to the south of Westway's existing bulk storage tanks to provide storage for crude oil. The new tanks would each have a capacity of 200,000 barrels (8,400,000 gallons) for a project total storage capacity of 800,000 barrels (33,600,000 gallons). Each tank would be 150 feet in diameter and 64 feet in height. Each tank would sit on a concrete slab supported by pilings driven approximately 150 feet into the ground. The tanks would be surrounded by a concrete containment wall; the containment area would have the capacity to contain the total volume of a single tank plus an allowance for precipitation.

The existing rail facility on the site would be expanded from two (2) short spurs with a total of 18 loading/unloading spots to four (4) longer spurs with a total of 76 loading/unloading spots. As is currently the case, the rail spurs would be serviced from the east side of the terminal. The reconstructed rail area would be built on a sloped concrete slab such that spills of liquids would be contained and directed to a central sump for collection. The rail containment area would have the capacity to contain the total volume of a single rail car plus an allowance for precipitation. Construction of the expanded rail facility would involve demolition of an existing wood frame warehouse.

The project proponent estimates that the terminal would receive 9,600,000 barrels of oil per year, equivalent to two unit trains (120 railcars), one loaded and one empty, every three days.

The company estimates 60 ships or barges a year (120 entry and departure transits) for shipment of the crude oil.

A new pipeline would connect the new tanks, via an existing pipeline bridge, to the Port's Terminal #1. Work performed on the terminal dock would be limited to the addition of loading arms and parts of a Marine Vapor Combustion System. No in-water work is proposed.

Future expansion of the tank farm into the remainder of the property is possible, but not included as part of this proposal.

II. PERMITS/APPROVALS REQUIRED

A. PERMITS/APPROVALS REQUIRED PRIOR TO CONSTRUCTION

- City of Hoquiam – Critical Areas Review
- City of Hoquiam – Shoreline Substantial Development Permit
- City of Hoquiam – Conditional Land Use Permit
- City of Hoquiam – Stormwater Drainage Control Plan
- City of Hoquiam – Erosion Control Plan
- City of Hoquiam – Grade and Fill Permit
- City of Hoquiam – Building Permit
- City of Hoquiam – Demolition Permit
- City of Hoquiam – Fire Department Permit
- City of Aberdeen – Utility Services Agreement
- Washington State Department of Ecology – NPDES General Construction Permit
- Washington State Department of Ecology – RCRA Notice of Registration Update
- Washington State Olympic Region Clean Air Agency – Approval Order

B. PERMITS/APPROVALS REQUIRED PRIOR TO OPERATIONS

- Environmental Protection Agency – Facility Response Plan
- Environmental Protection Agency - Spill Prevention Control and Countermeasure Plan
- Washington State Department of Ecology - NPDES Individual Discharge Permit
- Washington State Department of Ecology - Spill Prevention Plan
- Washington State Department of Ecology – Spill Contingency Plan
- Washington State Department of Ecology – Facility Operations Manual
- Washington State Department of Ecology – Oil Handling Facility Training and Certification Report
- Washington State Department of Ecology – Oil Handling Facility Safe and Effective Threshold Report
- U.S. Coast Guard – Letter of Intent
- U.S. Coast Guard - Oil Spill Response Plan
- U.S. Coast Guard – Facility Security Plan and Facility Security Assessment
- U.S. Coast Guard – Facility Response Plan
- U.S. Coast Guard - Operations Manual update

III. PUBLIC COMMENT

(To be completed)

IV. REQUIRED MITIGATION MEASURES

The applicant's environmental checklist is incorporated by reference. The following discussion addresses mitigation measures that shall be implemented as part of the project. **These mitigation**

measures shall be deemed conditions of approval of the land use and/or permits issued under Hoquiam Municipal Code (HMC) 10.07 and 11.04. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.

As allowed in SEPA regulations (WAC 197-11-060) the Co-lead Agencies recognize this is one of two similar crude oil terminal proposals in the Grays Harbor area that have been submitted for review. The agencies have considered the aggregate impacts of the existing Westway operations and proposed operations and the cumulative impacts of the Westway proposal and the Imperium crude oil proposal during this evaluation. The proposals are not being considered a single course of action under WAC 197-11-060. They are not interdependent and each proposal can be implemented on its own. The potential vessel and rail traffic impacts from the Imperium proposal are being considered because of the potential for indirect or cumulative impacts resulting from the two proposals using the same transportation pathways and constructed in a similar timeframe (WAC 197-11-792).

1. EARTH

The applicant must obtain a NPDES Construction Stormwater General Permit. The permit requires erosion and sediment control measures to prevent stormwater from washing soil, nutrients, chemicals, and other harmful pollutants into local water bodies. The applicant must implement a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP includes best management practices and structures to control and treat stormwater discharges.

- The applicant shall obtain coverage under the NPDES Construction Stormwater General Permit before site preparation begins.
- The applicant shall prepare and follow a Stormwater Pollution Prevention Plan to prevent and control the introduction of silt, sand, and other contaminants into stormwater runoff.
- Best Management Practices (BMPs) shall be implemented to control potential erosion during site construction activities.

2. AIR

The applicant shall obtain air permit approval from the Olympic Region Clean Air Agency (ORCAA) and be responsible for complying with all applicable air quality standards and permit requirements for the construction and operation of this facility.

- Emissions from ship loading operations shall be routed to a vapor combustion unit approved by ORCAA.
- Crude oil air emissions shall be controlled using Best Available Control Technology as required by ORCAA as part of the facility Air Permit.
- Tank emissions shall be reduced using internal floating roofs.
- Rail car emissions shall be controlled using vacuum relief devices on each railcar.
- Greenhouse gases (GHG) for the proposal include: rail traffic from the Washington/Idaho border to the facility, vessel transits from the facility to the three nautical mile limit, vehicular traffic from new employees, and construction and operation activities. The total amount of GHG was estimated at 14,979 metric tons CO₂e annually.
- ***Additional mitigation measure:*** In order to reduce greenhouse gases and diesel particulate matter from the locomotives, idling shall be minimized to the maximum

extent practicable. Shutting down locomotive engines as soon as practicable when not in use and delaying restart until necessary for car switching or departure from the facility shall be considered reasonable measures to reduce these pollutants.

3. WATER

Construction Runoff Control

The applicant must obtain a NPDES Construction Stormwater General Permit before site preparation begins. The permit requires erosion and sediment control measures to prevent stormwater from washing soil, nutrients, chemicals, and other harmful pollutants into local water bodies.

- Appropriate BMPs shall be implemented to control potential erosion during site construction activities.

Industrial Stormwater Control

The applicant must obtain a new NPDES Individual Discharge Permit. The permit requires erosion and sediment control measures to prevent stormwater from washing soil, nutrients, chemicals, and other harmful pollutants into local water bodies. The applicant must implement a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall include best management practices and structures to control and treat stormwater discharges.

- No waste materials shall be discharged to surface or ground waters. Stormwater shall be discharged to the existing Port of Grays Harbor stormwater system.
- Precipitation falling inside the tank storage area shall be collected and tested before being released into the stormwater system.

Spill Prevention, Preparedness and Response Plans

The applicant shall prepare and maintain U.S. Coast Guard-approved Facility Security Plan and Facility Response Plan; Environmental Protection Agency-approved Facility Response Plan and Spill Prevention Control and Countermeasure Plan; and Department of Ecology- approved Oil Spill Prevention Plan and Oil Spill Contingency Plan. Spill response, preparedness and response requirements are described in more detail under Item 7.

