Appendix B

Laws and Regulations

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This appendix provides information on the laws, regulations, and court decisions that apply to the resources addressed in Chapter 3, *Affected Environment, Impacts and Mitigation*, and Chapter 4, *Environmental Health and Safety*. This appendix also provides information on plans, policies, and professional practices that provide guidance for management of these resources.

B.1 Federal

B.1.1 Clean Water Act of 1972 (33 U.S.C. 1251 et seq.)

The Clean Water Act (CWA) of 1972 (33 United States Code [U.S.C.] 1251 et seq.) establishes the basic structure for regulating discharges of pollutants into waters of the United States and for developing and implementing surface water quality standards. As defined in 40 Code of Federal Regulations (CFR) 122.2, waters of the United States include all navigable waters subject to the ebb and flow of the tide; interstate waters and wetlands; intrastate lakes, rivers, streams (including intermittent streams), wetlands, sloughs, mud and sand flats, and natural ponds, among other water bodies, whose use, degradation, or destruction could affect interstate or foreign commerce; tributaries and adjacent wetlands to all such waters previously mentioned; and the territorial seas. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA, are not waters of the United States.

Under the CWA, discharges of pollution from point sources are managed through a number of regulatory provisions. The following are applicable to the proposed action.

B.1.1.1 Section 301 of the Clean Water Act (33 U.S.C. 1311)

Section 301 of the CWA (33 U.S.C. 1311) prohibits the discharge of any pollutant to a water of the United States from a point source without a permit. Waters of the United States include wetlands and other waters that may contain areas of submerged aquatic vegetation that could be affected by pollutants.

Point sources are defined as any discernable, confined, or discrete conveyance such as but not limited to a pipe (e.g., outfall), ditch, channel, or container. Because the proposed action would require the discharge of stormwater to Grays Harbor through the Port of Grays Harbor's stormwater conveyance system, compliance with Section 301 of the CWA would be required.

B.1.1.2 Section 402 of the Clean Water Act

Section 402 of the CWA (33 U.S.C. 1342) establishes the permitting program, known as the National Pollutant Discharge Elimination System (NPDES), under which such discharges are regulated for construction and operations of facilities. It mandates that certain activities comply with the requirements of the U.S. Environmental Protection Agency (EPA) NPDES program. In Washington State, EPA has delegated this authority to the Washington State Department of Ecology (Ecology), and Ecology administers all of the applicable permits under the program.

B.1.2 Clean Air Act of 1963 (42 U.S.C. 7401 et seq.)

EPA regulates the nation's air emissions through the Clean Air Act (42 U.S.C 7401 et seq.). EPA first began regulating on-road mobile sources in 1970 as part of the Clean Air Act. EPA was given the added regulatory authority under Section 213 in the 1990 Clean Air Act Amendments to control the emissions from nonroad engines (e.g., construction equipment, locomotives, and ships). An extensive number of exhaust emissions standards and regulations have been issued by EPA since 1990 on all classes of nonroad engines including construction equipment, locomotives, vessels, off-road vehicles and lawn and garden equipment. Most recent regulations relevant here are the locomotive emission standards for new and rebuilt locomotive engines along with the North America Emission Control Area for marine vessels limiting the sulfur content in fuel oil. No provisions have been made to allow states (other than California) or local authorities to impose additional regulations on these source categories.

B.1.2.1 National Ambient Air Quality Standards

Under the Clean Air Act, EPA has established National Ambient Air Quality Standards for criteria air pollutants that establish the concentration of air pollutants allowed in the ambient (outside) air. The six criteria air pollutants are carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter particulate matter with a diameter of 10 or 2.5 micrometers or less, and sulfur dioxide. The National Ambient Air Quality Standards are designed to protect the most sensitive populations. Unless the state or local jurisdiction has adopted more stringent standards, EPA standards apply.

The National Ambient Air Quality Standards consist of primary standards designed to protect public health including protecting the health of sensitive populations such as asthmatics, children, and the elderly and secondary standards designed to protect public welfare (e.g., preventing air pollution damage to vegetation). Annual standards are never to be exceeded. Short-term standards are not to be exceeded more than once per year unless noted. Federal and state ambient air quality standards are shown in Table 1.

B.1.2.2 Air Toxics

Under the Clean Air Act, EPA is also required to control air toxics, which are pollutants known or suspected to cause cancer or other serious health effects, such as birth defects or reproductive effects. Examples of air toxics include diesel particulate matter, benzene, formaldehyde, and toluene. EPA has identified 188 air toxics, which it refers to as hazardous air pollutants. EPA's control of these pollutants differs from its control of criteria air pollutants. No ambient air quality standards have been established for air toxics. Instead, EPA has identified all major industrial stationary sources that emit these pollutants, and has developed national technology-based performance standards to significantly reduce their emissions and ensure that major sources of these toxics are controlled regardless of geographic location.

In 2009, EPA proposed the Endangerment Finding and the Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act. The Endangerment Findings determined that the current and projected concentrations for carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorinated chemicals, and sulfur hexafluoride posed a threat to the health and welfare of current and future generations (U.S. Environmental Protection Agency 2009). The action establishes the legal foundation for regulating greenhouse gas (GHG) emissions from sources such as vehicles, industrial facilities, and power plants.

B.1.3 Greenhouse Gas Reporting Program (40 CFR 98)

EPA issued the Mandatory Reporting of Greenhouse Gases Rule (74 *Federal Register* [FR] 56260), establishing mandatory GHG reporting requirements for owners and operators of certain facilities that directly emit GHGs. As of 2010, there is an annual reporting requirement for facilities that emit 25,000 metric tons or more of GHGs (U.S. Environmental Protection Agency 2015a).

B.1.4 Greenhouse Gas Tailoring Rule

Under the New Source Review Prevention of Significant Deterioration and Title V Operating Permit Programs, EPA established an approach to permitting GHG emissions. This ruling tailors the existing permitting requirements to include best available control technology for GHG emissions from new and existing industrial facilities (U.S. Environmental Protection Agency 2015b).

B.1.5 National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.)

The National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) established the National Flood Insurance Program (NFIP) This federal floodplain management program is designed to reduce future flood losses nationwide through the implementation of community-enforced building and zoning ordinances, in return for the provision of affordable, federally backed flood insurance to property owners (Federal Emergency Management Agency 2011:1). NFIP is administered by the Federal Emergency Management Agency, a component of the U.S. Department of Homeland Security. For the most part, NFIP is a voluntary program available to cities, towns, or counties who choose to participate based on an assessment of their site-specific flood hazards.

For communities involved in NFIP, the Federal Emergency Management Agency, typically conducts a detailed engineering flood insurance study to determine the flood hazards in a particular area. The flood hazard areas identified in the study are mapped on a flood insurance rate map for the community. These maps typically show the base flood elevations (if determined), floodplain boundaries, and a series of insurance risk zones. They also identify any special flood hazard areas—high-risk areas that include lands that would be inundated by a flood having a 1% chance of occurring in a given year, which is also referred to as the base flood or 100-year flood. Special flood hazard areas are labeled as Zone A or Zone V, both of which are often followed by a modifier that further describes site-specific conditions (e.g., Zone AO, Zone A1-A30, Zone VE, Zone V1-V30). Zone V designations are used for areas along the coasts that are both within the 100-year floodplain and subject to additional hazards associated with storm-induced waves.

In addition to special flood hazard areas, flood insurance rate maps may also show areas of moderate and minimal flood hazards, and the limits of the regulatory floodway. Moderate flood hazard areas are labeled Zone B and are defined as those areas located between the limits of the base flood and the 0.2%-annual-chance (or 500-year) flood. Minimal flood hazard areas are labeled Zone C and are those areas located above the elevation of the 0.2% annual-chance flood.[1] The regulatory floodway is defined as the channel of a river or other watercourse, and the portion of the floodplain outside the channel banks, that must be kept free from encroachment so that water from

[1] On new and revised flood insurance rate maps, Zone X is now used in place of Zones B and C, with further differentiation provided on the map by shading.

the base flood may pass through without increasing the flood level of the 100-year flood by more than 1 foot. Participating communities must regulate development in these floodways to ensure that there are no increases in upstream flood elevations.

The Cities of Hoquiam and Aberdeen are both participants in the NFIP (Federal Emergency Management Agency 2014:1, 3). Development within floodplains is regulated on the local level in Hoquiam in accordance with Hoquiam Municipal Code (HMC) 11.16 and in Aberdeen in accordance with Aberdeen Municipal Code (AMC) 15.52.

B.1.6 Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as Amended by the National Invasive Species Act of 1996 (16 U.S.C. 4711 et seq.)

Ballast water management is regulated under authority of the *Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990*, as amended by the *National Invasive Species Act of 1996* (16 U.S.C. 4711). The U.S. Coast Guard (USCG) issued mandatory ballast water management regulations in 2004 that require most vessels entering U.S. waters with ballast water from outside the U.S.'s Exclusive Economic Zone to either conduct midocean ballast water exchange, retain the vessel's ballast water onboard, or utilize an alternative control method approved by USCG (69 FR 44952). Because a number of studies have shown that mid-ocean exchange is only partially effective and not all vessels in all ports comply with these regulations, USCG issued a final rule on June 12, 2012 (77 FR 17254) establishing the most stringent standards to date for the quantity of living organisms that may be retained in ship's ballast water when discharged into waters of the United States. However, the act contains three categories of vessels that are exempt from requirements to install and operate USCG-approved ballast water management systems, including the requirements to conduct midocean exchange and the newer numeric standards for organisms in discharged ballast water (16 U.S.C. 4711; 77 FR 17254). The following categories of vessels are exempt.

