

**BEFORE THE CITY OF HOQUIAM
LAND USE HEARING EXAMINER**

Eric R. Toews, Land Use Hearing Examiner

RE: WESTWAY TERMINALS, INC., Conditional Use Permit Application (CUP #13-01)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION
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I. INTRODUCTION

Applicant Westway Terminals, Incorporated, has requested a Conditional Use Permit (CUP) to construct four (4) 64-foot tall crude oil storage tanks on property located at Terminal #1 at the Port of Grays Harbor. The storage tanks are a component of a larger crude oil by rail handling, storage and transfer facility that straddles the municipal boundary between the cities of Hoquiam and Aberdeen.

The site is currently used by Westway Terminals, Incorporated as a bulk methanol storage facility. The proposed project will expand the applicant's operations to include an area to the south to be leased from the Port for crude oil handling, storage and transfer operations. Historically the Port used the 16.2-acre site for temporary log storage and log transfer operations.

Generally, the site is bounded on the northwest, north and east by industrial operations on land owned by the Port of Grays Harbor and leased to private entities. To the northwest and north lies the Imperium Renewables Incorporated, biodiesel production facility; to the east (on leased land that straddles the municipal boundary between Hoquiam and the City of Aberdeen) lies a bulk grain storage and transfer facility operated by Ag Processing, Incorporated; to the south lies the Grays Harbor estuary and harbor shipping channel. The Puget Sound and Pacific Railroad generally separates the Port owned industrial areas from commercial and residential areas lying to the north. The subject property is level and unencumbered by environmentally sensitive areas.

After considering the staff report, testimony presented at a public hearing conducted on May 16th, 2013, and all additional evidence submitted with respect to this proceeding, the Land Use Hearing Examiner APPROVES the conditional use permit (CUP) application as set forth herein.

II. EXHIBITS

The exhibits below were introduced into the administrative record and are formally designated as follows:

- Exhibit "A": Staff Report & Recommendation, dated May 16th, 2012 consisting of five (5) pages (not including Exhibits "B" through "I", below, which were originally appended to the staff report).
- Exhibit "B": Application for conditional use permit submitted by Westway Terminals, Inc., dated December 3rd, 2012, consisting of thirteen (13) pages (including attachments).
- Exhibit "C": State Environmental Policy Act (SEPA) Checklist, dated February 19th, 2013 and signed by Mr. Robert K. Shoemake Jr., HSEQ Regional Manager for Westway Terminals, Inc., consisting of thirty-five (35) pages (including Appendices "A" through "E").
- Exhibit "D": City of Hoquiam and Washington Department of Ecology (DOE) Responsible Officials' Amendments to the Environmental Checklist and Threshold Determination (a Mitigated Determination of Nonsignificance (MDNS)) for Westway Terminal Tank Farm Expansion Project, dated April 4th, 2013, and signed by Mr. Brian J. Shay, City Administrator for the City of Hoquiam, and by Ms. Sally Toteff, Southwest Regional Director for DOE, consisting of eleven (11) pages.
- Exhibit "E": Letter from Mr. Gary G. Nelson, Executive Director of the Port of Grays Harbor, to Mr. Brian Shay, Hoquiam City Administrator, commenting on the MDNS referenced in Exhibit "D" (consisting of two (2) pages, dated April 18th, 2013).
- Exhibit "F": Joint Aquatic Resources Permit Application Form (JARPA) submitted by Mr. Robert K. Shoemake, HSEQ Regional Manager for Westway Terminals, Inc., consisting of eighteen (18) pages, and dated December 3rd, 2012).
- Exhibit "G": Critical Areas Report Checklist (with attachments) prepared Mr. Robert K. Shoemake, HSEQ Regional Manager for Westway Terminals, Inc., consisting of thirty-four (34) pages, and dated December 3rd, 2012).
- Exhibit "H": Affidavit of publication from the *Montesano Vidette* newspaper, dated March 21st, 2013, setting forth the Notice of Application for Shoreline Substantial Development Permit, Case #SMA 12-07, an application to expand the bulk liquid storage terminal of Westway Terminals, Inc., consisting of one (1) page.
- Exhibit "I": Notice of Application for Conditional Use Permit for the proposed expansion of the bulk liquid storage terminal of Westway Terminals,

Inc., from *The Montesano Vidette* newspaper, consisting of one (1) page.