4 & 5. PLANTS AND ANIMALS

Grays Harbor and the area along the vessel and rail route include many environmentally sensitive areas including streams, rivers, wetlands, fishing areas, shellfish beds, and migratory bird habitats. Spill prevention, preparedness, and response requirements to protect environmentally sensitive areas are described in Item 7 in more detail.

- HMC 10.05.65 requires that 18 inches total caliper of new trees be planted per acre of construction. Because the soils on the project site have been determined not to be adequate for long-term survival of trees, the applicant shall plant the required trees on other Port property and along public ways inside the City as per the plan submitted with the SEPA checklist.
- The Geographic Response Plan for Grays Harbor includes response strategies tailored to the Grays Harbor area and are tailored to minimize impacts of spills on sensitive resources. The Geographic Response Plan identifies sensitive natural, cultural or significant economic resources and provides strategies to respond to a spill which could affect them. The Geographic Response Plan shall be implemented as part of the facility's

Spill Contingency Plan.

www.ecy.wa.gov/programs/spills/preparedness/GRP/GraysHarbor/GraysHarbor.html.

6. ENERGY AND NATURAL RESOURCES

- All pumps and process technology equipment shall use energy efficient motors as appropriate to conserve energy.

7. ENVIRONMENTAL HEALTH

Health Hazards

- The applicant shall ensure that all employees and contractors working on the site during construction and operations receive all applicable training regarding the safe handling, use, and storage of crude oil.
- The applicant shall comply with all applicable federal, state, and local safety requirements pertaining to the proposed site functions and operations.

Noise

- Pile driving shall be limited to daylight hours to reduce potential noise impacts on off-site areas.
- The applicant shall adhere to all applicable federal, state and local noise standards.

Spill Prevention, Preparedness and Response

The public has expressed concerns of potential spills of oil from this proposal. Washington State has strong oil spill prevention, preparedness, and response regulations that apply to this proposal. Prevention requirements include plans for facility design and operations; requirements to pre-boom transfers of oil over the water; and inspections of the facility, vessels, and operations. Federal and Washington State preparedness and response regulatory requirements include development of a facility contingency plan with spill response contractors and equipment identified and contracted for in advance and actions for responding to spills including a worst-case discharge at the facility. Rail and vessel operators and owners must have contingency plans in place that address spills from vessels or from rail cars. The Grays Harbor's Geographic Response Plan identifies economic and environmentally sensitive areas and response strategies.

The applicant shall prepare and maintain U.S. Coast Guard -approved Facility Security Plan and Facility Response Plan; Environmental Protection Agency-approved Facility Response Plan and Spill Prevention Control and Countermeasure Plan; and Department of Ecology- approved Oil Spill Prevention Plan and Oil Spill Contingency Plan.

Facility Design and Emergency Response Plan

- The applicant shall comply with International Fire Code and Washington Facility Design Standards.
- All tank and rail car unloading areas shall be equipped with fire-fighting foam.
- Crude oil storage tanks shall be constructed to American Petroleum Institute (API) 650 and 653 standards and National Fire Protection Association (NFPA) No. 30 standards.
- The bulk liquid storage tanks and all associated piping shall be constructed to all applicable engineering standards to reduce the potential for spills of crude oil from the facility.

- The tank and rail spur facilities shall be equipped with concrete containment areas adequate to contain a potential spill plus an allowance for precipitation. The terminal dock shall be equipped with a curbing system as required by the USCG.
- Tanks shall include high and high-high level alarms.
- An Emergency Action Plan and Hazardous Materials Management Plan shall be filed with the local fire department, including chemical storage data and locations.
- The Westway site is located on soils derived from dredged materials that have a high liquefaction susceptibility factor. The site is rated as a seismic class D-E site. The Westway proposal is not expected to increase the liquefaction potential. The new storage tanks will sit on a concrete slab which will be supported by a series of piles driven approximately 150 feet into the ground.
- The Port of Grays Harbor is in a tsunami hazard area and is covered by the Grays Harbor County evacuation planning and risk management plan.

Oil Spill Prevention at the Facility:

- Prevention and response actions for spills to water shall be identified in the Spill Prevention Control and Countermeasure Plan required by 40 CFR 112 Oil Pollution Prevention, and the Spill Prevention Plan and Contingency Plan required by WAC 173-180 Facility Oil Handling Standards and WAC 173-182 Oil Spill Contingency Plan.
- Oil storage tanks shall be located within concrete containment areas capable of holding the total volume of the largest tank on-site plus precipitation. All of the rail area shall be built on concrete and shall be constructed to contain an entire rail car plus precipitation.
- Dock shall be constantly attended by a terminal operator during all loading operations that shall be able to stop a transfer immediately.
- During all oil loading operations, a spill response team, skimming equipment and boom shall be stationed 1,000 feet downstream at a boat ramp.
- Pre-booming of all oil transfers over water is required if safe and effective. Because the Chehalis River typically has a strong current and debris present, if pre-booming cannot be safely conducted, alternative measures are required.
- The Grays Harbor planning standard in WAC 173-182-405 specifies time and equipment requirements, including boom that is capable of encountering oil at advancing speeds of at least two knots in waves and appropriate for the operating environment. This standard shall be required in the facility's Spill Contingency Plan.

Oil Spill Prevention for the Rail Route:

- Puget Sound and Pacific (PSAP) Railroad has a contract with a spill response contractor to respond to any derailment or spill along the route from Centralia to Grays Harbor. A spill response plan has been submitted to the Federal Railroad Agency.
- ***Additional mitigation measure:*** In order to mitigate the risk of a spill impacting waters of the state, the applicant must ensure spill response equipment caches are positioned near identified sensitive areas such as the Chehalis River and near wetlands. A map identifying the locations and equipment of the caches shall be provided to Ecology for approval.

Oil Spill Prevention for the Vessel Route to Reduce Risk of a Spill:

- All crude oil tankers and oil barges shall be covered by the oil spill contingency plan held by Washington State Maritime Cooperative and approved by Ecology.
- US Coast Guard and Ecology shall be given advance notice of departure of all outbound crude oil vessels.
- Pilots shall schedule the departure of loaded vessels to coincide with the high tide to prevent the potential for grounding.
- All tankers shall have a pilot on board from the three nautical mile limit offshore to the dock at Terminal #1.
- The Port of Grays Harbor and the Pilots shall coordinate all commercial traffic in Grays Harbor and shall not allow any other vessel traffic in the ship channel from the terminal to the three nautical miles limit offshore when vessels loaded with crude oil depart the terminal.
- Two tugs shall accompany all loaded outbound crude vessels from the terminal to three nautical miles offshore and provide assistance if needed. A third tug shall also be available.
- A location at buoys 13 and 14 in the harbor has been identified as a suitable safe mooring area in the case of a vessel emergency. Tugs shall assist in maneuvering the vessels to the mooring area if needed.
- In the case of a vessel casualty offshore (like a loss of propulsion or sinking), response tugs at Neah Bay and Columbia River could provide assistance, however, response times will depend on tug availability and weather conditions.

Oil Spill Response

- Minor spills shall be cleaned up immediately using adsorbents, pads, or other appropriate materials.
- All materials used in cleanup shall be disposed of properly.
- The Ecology and U.S. Coast Guard approved spill response plans and contingency plans will be implemented in the case of any spill or discharge.

8. LAND AND SHORELINE USE

The applicant's proposal is consistent with the City of Hoquiam's local Shoreline Master Program. A Shoreline Substantial Development Permit will be obtained for the proposal.

- The applicant shall maintain the facility in good repair and the site shall be kept free of weeds, trash, and unsightly piles of equipment.
- The new storage tanks shall be painted white and periodically be pressure washed to remove staining.
- The applicant shall coordinate the project illumination plan with the Port of Grays Harbor to ensure that site lighting does not conflict with other land uses in the area.