- Crude oil tankers engaged in coastwise trade.
- Any vessel of the U.S. Armed Forces that is subject to the Uniform National Discharge Standards for Vessels of the Armed Forces.
- Any warship, naval auxiliary, or other vessel owned or operated by a foreign state and used, for the time being, only on government and non-commercial service.

B.1.7 Endangered Species Act (16 U.S.C. 1531–1544)

The Endangered Species Act (ESA) (16 U.S.C. 1531–1544, as amended) provides protections for imperiled species and the ecosystems upon which they depend. Under the ESA, species may be listed as endangered or threatened, meaning they are either in danger of becoming extinct or may become endangered in the near future. The U.S. Department of the Interior, acting through the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (USFWS), are responsible for implementing the ESA. USFWS is responsible for plant species and for designating critical habitat areas deemed essential to the conservation and recovery of the listed species. The USFWS Information, Planning, and Conservation online system maintains the current list of plant species protected and managed under the ESA.

Section 7 of the ESA requires federal agencies to ensure their actions, including providing federal funding or issuance of a federal permit, do not jeopardize the existence of any listed species. Section 9 of the ESA prohibits the take[2] of threatened or endangered species to provide for the protection and recovery of listed species. However, take of ESA listed plants is prohibited only on federal lands.

USFWS also works cooperatively with Washington State Department of Natural Resources under Section 6 of the ESA to conduct research and conservation activities to protect and recover rare or endangered plants.

NOAA Fisheries is responsible for managing, conserving, and protecting ESA-listed marine species, including marine mammals, sea turtles, fish (marine and anadromous), marine invertebrates, and marine plants. USFWS is responsible for terrestrial and freshwater species, including mammals, birds, reptiles, amphibians, fish, invertebrates (e.g., clams, snails, insects), and plants. Both NOAA Fisheries and USFWS are responsible for designating critical habitat for ESA-listed species, which are areas essential to the conservation of listed species. Federally listed threatened and endangered species may be present in the study area. Although no permits or approvals are required by the ESA, the proposed action could result in indirect impacts on ESA-listed species.

B.1.8 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801)

The Magnuson-Stevens Fishery Conservation and Management Act is the principal law governing marine fisheries management in federal waters of the United States. The act establishes eight regional fishery management councils responsible for preparing fishery management plans. The Pacific Fishery Management Council is responsible for preparing the fishery management plan that covers California, Oregon, and Washington (including Grays Harbor), and NOAA Fisheries is responsible for implementing and enforcing the fishery management plan. Habitats used by fisheries managed under fishery management plans are protected under the essential fish habitat (EFH) provisions of Section 305. The act defines EFH as “those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” While the fishery management jurisdiction of the act applies to federal waters (3 to 200 miles offshore), the EFH provisions of the act apply throughout the range of the managed species and extend into state-managed estuarine and riverine habitats (inshore and up to 3 miles offshore). Habitat protected under the act is present in the study area. Under the act, federal agencies must consult with NOAA Fisheries for actions that might adversely affect EFH. Although no permits or approvals are required consistent with the act, the proposed action could indirectly affect EFH.

B.1.9 Marine Mammal Protection Act of 1972, As Amended 2007 (16 U.S.C. 31)

The Marine Mammal Protection Act of 1972 (50 CFR 216, as amended) protects marine mammals from take without appropriate authorization, which may only be granted under certain circumstances by NOAA Fisheries. NOAA Fisheries and USFWS enforce the act. The act protects marine mammals from take without appropriate authorization, which may only be granted under

[2] Take, as defined by the ESA means, “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.”

certain circumstances by NOAA Fisheries. Marine mammals protected under the act may be present in the study area. Although no permits or approvals are required by the act, the proposed action could indirectly affect marine mammals.

B.1.10 Migratory Bird Treaty Act of 1918 (16 U.S.C. 703–709)

USFWS enforces the Migratory Bird Treaty Act of 1918 as amended (16 U.S.C. 703–709, as amended). The act makes it illegal for anyone to take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such a bird except under the terms of a valid permit issued pursuant to federal regulations. Birds protected by the act may be present in the study area. Although no permits or approvals are required by the act, the proposed action could indirectly affect protected birds.

B.1.11 Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.)

USFWS enforces the Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668, as amended). The act prohibits the *take*[3] of bald eagles, including their parts, nests, or eggs without a permit issued by USFWS, and provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle... [or any golden eagle], alive or dead, or any part, nest, or egg thereof." Bald eagles may be present in the study area.

B.1.12 Quinault River Treaty

The Quinault River Treaty, also known as the Treaty of Olympia, was signed in 1855 and 1856 and set aside reservation land and reserved fishing rights for the Quinault Indian Nation throughout its usual and accustomed grounds. The treaty specifies that “the right of taking fish at all usual and accustomed grounds and stations is secured to said Indians in common with all citizens of the Territory…” (Treaty of Olympia). “Usual and accustomed grounds” refers to an area where a particular tribe has reserved right under the provisions of the treaty based on that tribe having traditionally fished the area. The treaty is law under the U.S. Constitution and treaty rights have been reaffirmed by the federal court through several court rulings.

As a treaty tribe, the Quinault Indian Nation manages its fisheries and is responsible for regulating its fishers both on and off reservation. The Quinault Indian Nation is a comanager with the State of Washington (Washington Department of Fish and Wildlife [WDFW]) for salmon, steelhead, and Dungeness crab. Each year the tribe and state meet to determine how many fish and crab can be caught in fisheries. The tribe and state then negotiate fishery schedules to ensure an equitable share of the catch. The process for co-management of the ocean and freshwater salmon fisheries has evolved over the years and is now a highly evolved process of preseason meetings and use of model based predictions of abundance, number of fish available for harvest, and catch. Once the tribe and state reach agreement on fisheries in the spring they release a preseason summary of planned fisheries and predicted catch (the planned fisheries includes schedules of weeks and days open). The

[3] Take under the Bald and Golden Eagle Protection Act means to “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.” 50 CFR 22.3

Quinault Indian Nation posts fishery regulations on their website reporting days and areas opened by statistical week (Sunday through Saturday) for their fishers. WDFW also posts planned openings of tribal fisheries on their website to inform recreational fishers when nets may be deployed. The tribe is responsible for enforcing Quinault fishing regulations and in-season management includes monitoring catch during each opening. Summaries of weekly catch are shared with WDFW as the fishery progresses and annual catch is shared at the end of the season. An important aspect of fisheries management are in-season reviews of catch and updated estimates of number of harvestable fish. Provisions are in place between the tribe and state to adjust fishery schedules in-season if estimates of number of fish and harvestable abundance are not as forecast or if bad weather has disrupted fishing schedules (Scharpf pers. comm.). These updates may adjust fishery schedules, resulting in closures to protect certain species or to add a fishing day in the same week (if bad weather affected a fishery).

The Quinault Indian Nation began to exert its treaty-reserved right for Dungeness crab when treaty-reserved rights were extended to shellfish in a ruling by Judge Rafeedie in 1994 (*United States v. Washington*, *873 F. Supp. 1422*). The States of Washington, Oregon and California and treaty tribes comanage the coastal Dungeness crab fishery. The four coastal treaty tribes (Makah, Quileute, Hoh and Quinault) have designated usual and accustomed ocean fishing areas for crab. The treaty tribes and state determine the amount of harvestable crab for each area, which the treaty tribes are entitled to 50%. The tribes manage their fisheries specific to their usual and accustomed area, setting seasons, issuing permits, regulating number of pots that can be deployed, and recording catch.

Management of treaty-reserved rights for marine fisheries is at the international or federal level. Halibut are managed at the international level with the International Pacific Halibut Commission regulating harvest. Other marine fish such as sablefish, groundfish (rockfish, pacific cod, lingcod, and whiting) are managed through the Pacific Fisheries Management Council. The council and coastal treaty tribes (Makah, Quileute, Hoh, and Quinault) have formal harvest allocations for sablefish and whiting (Pacific Fishery Management Council 2014). Treaty allocation of other groundfish species is made through annual determination by the council through a regulatory process found at 50 CFR 660.50.

B.1.13 United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974)

United States v. Washington, *384 F. Supp. 312*, commonly referred to as the Boldt Decision, is a 1974 ruling that interpreted the rights of treaty tribes to take fish in their "usual and accustomed places in common with all citizens" to mean that treaty tribes have a treaty-reserved right to harvest 50% of the harvestable portion of fish. It also affirmed the role of treaty tribes as co-managers of the resources with WDFW. Estimates of harvestable salmon run and fishery schedules are negotiated between the tribes and WDFW fishing preseason. The 1974 decision was affirmed by the Supreme Court in 1979.

