



Application of ORMA Review Criteria to Contanda's Proposed Project

Washington's Ocean Resources Management Act ("ORMA"), ch. 43.143 RCW, sets review criteria for certain projects affecting Washington's coastal waters. The City of Hoquiam recently amended its shoreline management ordinance and now implements ORMA by requiring compliance with the Act and the implementing regulations adopted by the Department of Ecology (Ecology), Washington Administrative Code (WAC) 173-26-360. See Hoquiam Municipal Code Section 11.05.090.

"Ocean uses," as that term is defined in WAC 173-26-360(3), do not appear to include terminals for refined petroleum products located at established ports. However, the Washington Supreme Court ruled in *Quinault Indian Nation v. Imperium Terminal Services, LLC*, 187 Wn.2d 460, 387 P.3d 670 (2017), that ORMA's review criteria apply to certain petroleum terminals located in ports adjacent to Washington's coastal waters that would transfer petroleum products between land and marine transport and that require a shoreline substantial development permit. The Court concluded that ORMA should be liberally construed to address "broad concerns surrounding the environmental dangers of collecting and transporting oil near" Washington's shores.

The Court did not specify a particular trigger for ORMA review, such as a terminal storage capacity or throughput threshold. Rather, the Court based its decision on the elements stated in RCW 43.143.030(2), which provides that ORMA's review criteria apply to uses that: (a) require permits or other approvals; and (b) will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coastal uses. The Court said that the two projects at issue in that case were designed to move "tens of millions of gallons of petroleum products" across Washington's coast and would add about 520 vessel transits and 973 train transits a year to the Grays Harbor region. Based on the proposed throughput and traffic levels but without any evidence of actual or likely harm that would result from the projects, the Court concluded that the projects "pose a great risk of adversely impacting renewable resources with their increased threat of environmental harm. They may also adversely impact navigation or preexisting ocean or coastal uses in the area by creating a substantial increase in ocean vessel and rail transits and increased risk of oil spills on coastal waters and coastline." The Court concluded that ORMA's review criteria applied based upon those potential impacts.

Contanda currently is applying for a shoreline substantial development permit for expansion of its Grays Harbor terminal with about a third less projected annual throughput, substantially fewer rail cars and about half the associated vessel traffic compared to the projects at issue in *Quinault Indian Nation*. Contanda's current proposal is more fully described in the *Contanda Terminal Expansion Project State Environmental Policy Act Evaluation*. The products that will be handled by the terminal also are much less environmentally persistent than the crude oil at



issue in that case. The largest volume petroleum products – distillate fuel (i.e., diesel) and gasoline – are commonly in use in Grays Harbor as fuel for vehicles and marine vessels and are stored in smaller quantities at gas stations, fuel docks and other facilities throughout the region. Normal operations of the proposed terminal are not expected to “adversely impact renewable resources, ... recreation, navigation, ... or other existing ocean or coastal uses.” Spill contingency planning and response capabilities, already required by State and federal law, also substantially reduce the risk that an accident would result in adverse impacts to those resources. As a result, the criteria articulated in RCW 43.143.030(2) and relied upon in *Quinault Indian Nation* may not trigger ORMA review for this project. Nevertheless, the newly proposed project meets all of ORMA’s review criteria, as demonstrated below.

Compliance with Ocean Resource Management Act Criteria WAC 173-26-360(6) Permit Criteria

(a) There is a demonstrated significant local, state, or national need for the proposed use or activity

The State’s interest in coastal and ocean resources includes a continuing interest in fostering marine transportation, which ORMA recognizes has “played a major role in the history of the state and will continue to be important in the future.” RCW 43.143.005(2). ORMA’s project review criteria must be applied consistently with its policies, RCW 43.143.030(1), which favor the development of marine transportation and its role in Washington’s economy. RCW 43.143.005(2). This is particularly relevant in considering the need for port development projects like Contanda’s project.