Exhibit "J": Comment letter from Mr. Knoll Lowney, Attorney for Friends of Grays Harbor, Grays Harbor Audubon Society, the Sierra Club, the Surfrider Foundation and Citizens for a Clean Harbor to Mr. Brian Shay, Hoquiam City Administrator, commenting on the CUP application referenced in Exhibit "B" (consisting of three (3) pages, dated May 15th, 2013).

The Land Use Hearing Examiner adopts by reference the exhibits enumerated above as fully as if set forth herein.

III. ORAL TESTIMONY

The Examiner opened the public hearing at 10:30 a.m. on May 16th, 2013 in the City Council Chambers located at 609 8th Street, Hoquiam, Washington 98550. City Planner, Mr. Joshua Beach introduced the Staff Report and Recommendation and explained the basis for the conditional use permit (CUP) application and staff's recommendation of approval regarding the proposal.

The Examiner noted that the proposal had come before him because of the height of the proposed structures, not because of the nature of the use per se. The Examiner inquired as to the legislative background of the relevant code provision, which requires issuance of a CUP for any industrial use in the Industrial District that exceeds fifty-five (55) feet. In particular, the Examiner inquired as to whether all the review and approval criteria of HMC §10.07.130(a)-(g) were applicable, or only those directly relevant to the issue of height (i.e., criteria (e) and (f), respectively). In response, Mr. Beach clarified that it was staff's opinion that all of the review and approval criteria for conditional uses set forth in Section 10.07.130(2) applied to the instant application.

The Examiner then sought to clarify the status of the SEPA threshold determination, asking specifically if the amended SEPA checklist and MDNS issued on April 4th, 2013 was final and conclusive, and whether the comments and concerns raised by the Port of Grays Harbor (see Exhibit "E") had been addressed. Mr. Brian Shay, Hoquiam City Administrator and SEPA Responsible Official indicated that the proposal had been the subject of a detailed SEPA review and threshold determination, and that the City of Hoquiam had been the "co-lead" along with the Washington Department of Ecology. He stated that no appeal of the MDNS had been filed, but clarified that the Hoquiam Municipal Code did not specify a process or timeframe for such appeals. He indicated that the MDNS had not been specifically amended based upon comments received from the Port of Grays Harbor, but that some of the issues requiring clarification

that had been raised by the Port would be dealt with through conditions attached to the Shoreline Substantial Development Permit, which has not yet been issued.

The Examiner then inquired as to whether staff had an opinion on the appropriateness of specifically adopting and incorporating by reference the mitigation measures set forth in the MDNS, as doing so would appear to comprehensively address the CUP review and approval criteria of HMC §10.07.130. Staff was specifically queried on the appropriateness of adopting and incorporating by reference mitigating conditions from the threshold determination within the CUP that applied to areas beyond the territorial limits of the City of Hoquiam. In this regard, the Examiner referenced the statement on pages 3 and 4 of the MDNS that indicates that “[t]hese mitigation measures shall be deemed conditions of approval of the land use and/or permits issued under Hoquiam Municipal Code 10.07 and 11.04.” Neither Mr. Beach nor Mr. Shay provided a definitive response to this question.

Finally, the Examiner noted that he had been provided with written testimony in the form of a letter submitted by Mr. Knoll Lowney, Attorney, on behalf of the Friends of Grays Harbor, Grays Harbor Audubon Society, the Sierra Club, the Surfrider Foundation and Citizens for a Clean Harbor. As noted, supra, this letter has been included in the administrative record as Exhibit “J”.

Following staff interrogatories, the Examiner opened the hearing to receipt of public testimony. The applicant’s representative, Mr. Doug Townsend of the Harris Group, 300 Elliot Avenue West, Suite 500, Seattle, WA 98119, was present for the hearing, but declined to offer testimony.

Mr. Dave Forbes of 2216 Aberdeen Avenue, Hoquiam, WA 98550, asked for clarification on the scope of the question before the Examiner. He stated that he had had a difficult time hearing and understanding the questions posed by the Examiner to staff, as well as the staff responses. He wished to know whether only the issue of the height of the crude oil storage tanks was before the Examiner, or whether the potential impacts associated with the entire proposal were being reviewed and considered. The Examiner stated that based on the responses of staff and a review of the code, that the proposed use, not merely the height, was being assessed.