B.1.14 United States v. Washington, 873 F. Supp. 1422 (1994)

Through *United States v. Washington*, *873 F. Supp. 1422 (1994)*, Judge Rafeedie ruled that treaty rights include shellfish and that tribes are entitled to 50% of the harvestable shellfish on most Washington State beaches. The ruling excluded shellfish beds "staked or cultivated by citizens." The

coastal tribes have successfully argued that this treaty right also applies to marine fish and shellfish along the Washington Coast.

B.1.15 Occupational Safety and Health Act of 1970 as Amended 2004 (29 U.S.C. 651 et seq.)

The Occupational Safety and Health Act (29 U.S.C. 651 et seq.) establishes the framework for safe and healthful working conditions by authorizing enforcement of the standards developed under the act. The act also provides for training, outreach, education, and assistance related to establishing a safe working environment. Regulations defining safe standards have been developed for general industry, construction, maritime, recordkeeping, and agriculture. The State of Washington has a state plan that has been approved by the Occupational Safety and Health Administration. The administration's standards specific to hazardous materials are listed in 29 CFR 1910 Subpart H. Safety and health regulations pertaining to construction are listed in 29 CFR 1926 Subpart H.

B.1.16 Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 103)

Proper site characterization of and site remediation for hazardous materials is regulated by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 103). Additional requirements for hazardous materials are specified under hazardous substances at 40 CFR 116, and priority toxic pollutants at 40 CFR 122.

B.1.17 Oil Pollution Act of 1990 (33 U.S.C. 40)

The federal Oil Pollution Act of 1990 (33.U.S.C. 40) requires more stringent planning and spill prevention activities, improved preparedness and response capabilities, and ensures that responsible parties pay for oil spill cleanups. The act specifies that the responsible party is liable for specified damages resulting from the discharge and removal costs incurred. States may impose additional liability, funding mechanisms, removal requirements, fines, and penalties in addition to those imposed by the CWA.

B.1.18 Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.)

Hazardous waste is regulated primarily under the authority of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.). The act was established in 1976 to protect human health and the environment, reduce waste, conserve energy and natural resources, and eliminate generation of hazardous waste. Under the authority of the act, the regulatory framework for managing hazardous waste, including requirements for entities that generate, store, transport, treat, and dispose of hazardous waste is found in uses 40 CFR 260 through 299.

B.1.19 Hazardous Materials Regulations (49 CFR 171-180)

The Pipeline and Hazardous Materials Safety Administration regulates the movement of hazardous materials. Rail transportation of hazardous material is subject to hazardous materials regulations under 49 CFR 105–110, and 130, which are applicable to transportation of hazardous material by

any mode. The authority is the U.S. Department of Transportation (USDOT) Hazardous Materials Division, which delegates the authority to the Federal Railroad Administration (FRA). FRA oversees the regulations specific to rail transportation (49 CFR 171–180).

On May 8, 2015, the Pipeline and Hazardous Materials Safety Administration released a Final Rule (80 FR 26643) that adjusts standards and requirements in 49 CFR Parts 171, 172, 173, 174, and 179.

B.1.20 Highway Safety Act (23 U.S.C. 4), Railroad Safety Act (49 CFR 200–299)

The Highway Safety Act (23 U.S.C.) gives the Federal Highway Administration A regulatory jurisdiction over safety at federal highway/rail grade crossings. USDOT has promulgated rules addressing grade-crossing safety and provides funding for installation and improvement of warning devices. All traffic control devices installed at railroad facilities involving federal aid projects must comply with 23 CFR 655F. On certain projects where federal funds are used for the installation of warning devices, those devices must include automatic gates and flashing light signals.

B.1.21 Manual on Uniform Traffic Control Devices (23 U.S.C. 109(d))

The *Manual on Uniform Traffic Control Devices* (23 U.S.C. 109(d)) provides standards and guidelines for selection, design, and placement of traffic control devices for national uniformity.

B.1.22 Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.)

The Ports and Waterways Safety Act of 1972, as amended (33 U.S.C. 1221 et seq.) provides primary authority to USCG to provide for navigation and vessel safety, protect the marine environment, and protect life, property, and structures in, on, or immediately adjacent to the navigable waters of the United States. USCG enforces all federal laws applicable to navigable waters and navigation in U.S. territorial waters and has federal oversight for ensuring the environmental safety of U.S. waters.

B.1.23 Port and Tanker Safety Act of 1978 (33 U.S.C. 1221 et seq.)

The Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended by the Port and Tanker Safety Act of 1978 (Public Law 95-474), gives USCG broad and extensive authority to supervise and control all types of vessels, foreign and domestic, operating in U.S. navigable waters.[4] Both USCG and the U.S. Army Corps of Engineers (USACE) determine the physical navigation channel requirements and establish jointly the operational protocols for all vessels and boats in the channel.

B.1.24 Navigation and Navigable Waters (33 CFR)

Navigation and Navigable Waters (33 CFR) grants USCG much of the authority and responsibility to establish and enforce rules and regulations in U.S. navigable waters, through the Secretary of

[4] The U.S. Coast Guard also installs and maintains Federal Aids to Navigation—marine aids to navigation—in U.S. ports, including Grays Harbor in accordance with 33 CFR 62.

Homeland Security. USCG has the authority to issue regulations pertaining to anchorage areas, lightering zones, drawbridges, Regulated Navigation Areas, safety and security zones, special local regulations, and inland waterways.

B.1.24.1 Vessel Bridge-to-Bridge Radiotelephone Regulations (33 CFR 26)

Part 26 requires the use of certain vessels to carry a radiotelephone that is capable of transmitting and receiving messages through designated channels.

B.1.24.2 Inland Navigation Rules (33 CFR 83-90)

Subchapter E, Inland Navigation Rules, establishes rules for navigation of inland waters of the United States. Rules include positioning and technical details of lights, shapes, and sound signal appliances. It defines distress signals and pilot rules.

B.1.25 Pilotage Requirements (46 CFR 15.610 and 15.812)

All commercial vessel traffic engaged in trade moving in and out of Grays Harbor must be under the direction and control of either a federally licensed (USCG Master Mariner's license with tug endorsement) mariner or employ a state-licensed pilot, depending on whether the vessel is on a domestic or foreign voyage.[5] A vessel that has a U.S. flag and is engaged in trade contained within U.S. territories in accordance with the Jones Act (the Maritime Act of 1920) is said to be on a coastwise voyage and is exempt from Washington State mandatory pilotage (Revised Code of Washington [RCW] 88.16.070) requirements. However, the vessel does require a federally licensed captain who is issued a license from the USCG (46 U.S.C. 8502) (46 CFR 15.610 and 15.812) with appropriate endorsements based on the size and route of the vessel.

B.1.26 Anchorages under Ports and Waterways Safety Act (33 CFR 109)

Authorizes USCG to specify times of movement, restrict operations, and direct anchoring of vessels under hazardous conditions.

B.1.27 Financial Responsibility for Water Pollution (Vessels) and Oil Pollution Act 90 Limits of Liability (Vessels and Deepwater Ports) (33 CFR 138)

Financial Responsibility for Water Pollution (Vessels) and Oil Pollution Act 90 Limits of Liability (Vessels and Deepwater Ports) (33 CFR 138) establishes requirements for responsible parties to demonstrate financial ability to meet potential liability for costs and damages. As stated in 33 CFR 138.15, the requirement for a Certificate of Financial Responsibility is for vessels over 300 gross tons that use the navigable waters of the United States. 33 CFR 138.230 specifies limits of liability.

[5] State-licensed pilots are mariners familiar with the local waters and channel conditions that guide commercial trade vessels into and out of the Port of Grays Harbor. They are port employees but also serve the state.

B.1.28 Facilities Transferring Oil or Hazardous Materials in Bulk (33 CFR 154)

Under 33 CFR 154, facilities transferring oil or other hazardous materials in bulk must submit an Operations Manual to the USCG for approval. The manual will include site-specific information for operations, including oil transfers, testing and safety equipment. Once a facility receives approval from the USCG to operate, the facility operator is under obligation to ensure that all facility personnel use the procedures within the approved operations manual.

Facility Response Plans are required by the USCG for facilities that, because of their location, could reasonably be expected to cause at least substantial harm to the environment by discharging oil into or on the navigable waters, adjoining shorelines, or exclusive economic zone. The Facility Response plan has response criteria for specific operating environments and the type of oil that a facility stores or transfers. The facility will be required to have a Facility Response Plan.

A Facility Response Plan requires (33 CFR 154.1035):

1. An Emergency Response Action Plan that includes:
    a. Notification procedures.
    b. Facility's spill procedures for different spill sizes and procedures to prevent or mitigate a discharge of oil resulting from facility transfer operations.
    c. Facility's response activities.
    d. Fish and wildlife and sensitive environments.
2. Training and Exercise Procedures
3. Plan Review and Update Procedures

The Emergency Response Action Plan requirement for the worst-case discharge scenario requires that all fish and wildlife sensitive environments identified in the Area Contingency Plan that could be potentially impacted by the discharge be identified along with the response actions that the facility anticipates taking to protect these fish and wildlife and sensitive environments. The facility must also identify appropriate equipment (boom, oil recovery devices, and storage capacity for recovered oil) and required personnel available by contract with an oil spill removal organization or other approved means as described in 33 CFR 154.1028 to protect fish and wildlife sensitive environments that fall within the distances calculated using the methods in the regulation.