9. HOUSING

The proposal will have no significant impacts on housing and no mitigation measures are required with regard to housing.

10. AESTHETICS

- The applicant shall maintain the facility in good repair and the site shall be kept free of weeds, trash, and unsightly piles of equipment.
- The new storage tanks shall be painted white and periodically be pressure washed to remove staining.

11. LIGHT AND GLARE

- New lighting shall be limited to that needed for safety and security. The applicant shall coordinate the project illumination plan with the Port of Grays Harbor to ensure that site lighting does not conflict with other land uses in the area.

12. RECREATION

- Recreational uses in the area, including recreational fishing and birding, will not be affected by the normal operations proposed for this facility.
- Spill response, preparedness and response requirements are described in more detail under item 7. The Geographic Response Plan for Grays Harbor includes response strategies tailored to the Grays Harbor area to minimize impacts of spills on sensitive resources. The Geographic Response Plan identifies sensitive natural, cultural and significant economic resources and provides strategies to respond to a spill which could affect them.

13. HISTORIC AND CULTURAL PRESERVATION

- If any potentially historical objects or other resources are found during construction, work in the vicinity of the find shall be immediately halted and the Washington Office of Archaeology and Historic Preservation shall be notified. Consultation with experts in that agency shall occur before construction proceeds.
- The applicant shall adhere to all the spill prevention, and cleanup measures specified in Item 7 to prevent and control potential spill impacts on Tribal fisheries.

14. TRANSPORTATION

The Westway proposal could result in two additional unit trains every three days (one loaded and one empty) and 60 tankers or tank barges a year (120 entry and departure transits). The Imperium proposal could result in two additional unit trains every day (one loaded and one empty) and up to 200 tankers or tank barges a year (400 entry and departure transits).

	Current level (2012)	Maximum in Westway Proposal	Maximum in Imperium Proposal	Total Maximum from both proposals	Total Number including current level and cumulative
Number of Vessel Transits per year (loaded and unloaded vessels)	168	120	400	520	688
Number of Train Transits per year (loaded and unloaded trains)	730	243	730	973	1703

The current baseline for rail traffic is approximately seven loaded trains per week. The Puget Sound and Pacific (PSAP) Railroad and Port of Grays Harbor have drafted a Freight Rail Plan 2013 that identifies infrastructure enhancements for an increase of three to seven loaded trains per week. There would be approximately nine additional loaded trains (18 loaded and unloaded trains) a week combined according to the Westway and Imperium proposals.

Vehicle Traffic

- The applicant shall provide adequate parking for additional employees as determined by the City of Hoquiam Building Official.

Rail Traffic

Two additional unit trains shall transit through the Aberdeen/Hoquiam area (one inbound, one outbound) every three days but are not expected to significantly impact existing traffic patterns at the entrances to the Olympic Gateway Shopping area and Port Industrial Road.

- **Additional mitigation measure:** To degree possible, trains shall transit the cities of Aberdeen and Hoquiam during non-rush hours, preferably in the evening, to avoid traffic congestion and impact to local businesses.
- **Additional mitigation measure:** A Rail Transportation Impact Analysis (RTIA) shall be completed prior to the applicant receiving the project Certificate of Occupancy for operation as issued by the City. The RTIA will determine the potential for impacts directly caused by changes and increases in rail traffic on local vehicular traffic and other rail commodities. The analysis shall identify any improvements or mitigation needed. Washington State Department of Transportation and the Washington Utilities and Transportation Commission will review the RTIA and provide comments to the Co-Leads.
- **Additional mitigation measure:** The applicant shall provide evidence to the City of Hoquiam that mitigation measures identified in the RTIA are implemented or are obligated to be implemented by the appropriate entities responsible for rail movements in the Aberdeen and Hoquiam area prior to the applicant receiving the project Certificate of Occupancy for operation as issued by the City.

Vessel Traffic

- All tankers shall have a pilot on board from the three nautical mile limit offshore to the dock at Terminal #1.
- All outbound vessels shall have tug escort from the terminal to the three nautical mile limit.
- **Additional mitigation measure:** Tankers and oil barges, loaded and empty, shall transit outside of 50 nautical miles along the Washington Coast as recommended by the West Coast Offshore Vessel Traffic Risk Management Project.
- **Additional mitigation measure:** Tankers and oil barges, loaded and empty, shall follow the Area to Be Avoided on the Olympic Coast and remain 25 nautical miles off the coast of the Olympic Coast National Marine Sanctuary.
- **Additional mitigation measure:** A Vessel Traffic Impact Analysis (VTIA) shall be completed prior to the applicant receiving the project Certificate of Occupancy for operation as issued by the City. The VTIA will determine the potential for impacts that

may result from changes or increases in vessel traffic in Grays Harbor. The analysis will identify any changes in existing operating policies and procedures that may be needed.

- ***Additional mitigation measure:*** The applicant shall provide evidence to the City of Hoquiam that mitigation measures identified in the VTIA are implemented or are obligated to be implemented by the appropriate entities having responsibility for such policies and procedures. Mitigation measures implemented shall be completed to the satisfaction of the Harbor Safety Committee and/or the US Coast Guard prior to receiving the project Certificate of Occupancy for operations as issued by the City.

15. PUBLIC SERVICES

- The applicant shall comply with all applicable fire prevention and suppression requirements and shall conduct all appropriate communication and collaboration with public service officials.
- The applicant shall develop and implement required spill response plans in conformance with all applicable laws and regulations.

16. UTILITIES

The proposal will have no significant impacts on utilities and no mitigation measures are required with regard to utilities.

BEFORE THE SHORELINE ADMINISTRATOR FOR THE CITY OF HOQUIAM**Brian Shay, Shoreline Administrator**RE: Westway Terminal Company LLC
Tank Farm Expansion Project

Case No. : SMA 12-07

Shoreline Substantial Development
Permit**FINDINGS OF FACT AND
CONCLUSIONS OF LAW OF THE
SHORELINE ADMINISTRATOR****INTRODUCTION**

Westway Terminal Company LLC has applied for a shoreline substantial development permit to construct and operate an expansion of its bulk liquid tank farm to be located on leased property owned by the Port of Grays Harbor, the property being a portion of Terminal 1. The project would be partially constructed/installed within 200 feet of the Ordinary High Water Mark (OHWM) of Grays Harbor. The Shoreline Administrator approves the application with conditions.

EXHIBITS

All exhibits as adopted are listed below and are incorporated herein by reference.

- Exhibit 1: Joint Aquatic Resources Permit Application Form (JARPA) dated November 30, 2012.
- Exhibit 2: SEPA Checklist dated February 19, 2013
- Exhibit 3: SEPA Checklist Appendices dated February 19, 2013
- Exhibit 4: SEPA Threshold Determination as published by the City of Hoquiam on April 4, 2013.
- Exhibit 5: Critical Areas Permit Checklist dated 12/3/2012

FINDINGS OF FACT**Procedural:**

1. Application. The applicant filed an application for Shoreline Substantial Development with the City of Hoquiam on November 30, 2012. The City, acting

under its authority, acted as co-lead agency with the Department of Ecology for purposes of SEPA, and as lead agency for permits required under the Shoreline Management Act and local Shoreline Master Programs.

The City of Hoquiam and Department of Ecology issued the Responsible Officials' Amendments to the Environmental Checklist and SEPA Threshold Determination on April 4, 2013. The public comment period on the threshold determination ended on April 19, 2013.