Contanda’s proposed terminal expansion will advance the significant local need for economic development, which is among the objectives of the community having a commercial port. Data compiled by the Grays Harbor Council of Governments¹ indicate that in 2015, unemployment in Grays Harbor was at 8.9 percent, compared to a Washington State average of less than 5 percent.² In 2015, 14 percent of all persons in Grays Harbor were estimated to be living below the poverty level, compared to 12 percent across Washington as a whole; over the period 2010-2014 18.8 percent of Grays Harbor residents were in poverty.³ There is a significant local need for economic development.

The Port of Grays Harbor (Port) is one of the key tools for fostering economic development in the Grays Harbor region. The Port was one of the first port districts formed in the State of Washington. It has adopted as its mission the fostering of trade and economic development for the betterment of the region. The Port also has had success in fostering economic development. In 2014, the Port commissioned a study, conducted by Martin Associates and based on 2013 data, to evaluate the contribution that businesses operating out of the Port

¹ Grays Harbor Council of Governments, Demographic Highlights (2015).

² Washington State Employment Security Department, Grays Harbor County profile (updated Nov. 2016).

³ U.S. Census Bureau, American Community Survey (2015, 2010-2014).



make to the local economy.⁴ That study found that the Port's four deepwater terminals generated 574 direct jobs, 645 induced jobs and 305 indirect jobs, with an average salary of \$63,134. By comparison, data compiled by the Grays Harbor Council of Governments indicates that the median household income in Grays Harbor in 2015 was \$44,345. Thus, the Port's deepwater terminals are responsible for bringing high value, high wage jobs to the region. Contanda's proposed terminal expansion project fits firmly within the mission of the Port of Grays Harbor. It would serve the significant local need for new economic development by generating local construction jobs, as well as adding long-term employment associated with terminal operations at salaries comparable to or better than the average for other Port-related jobs and well above the local median household income.

In 2013, ECONorthwest conducted a study of the potential economic contribution from Westway's proposed crude-by-rail project, finding that construction of the Westway project could generate 128 direct construction jobs in Washington, 193 indirect jobs and 162 induced jobs.⁵ Contanda expects the currently proposed project will result in 80 to 100 construction jobs. While Contanda's current proposal would result in about two-thirds of the maximum product throughput proposed for crude-by-rail, it would involve construction of more tanks and about the same total storage capacity. Other components of the project (expanded rail spurs, piping, secondary containment, other terminal infrastructure) would be the same or very similar to what would be needed for a crude oil terminal, making the ECONorthwest projection reasonably representative of construction related employment associated with Contanda's current terminal expansion proposal.

ECONorthwest estimated that Westway's proposed crude-by-rail operations would add 15 direct terminal jobs and 21 direct marine and rail jobs and that the project's ongoing operations, including its rail and vessel components, would result in 20 indirect jobs and 17 induced jobs. Contanda estimates that the current proposal would generate between 4 and 20 direct jobs. Contanda's project will involve around a third less annual throughput than the crude-by-rail project, as well as less rail traffic and about half of the vessel traffic contemplated by the crude-by-rail project. As a result, the ongoing operation of Contanda's proposed terminal expansion is likely to produce fewer new direct, indirect and induced jobs than the crude-by-rail proposal, but ECONorthwest's study is still indicative of the scale of the economic impact Contanda's current project could have on the local economy. And as noted above, the salaries for these new jobs would be at least comparable to the average salary for other jobs produced by the Port of Grays Harbor's existing deepwater port operations.

In addition to direct and indirect employment, construction of the proposed project would generate significant sales tax in the local community and in Washington State and, once established, the proposed project would generate additional property tax for the local community on an ongoing basis. These revenue streams support the local economy, providing local revenue that would be lost if the proposed project were built elsewhere.

⁴ Martin Associates, *The 2013 Economic Impact of the Port of Grays Harbor* (October 2014).

⁵ ECONorthwest, *Economic Impact Analysis of Bulk Liquid Storage Facilities at the Port of Grays Harbor* (September 2013).