A facility owner/operator is required to review the facility response plan annually and submit any revisions to the USCG, Washington State, and all other holders of the response plan for information or approval as appropriate. The plan is valid for a period of up to 5 years.

B.1.29 Vessel Contingency and Response Plans (33 CFR 155)

Vessel Response Plan regulations for tank vessels are in 33 CFR 155 Subpart D. They are applicable to U.S.-registered and foreign-flag tank vessels. Vessel Response Plans include the following.

- Notification procedures.
- Shipboard spill mitigation procedures.

- Shore-based response activities.
- List of contacts
- Training procedures.
- Exercise procedures.
- Plan, review, update, revisions, amendment, and appeal procedures.
- Geographic-specific appendices

Plans must be submitted at least 60 days before the vessel intends to handle, store, transport, or transfer oil in U.S. waters. The plan remains valid for a period of up to 5 years from the date of approval. The Vessel Response Plan must be reviewed annually by the owner/operator, and plan amendments are submitted to the USCG for information or approval.

B.1.30 Oil and Hazardous Material Transfer Operations (33 CFR 156)

Oil and Hazardous Material Transfer Operations covers specific requirements for vessel and facility personnel conducting the transfer of oil or hazardous material on the navigable waters of the United States to, from, or within each vessel with a capacity of 250 barrels or more. The following requirements are included in the section.

- Advance notice of transfer to the USCG.
- Moorings of sufficient strength to keep the vessel against the dock during all expected conditions of surge, current, and weather.
- Transfer hoses and loading arms of sufficient length to allow the vessel to move to the limits of its moorings without placing strain on the hose, loading arm, or transfer piping system.
- Availability of discharge containment equipment.

USCG may require a facility operator to notify the local Captain of the Port 4 hours in advance of transfer operations (33 CFR 156.118).

B.1.31 Spill Prevention, Control, and Countermeasure Plans (40 CFR 112)

Spill prevention, control, and countermeasure plans ensure that facilities implement containment and other countermeasures that would prevent oil spills from reaching navigable waters. Plans are administered by EPA. The plan must be prepared and implemented prior to a facility beginning operations. Once implemented, the facility owner or operator must review and update it once every 5 years. The proposed facility will be required to develop and implement a spill prevention, control, and countermeasure plan.

B.1.32 Hazardous Materials Regulations (49 CFR 171-180)

The Pipeline and Hazardous Materials Safety Administration regulates the movement of hazardous materials. Rail transportation of hazardous material is subject to hazardous materials regulations under 49 CFR 105–110, and 130, which are applicable to transportation of hazardous material by

any mode. The authority is the USDOT Hazardous Materials Division, which delegates the authority to FRA. FRA oversees the regulations specific to rail transportation (49 CFR 171–180).

On May 8, 2015, the Pipeline and Hazardous Materials Safety Administration released a Final Rule (80 FR 26643) that adjusts standards and requirements in 49 CFR Parts 171, 172, 173, 174, and 179.

B.1.33 Oil Pollution Act of 1990 (33 U.S.C. 40)

The federal Oil Pollution Act of 1990 (33.U.S.C. 40) requires more stringent planning and spill prevention activities, improved preparedness and response capabilities, and ensures that responsible parties pay for oil spill cleanups. The act specifies that the responsible party is liable for specified damages resulting from the discharge and removal costs incurred. States may impose additional liability, funding mechanisms, removal requirements, fines, and penalties in addition to those imposed by the CWA.

B.1.34 Limits on Liability (33 U.S.C. 2704)

The Limits on Liability in 33 U.S.C. 2704(a)(4) establishes that the responsible party shall not incur costs with respect to each incident that exceeds $350,000,000 for any onshore facility.

B.1.35 Hazardous Materials Transportation Act (49 U.S.C. 51)

The Hazardous Materials Transportation Act regulates all aspects of hazardous materials packaging, handling, and transportation for vessel, truck, and rail. It designates the amount of a certain material that may be transported to limit an unreasonable risk to health and safety or property. The act prescribes regulations for safe transportation of hazardous materials in intrastate, interstate, and foreign commerce.

B.1.36 Interstate Commerce Commission Termination Act (49 U.S.C. 101)

The Interstate Commerce Termination Act of 1887 (49 U.S.C. 101) created the Interstate Commerce Commission, which oversaw the operations and economics of all U.S. railroads and established railroads as common carriers. As a common carrier, railroads cannot discriminate between shippers and may not refuse a reasonable request for shipment. The Interstate Commerce Commission was disbanded in 1995 and reestablished as the Surface Transportation Board. The act upholds the common carrier obligations of railroads and requires railroads to provide service on request.

In addition to overseeing operations and economics, the Surface Transportation Board also classifies railroads based on revenue thresholds adjusted for inflation. In 2013, Class I carriers were identified as railroads with revenues of $467.0 million or more. Class II carrier threshold revenues ranged from $37.4 million to less than $467.0 million. Class III carriers thresholds were less than $37.4 million. All switching and terminal carriers regardless of revenues are Class III carriers (U.S. Department of Transportation 2014).

B.1.37 Railroad Noise Emission Standards (40 CFR 201) and Railroad Noise Emission Compliance Regulations (49 CFR 210)

EPA and FRA have issued regulations that apply to rail operations: EPA's Railroad Noise Emission Standards (40 CFR 201) and FRA's Railroad Noise Emission Compliance Regulations (49 CFR 210). These regulations govern railroad noise levels at the source and specify certain noise limits for locomotives and rail cars. They provide general guidance applicable to calculating noise levels related to train operations and evaluating the relative magnitude of potential impacts.

B.1.38 Railroad Locomotive Safety Standards (49 CFR 200-299)

FRA implements the Railroad Safety Act (49 CFR 200–299). Regulations address detailed safety requirements related to track, operations, and rail cars.

B.1.39 Rail Oil Spill Response Plans (49 CFR 130)

The Pipeline and Hazardous Materials Safety Administration is responsible for regulating the transport of oil and hazardous materials on rail. A basic oil spill response plan is required for rail cars carrying liquid petroleum or non-petroleum oil with a capacity of 3,500 gallons or more. A comprehensive oil spill response plan is required for rail cars carrying liquid petroleum or non-petroleum oil in a quantity greater than 42,000 gallons per rail car.

The comprehensive oil spill response plan includes all of the basic oil spill response plan elements and also includes additional response coordination requirements; ensures equipment availability by contract; adds training and exercise requirements; and requires submission to the Administrator of FRA.

Since no oil is currently being transported on the PS&P line, no oil spill response plan is required. If the proposed action is permitted, a basic oil spill response plan would be required. Due to the capacity of the rail cars (roughly 30,000 gallons), a comprehensive oil spill response plan would not be required under current regulations. Federal agencies have proposed to revise the requirements for federal oil spill response plans from railroads.

B.1.40 Railroad Safety Act of 1970 (49 U.S.C. 20101–20144; 21301–21304)

The Railroad Safety Act (49 U.S.C. 20101–20144; 21301–21304) of 1970 gives FRA rulemaking authority over all areas of rail line safety. FRA has issued rules that impose minimum maintenance, inspection, and testing standards for at-grade crossing warning devices for highway/rail grade crossings on federal highways and state and local roads (49 CFR 234–236). FRA delegates jurisdiction to state and local law enforcement agencies for most aspects of highway/rail grade crossings, including warning devices and traffic law enforcement.

B.1.41 Railroad Safety Enforcement Procedures (49 CFR 200-209)

The Railroad Safety Enforcement Procedures grant FRA authority to regulate safety, including operations, engineers, and crew (e.g., control of alcohol and drug use), track, signaling, and rolling stock (e.g., locomotives and passenger and freight cars) for common carrier rail lines that are part of the general rail line system of transportation (49 CFR 200–209).

B.1.42 Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains (80 FR 26643)

The Pipeline and Hazardous Materials Safety Administration, in coordination with FRA, is adopting requirements designed to reduce the consequences and, in some instances, reduce the probability of accidents involving trains transporting large quantities of flammable liquids. It defines and regulates the operations of high-hazard flammable trains.

The Final Rule defines a high-hazard flammable train as one that comprises 20 or more loaded tank cars of a Class 3 flammable liquid in a continuous block or 35 or more loaded tank cars of a Class 3 flammable liquid across the entire train. The Final Rule restricts all high-hazard flammable train speeds to 50 miles per hour in all areas and all rail carriers must ensure that all high-hazard flammable trains have a functioning two-way end-of-train device or distributed power-braking system. It requires that existing tank cars must be retrofitted in accordance with the USDOT-prescribed retrofit design or performance standard and new tank cars are required to meet enhanced USDOT Specification 117 design or performance criteria. The rule establishes requirements for developing a sampling and testing program for all unrefined petroleum-based products, such as crude oil.

Existing tank cars must be retrofitted in accordance with the USDOT-prescribed retrofit design or performance standard. Retrofits must be completed based on a prescriptive retrofit schedule and a retrofit reporting requirement is triggered if initial milestone is not achieved. New tank cars constructed after October 1, 2015 are required to meet enhanced USDOT Specification 117 design or performance criteria.