Substantive:

2. Location: The proposed project would be located on County Assessor's tax Parcel No. 0564023000000 (within the City of Hoquiam) in Section 18, Township 17 North, Range 10 West of the Willamette Meridian and Parcel No. 029902000200 (within the City of Aberdeen) in Section 7, Township 17 North, Range 10 W.M., adjacent to the Chehalis River.
3. Current Use. The project site is currently a paved lay down yard and is partially occupied by a warehouse building. The Port and tenants use the site to store a variety of materials awaiting shipment by rail, truck or watercraft.
4. Proposed use. The applicant proposes to expand its existing bulk liquid storage terminal to allow for the receipt of crude oil unit trains, storage of crude oil from these trains, and shipment of crude oil by vessel and/or barge from the Port of Grays Harbor Terminal #1. Four (4) internal floating roof storage tanks would be constructed on the site to the south of Westway's existing bulk storage tanks to provide storage for crude oil. The new tanks would each have a capacity of 200,000 barrels (8,400,000 gallons) for a project total storage capacity of 800,000 barrels (33,600,000 gallons). Each tank would be 150 feet in diameter and 64 feet in height. Each tank would sit on a concrete slab supported by pilings driven approximately 150 feet into the ground. The tanks would be surrounded by a concrete containment wall; the containment area would have the capacity to contain the total volume of a single tank plus an allowance for precipitation.

The existing rail facility on the site would be expanded from two (2) short spurs with a total of 18 loading/unloading spots to four (4) longer spurs with a total of 76 loading/unloading spots. The reconstructed rail area would be built on a sloped concrete slab such that spills of liquids would be contained and directed to a central sump for collection. The rail containment area would have the capacity to contain the total volume of a single rail car plus an allowance for precipitation. Construction of the expanded rail facility would involve demolition of an existing wood frame warehouse.

The terminal would receive up to 9,600,000 barrels of oil per year, equivalent to two unit trains (120 railcars), one loaded and one empty, every three days. An

estimated 60 ships or barges a year (120 entry and departure transits) would be used for outbound shipment of the crude oil.

A new pipeline would connect the new tanks, via an existing pipeline bridge, to the Port's Terminal #1.

The portions of the proposal that would be within 200 feet of the shoreline and therefore require this permit include a portion of the new pipeline connecting the tanks to the terminal, new loading arms and portions of a Marine Vapor Combustion System installed on the existing dock, and portions of the tank farm concrete containment wall. No in-water work is proposed.

5. Surrounding Uses. Adjacent property uses are industrial to the north, east, and west. The Chehalis River lies south of the project site.

6. Potential Impacts. The proposed project would not entail any in water work and therefore would not have any direct impacts on the Chehalis River. The following measures shall be employed to minimize or avoid water quality impacts:

- The applicant shall obtain coverage under the NPDES Construction Stormwater General Permit before site preparation begins.
- Best Management Practices (BMPs) shall be implemented to control potential erosion during site construction activities.
- The applicant shall obtain an NPDES Individual Discharge Permit. No waste materials shall be discharged to surface or ground waters. Stormwater shall be discharged to the existing Port of Grays Harbor stormwater system.
- The applicant shall prepare and follow a Stormwater Pollution Prevention Plan to prevent and control the introduction of silt, sand, and other contaminants into stormwater runoff.
- Precipitation falling inside the tank storage area shall be collected and tested before being released into the stormwater system.
- The applicant shall prepare and maintain USCG-approved Facility Security Plan and Facility Response Plan; Environmental Protection Agency-approved Facility Response Plan and Spill Prevention Control and Countermeasure Plan; and Department of Ecology- approved Oil Spill Prevention Plan and Oil Spill Contingency Plan. The approved response and contingency plans shall be implemented in the case of any spill or accidental discharge of crude oil.
- The Geographic Response Plan (GRP) for Grays Harbor shall be implemented as part of the facility's Spill Contingency Plan.
- To reduce the potential for accidental releases of crude oil from the facility, the bulk liquid storage tanks and all associated piping shall be constructed to all applicable engineering standards, including but not limited to International Fire Code and Washington Facility Design standards, API 650 and 653 standards, and NFPA No. 30 standards.

- The tank and rail spur facilities shall be equipped with concrete containment areas adequate to contain a potential spill plus an allowance for precipitation. The terminal dock shall be equipped with a curbing system as required by the USCG.
- The storage tanks shall include high and high-high level alarms.
- The applicant shall file an Emergency Action Plan and Hazardous Materials Management Plan with the local fire department.
- In order to mitigate the risk of a spill impacting waters of the state, the applicant must ensure spill response equipment caches are positioned in Department of Ecology-approved locations near identified sensitive areas such as the Chehalis River and near wetlands.
- Prevention and response actions for spills to water shall be identified in the Spill Prevention Control and Countermeasure Plan, Spill Prevention Plan, and Contingency Plan as required by 40 CFR 112, WAC 173-180, and 173-182.
- The dock shall be constantly attended by a terminal operator during all loading operations that shall be able to stop a transfer immediately.
- During all oil loading operations, a spill response team, skimming equipment and boom shall be stationed 1,000 feet downstream at a boat ramp.
- Pre-booming of all oil transfers over water is required, if booms can be deployed safely and effectively. Because the Chehalis River typically has a strong current and debris present, if pre-booming cannot be safely conducted, alternative measures are required.
- The Grays Harbor planning standard in WAC 173-182-405 specifies time and equipment requirements, including boom that is capable of encountering oil at advancing speeds of at least 2 knots in waves and appropriate for the operating environment. This standard shall be required in the facility's Spill Contingency Plan.
- All crude oil tankers and oil barges shall be covered by the oil spill contingency plan held by Washington State Maritime Cooperative and approved by Ecology.
- The U.S. Coast Guard and Ecology shall be given advance notice of departure of all outbound crude oil vessels.
- Pilots shall schedule the departure of loaded vessels to coincide with the high tide to prevent the potential for grounding.
- All tankers shall have a pilot on board from the 3 mile nautical limit offshore to the dock at Terminal #1.
- The Port of Grays Harbor and the pilots shall coordinate all commercial traffic (specifically, ships requiring pilots and/or tugs or oil barges) in Grays Harbor and shall not allow any other vessel traffic in the ship channel from the terminal to the 3 nautical mile limit offshore when vessels loaded with crude oil depart the terminal. Two tugs shall accompany all loaded outboard crude vessels from the terminal to 3 nautical miles offshore and provide assistance if needed. A third tug shall also be available.

- A location at buoys 13 and 14 in the harbor has been identified as a suitable safe mooring area in the case of a vessel emergency. Tugs shall assist in maneuvering the vessels to the mooring area if needed.
 - Minor spills shall be cleaned up immediately using adsorbents, pads, or other appropriate materials.
 - All materials used in cleanup shall be disposed of properly.
 - The applicant shall ensure that all personnel working on the site during construction and operations receive all applicable training regarding the safe handling, use, and storage of crude oil.
 - The applicant shall comply with all applicable federal, state, and local safety requirements pertaining to the proposed site functions and operations.
 - Receipt, storage, and outbound shipment of crude oil shall not exceed 9,600,000 barrels of oil per year. The applicant shall submit to the Shoreline Administrator, on an annual basis, appropriate records verifying the volume of crude oil received, stored, and shipped from the facility. Receipt, storage, or shipment of crude oil exceeding 9,600,000 barrels per year shall require separate SEPA review.
7. Waterbody. The Chehalis River at the project location is on the State's 303(d) List of impaired waterbodies as a Category 2 water for pH and temperature. Category 2 waters do not require development of Total Maximum Daily Load (TMDL) limitations at this time.
8. Wetlands. No material would be placed in wetlands.
9. Structures. Structures to be placed in the shoreline zone consist of portions of product transmission pipelines running from the tank farm to the marine terminals, new loading arms and portions of a Marine Vapor Combustion System installed on the existing dock, and portions of the tank farm concrete containment wall, all as shown in Figure 2 of the application.
10. Fill. No fill material would be placed in surface waters or wetlands
11. Excavation/Dredging. No excavation or dredging would be required for the proposed action.
12. Timeline. Construction was originally proposed to begin in April of 2013. Construction is now estimated to begin upon successful completion of all necessary building and environmental permits.
13. Shoreline Designation. The subject property is classified as Urban Environment.
14. SEPA Environmental Checklist. A SEPA Environmental Checklist was submitted to the City of Hoquiam on February 19, 2013. The City acted as co-

lead agency with the Department of Ecology for SEPA review of this application. A Mitigated Determination of Nonsignificance was issued on April 4, 2013 and the public comment period concluded April 19, 2013.