Contanda also has been approached by local interests that have considered constructing a local bulk storage facility for fuel to serve commercial and retail distribution channels. Rather than build a separate facility, they are interested in using Contanda's proposed project as bulk storage to serve the local ultralow sulfur diesel fuel market. Fuel delivered to Contanda's terminal by rail would be delivered through the new truck racks that are proposed as part of the current proposal, for distribution to local commercial and retail outlets to provide fuel for vehicles and marine vessels. While this would represent only a portion of the fuel shipped through Contanda's terminal, it would meet a local need for safe and economically efficient fuel storage for local distribution. It also would reduce the volume of gasoline and diesel trucked to the Grays Harbor region from Tacoma or elsewhere in the region, reducing traffic congestion and the greenhouse gas emissions associated with the truck traffic.

Contanda's terminal expansion project also will serve the significant regional need for improving and expanding the transportation of refined petroleum products. Contanda proposes to rent bulk liquid storage space to the owner of the products that would be transported through the facility. Contanda will provide the services of unloading rail cars, storing products, and loading vessels. The owners of the products or their agents will be responsible for arranging rail and vessel transportation of the liquid products. As a provider of a service to the bulk liquid transportation market, Contanda's proposed project represents just one node within the much broader network that transports domestic petroleum resources for domestic use. The storage space at a marine terminal is a buffer in that transportation network, making the transfer of products from rail to vessel more efficient, thereby facilitating the movement of bulk liquid cargo using both modes of transport and improving the efficiency of the overall transportation system.

(b) There is no reasonable alternative to meet the public need for the proposed use or activity

ORMA's review criteria have never been applied to a project before and ORMA provides no guidance as to how the "no reasonable alternative" criterion should be applied in making a permit decision. However, it is readily apparent from the structure of the statute that to be a "reasonable alternative" with the meaning of ORMA, an alternative to the proposed project must meet the demonstrated need that is satisfied by the project under review and do so without impacting renewable ocean resources. See RCW 43.143.010(3) ("When conflicts arise among uses and activities, priority shall be given to resource uses and activities that will not adversely impact renewable resource over uses which are likely to have an adverse impact on renewable resources."). If an alternative would have the same or similar impacts, ORMA's policy objectives indicate that it should not be given priority over the proposed project and so should not be considered a "reasonable alternative." This interpretation is supported by Ecology's general ocean use guidelines, which call for favoring alternatives with fewer impacts. WAC 173-26-360(7)(a), (b) and (c). Ecology's general ocean use guidelines also suggest that any alternatives should be commensurate with the need for the use, meaning within similar geographic scope. WAC 173-26-360(7)(d).



Contanda's proposed terminal expansion would be part of a regional transportation system to move distillate fuel, gasoline and other petroleum products from refineries to markets on the west coast of the United States. Its purpose would be to facilitate the transfer of bulk liquids between two forms of transportation: from rail to marine vessels. This would fulfill one of the typical functions of port facilities, a function that may be served only by constructing a marine bulk liquid terminal at the interface between land and sea. There is no reasonable alternative means of transferring bulk liquids between rail cars, trucks, or pipelines and marine cargo vessels. Any other facility designed to fulfill this function at a different location would have the same or similar potential impacts on coastal and marine resources.

Contanda's project also would serve a local need for economic development and for governmental revenue, a local need for bulk storage of distillate fuel and gasoline, and a regional need for improved and expanded bulk storage of refined petroleum products at terminals linking rail and vessel transportation.

Grays Harbor has lagged behind other areas of Washington in employment and income for many years. The Port of Grays Harbor has had some success in fostering use of its four deepwater terminals, exemplified by the expansion of shipments of automobiles through the Port and the growth in grain shipments, although it continues to have a substantial amount of vacant, undeveloped space in those terminals. But while vessel traffic in the Port has increased slightly in recent years, as discussed below it remains a fraction of the traffic levels that occurred prior to the decline of the regional forest products industry. The region's depressed employment and economic statistics amply demonstrate the need for continued growth and diversification at the Port and throughout the local economy. Moreover, there are no reasonable alternatives for economic growth and development in the region that would diminish the value of the contributions to growth and development from Contanda's project. And because Contanda's project does not require any new pier construction or other in-water work, it has fewer environmental impacts than developing a similar terminal at a location that does not already have an adequate pier in place.