Offerors or shippers of unrefined petroleum-based cargoes such as crude oil must develop and carry out a sampling and testing program for all unrefined petroleum-based products, such as crude oil, to address sampling prior to the initial offering of the material for transportation and when changes that may affect the properties of the material occur.

B.1.42.1 Rail Routing—Risk Assessment

High-hazard flammable train rail carriers must, not later than 90 days after the end of each calendar year, compile commodity data for the previous calendar year for the materials listed in paragraph (a) of 49 CFR 172.820 including flammable cargoes (such as crude oil). Commodity data must be collected by route, a line segment, or a series of line segments as aggregated by the rail carrier.

High-hazard flammable train rail carriers and emergency responders must perform a routing analysis that considers, at a minimum, 27 safety and security factors and select a route based on

findings. These planning requirements are prescribed in 49 CFR 172.820 and are expanded to apply to high-hazard flammable trains.[6] A rail carrier must use the results of the routing analysis (also referred to as a safety and security risk analysis) to select the route to be used in moving the materials.

B.1.42.2 Rail Routing—Notification

Rail carriers must identify a point of contact for routing issues involving the movement of crude oil and provide the contact information to the following groups.

- State and/or regional fusion centers.
- State, local, and tribal officials that may be affected by a rail carrier's routing decisions and who have contacted the carrier to discuss routing decisions.

In addition, the emergency order (Docket No. DOT-OST-2014-0067) published on May 7, 2014, requires all railroads that operate trains containing one million gallons or more of Bakken crude oil to notify State Emergency Response Commissions about the operation of these trains through their state.

B.2 State

B.2.1 State Building Code (RCW 19.27)

The Washington State Building Code (RCW 19.27) sets building standards that promote the health, safety, and welfare of occupants and users of building and structures. Under Chapter 19.27.031, the State of Washington has officially adopted multiple building codes by reference. Among these are the 2012 editions of both the International Building Code (IBC) and the International Fire Code (IFC), as published by the International Code Council (Chapters 51-50 and 51-54A of the Washington Administrative Code [WAC]). Compliance with these codes is typically required at the local level and enforced through the issuance of building permits and the performance of building inspections by city building departments.

Both the IBC and IFC contain specific design standards and seismic requirements for the construction of occupied and unoccupied structures to minimize the risk of damage to people and property from geologic hazards such as earthquakes. Two of the standards that are applicable to the proposed action include the American Society of Civil Engineers (ASCE) Standard 7-02 and the American Petroleum Institute (API) Standard 650.

B.2.1.1 ASCE 7-02, Minimum Design Loads for Buildings and Other Structures

Required under Section 1613 of the 2012 IBC, ASCE 7-02 provides the latest design and construction requirements for all structures and permanently attached non-structural components for dead, live, soil, flood, wind, snow, rain, ice, and earthquake loads, as well as their combinations. This standard

[6] Currently the requirements are applicable to a single carload of explosives, a quantity of a material poisonous by inhalation in a single bulk packaging, or a radioactive material.

is currently under revision to include an additional factor of safety for tsunami modeling, prediction, and inundation estimates. The revised guidance is expected to be released in 2016 as ASCE/SEI 7-10.

B.2.1.2 API 650, Welded Steel Tanks for Oil Storage

Required under Section 5704.2.7 of the 2012 IFC, by reference through the National Fire Protection Association's Flammable and Combustible Liquids Code (30), Chapter 4, Section 4.2.3.1.1(2). API 650 addresses the design and construction requirements for welded steel tanks used for oil storage under atmospheric pressures, including the minimum requirements for tanks subject to seismic loading.

B.2.2 Building Permit Application—Evidence of Adequate Water Supply (RCW 19.27.097)

RCW 19.27.097 requires each applicant for a building permit to provide evidence of an adequate water supply for the intended use of the building. In addition to other authorities, the county or city may impose conditions on building permits requiring connection to an existing public water system where the system is able to provide safe and reliable potable water to the applicant with reasonable economy and efficiency.

B.2.3 Clean Air Act (RCW 70.94)

The Washington State Clean Air Act (RCW 70.94) regulates stationary sources of emissions to protect air quality. The act is administered by Ecology at the state level and by local air agencies for several specific areas within Washington at the regional level. Ecology has established ambient standards for total suspended particulates and sulfur dioxide that are more stringent than the federal requirements. Annual standards are never to be exceeded. Short-term standards are not to be exceeded more than once per year unless noted. National and state ambient air quality standards are shown in Table 1.

The Olympic Region Clean Air Agency has local jurisdiction for Grays Harbor County. Prevention of Significant Deterioration permitting activities is administered by Ecology on a statewide basis. Businesses and industries that cause, or have the potential to cause, air pollution are required to receive approval from the local air agency prior to beginning construction. These are requirements of Washington's Clean Air Act and apply statewide (RCW 70.94). An approved notice of construction air permit is required prior to constructing, installing, establishing, or modifying any equipment or operations that may emit air pollution.

B.2.4 Controls for New Sources of Toxic Air Pollutants (WAC 173-460)

Ecology pursues reductions in air toxics, which it refers to as toxic air pollutants, listed under Controls for New Sources of Toxic Air Pollutants (WAC 173-460-150), from new or modified

stationary sources.[7] In general, all sources that require a notice of construction application are required to assess their toxic air pollutant emissions from stationary sources with a review of the best available control technology for toxic air pollutants, quantification of emissions, and human health protection demonstration. The objective is to reduce or eliminate toxic air pollutants from stationary sources prior to their generation whenever economically and technically practicable.

B.2.5 Greenhouse Gas Reporting Rule (WAC 173-441)

Reporting of Emissions of Greenhouse Gases (WAC 173-441) establishes mandatory GHG[8] reporting requirements for owners and operators of certain facilities that directly emit GHGs. According to WAC 173-441-030(1), the reporting requirements apply to industrial facilities that meet the following two criteria.

- Emit at least 10,000 metric tons per year of GHG in terms of carbon dioxide equivalents, including carbon dioxide from the combustion of biomass.
- Are part of an applicable source category listed in WAC 173-441-120 incorporated by reference from 40 CFR 98.

B.2.6 Ambient Air Quality Standards

Table 1 provides the federal and state ambient air quality standards.

[7] A stationary source refers to an emissions source of air pollution that does not move. Examples of stationary sources include power plants, factories, and dry cleaners.

[8] GHG emissions from the proposed action include carbon dioxide, methane, nitrous oxide, and fluorinated gases.

Table 1. Federal and Washington State Ambient Air Quality Standards

Pollutant	Federal		State
	Primary (protect public health)	Secondary (protect public welfare)	
Carbon monoxide			
8-hour average[a]	9 ppm	No standard	9 ppm
1-hour average[a]	35 ppm	No standard	35 ppm
Ozone			
8-hour average[b,c]	0.075 ppm	0.075 ppm	0.075 ppm
Total suspended particles			
Annual average	No standard	No standard	60 µg/m^3
24-hour average[a]	No standard	No standard	150 µg/m^3
PM_{10}			
24-hour average[a]	150 µg/m^3	150 µg/m^3	150 µg/m^3
$PM_{2.5}$ 5			
Annual average	12 µg/m^3	15 µg/m^3	12 µg/m^3
24-hour average[a]	35 µg/m^3	35 µg/m^3	35 µg/m^3
Lead			
Quarterly average	No standard	No standard	1.5 µg/m^3
Rolling 3-month average	0.15 µg/m^3	0.15 µg/m^3	No standard
Sulfur dioxide			
Annual average	No standard	No standard	0.02 ppm
24-hour average[a]	No standard	No standard	0.14 ppm
3-hour average[a]	No standard	0.50 ppm	0.50 ppm
1-hour average[d]	75 ppb	No standard	75 ppb
Nitrogen dioxide			
1-hour average	100 ppb	No standard	100 ppb
Annual average	53 ppb	53 ppb	52 ppb

Source: 173 WAC 470–475; U.S. Environmental Protection Agency 2015c

[a] Not to be exceeded on more than 1 day per calendar year as determined under the conditions indicated in 173 WAC 475.

[b] In March 2008, EPA lowered the federal standard for 8-hour ozone from 0.08 ppm to 0.075 ppm.

[c] To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.075 ppm.

[d] The 0.25 ppm standard is not to be exceeded more than two times in 7 consecutive days.

ppm = parts per million; PM_{10} = particulate matter with a diameter of 10 micrometers or less; $PM_{2.5}$ = particulate matter with a diameter of 2.5 micrometers or less; µg/m^3 = micrograms per cubic meter

Ecology maintains a network of air quality monitoring stations throughout the state and the Olympic Region Clean Air Agency has an ambient monitoring station in Aberdeen. These stations are placed in areas where air quality problems are most likely to occur, usually in or near urban areas or close to large air pollution sources. A limited number of additional stations are located in remote areas to provide an indication of regional background air pollution levels.