15. Floodplain Impacts. This facility is not located in a floodplain and will not have any impacts on the floodplain.

16. Public Benefit of Proposal. Pursuant to HMC 11.04.060, water related industries are classified as a Permitted Shoreline Use. The purpose of the transmission pipeline delivery system constructed in the shoreline zone is to provide a pathway for stored materials to be shipped by waterborne transport vessels for delivery to market. The proposed facilities are therefore "water-related industries." Because the Hoquiam Municipal Code has been formally adopted by the City of Hoquiam as policy, the proposed project is deemed to be in the public interest.

CONCLUSIONS OF LAW

Procedural:

1. Authority of Shoreline Administrator. HMC 11.04.180(5)(b) provides that the Shoreline Administrator shall evaluate the application and collect all relevant data and communications from persons and agencies wishing to express views on the application during a thirty (30) day review period. HMC 11.04.180 (5)(c) requires the Shoreline Administrator to issue a final decision in written form at the end of this review period.

Substantive:

2. Applicable HMC Criteria and Application. Chapter 11.04 of the Hoquiam Municipal Code governs the criteria for shoreline substantial development permits. The applicable criteria are included below and are applied via Conclusion of Law:

HMC 11.04.180(1), Permits. HMC 11.04.180(1) requires that permits be obtained for "substantial development" HMC 11.04.030(2) defines "substantial development" as development in which the total cost or fair market value exceeds five thousand dollars. The applicant has submitted a complete application for a Shoreline Substantial Development Permit to the City of Hoquiam. Therefore this criterion is satisfied.

HMC 11.04.060, Siting Regulations. HMC 11.04.060(2)(m) designates "water

-related industries" as a Permitted Shoreline Use. The proposed raw materials storage tank farm would be classified as "water-related industries" Therefore, this criterion is satisfied.

HMC 11.04.080, Earth Changing Regulations. HMC 11.04.080(2) specifies that protection from siltation and erosion shall be provided for all earth changing acts. The applicant has stated that it will develop a Temporary Erosion and Sediment Control Plan and Stormwater Pollution Prevention Plan and implement Best Management Practices (BMPs) to control erosion and prevent siltation during construction. Therefore, this criterion is satisfied.

HMC 11.04.100, Restoration of shoreline areas – defined. HMC 11.04.110 defines "restoration of shoreline areas" as "returning the area to its natural state, or cleaning up the area to remove litter, debris, abandoned structures, and pilings to present a neat and tidy appearance." The latter definition applies to the proposed project. In order to satisfy the criterion, the applicant shall be required to remove all litter and construction debris from the shoreline area at the completion of project construction and equipment installation.

HMC 11.06.030, Compliance with Critical Areas Protection. HMC 11.06.030 requires that "all public and private land uses in the City of Hoquiam shall comply with the requirements of this Article as a condition to any project permit application granted under titles 9, 10, or 11 of the Hoquiam Municipal Code"

HMC 11.06.060, Technical Assessments. HMC 11.06.060 requires that each project proposal occurring in the area potentially having critical areas present on or near the project site conduct a critical areas assessment to determine if the proposal will affect any critical area or critical area buffer. "It shall be the responsibility of the applicant to provide the City with appropriate technical assessments and reports prepared by a qualified expert, if necessary, to fulfill the requirements of an application for a project permit review or threshold decision under Titles 9, 10, or 11 of the Hoquiam City Code or any other city, state, or federal laws."

Grays Harbor Estuary Management Plan. The Grays Harbor Management Plan is as incorporated into the City of Hoquiam Municipal Code in January of 1986. The goal of the Plan provides that "there are three policy levels in the Grays Harbor Estuary Management Plan. The first level is a single, broad policy entitled the Estuary Management Goal. The goal sets forth the concept of balance of development and preservation of the estuary (see section entitled Plan Concepts). The goal which says in part that "The Grays Harbor estuary will be managed for multiple uses....."

The area occupied by the Westway including the proposed expansion is within Management Unit 15 Planning Area III which is designated as Urban Development (UD). The management objective of this area "...will serve as one of the principal areas for heavy industrial expansion for the Grays Harbor Region. The emphasis on use will be for water related and dependent uses and redevelopment of already development lands." The proposed Westway Expansion appears to fall in the category of allowed uses and objectives for the Management Unit.

3. Applicable WAC Provisions: WAC 173-27-140 and WAC 173-27-150 specifically apply to this project. All provisions identified in this Conclusions of Law are quoted and applied below.

WAC 173-27-140, Review Criteria for All Development, WAC 173-27-150 and Review Criteria for Substantial Development Permits contain criteria that apply to this proposal. They are summarized as follows:

WAC 173-27-140, Review Criteria for All Development:

- (1) *No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.*

WAC 173-27-150, Review Criteria for Substantial Development Permits:

- (A) *A substantial development permit shall be granted only when the development proposed is consistent with:*
 - (a) *The policies and procedures of the act;*
 - (b) *The provisions of this regulation; and*
 - (c) *The applicable master program adopted or approved for the area.*
4. WAC 173-27-140 and WAC 173-27-150 Compliance: The "policies and procedures of the act" referenced above have already been addressed in the procedures used to review the subject shoreline substantial development permit application. These procedures are fully compliant with state and local regulations. Likewise, the proposed project has been deemed to be consistent with the "policy and provisions of the Shoreline Management Act and the master program." Local master program compliance is established in HMC 11.04.010, in which the "Grays Harbor Estuary Plan" dated January 1986, is adopted as an amendment to the Hoquiam Shoreline Management ordinance.

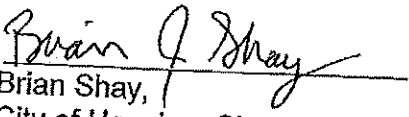
5. Shoreline Substantial Development Application Complies with All Required Criteria: The proposed development complies with all required criteria for issuance of a Shoreline Substantial Development Permit. The proposed project complies with and is consistent with the policies of the Hoquiam Municipal Code and state shoreline management regulations.

DECISION

Based on the documents and exhibits submitted into the record and the previously made Findings of Fact and Conclusions of Law, the Shoreline Substantial Development Permit requested by the applicant is hereby **APPROVED**, subject to the following conditions:

1. The applicant shall adhere to all mitigation measures specified in item #6 of the Findings of Fact, above, to avoid and minimize potential water quality impacts.
2. The applicant shall obtain and comply with all other applicable permits and authorizations resulting from this proposal including, but not necessarily limited to, compliance requirements of the City of Hoquiam Building Official, the City Fire Chief, City Police Chief, the City water, sewer and street Departments.
3. The applicant and its contractor(s) shall comply with all other applicable federal, state, and local regulations not otherwise specifically identified herein.
4. The applicant shall adhere to all other applicable policies and regulations of the City of Hoquiam Shoreline Management Master Program and City of Hoquiam Municipal Code.
5. The applicant shall obtain all other applicable state and federal permits or authorizations as may be required prior to commencement of construction on the site. Copies of all other applicable permits or written authorizations must be provided to the City prior to issuance of the building permit.
6. The Applicant shall comply with all provisions of the Critical Areas Ordinance.