Mr. Forbes then proceeded to express his concern about the potential impacts to transportation systems in Grays Harbor County and the cities of Hoquiam and Aberdeen. He noted the significant increases in railroad traffic that would be occasioned by approval of the proposal, and expressed his concern that these impacts had not yet been fully studied or mitigated. He questioned how a MDNS could be issued in advance of preparation of the Rail Transportation Impact Analysis called for in the threshold determination, suggesting that it was not

possible to conclude that impacts had been adequately mitigated prior to their identification, and that the rail impact study should be completed first.

Mr. Arnie Martin of 631 Chenault Avenue, Hoquiam, WA 98550, echoed Mr. Forbe's comments and concerns, suggesting that the impacts of increased rail traffic would be felt from Grays Harbor County back to the source of the crude oil being transported: North Dakota. He stated that, thus far, impacts have been completed on a project-by-project basis, with no cumulative impacts to the overall railroad and transportation system having yet been completed. He also suggested that the overall transportation impacts of this increased railroad use be fully ascertained prior to project approval.

As no other citizens wished to testify, the hearing was closed at approximately 11:05 a.m.

IV. FINDINGS

1. An application was received from Westway Terminals, Inc., on December 3rd, 2012, for a conditional use permit (CUP) 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. Because the proposal requires the construction of four (4) sixty-four (64) foot tall crude oil storage tanks, a CUP is required.
2. The subject site is leased by the applicant from the Port of Grays Harbor and is located at 3128 Port Industrial Road, Terminal #1, Hoquiam, WA 98550. The proposal is part of a larger crude oil handling, storage and transfer facility that straddles the municipal boundary between the cities of Hoquiam and Aberdeen. The subject site comprises approximately 16.2 acres and is located adjacent to the Grays Harbor estuary and shipping channel (i.e., Chehalis River) (Section 18, Township 17 North, Range 9 West W.M., tax parcel number 056402300000, and Section 7, Township 17 North, Range 9 West W.M., tax parcel number 029902000200).
3. Historically, the Port of Grays Harbor used the site for temporary log storage and transfer operations. Generally, the site is bounded to the northwest and north by Imperium Renewables Incorporated (a biodiesel production facility) to the east by Ag Processing, Incorporated (a bulk grain storage and transfer facility), and to the south by the Grays Harbor estuary and harbor shipping channel. Thus, adjoining parcels are devoted exclusively to industrial and commercial uses and Port operations. The Puget Sound and Pacific Railroad generally separates the Port owned industrial areas from commercial and residential areas lying to the north. The property is level and unencumbered by environmentally sensitive areas.

4. As required under the State Environmental Policy Act (SEPA) (Chapter 43.21C RCW) and the Washington State Administrative Code (Chapter 197-11 WAC), the City of Hoquiam and the Washington Department of Ecology (DOE) issued a joint mitigated determination of nonsignificance (MDNS) for the proposal on April 4th, 2012.

5. The Hoquiam Municipal Code (hereinafter "HMC") states that the "*I district provides for industrial uses and small businesses engaged in the design, development, manufacturing, fabricating, testing, servicing or assembly of manufactured products.*" HMC §10.03.020(3)(e).

6. The HMC further states as follows:

"The general purposes of the industrial district are to provide a variety of manufacturing and marine-related uses in limited areas, which if located elsewhere would be unacceptable. The district protects residential and nonmanufacturing areas from adverse effects associated with industrial activity. The district promotes economic diversification and employment opportunities for present and future residents. Activities within the district may include small-scale manufacturing, processing, fabrication and assembly of products and materials, warehousing, storage, and transport facilities. Marine-related activities may include boat-related haul-out, repair and fabrication, painting services, and associated retail sales. The district also accommodates heavy manufacturing activities including processing, assembling of products or bulk storage." HMC §10.03.112.

7. HMC §10.03.100(3), sets forth the maximum density and minimum dimensional standards for the City's zoning districts, and establishes a 55-foot height limitation for structures located within the Industrial Zoning District. However, the 55-foot limitation is linked to a footnote following the density and dimensional standards table which states that "[h]eights greater than 55 feet require a conditional use permit."

8. If approved, the four (4) storage tanks that are part of the applicant's proposed bulk liquid storage terminal would stand approximately 64-feet in height, and would be an integral component of a larger crude oil handling, storage and transfer facility that straddles the municipal boundary between the cities of Hoquiam and Aberdeen.

9. The criteria for Conditional Use Permits are set forth in HMC §10.07.130.

10. In accordance with the requirements of HMC 10.07.070, a Notice of Application was published in the *Montesano Vidette* on March 21st, 2013.