Based on monitoring information collected over a period of years, EPA and Ecology designate regions as being attainment or nonattainment areas for regulated air pollutants. Attainment status

indicates that air quality in an area meets the federal, health-based ambient air quality standards. Nonattainment status indicates that air quality in an area does not meet those standards. If the measured concentrations in a nonattainment area improve to levels consistently below the federal standards, Ecology and EPA can reclassify the nonattainment area to a maintenance area. In that case, Ecology and the local clean air agency are required to implement maintenance plans to ensure ongoing emission reductions, and continuous compliance with the federal standards.

EPA has established *de minimis* threshold levels, which represent a screening level for which a conformity analysis must be prepared if various criteria pollutants emissions exceed the thresholds. Grays Harbor County meets all National Ambient Air Quality Standards, and the more stringent state standards set for total suspended particulates and sulfur dioxide (i.e., ambient levels of air pollutants are well below *de minimis* levels).

B.2.7 Water Pollution Control Act (RCW 90.48)

The Washington State Water Pollution Control Act (RCW 90.48) regulates the discharge of pollutants into waters of the state including streams, lakes, rivers, ponds, inland waters, salt waters, watercourses, and other surface and underground waters. In many of these types of waters, vegetation plays an important part in the integrity and function of these waters and can influence water quality and how flows moves through these systems. The overall goals are preventing and cleaning up water pollution in waters of the state and protecting the quality and integrity of these resources. In addition to the development and implementation of state water pollution regulations and water quality standards, RCW 90.48 also addresses all of federal water pollution control laws and regulations that were delegated to the state by EPA, including the NPDES program created under CWA Section 402.

B.2.8 National Pollutant Discharge Elimination System Permit Program (WAC 173-220)

WAC 173-220 establishes a state permit program applicable to the discharge of pollutants and other wastes and materials to the surface waters of the state. The permits issued under WAC 173-220 are designed to satisfy the requirements for discharge permits under section 402(b) of the Federal Water Pollution Control Act and RCW 90.48. Under this program, any entity who wishes to discharge wastewater or stormwater to waters of the United States from a point source as part of the construction or operation of a commercial or industrial facility must obtain the appropriate NPDES permits from the state (Ecology). If such discharges are to a publicly owned treatment works or to groundwater, then a state wastewater discharge permit is required.

The proposed action would discharge stormwater from portions of the project site to Grays Harbor via the existing Port of Grays Harbor's stormwater conveyance system during the construction and operations phases of the proposed action. Consequently, it would require two different NPDES permits: an NPDES Construction Stormwater Permit and an NPDES Industrial Stormwater Discharge Permit.

B.2.8.1 Construction Stormwater Permit

Projects that disturb one or more acres of soil, or that disturb less than one acre but are part of a larger common plan of development that in total disturbs 1 or more acres, are required to obtain coverage under the General Permit for Stormwater Discharges Associated with Construction

Activities. Construction activity subject to this permit includes clearing, grading, and disturbances to the ground such as stockpiling or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. General Construction Permit applicants are required to prepare a Notice of Intent and a stormwater pollution prevention plan (SWPPP) and implement and maintain best management practices (BMPs) to avoid adverse impacts on receiving water quality as a result of construction activities, including earthwork consistent with the *Stormwater Management Manual for Western Washington* (Washington State Department of Ecology 2012).

Coverage under the general permit is obtained by submitting permit registration documents to Ecology that include a risk level assessment and a site-specific SWPPP identifying an effective combination of erosion control, sediment control, and non-stormwater BMPs. The general permit requires that the SWPPP define a program of regular inspections of the BMPs and, in some cases, sampling of water quality parameters to ensure water quality is maintained to acceptable levels during construction.

B.2.8.2 Industrial Stormwater Discharge Permit

Facilities conducting industrial activities that discharge stormwater to a surface waterbody or to a storm sewer system that drains to a surface waterbody are required to obtain this permit. Under this permit, the Permittee is authorized to discharge stormwater and conditionally approved non-stormwater discharges to waters of the state. All discharges and activities authorized by this permit shall be consistent with the terms and conditions of this permit.

The permit requires coverage for private entities, state, and local government facilities, and includes existing facilities and new facilities. Facilities conducting industrial activities including or referenced shall apply for coverage under this permit or apply for a Conditional No Exposure exemption, if eligible. Ecology may also require permit coverage for any facility on a case-by-case basis in order to protect waters of the state.

B.2.9 Ballast Water Management Law (RCW 77.120)

Washington's Ballast Water Management Law (RCW 77.120) addresses the management of ballast water on all vessels of 300 gross tons or more, United States and foreign, carrying, or capable of carrying, ballast water into the waters of the state after operating outside of the waters of the state. The owner or operator in charge of a vessel is required to file a ballast water reporting form at least 24 hours prior to arrival into waters of the state, and to ensure that the vessel does not discharge ballast water into the waters of the state except as authorized by this law. Discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange, or if the vessel has treated its ballast water, to meet standards set by the department consistent with applicable state and federal laws.

Vessels used for the proposed action are expected to be over 300 gross tons and would need to carry ballast water. Consequently, they would be required to follow the ballast water regulations.

B.2.10 Water Resource Act of 1971 (RCW 90.54)

The Water Resources Act of 1971 (RCW 90.54) sets fundamentals of water resource policy for the state to ensure adequate protection and optimal utilization for the people of the state by providing

direction to state agencies and local governments. Fish and fish habitat needs are also often addressed in water resource inventory area plans in accordance with WAC 173-500. These plans involve many local stakeholders, including federal, tribal, state, and local agency representatives.

B.2.11 Natural Area Preserves Act (RCW 79.70)

The 1972 Washington Natural Area Preserves Act (RCW 79.70) establishes a framework for identifying and cataloging special-status plant species and regionally important or unique plant communities in Washington State. The study area supports plant communities and species classified and preserved under the act, which provides context for understanding how the plant species and quality of plant communities that are or could be present in the study area are determined and categorized.

The act authorizes the Washington State Department of Natural Resources to establish and manage a statewide system of natural areas for the preservation of the state's natural ecosystems, including native plants. This system has expanded to include lands managed by numerous federal and state agencies and private conservation organizations. The act also established the Washington Natural Heritage Program within the Washington Department of Natural Resources, which provides a scientific approach for identifying candidate sites for the natural areas system. Because Washington State is one of 18 states without a state-level endangered plant law (U.S. Forest Service 2014), the act also authorizes Washington Natural Heritage Program to track plant species and high-quality natural ecosystems in the state and to designate plants with a state status as threatened, sensitive, or endangered (Washington Native Plant Society 2014).

B.2.12 Noxious Weed Law (RCW 17.10) and Noxious Weed List and Schedule of Monetary Penalties (WAC 16-750)

Special-status plants can include species designated as noxious weeds by the Washington State Weed Control Board under Washington State's noxious weed law (RCW 17.10). The study area supports plant species regulated as noxious weeds under the law. Management of developed areas can also affect the spread of noxious weeds to adjacent undeveloped areas.

The State Noxious Weed List and Schedule of Monetary Penalties (WAC 16-750) establishes the list of noxious weeds and defines weeds to be within Classes A to C. These classes indicate the level of concern and specify mandatory control and prevention measures associated with each class—Class A weeds receiving the highest priority for eradication. Local weed control boards adopt lists specific to their areas.

Several plant species present in the study area are listed noxious weeds.

- Four species of cordgrass (*Spartina anglica*, *S. densiflora*, *S. patens*, and *S. alterniflora*), are Class A noxious weeds (Grays Harbor County Noxious Weed Control Board 2014), and USFWS has identified the presence of cordgrass in the Grays Harbor estuary (U.S. Fish and Wildlife Service 2014).
- Common reed (*Phragmites australis*), a Class B noxious weed (Grays Harbor County Noxious Weed Control Board 2014), has invaded parts of the Grays Harbor estuary, including low elevation salt marsh areas critical to migratory shorebirds (U.S. Fish and Wildlife Service 2014). Riparian and wetland species such as Japanese knotweed (*Polygonum cuspidatum*) and purple

loosestrife (*Lythrum salicaria*) are also Class B noxious weeds present in the study area (Grays Harbor County Noxious Weed Control Board 2014).

- Field bindweed (*Convolvulus arvensis*), evergreen blackberry (*Rubus laciniatus*), Himalayan blackberry (*Rubus armeniacus*), Canada thistle (*Cirsium arvense*), and bull thistle (*Cirsium vulgare*), as well as invasive reed canarygrass (*Phalaris arundinacea*) are Class C noxious weeds (Grays Harbor County Noxious Weed Control Board 2014) present in the study area.

B.2.13 State Environmental Policy Act (RCW 43.21C and WAC 197-11)

The State Environmental Policy Act (SEPA), enacted in 1971, requires that the impacts of all major actions sponsored, funded, permitted, or approved by state or local agencies be planned using "appropriate consideration to environmental values and amenities" with consideration of in order to prevent or eliminate damage to the environment. WAC 197-11 identifies the rules and procedures for the environmental review process and content. SEPA also mandates that each state and local agency adopt its own procedures to carry out the intent of the law.