Contanda's project also could meet a regional need for bulk storage of low sulfur diesel fuel and gasoline to serve the local commercial and retail markets. This need might be met by development of a different facility, which likely would be smaller than Contanda's proposed project but would present the same range of potential environmental impacts as the Contanda project. Thus, any alternative to Contada's project that would provide bulk fuel storage to serve the local region's commercial and retail market for distillate fuel would pose the same or substantially similar impacts, and so would not be a reasonable alternative to Contanda's proposed project.

Ecology's general ocean use guidelines call for consideration of alternatives with a geographic scope similar to the scope of the need being addressed by a project. WAC 173-26-360(7)(d). There are other places in Washington – Puget Sound or Columbia River ports – where at least some of the products that will be handled by Contanda's project currently are stored and loaded onto vessels. Presumably one alternative to developing Contanda's proposed project

would be to expand terminal capacity at one of those other ports. But the impacts of moving refined products through those ports would be essentially the same as in Grays Harbor. ORMA calls for the same degree of consideration for the resources of the Columbia River as it does for Grays Harbor estuaries. RCW 43.143.030(2)(e). And Ecology's general guidelines give priority to an alternative with similar effects only if it presents a lower probability of a disaster. WAC 173-26-360(7)(c). ORMA does not apply to Puget Sound, but the waters of that region are just as sensitive as Washington's coastal waters and subject to the same environmental considerations under the Shoreline Management Act and the State Environmental Policy Act (SEPA) as are the waters of Grays Harbor. The shipping channels in Puget Sound and the Columbia are much busier than Grays Harbor, and so pose more rather than less opportunities for shipping accidents. Expanding other Washington ports is not a "reasonable alternative" under ORMA's criteria because building a marine terminal elsewhere would not avoid the potential for impacts to the renewable resources of Washington's marine waters or lower risks of spills. In addition, expanding a port elsewhere would not be a reasonable alternative because it would not meet the significant local needs for economic development, governmental revenue and bulk fuel storage for distribution in the local region.

(c) There will be no likely long-term significant adverse impacts to coastal or marine resources or uses

Ecology's general ocean use guidelines, WAC 173-26-360(7)(e), suggests use of SEPA's definition of "significant" in applying this criterion, which is "a reasonable likelihood of more than a moderate adverse impact on environmental quality." WAC 197-11-794(1). However, ORMA adds two qualifiers not found in SEPA; ORMA bars ocean uses that would have significant adverse impacts that are "likely long-term." RCW 43.143.030(2)(c); WAC 173-26-360(6). Thus, impacts on coastal and marine resources and uses are allowed under this criterion, unless they would be (a) likely to occur; (b) long-term in duration; and (c) more than moderate adverse impacts. The language of the statute and the regulation allows permitting of uses even if there is a **potential** for a significant adverse impact so long as the adverse impact is not **likely** to occur, or if a likely significant adverse impact will have a short duration.

The Westway Final Environmental Impact Statement (FEIS; City of Hoquiam and Ecology 2016) identified the following **potential** (not probable) unavoidable and significant adverse environmental impacts to coastal and marine resources or uses from the proposed crude-by-rail project: (a) a tsunami causing the rupture of storage tanks and release of crude oil into the environment; (b) potential conflicts between increased vessel traffic related to the project and tribal fishing activity in Grays Harbor; (c) increased potential for an incident involving spill, fire, or explosion at the terminal site, with increased potential for environmental damage from a spill and demand on local emergency services on site; and (d) the same potential consequences of a spill, fire or explosion resulting from rail or vessel traffic associated with the terminal project. The FEIS also identified potential significant adverse impacts due to noise from rail traffic and increased vehicle traffic delays, but those are not impacts to renewable coastal marine resources or uses and so do not fall within the scope of ORMA's review criteria. As with the potential impacts to coastal and ocean resources and uses, the impacts from rail traffic also



would be significantly reduced compared to the impacts analyzed in the Westway FEIS by the lower throughput and change of product mix under Contanda's current proposal.