Dated this 26th day of April, 2013


Brian Shay,
City of Hoquiam Shoreline Administrator

Appeal and Reconsideration

This is a final decision that may be appealed to the State Shorelines Hearings Board. A complete file on the documents pertaining to this case is available for review at the City of Hoquiam. The procedures for appeal of this decision are governed by RCW 90.58.140 and must be filed within twenty one (21) calendar days of the issuance of this decision.

SMITH & LOWNEY, P.L.L.C.

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April 18, 2013

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Subject: Comments on Mitigated Determination of Non-Significance
Westway Terminal Tank Farm Expansion Project

This letter is being submitted on behalf of the Friends of Grays Harbor, Grays Harbor Audubon Society, Sierra Club, Surfrider Foundation, and Washington Environmental Council ("environmental organizations") and Citizens for a Clean Harbor, (a citizens group) to comment on the March 14, 2013, Mitigated Determination of Non-Significance ("MDNS") issued to the "Westway Terminal Tank Farm Expansion Project ("Project"). The environmental organizations describe themselves and their missions as follows:

FOGH (Friends of Grays Harbor) is a broad-based 100% volunteer tax-exempt 501(c)(3) citizens group made up of crabbers, fishers, oyster growers and caring citizens. The mission of FOGH is to foster and promote the economic, biological, and social uniqueness of Washington's estuaries and ocean coastal environments. The goal of FOGH is to protect the natural environment, human health and safety in Grays Harbor and vicinity through science, advocacy, law, activism and empowerment.

Grays Harbor Audubon Society is committed to maintaining terrestrial and aquatic Wildlife Habitat in Grays Harbor County and the surrounding areas.

Sierra Club is a national nonprofit organization of over one million members and supporters dedicated to exploring, enjoying and protecting the wild places of the earth; practicing and promoting responsible use of the earth's ecosystems and resources; educating and enlisting humanity to protect and restore the quality of the natural and human environment; and using all lawful means to carry out these objectives.

Specifically, Sierra Club's Beyond Oil Campaign works to stem our nation's dependence on oil and to secure protections for communities and ecosystems from the significant toxic and global warming pollution emitted by oil development, including prevention of oil spills. Sierra Club has more than 20,000 members in the State of Washington who want to ensure that Washington's treasured coastline and the regions in which oil could be transported by rail are protected into the future.

Surfrider Foundation is a national organization that operates through a network of grassroots chapters who take volunteer action to protect our ocean, waves and beaches through campaign, program and educational initiatives in their communities. It's Washington Chapters represent over 2000 supporters.

Washington Environmental Council (WEC) is a nonprofit, statewide advocacy organization that has been driving positive change to solve Washington's most critical environmental challenges since 1967. WEC's mission is to protect, restore, and sustain Washington's environment.

Citizens for a Clean Harbor (CCH) is a grass roots organization of citizens concerned about the actions of the Port of Grays Harbor and how those actions affect water quality, water quantity and health of the estuary, rivers and streams upon which they depend.

The undersigned have serious concerns over the development of "crude-by-rail" facilities on the Grays Harbor shoreline. Such development presents very significant risks to Grays Harbor's sensitive ecosystems and surrounding communities. We disagree with the finding of the co-lead agencies, the City of Hoquiam and Department of Ecology, that the proposed facilities are unlikely to have a significant environmental impact and therefore do not require the preparation of an environmental impact statement. This letter outlines the procedural and substantive deficiencies of the environmental review process culminating in the MDNS and identifies some of the most important environmental issues that require the preparation of an environmental impact statement.

Cumulative Impacts.

The lead agencies have adopted an impermissibly narrow project scope for their environmental review. They acknowledge that the review should consider cumulative impacts of various crude-by-rail facilities, but then arbitrarily exclude the largest of these facilities from their review. The U.S. Development proposal is moving forward and permit applications will soon be submitted.¹

¹ It is known by department that the third terminal is coming and should have waited to do all three together. As allowed in SEPA regulations (WAC 197-11-060) the Co-lead Agencies recognize this is one of two similar crude oil terminal proposals in the Grays Harbor area that have been submitted for review. The agencies have considered the aggregate impacts of the existing Westway operations and proposed operations and the cumulative impacts of the Westway proposal and the Imperium crude oil proposal during this evaluation. The proposals are not being considered a single course of action under WAC 197-11-060. They are not interdependent and each proposal can be implemented on its own. The potential vessel and rail traffic impacts from the Imperium proposal are being

There is no valid basis for ignoring the cumulative impacts from this third crude-by-rail project.

Even if one were to ignore the fact that U.S. Development is about to submit applications for a crude-by-rail terminal, the lead agencies must consider the cumulative impacts from the Port of Grays Harbor's development plans. The Port has adopted the goal of developing the Terminal 3 property as a rail-to-ship commodity transportation facility, and the Corps of Engineers is facilitating this effort through the deepening of the transportation channel. The co-lead agencies must consider cumulative impacts relating rail and vessel transportation, as well as emergency response.

The decision to allow new crude-by-rail facilities to be evaluated as a mere tank-farm expansion will itself have cumulative impacts. Analysts suggest that the oil industry is seeking routes to market for significant stockpiles of crude oil. Some of that crude is immediately eligible for international export while other sources may become eligible by executive, administrative or congressional action. The co-lead agency's decision to allow new crude-by-rail facilities without an environmental impact statement will set a precedent, effectively exempting new rolling oil pipelines from environmental review.

Similarly, once the three crude-by-rail facilities are developed, there is a likelihood that they will be able to freely expand without ever triggering an environmental impact statement. The proposal acknowledges that future expansion of the tank farm into the remainder of the property is possible, but not included as part of this proposal. In deciding whether these projects will have a significant environmental impact, the co-lead agencies must consider the cumulative impacts of the facilities at full capacity. All three project sites, and particularly the Terminal 3 site, contain ample room for tank-farm expansion. As a practical matter, however, the throughput of these facilities could be significantly expanded without further permitting or environmental review merely by increasing the frequency of train and vessel traffic.

The magnitude of the oil shipments even at startup should require an EIS. If all three proposals move forward, there will be 97,440,000 gallons of crude oil at the estuary's edge where there has been little or none before.² In addition it is possible that a full unit train with its 3,200,000 gallons could also be waiting to unload.

considered because of the potential for indirect or cumulative impacts resulting from the two proposals using the same transportation pathways and constructed in a similar timeframe (WAC 197-11-792).