B.2.14 Growth Management Act (RCW 36.70A)

The Growth Management Act (RCW 36.70A) requires the counties and cities of the state to prepare and adopt comprehensive plans that keep with the Growth Management Act planning goals (RCW 36.70A.020). The Growth Management Act defines a variety of critical areas, including fish and wildlife habitat, which are designated at the local level under city and county critical areas ordinances. It requires all counties and cities in Washington to adopt development regulations to protect designated critical areas, and protecting critical areas means to maintain their values and functions to ensure no net loss of these values and functions. Because the proposed action would occur within the jurisdiction of the Cities of Hoquiam and Aberdeen, the comprehensive plans of these cities are discussed under the local applicable regulations, below. Critical areas review may be required for actions proposed within critical areas.

B.2.15 Shoreline Management Act (RCW 90.58)

The Shoreline Management Act (RCW 90.58) establishes policies and objectives for managing the use, development, environmental protection, and public access of the state's shorelines. Under the Shoreline Management Act, both the Chehalis River and Grays Harbor are shorelines of statewide significance. The Shoreline Management Act is administered by local governments through Shoreline Master Programs, which are essentially shoreline-specific comprehensive plans, zoning ordinances, and development permit systems that regulate land use and development in and along shorelines of the State of Washington.

B.2.16 Department of Fish and Wildlife Permanent Regulations (WAC 232-12)

At the state level, WDFW is charged with managing wildlife resources, including designating and protecting state listed endangered, threatened, and candidate species as well as priority habitats and species. WAC 232-12-011 provides a list of wildlife species native to the state of Washington that are protected. WAC 232-12-014 provides a list of endangered species in Washington State. Although no

permit or approval is required specific to state-listed species, special consideration is given in terms of the potential impacts on these populations.

B.2.17 Washington Department of Fish and Wildlife North of Falcon Policy (Policy C-3608)

This policy guides WDFW staff in considering conservation, allocation, in-season management, and monitoring issues associated with the annual salmon fishery planning process known as North of Falcon. When considering management issues, staff will ensure that decisions are made consistent with: the statutory authority, *U.S. v. Washington: U.S. v. Oregon*, the ESA, the Puget Sound Chinook Harvest Management Plan, the Pacific Salmon Treaty, the Pacific Fishery Management Council's Framework Salmon Management Plan, pertinent state/tribal agreements; and the applicable WDFW Commission policies.

B.2.18 Maximum Environmental Noise Levels (WAC 173-60)

WAC 173-60-0403 defines the maximum permissible environmental noise levels at property boundaries. Permissible sound levels are based on the land use of the noise source and receiving property. Land uses are categorized into three environmental designation[s] for noise abatement (EDNA) classes.

The most noise-sensitive EDNA, Class A, includes residential properties and parks. Class B EDNAs involve "uses requiring protection against noise interference with speech." Class B EDNAs typically include commercial lands. The project site is designated as Class C, which typically includes industrial and agricultural properties. The regulation contains exemptions for particular sound sources, as noted below.

Table 2 summarizes the maximum permissible daytime environmental noise levels (per WAC 173-60-040) in terms of A-weighted decibels (dBA).[9]

Table 2. Washington Administrative Code Noise Level Limits

	EDNA of Receiving Property (dBA)		
EDNA of Noise Source	**Class A[a]**	**Class B**	**Class C**
Class A	55	57	60
Class B	57	60	65
Class C	60	65	70

[a] Between the hours of 10:00 p.m. and 7:00 a.m., the noise level limits are reduced by 10 dBA for receiving property within Class A.

dBA = A-weighted decibels; EDNA = environmental designations for noise abatement

[9] Sound pressure levels are measured in units of decibels (dB), a logarithmic scale employed to reduce the otherwise cumbersome large range of pressure values. Environmental sound measurements in decibels are often expressed in terms of A-weighted decibels (dBA), which mimic the frequency response of human hearing which is most sensitive in midrange frequencies.

These state regulations contain exemptions for particular sound sources. The following construction and operational noise sources associated with the proposed action are exempt from state noise regulations (WAC 173-060-050).

- Noise created by safety and protective devices, if noise suppression would defeat the safety release intent of the device.
- Noise created by warning devices not operated continuously for more than 5 minutes per incident.
- Noise created by motor vehicles when regulated by WAC 173-62.[10]
- Construction-related noise during daytime hours.[11]
- Sounds created by surface carriers engaged in interstate commerce by railroad.

B.2.19 Scenic Highways Regulations (RCW 47.39.020)

The Scenic Highways Regulations (RCW 47.39.020) address scenic highways and recreational areas and dictates that scenic and recreational areas be preserved and protected from inappropriate development. Protection includes managing land use outside the normal rights-of-way.

B.2.20 Fisheries (WAC 220)

WDFW is responsible for managing regulations related to fisheries. WAC 220 establishes fishing seasons, minimum and maximum size limits, regulations regarding sale of catch, and catch limits, among other restrictions.

B.2.21 Wildlife (WAC 232)

WDFW is responsible for managing regulations related to wildlife areas and game reserves. WAC 232 establishes hunting seasons and limits, falconry regulations, wildlife interaction regulations, and identifies game reserves throughout the state.

B.2.22 Indian Graves and Records (RCW 27.44)

RCW 27.44 provides protection for Native American graves and burial grounds, encourages voluntary reporting of said sites when they are discovered, and mandates a penalty for disturbance or desecration of such sites.

B.2.23 Archaeological Sites and Resources (RCW 27.53)

RCW 27.53 governs the protection and preservation of archaeological sites and resources and establishes the Washington State Department of Archaeology and Historic Preservation as the administering agency for these regulations.

[10] WAC 173-62: Motor vehicle noise performance standards.
[11] Defined as 7:00 a.m. to 10:00 p.m. in WAC and 7:00 a.m. to 8:00 p.m. in HMC.

B.2.24 Abandoned and Historic Cemeteries and Historic Graves (RCW 68.60)

RCW 68.60 provides for the protection and preservation of abandoned and historic cemeteries and historic graves.

B.2.25 Prohibit Methods of Sewage Disposal (RCW 43.20.050)

RCW 43.20.050 prohibits disposal of sewage and industrial waste in a manner that would negatively affect domestic water supply or endanger the health and well-being of the people of the state. Local officers and employees are changed with enforcement. The applicant would be required to dispose of sewage and industrial waste properly.

B.2.26 Model Toxics Control Act (RCW 70.105D and WAC 173-340)

The Model Toxics Control Act and its implementing regulations (RCW 70.105D and WAC 173-340) is a toxic waste cleanup law that went into effect in 1989. Ecology's Toxic Cleanup Program oversees investigation and cleanup under the act.

B.2.27 Sediment Management Standards (WAC 173-204)

The Sediment Management Standards was created under the authority of RCW 90.48, the Water Pollution Control Act; RCW 70.105D, the Model Toxics Control Act; RCW 90.70, the Puget Sound Water Quality Authority Act; RCW 90.52, the Pollution Disclosure Act of 1971; RCW 90.54, the Water Resources Act of 1971; and RCW 43.21C, the State Environmental Policy Act, to establish marine, low salinity and freshwater surface sediment management standards for Washington State. The purpose of this chapter is to reduce and ultimately eliminate adverse effects on biological resources and significant health threats to humans from surface sediment contamination by establishing standards for the quality of surface sediments; applying these standards as the basis for management and reduction of pollutant discharges; and providing a management and decision process for the cleanup of contaminated sediments. The standards apply to sediment quality and reduced pollutant discharges. They also provide a decision process for the cleanup of contaminated sediment sites.

B.2.28 Hazardous Substances Account Act (RCW 70.105 et seq.)

Proper site characterization and site remediation of hazardous materials is regulated by the state Hazardous Substances Account Act (Health and Safety Code Section 25300 et seq.).

B.2.29 Dangerous Waste Regulations (WAC 173-303)

Ecology is authorized by EPA to implement the federal hazardous waste rules in Washington State via the Dangerous Waste Regulations (WAC 173-303). The purposes of these regulations are to provide authorities and standards for designating, tracking, managing, and safely disposing of dangerous solid wastes.

B.2.30 Hazardous Waste Operations (WAC 296–843)

The Hazardous Waste Operations regulations (WAC 296–843) apply to employees working in operations involving hazardous waste at a treatment, storage, and disposal facility required to have a permit or interim status and regulated by agencies implementing the federal Resource Conservation and Recovery Act. They also apply to employees conducting initial investigations of government-identified sites before determining whether hazardous substances are present; to corrective actions involving clean-up operations at sites covered by the act, and to employees performing clean-up operations at an uncontrolled hazardous waste site.

B.2.31 Oil Spill Act (RCW 90.56)

The Washington State Oil and Hazardous Substance Spill Prevention and Response Act (RCW 90.56) establishes programs to reduce the risk and develop an approach to respond to oil and hazardous substance spills. Under state law (RCW 90.56.370), anyone responsible for spilling oil into state waters is liable for damages resulting from injuries to public resources and imposes penalties on any person who willfully or recklessly discharges oil into state waters.[12] The Oil Spill Act grants these types of enforcement (criminal and civil) and other broad powers of regulation to Ecology for a comprehensive, statewide, spill prevention and response program.

On May 14, 2015, the Governor signed House Bill 1449, changing several aspects of the regulatory programs covering the over-land and over-water transportation of oil. The following provisions in the bill amend RCW 90.56.