As discussed in greater detail in Contanda's SEPA Evaluation, the ocean-related potential impacts are significantly diminished in scale with Contanda's current proposed project and are not likely to be significant adverse impacts. Should any of them be considered significant adverse impacts, despite the reduction in scale, they would not be long-term impacts. The bulk liquids to be handled and stored at the terminal are classified by Ecology as non-persistent or having low persistence.⁶

Vessel Traffic Impacts. Vessel traffic associated with Contanda's current proposal would not have a significant adverse impact on tribal fishing activity. The Westway FEIS evaluated the potential impact of 238 vessel transits through Grays Harbor a year, or 0.7 transits a day. Contanda's proposed project would only involve 96 transits a year or 0.26 transits a day, which is only about 40 percent of the additional vessel traffic evaluated in the Westway FEIS. At this lower rate of vessel traffic, there should not be a significant adverse impact on tribal fishing activity. Contanda also has been working closely with the Quinault Indian Nation to ensure that potential impacts on the fishery are adequately addressed.

The assessment of the potential impact of vessel traffic increases in the Westway FEIS also failed to account for the fact that vessel trips through Grays Harbor historically ranged between 2,500 and 4,000 per year. In that historical context, the addition of 96 vessel transits a year is insignificant. The Westway FEIS limited its detailed vessel traffic analysis to the period 2008 to 2012, a particularly low period for vessel traffic in Grays Harbor, noting only 1,450 vessel trips over the entire four year period. However, data on West Coast harbor usage compiled by the U.S. Army Corps of Engineers indicates that vessel traffic in Grays Harbor was as high as 12,000 vessel trips in 1986 and ranged between 2,500 and 4,000 vessel trips per year from 1991 to 2003. Loss of the local pulp and lumber mills precipitated the relatively recent decline in Grays Harbor vessel traffic, which has only recently seen a small rebound, particularly with the growth of roll on/roll off (RORO) vessel calls delivering automobiles. But even in comparison to recent traffic rates, the increase in vessel trips through Grays Harbor associated with Contanda's proposed project is not likely to have a significant impact on other harbor users.

Tsunami. The Westway FEIS included an extremely conservative set of tsunami design criteria because of the long-term impact that the release of crude oil from multiple large storage tanks could have on the environment of Grays Harbor. As detailed in Contanda's SEPA Evaluation, the products that would be handled under Contanda's current proposal are far less persistent and more biodegradable if released into the environment. Any impacts from a release – even a catastrophic release triggered by a natural disaster like a tsunami – would be relatively short term in duration. The tsunami modeling used to develop the design criteria in the Westway

⁶ Washington State Department of Ecology, *Washington State 2014 Marine and Rail Oil Transportation Study*, Publication Number 15-08-010, Appendix D, Table 57 (March 2015).



FEIS also were far more conservative than the standards that were recently developed for use around the Pacific Rim, including the west coast of the United States.

The Westway FEIS based its tsunami design criteria upon the height of a wave that could be generated by an earthquake with a magnitude that is only likely to be experienced once every 3,333 years, to which was added a safety factor of a 30 percent higher water elevation, plus another 10 percent increase in water elevation to account for potential sea level rise due to global warming. An event with a probability of occurring once in 3,333 years is not likely to occur during the life of Contanda's project. In addition, the added 40 percent increase in the projected height of a tsunami-caused wave greatly overstates the potential impact of even the worst-case tsunami evaluated in the Westway FEIS.