11. Other than the exhibits incorporated within Section II and the oral testimony summarized in Section III hereinabove, no comment letters or exhibits were submitted into the record in response to the Notice of Application for Conditional Use Permit.

V. CONCLUSIONS

1. Consistent with the provisions of HMC §1.55.080 and HMC §10.07.130, authority resides with the Land Use Hearing Examiner to review the Conditional Use Permit application, conduct an open record public hearing, consider written and oral testimony, and make a decision to approve, approve with conditions, or deny the application.

2. The code provisions and review criteria recited and discussed in conclusions 3 through 6, below, pertain to the instant project.

3. The City of Hoquiam’s Land Development Code applies *“to all land within the existing and future corporate boundaries of the city of Hoquiam.”* HMC §10.01.030. The purposes of Hoquiam’s Land Development Code relate to the protection of adjacent properties and to the protection and promotion of the health, safety and welfare of the citizens of the City of Hoquiam. HMC §10.01.020.

4. The proposed use is identified as a permitted use within the table set forth in HMC §10.03.116, not a conditional use. However, HMC §10.03.100(3) specifically requires that uses involving structures that exceed 55 feet in height be subject to conditional use review. Because the four (4) proposed liquid petroleum storage tanks are 64 feet in height, issuance of a conditional use permit is required. The following provisions of the Hoquiam Municipal Code were reviewed and considered in reaching this conclusion:

HMC §10.03.090, Table of permitted and conditional uses, subsection (2)(c): *“If the letter ‘P’ appears in the box at the intersection of the column and the row, the use is a permitted use, allowed by right in that district and subject to the general requirements of Chapter 10.05 HMC.”*

HMC §10.03.116, Table of Permitted and Conditional Uses – Commercial, Industrial and Natural Resources [note: only the relevant excerpt from the use table is depicted]:

Commercial, Industrial and Natural Resource Land Use	C-1	C-2	I	NR
<i>Industry, heavy</i>			P	

HMC §10.03.100(3), Table of Maximum Density and Minimum Dimensional Standards for Land Use Districts [note: only the relevant excerpt from the table is depicted]:

Development Standard	R-1	R-2	C-1	C-2	I
Maximum Height	35	35	55	55	55*

**Heights greater than 55 feet require a conditional use permit.*

5. The public health and safety standards of HMC §10.05.120(1)-(8) are applicable to all new development occurring within the City of Hoquiam. In this regard, the Examiner expressly concludes as follows:
- a. The Olympic Region Clean Air Agency (ORCAA) will issue the necessary notice of construction approval for the project. Operation of the storage facility, the subject of this review, is dependent upon receiving approval of necessary permits from ORCAA. Therefore the requirement of HMC §10.05.120(1) is satisfied.
 - b. There would be increases in noise at the site both during construction and in the long term. Long-term sources of noise will occur as a result of operation of the storage facility. Noises from these sources would be typical of those associated with industry and shipping in the area. However, nothing entered into the record suggests that the project would not be able to meet the noise standards of HMC §10.05.120(2).
 - c. Ambient light levels in the area would be elevated somewhat as a result of nighttime lighting on site. The applicant may also be required by the Federal Aviation Administration to mark and or/light the structure. This lighting would be typical of that associated with industrial and shipping operations in the area. There is no indication that the project proponent would need to install fences, walls, or other devices to obscure light and glare in order to meet the requirements of HMC §10.05.120(3).
 - d. HMC §10.05.120(4) permits the use and/or storage of hazardous substances, as defined in RCW 70.105.010(14), only within the C-1, C-2, and I districts. All hazardous substances are required to be stored and/or transported in approved containers that prevent any leakage to the air, earth, and/or surface or ground water. The Examiner concludes that transportation of crude oil by rail car is an approved method of transporting said material and further, that the four (4) storage tanks to be constructed on site will be inspected by City of Hoquiam officials to ensure that they meets all applicable requirements.
 - e. Wastewater generated at the facility would be directed either to publicly-owned treatment works or to a private wastewater treatment facility in accordance with State Waste Discharge regulations, and thus would meet the requirements of HMC §10.05.120(5).
 - f. The proposed storage tanks are not expected to increase stormwater runoff significantly. The site has been previously permitted and

used for industry and therefore is largely covered by impervious surfaces. Moreover, there are existing stormwater facilities onsite. The proposed conveyance system operation will meet the requirements of HMC §10.05.120(6).

g. The proposed project does not include plans that would increase erosion and sedimentation. There are no plans to remove vegetation or excavate soils on site. Therefore the requirements of HMC 10.05.120(7) have been satisfied.

h. Finally, there is no indication that the project would not be able to meet the vibration and concussion control requirements under HMC §10.05.120(8).