² Westway Terminals will have 800,000 barrels storage capacity, or 33,600,000 gallons. Their shipments by rail are to be a unit train of 105 cars every 3 days, with approximately 650 barrels of oil per car. They will be bringing in 10 unit trains per month, a total of 1,050 cars, or 682,000 barrels a month, or 28,665,000 gallons per month. Westway says that it may add at least one 200,000 barrel tank in the future. Imperium will have up to 9 tanks of 80,000 barrels each, so they will eventually have 720,000 barrels storage capacity or 30,240,000 gallons. Their shipments by rail are to be a unit train of 120 cars every day, with approximately 650 barrels of oil per car. They would be bringing in 30 unit trains per month, a total 3,600 cars, 2,340,00 barrels a month or 92,280,000 gallons per month. US Development plans are still preliminary, but the best guess is that they have 8 tanks, each holding 100,000 barrels, so the total storage capacity is 800,000 barrels or 33,600,000 gallons. They say they will have from 100 – 120 car unit trains, with a train arriving every two days or 15 trains per month. Using the 120 car train, this is 1,800 cars per month of about 650 barrels per car, 1,170,000 barrels per month or 49,140,000 gallons per month. US Development in presentations to the Port of Grays Harbor has indicated that it might increase its storage capacity to 1,000,000 barrels from the 800,000. Adding 200,000 barrels more impacts. This would be over 2 billion gallons flowing through the Estuary each year. On April 9, 2013 the Port of Grays Harbor Commission approved an Option

Cumulative impacts of coal trains and precedent of environmental review.

The Department of Ecology is failing to give these crude-by-rail proposals the same level of environmental considerations as similar proposals involving coal export facilities. The Department of Ecology, as a co-lead agency, is requiring the preparation of an EIS on the coal train projects. Governor Inslee recently joined the call for a thorough examination of the greenhouse gas and other air quality effects of continued coal leasing and exports. An EIS would take a broader look at cumulative impacts of the coal trains and the numerous coal-export facilities proposed in the Pacific Northwest.

The Department of Ecology and Governor Inslee should give equal and joint consideration to the crude oil trains and the numerous crude-by-rail terminals that have been or will be proposed in the Pacific Northwest. It is appropriate to consider the cumulative impacts of coal trains and crude oil trains and these energy commodity export facilities. These facilities will have cumulative impacts relating to train and vessel transportation. Indeed, the proposed coal trains that are being studied in the Department of Ecology's EIS process will be traveling over the same congested and inadequate rail facilities as the crude oil trains bound for Grays Harbor. The Department of Ecology cannot credibly state that these environmental impacts deserve full environmental review for one type of "dirty-energy-train" but not another. Attached hereto are the Determinations of Significance that have been issued in conjunction with the Cherry Point coal export facility, which are hereby incorporated by reference. That precedent demands an equally rigorous environmental review of the Grays Harbor crude-by-rail facilities, addressing at least those environmental issues that have been identified through the Cherry Point scoping process. We hereby incorporate by reference the summary of that scoping process.

Another precedent of the Cherry Point facility is the decision that the environmental review of the terminal development must also consider the associated rail improvements. Here, the co-lead agencies' environmental review must similarly consider the impact of the many rail improvements that will be required to allow the crude-trains to access the crude-by-rail terminals.

Finally, the co-lead agencies on the Cherry Point project have appropriately notified citizens across the state about the proposal and solicited their input into the environmental review process. The well-attended scoping meetings throughout the state have shown that the public interest in these energy-trains and export facilities is not limited to the communities surrounding the proposed terminals. The co-lead agencies should similarly invite comments from the public living along the rail lines. In addition to being too narrowly distributed, the public notice issued for the crude-by-rail projects was inadequate and misleading as to the substance of the project and the environmental review procedures.

to Lease property at Terminal 3, in Hoquiam, WA to Grays Harbor Rail Terminal, LLC a local subsidiary of US Development.

Need for an EIS.

These crude-by-rail facilities and their associated rail improvements will have a significant environmental impact as defined by SEPA and therefore require an EIS. Given the potential for additional crude-by-rail proposals, future capacity increases, and cumulative impacts as discussed above, a programmatic EIS should be prepared.

The proposed project has probable significant adverse environmental impacts that are not adequately disclosed, discussed, analyzed and/or mitigated in the MDNS. The MDNS has not adequately responded to or mitigated the probable adverse impacts disclosed in the comments submitted on the project, which are hereby incorporated by reference.³

It is unimaginable that the co-lead agencies would allow the development of a oil *pipeline* and crude oil terminals without an EIS, and the risks of this proposal are not mitigated simply because the crude is being transported by rail. Indeed, evidence suggests that crude-by-train carries three times the spill risk as an oil pipeline.

The risk of oil spills from trains, terminals and/or vessels is the most obvious environmental risk that is inadequately addressed in the MDNS. Citing the requirement of future spill plans and government approvals that *may* provide protection in the future is simply not an adequate environmental review. The risks here are even greater because the developments are proposed in an area at high risk for flooding, erosion, sea-level rise, earthquake, liquefaction and tsunamis. The proponent states that a Spill Control and Countermeasures Plan (SPCC and a Facilities Response Plan (FRP) will be developed and given to the City for review prior to operation. These plans should be submitted during the SEPA process and prior to permitting. If they are done afterwards, there is no opportunity for response, feedback and control or whether they are adequate. Since there are significant marine resource assets (e.g., forage fish, juvenile salmon, migratory birds and shellfish) that could be affected by a spill, these procedures need to have public, first-responder as well as agency review. Issuing and review of these procedures after the building of significant infrastructure and processing equipment will unduly influence the outcome of approval. The MDNS acknowledges the concerns about oil spills, but adopts a process that illegally removes this and other concerns from the SEPA process altogether.

The purpose of an MDNS is to incorporate sufficient mitigation to reduce the probable impact below a level of significance. The mitigation contained in the MDNS relating to the environmental issues identified in this comment letter is vague, inadequate, and unenforceable.

Additional grounds for these comments are as follows:

- (1) The containment design does not appear to be adequate for a design-basis accident. It appears that a catastrophic accident which released 8,400,000 gallons of crude plus 6" of rain water is proposed to be contained by a single containment wall whose

³ In addition to other comments, we incorporate the comments of the Quinault Indian Nation, Arnold Martin, Teri Franklin, Craig Zora and Brady Engvall.

integrity would be suspect in a catastrophic accident. The mitigation does not reveal how this would be handled and cleaned up. How would this be handled?

- (2) The review and design process does not account for sea level rise. Please discuss the calculations for projected rises scenarios.
- (3) The review does not appear to take into consideration that the area is in a tsunami hazard zone and would be inundated by an event and subject to liquefaction. How will you account for the impacts due to tsunami and liquefaction?
- (4) The proponent lists that controls for the loading, unloading and emergency monitoring have redundant processes, but they are all electronically controlled. As the 2007 storm proved the access to electricity can be interrupted for long periods of time. What emergency power will be associated with this installation?
- (5) The SEPA checklist states that there will be one terminal operator dedicated to the dock facility. Since the tank location is over 500 feet away from the dispensing tank, how will a single person be able to monitor the entire system, check for any leaks or spills, and make sure the equipment is functioning properly? Who else would be available to assist?
- (6) Where will spill containment equipment be stored? Will there be a redundancy in equipment at the tank site and dispensing site?
- (7) Considering alternatives is good planning, however there doesn't appear to be any consideration of alternatives.
- (8) The MDNS does not include any discussion of treaty rights or impacts to fisheries and the environment subject to those treaties. What are the consequences of ignoring Federal treaty rights and promises?
- (9) The MDNS does not adequately discuss sensitive area impacts and the duration of those impacts. What will be the impacts to these areas? How will short-term and long-term impacts affect these areas?
- (10) There is no discussion that all of the terminal areas have natural gas available. What would be the likelihood of crude oil igniting due to catastrophic incident that severs gas lines?
- (11) Lack of consideration for crude oil containing toxic chemicals, many of which are carcinogens: benzene, chromium, mercury, nickel, sulfur, toluene, lead, carbon monoxide, PAH's and VOC's. What considerations have been given to the introduction of these toxic chemicals?
- (12) Any oil spill would have devastating impacts to Grays Harbor, which contains unique wetlands and habitats and has been designated a shoreline of Statewide Significance. A spill would impact an Area of Hemispheric Importance for migratory birds, which are directly threatened by the presence of crude oil tanks, tankers, and railcars. Also

at risk would be one of only two known glass sponge coral reefs and numerous threatened and endangered species. Placed at risk would be marine industries that account for 31% of the Grays Harbor workforce. How does the MDNS address the potential loss of function, value and workforce?