The FEIS justified this approach based upon the potential persistence of a large crude oil release in the environment should a tsunami cause a rupture of the facility's storage tanks. While the potential impacts of a large tsunami-triggered crude oil spill may have justified considering this very, very low probability event a significant adverse impact for SEPA purposes, the same would not be true for the much less environmentally persistent products that will be stored at the facility under Contanda's current proposal. Unlike crude oil, the products that would be stored at Contanda's facility under the current proposal are not likely to persist if released into the ocean environment, and so would not conflict with ORMA's bar to long term adverse impacts. In addition, since issuance of the Westway FEIS, the American Society of Civil Engineers (ASCE) has developed final guidance for ASCE 7 Standard, Minimum Design Loads for Buildings and other Structures, Chapter 6 – Tsunami Loads and Effects, which are based upon significantly lower water elevations than the design assumptions in the FEIS. Uncertainty remains about what the future permitting requirements will be because the ASCE recommendations have yet to be adopted into the Uniform Building Code.

The potential for long-term environmental damage associated with a large-scale tsunami remains unlikely and the impacts of a tsunami on the proposed facility would not produce long-term adverse impacts, and so should not trigger ORMA's review criteria. Nevertheless, should the ASCE 7-6 recommendations be adopted by a future Uniform Building Code update before design of the currently proposed project is complete and building permit applications are submitted, the storage tanks will be designed to meet any applicable requirements of that standard.

Emergency Response. A significant spill, fire or explosion at Contanda's terminal or along the rail line or from a vessel in Grays Harbor would only occur in the unlikely event of a catastrophic accident and is not likely to result from normal terminal operations. The current proposal's significant reduction in vessel loading events and vessel trips, as well as the reduction in number of rail trips and in the number of rail cars unloaded, lowers the already very low likelihood of a significant release. Contanda has operated its existing terminal in Grays Harbor since 2009 without a single accidental release of stored product. Nevertheless, measures will be in place at the terminal and for rail and vessel operations to avoid accidents and minimize the risk of releases. Contanda also has identified measures in its SEPA Evaluation for the



current proposal that it will voluntarily implement that will provide additional protection related to emergency response preparedness and planning. Careful planning is warranted so that all emergency responders are prepared in the unlikely event that any of these low-probability events were to occur. If an emergency response were to be needed, the products that would be handled generally do not require use of specialized fire foam. And as already discussed above, the potential impact on renewable marine resources if such an incident were to occur – which is the focus of ORMA’s review criteria – could be significant in the short term but would not have long-term adverse impacts. The products that would be handled under Contanda’s current proposal are more biodegradable and less persistent in the environment if an accident were to occur, as detailed in Contanda’s SEPA Evaluation. As a result, due to low probability and the absence of potential long-term impacts, the potential need for emergency response also would not trigger this ORMA criterion.

(d) All reasonable steps are taken to avoid and minimize adverse environmental impacts, with special protection provided for the marine life and resources of the Columbia River, Willapa Bay and Grays Harbor estuaries and Olympic National Park

This ORMA criterion is easily satisfied by the existing regulatory regime, which is comprehensive and constitutes all reasonable measures to avoid and minimize adverse impacts from transporting and storing refined petroleum products. The Westway FEIS discusses the very well developed regulatory regime designed to minimize the risk of petroleum spills that would impact marine life and resources and to assure that resources are in place to respond if a spill does occur. These include oil pollution prevention requirements applicable to terminal facilities, vessel contingency and response plans and regulatory requirements for oil and hazardous material transfer operations. There also are new rules that were adopted in 2015 for rail transport of high-hazard flammable trains, including enhanced tank car standards and operational controls. The State of Washington also has its own rules for contingency planning and spill prevention and response that would apply to this project. Contanda also has identified measures in its SEPA Evaluation for the current proposal that it will voluntarily implement that will provide additional protection for marine resources.