6. Based upon the Staff Report (Exhibit "A") and relevant testimony, the Land Use Hearing Examiner concludes that the proposal, as mitigated through the SEPA MDNS, satisfies the conditional use criteria set forth in HMC §10.07.130. In reaching this conclusion, the Land Use Hearing Examiner has considered the measures set forth within the MDNS in relation to the proposed crude oil by rail handling, storage and transfer facility and the following: the potential for environmental hazards and pollution; the potential for traffic hazards and congestion; street and road capacities in the area; the location and amount of off-street parking; the potential for visual and auditory impacts; and the potential for obtrusive visual blight. The Land Use Hearing Examiner concludes that the project satisfies HMC §10.07.130 and the requirements contained in Title 10 HMC. The following provisions of the Hoquiam Municipal Code were reviewed and considered in reaching this conclusion:

10.07.130 Conditional use permits:

- (1) *The purpose of this section is to establish the procedures for granting conditional use permits for uses described in HMC 10.03.090(3). The Land Use Hearing Examiner may not grant a conditional use permit for uses not specifically listed in these sections.*
- (2) *It is recognized that certain uses possess unique and special characteristics with respect to their location, design, size, method of operation, circulation, and/or public facilities. Therefore, the Land Use Hearing Examiner may impose reasonable conditions on an applicant relating to a conditional use permit to protect the public health, safety and welfare and the best interests of the surrounding property owners or neighborhood. The Land Use Hearing Examiner may also require guarantees and evidence to ensure that the applicant complies with such conditions. In determining any conditions applied to the granting of a conditional use permit, the Land Use Hearing Examiner shall consider the following impacts by the application:*
 - (a) *Environmental hazards and pollution;*

- (b) *Traffic hazards and congestion;*
 - (c) *Street and road capacities in the area;*
 - (d) *Location and amount of off-street parking;*
 - (e) *Visual and auditory impacts;*
 - (f) *Obtrusive visual blight; and/or*
 - (g) *Any other unusual impact associated with the proposed conditional use.*
- (3) *Issuance of a conditional use permit shall not allow a variation from any of the specific or general provisions of this code.*
 - (4) *The Land Use Hearing Examiner shall review all applications for conditional use permits, conduct an open record public hearing, consider written and oral testimony, and make a decision to approve, approve with conditions, or deny an application.*
 - (5) *The Land Use Hearing Examiner will issue a decision to approve, approve with conditions or deny the application for a conditional use permit not later than seven days after the close of the open record public hearing.*
 - (6) *The decision of the Land Use Hearing Examiner shall be final and conclusive after twenty-one days of the notice of decision unless appealed to superior court.*
 - (7) *An applicant granted a conditional use permit must complete all associated construction activities within one year of the notice of decision. Failure to meet this requirement shall render the conditional use permit void."*

7. The Land Use Hearing Examiner concludes that the project as presented in the application is entirely consistent with prior relevant decisions issued by the Examiner, specifically, CUP decisions #08-02 and #10-02), and will not detract from the public health, safety and welfare, will not detract from the best interests of the surrounding property owners or neighborhood, and therefore, should be approved.

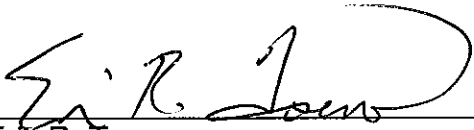
VI. DECISION

Based upon the forgoing, and after due consideration of all evidence and testimony submitted with respect to this matter, the Land Use Hearing Examiner APPROVES the conditional use permit application to construct a crude oil by rail handling, storage and transfer facility, including up to four (4) sixty-four (64) foot tall liquid petroleum storage tanks in accordance with the plans submitted for this application.

VII. APPEAL

Pursuant to HMC §10.07.130(6), the decision of the Land Use Hearing Examiner shall be final and conclusive twenty-one (21) days following issuance of the Notice of Decision embodied herein, unless appealed to superior court.

Dated this 28th day of May 2013.



Eric R. Toews
Land Use Hearing Examiner