- (13) The increase in train traffic through Grays Harbor County will have a significant impact on communities that are literally bisected by the train tracks. Emergency access can be delayed over 15 minutes due to mile long rail cars blocking crossings. In addition, rail cars cross over more than 100 creeks, rivers and streams, the majority fish-bearing. We are also concerned about impacts to surface transportation in the Hoquiam/Aberdeen facilities. How has the MDNS address surface traffic along the rail into Washington heading towards Centralia to Hoquiam?
- (14) How does the MDNS adequately address facility operations, including storage, existing piers and transfer methods?
- (15) What is the analysis of impacts on marine transportation to and from facilities, Panamax ships, Articulated Tug Barges, other vessels, including present traffic and projected additional traffic?
- (16) What is the analysis of impacts on land use and public infrastructure requirements, including alterations to roads, culverts, bridges, and overpasses in order to decrease disruption of current flows, analysis of costs and methods of payment to achieve these goals?
- (17) What is the analysis of impacts on cultural, historical and archeological issues, e.g., Treaty fishing rights/loss or impairment of usual and accustomed fishing sites?
- (18) What are the short-term and long-term effects of negative impairment of totemic species, e.g., salmon, razor clams, Orca and migratory birds?
- (19) What are the effects to the function and value of wetlands due to loss from fill, stormwater runoff pollution including from rain or wash down facilities and increased impervious surfaces and potential oil spill?
- (20) How will water resources, including fresh water, surface and groundwater be impacted? The MDNS does not consider water use at Facilities and pollution discharges.
- (21) Salt water concerns: normal/permitted pollution from discharges including sewage/ballast/bilge/stormwater/petroleum products, solvents and other industrial substances including those unknown substances that are part of the crude oil fracking process; from accidents and from introduction of invasive species. How has the MDNS addressed these specific concerns?
- (22) There are potential impacts to sensitive areas within the Harbor and on the open ocean coast. How will these areas be protected?

- (23) Aquatic invasive species introduction due to increased freight traffic – rail and vessel are a significant probability. How will these issues be addressed and controlled?
- (24) Nearshore changes due to increased shading from added vessels, including impacts to plants and animals. How will this be minimized or eliminated?
- (25) Human health, increased diesel fumes from trains, vessels and loading equipment. What preventive measures will be taken to eliminate or avoid these impacts? How will health issues that arise from this increase be addressed and paid for?
- (26) Impacts to federally-listed or state-listed and concerned marine species, including but not limited to: changes to currents, alteration of landforms; light changes (on land or at water), light pollution at night, changes in ability of light to penetrate water columns and to reach bottom as shading from dock/lingering ships noise pollution from operation of Port. How will these issues be eliminated or averted?
- (27) Impacts to salmonid species, sea run cutthroat, bull trout, pacific sand lance, smelt, English sole, essential forage fish, shellfish, razor clams, oysters, etc. could be catastrophic and long-term. What preventions will be in place and what mitigation would in place if a problem occurred? Would those affected be compensated? Who would pay that compensation?
- (28) What would be the impacts due to increased vessel traffic to visiting whale, gray whale, harbor seals and other large animals?
- (29) Impacts to migratory birds. GH is a hemispherically important stopping point for 500,000 – 1,000,000 migratory shorebirds. GH hosts over 50% of the western Red Knot population each year. What would be the effect of an incident on the mudflats and feeding grounds for the migratory bird population?
- (30) What are the hazardous materials on hand as part of operations and how are they protected from entering the waste flow on-site and off-site?
- (31) Vessel traffic increases and conflicts with existing marine resource uses such as crabbing, trolling and recreational fishing. How will these traffic flows be monitored and enforced? If the tide or fishing window is optimal for existing marine resource industries and a vessel is scheduled to depart, who will have precedence?
- (32) Air Pollution. Studies assessing the potential impacts of international shipping on climate and air pollution demonstrate that ships contribute significantly to global climate change and health impacts through emission of GHGs (for example, carbon dioxide [CO₂], methane [CH₄], chlorofluorocarbons [CFC]), aerosols, nitrogen oxides (NO_x), sulfur oxides (SO_x), carbon monoxide (CO) and particulate matter (PM). Air quality impacts may result from the chemical processing and atmospheric transport of ship emissions. For example, NO_x emissions from ships can combine with hydrocarbons in the presence of sunlight to produce ozone pollution, which can potentially affect visibility through haze, human and environmental health and has been associated with climate change effects. All classes of ocean-going marine

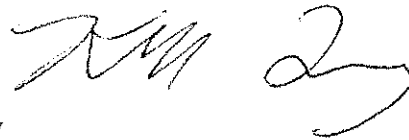
vessels equipped with engines have the capacity to cause air pollution. Will there be facilities to allow the vessels to operate on cleaner energy while in port?

- (33) Because more than 50% of a ship's operating expense is generally the cost of fuel oil, most of the world's ship operators seek the cheapest fuels available; in which high levels of pollutants is the price of their cheaper cost rather than cleaner alternatives. Accordingly, the diesel engines that power the vessels are often significant mobile source emitters of pollution in terms of sulfur oxides, fine particulate matter, nitrous oxides and resultant low-level ozone. How will these be addressed and eliminated or minimized?
- (34) Visual and aesthetic considerations, as the area becomes an oil port. How will this affect housing, business and other real estate values?
- (35) Increased global climate change and ocean acidity due to burning of the product. The global warming impacts of this facility would be significant, both on a local and global scale. The Westway facility alone would generate approximately 15,000 metric tons/year of CO₂ equivalent from rail, marine vessel, automobile, and Marine Vapor Combustion. Further, 10 million barrels of new shipping capacity will expand a presently transportation constrained market, allowing for increased rates of extraction, refining and end-use consumption that will lead to significant global warming pollution. Increased production also threatens public health as there is little to no regulation on toxic pollution coming out of wells and facilities where hydraulic fracturing is the primary mode of extraction. The significant influx of rail, automobile and shipping transportation resulting from the crude-by-rail shipping facility also will have impacts on local air quality and will exacerbate traffic congestion. How will this affect global greenhouse gas emissions and efforts to control these issues?
- (36) Wave and current impacts from increased ship activity. Dredging depths impact inner Harbor mudflats and sand islands. Decrease in lease values or elimination of oysterlands. How will increased vessel-oriented maintenance support current marine resources?
- (37) Impacts of the additional transportation of crude oil into domestic ports in Washington State and California. What has been the analysis of the indirect impacts of the proposed project(s)?
- (38) There has been an inadequate analysis of alternatives and project purpose.
- (39) There has been an inadequate analysis of indirect impacts.
- (40) Inadequate discussion of fire and emergency response along the entire rail line. Hoquiam has been experiencing increased incidents with fewer personnel and less equipment to respond. If there were more than one incident at one of the terminals or elsewhere in the City, how would the emergency services be able to respond?

We ask the co-lead agencies to withdraw the MDNS and require an Environmental Impact Statement (EIS). An EIS is appropriate and necessary given the magnitude of the proposed development and the fragility of the estuary and ocean beach environment.

Please place me and the above listed organizations on all mailing lists associated with this project and inform us of any developments with the application.

Yours very truly,
Smith & Lowney PLLC



By

Knoll Lowney

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