(e) All reasonable steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing

Contanda’s proposed project would implement the relevant measures discussed in its SEPA Evaluation for the new proposed project to avoid and minimize potential adverse social and economic impacts. The only potentially significant impacts identified in the Westway FEIS that would be applicable to Contanda’s proposed project relate to the social and economic values identified in this criterion are: (a) potential conflicts between terminal-related vessel traffic and tribal fishing activity; and (b) potential impacts from a significant oil spill or release. The Westway FEIS also identifies potential traffic delays in Aberdeen and Hoquiam, but Contanda’s current proposal also would result in lower traffic impacts and in any event the speed of vehicle traffic in a community is not a renewable ocean resource or use.



The significantly lower vessel traffic associated with the proposed project (about 40 percent of the traffic increase analyzed in the FEIS) would substantially avoid the impacts on tribal fishing discussed in the Westway FEIS. To the extent any residual impacts would occur, Contanda has been working closely with the Quinault Indian Nation to ensure that potential impacts on the fishery are adequately addressed.

A significant release of bulk liquids is very unlikely to occur from Contanda's terminal operations. Nevertheless, if such a release were to occur at Contanda's terminal or in Grays Harbor it could have a significant short-term impact on social or economic values, but the duration of that impact would be significantly shorter than would result from a crude oil spill, as the refined products that would be transported through the expanded terminal are not persistent oils. And, as discussed under the prior criterion, all reasonable measures would be implemented under existing spill prevention and response and contingency planning requirements to avoid and minimize any significant release and to respond quickly to contain the spilled product and protect sensitive resources to limit the scope of any adverse impacts from any such release.

While not an ORMA-protected resource, the increase in vehicle traffic delays also would be significantly reduced from the impacts analyzed in the Westway FEIS, since there would be fewer train trips associated with the current proposal.

(f) Compensation is provided to mitigate adverse impacts to coastal resources or uses

As discussed above, there would be no likely long-term significant adverse impacts to coastal resources from construction or operation of Contanda's proposed terminal expansion. Ecology's general guidelines call for determining compensatory mitigation based upon "impacts on commercial resources, such as the crab fishery, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season." WAC 173-26-360(7)(f). The construction and normal operation of Contanda's project is not expected to have a significant adverse impact on any of those resources or uses. Accordingly, no compensation should be required.

(g) Plans and sufficient performance bonding are provided to ensure that the site will be rehabilitated after the use or activity is completed

Ecology's general ocean use guidelines call for reclamation plans and bonding to reflect the effects of closing a facility and completing the activity. WAC 173-26-360(7)(h). Contanda's proposed project will be located within the Port's Terminal 1, on a site that was developed for use as a port, which is expected to continue to serve as a port if and when Contanda ceases operating on the site. Consistent with this long-term management plan for the site, Contanda's lease from the Port states:

No later than one (1) year prior to the expiration of this Lease, the Owner and the Landlord shall meet to discuss which structures erected upon or added to the Premises



by the Tenant during the term on this Lease (the “Leasehold Improvements”) shall be owned or transferred as follows: The Tenant shall have the right to remove and retain title to any Leasehold Improvements. Thereafter, the Owner shall have the option to purchase at Fair Market Value, as defined below, any Leasehold Improvements. If neither party wishes to retain title to or purchase at Fair Market Value, as defined below, any Leasehold Improvements, they shall be decommissioned by the Tenant and shall remain on the Premises as property of the Owner. Decommissioning shall include the removal of Materials from equipment and cleaning to allow normal use. Equipment meeting applicable use standards (as an example API 650 currently for bulk tank farms, as verified by API 653 inspection) may be left in place. Equipment not meeting applicable standards will be removed by the Tenant. Any Leasehold Improvements purchased by the owner shall be at their Fair Market Value, determined in accordance with the appraisal procedure set forth below.

In short, Contanda has the right to remove all improvements to the property. If they choose not to, the Port has the option to buy the improvements. If neither Contanda nor the Port wants the improvements, Contanda must clean the site/equipment and leave it in place. Contanda’s performance of its obligations under the lease is further secured by additional provisions of its lease, including Pollution Liability Insurance (Section 20), Environmental Assessment (Section 21.F), and Performance Bond Security (Section 24).

(h) The use or activity complies with all applicable local state and federal laws and regulations

Contanda intends to obtain all required permits and approvals, which are identified in Contanda’s SEPA Evaluation, and to comply with all applicable laws and regulations.

Transportation Use Guidelines

The Washington Supreme Court also concluded that the crude-by-rail terminal proposal should be considered a “transportation use” within the meaning of WAC 173-26-360(12), which provides guidelines for ocean transportation uses, since the vessel trips from the terminal originate in Washington’s coastal waters. Contanda assumes that similar considerations will result in the City of Hoquiam evaluating Contanda’s current proposal as a “transportation use.” Accordingly, the following explains how the project satisfies the guidelines set out in the relevant portion of Ecology’s regulation:

(a) An assessment should be made of the impact transportation uses will have on renewable resource activities such as fishing and on environmentally critical and sensitive habitat areas, environmental and scientific preserves and sanctuaries.

The Westway FEIS includes an assessment of vessel traffic impacts on fishing activity and discusses the potential for a spill from a vessel to impact environmentally critical and sensitive habitat areas. As discussed above, the current proposal would generate about 40 percent the



vessel traffic contemplated by the crude oil proposal assessed in the Westway FEIS, substantially reducing the potential traffic impacts on fishing activity. Contanda also is working with the Quinault Indian Nation to further minimize impacts on tribal fishing. Any spill during transportation activities would, of course, be the result of an accident and is not an expected or intended consequence of Contanda's proposed project. Nevertheless, if a spill were to occur, the impacts would be less than discussed in the Westway FEIS because the refined products being handled under the current proposal are significantly less persistent in the environment.

(b) When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk.

Vessel traffic associated with Contanda's proposed project will be limited to the established shipping channel through Grays Harbor and to established shipping lanes outside of Grays Harbor. This is the only feasible shipping route in and out of the Port of Grays Harbor. It also is a well maintained shipping route, which minimizes the risk of an accident triggered by an unknown navigational hazard. Contanda is also voluntarily implementing the following measure to address potential safety concerns:

While commercial fishing boats are required to follow the U.S. Coast Guard navigation rules to improve awareness of vessel traffic in the navigation channel, the applicant will work with the Grays Harbor Safety Committee, including the U.S. Coast Guard and Port of Grays Harbor, to establish procedures to announce project-related vessel traffic arrivals and departures over a designated VHF marine radio channel at least 1 hour before arrival and departure.

(c) Transportation uses should be located or routed to avoid habitat areas of endangered or threatened species, environmentally critical and sensitive habitats, migration routes of marine species and birds, marine sanctuaries and environmental or scientific preserves to the maximum extent feasible.

The potential impacts of a terminal expansion project at Contanda's facility on threatened and endangered species and their habitat, sensitive habitat areas and the Grays Harbor estuary have been fully evaluated in Section 3.5 of the Westway FEIS, as supplemented by the SEPA Evaluation accompanying the Substantial Shoreline Development Permit application. The proposed project will be located at the Port of Grays Harbor's existing Terminal 1, among existing Port facilities, will use an existing dock, and requires no expansion to that dock or other in-water work. Construction of the proposed project requires no in-water construction work and no loss of shoreline or aquatic habitat. The project site currently is covered with gravel or pavement, with scattered weeds and grass, and construction activities will not have any material impact on sensitive habitats.

During operation of the proposed terminal expansion, there is the potential for spills or leaks that could affect water quality and aquatic habitat in and around the Grays Harbor shoreline.



The potential for these impacts is fully evaluated in the Westway FEIS, although the throughput would be lower and the products that will be handled by Contanda's proposed terminal expansion are less persistent in the environment than the crude oil studied in the Westway FEIS. Contanda will implement spill prevention and response measures during product transfers to avoid and minimize the risk of spills reaching the water. Vessel traffic associated with Contanda's proposed project will be limited to the established vessel channel through Grays Harbor and to established shipping lanes, thereby avoiding impacts to critical and sensitive habitats to the maximum extent feasible.