- Oil is redefined in oil spill prevention, cleanup, and financial responsibility laws to mean any kind of oil that is liquid at 25°C and one atmosphere of pressure, including any distillate of that oil. The definition also explicitly covers bitumen, synthetic crude, natural gas condensate.
- Railroads must submit oil spill contingency plans to Ecology in the same manner as terminals, refineries, and other covered facilities. However, railroads are not made subject to the oil spill prevention planning requirements placed on other facilities.
- The oil spill prevention-planning standard of best achievable protection is applied to oil spill contingency planning, which must include access to in-state equipment to respond to a worst case spill.
- Railroads that transport oil as bulk cargo, pipelines, and other facilities are required to submit advanced notice to the Ecology of transfers between rail facilities, vessels, and other facilities.
- Ecology must aggregate rail transfer data by county quarterly and publish it on its website.
- Vessel Traffic Management Assessment (Section 11) is contingent on funding and specific to vessel traffic in the Columbia River; therefore, regulations would not apply to the proposed action.

[12] The definition of oil within the act means oil of any kind including crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse and oil mixed with wastes other than dredged spoil.

B.2.32 Oil Spill Natural Resources Damage Assessment (WAC 173-183)

The Oil Spill Natural Resource Damage Assessment rule (WAC 173-183) establishes procedures for convening a resource damage assessment committee, preassessment screening of damages, and selecting the damage assessment method. The rule lays out a simplified process, called a compensation schedule, to calculate damages based on the habitat and organisms potentially impacted by the spill, the type of oil spilled, and the volume of oil spilled. The objective of this process is to restore natural resources to a prespill condition.

Although states have limited regulatory authority over railroads, they may participate in FRA's rail safety activities, such as safety inspections. State rail safety inspectors are trained by FRA through an agreement that allows the state to enforce FRA regulations. State agencies also play other roles in the planning and oversight of railroads in Washington State.

B.2.33 Washington Utilities and Transportation Commission

Per agreements with FRA, the Washington Utilities and Transportation Commission inspects and issues violations for hazardous materials, track, signal and train control, and rail operations. The commission also regulates the construction, closure, or modification of public railroad crossings. In addition, the commission inspects and issues defect notices if a crossing does not meet minimum standards. However, the commission has no jurisdiction over public crossings in first-class cities,[13] including Aberdeen.

B.2.34 Transportation Regulations (RCW 81)

RCW 81 regulates transportation in Washington State. This includes administering railroad safety provisions allowed under 49 U.S.C. 20106 and state law (RCW 81.04.540), rules for the equipment used by common carriers (RCW 81.44), and railroad crossings (RCW 81.53). On May 14, 2015, the Governor signed House Bill 1449, changing several aspects of the regulatory programs covering the over-land and over-water transportation of oil. Provisions in the bill amend RCW 81 as follows.

- **RCW 81.04.** Railroads that transport oil as bulk cargo must provide the same financial assurances to Ecology (via the Washington Utilities and Transportation Commission) as facilities like oil refineries and terminals. The financial assurances must relate to the railroad company's ability to pay damages in the event of a spill or accident involving the transport of crude oil by the railroad company in Washington.
- **RCW 81.44.** Commission employees certified by FRA to perform hazardous materials inspections may enter the property of any business that receives, ships, or offers for shipment hazardous materials by rail. The term *business* is all-inclusive and is not limited to common carriers or public service companies.
- **RCW 81.44**.The purpose of the entry is limited to performing inspections, investigations, or surveillance of equipment, records, and operations relating to the packaging, loading, unloading,

[13] Per RCW 35.01.01, a first-class city is a city with a population of 10,000 or more at the time of organization or reorganization that has adopted a charter.

or transportation of hazardous materials by rail, pursuant only to the state participation program outlined in 49 CFR Part 212.

- **RCW 81.53**. The Washington Utilities and Transportation Commission must adopt safety standards for private road crossings of railroads used to transport crude oil. These safety standards must include signage requirements, Washington Utilities and Transportation Commission inspection and crossing improvement prioritization criteria, and requirements for railroad companies to pay for and complete improvement projects.
- **RCW 81.53.** The Washington Utilities and Transportation Commission may inspect private crossings and order railroads to improve private crossings.
- **RCW 81.53.** Within 35 days of the effective date of Section 21 of House Bill 1449, first-class cities must provide to the commission a list of all existing public crossings within the limits of a first-class city. Within 30 days of modifying, closing, or opening a grade crossing within the limits of a first-class city, the city must notify the commission in writing of the action taken, identifying the crossing by USDOT number.

B.2.35 Transportation System Policy Goals (RCW 47.04.280)

The Washington Transportation System Policy (RCW 47.04.280) establishes the following goals: economic vitality, preservation, safety, mobility, environment, and stewardship. The economic vitality goal is to develop transportation systems that promote growth and enhance the passenger and freight rail services to create a prosperous the economy. The preservation goal is to preserve or extend the life of previous investments in the transportation systems and services for future use. The safety goal is to ensure the safety and security of customers and the transportation system as well as provide necessary improvements. The mobility goal is to improve the predictability of the passenger and freight rail service throughout the state. The environment goal is to ensure that the quality of life in Washington is enhanced by transportation improvements that promote energy conservation, healthy communities, and protect the environment. The stewardship goal is to provide ongoing improvements to the quality, effectiveness, and efficiency of the transportation system (Washington State Department of Transportation 2014).

B.2.36 Motor Vehicles—Rules of the Road (RCW 46.61)

The rules-of-the-road (RCW 46.61) require all vehicles to stop within 50 feet but not less than 15 feet of the nearest at-grade rail crossings with stop signs or when railroad warning signals are activated. The rules prohibit the stopping or parking of a vehicle on a railroad track. Slow, low, and specialty vehicles (such as school buses) have specific requirements before crossing at-grade crossings, including notifying the railroad before entering the area and stopping at all highway rail crossings within at least 15 to 50 feet of the tracks unless signs or a police officer at the crossing indicates that stopping is not required.

B.2.37 Washington State Department of Transportation

The Washington State Department of Transportation (WSDOT) Freight Systems Division is responsible for the statewide freight transportation policy and its Rail Division oversees the management of the Amtrak Cascades intercity passenger rail service along the Pacific Northwest corridor. These divisions jointly develop the state rail plan (for both freight and passenger). WSDOT

also administers a grant program and a loan program to support freight rail capital investments for short-line railroads.

WSDOT has no regulatory authority as it pertains to freight rail operations. However, WSDOT is responsible for highway operations and maintenance at state highway railroad grade crossings and at state highway intersections and interchanges that can be affected by nearby local roadway crossings. As part of its local agency guidelines and highway design standards, WSDOT provides guidance to local agencies on grade-crossing design and safety. Guidance is provided in the following WSDOT documents.

- WSDOT Local Agency Guidelines M 36-63.26, November 2014, Chapter 32, Railroad/Highway Crossing Program
- WSDOT Design Manual M 22.01.10, July 2013, Chapter 1350, Railroad Grade Crossings

The Washington Utilities and Transportation Commission regulates railroad companies, roadway/rail grade crossings, and rail-related safety grants for grade crossings. Specific RCW sections that apply to this project are described below.

B.2.38 City Streets as Part of State Highways (RCW 47.24)

RCW 47.24 regulates the maintenance and jurisdictional control for city streets that are part of state highways. Specifically, RCW 47.24.020 authorizes WSDOT as the road authority for state highways, including state highways located within city limits.

B.2.39 Grade-Crossing Petitions (WAC 480-62-150)

State legislation requires a petition to be filed with the Washington Utilities and Transportation Commission whenever the commission itself or a railroad company, city, county, transportation department, or parks and recreation commission seeks to open a new crossing (at-grade, over, or under), close an existing crossing, construct supplemental safety measures including median barriers, realign highway or railroad tracks, widen highways, construct multiple tracks, change crossing surfaces, and modifying/upgrading crossing protection (WAC 480-62-150).

B.2.40 Railroads—Operating Requirements and Regulations (RCW 81.48)

Railroads facilitate interstate and intrastate commerce and are regulated almost exclusively by the federal government, preempting state and local authority. This preemption limits the state's authority even with regard to safety measures under the Federal Railroad Safety Act.

The railroad operating requirements and regulations penalize those who obstruct or delay trains; except to the extent preempted by federal law, regulate train speed within cities, towns, and at-grade crossings; outline the procedure to fix or change speed limits; require trains to make a complete stop at railroad crossings; and penalize violations of duty endangering safety (RCW 81.48).

B.2.41 Railroads—Crossings (RCW 81.53)

The railroad crossings regulation (RCW 81.53) establishes a legislative preference that highway rail crossings are constructed as grade-separated crossings, and requires Washington Utilities and

Transportation Commission authorization when at-grade crossings are constructed or modified; outlines petitions and requirements for changing crossings; poses a minimum clearance for under-crossings; establishes the railroad's duty to maintain crossings; apportions costs between railroads and road authorities for establishing and modifying crossings; outlines eminent domain; provides authority for the state to order closure of existing crossings; and lists minimum requirements for crossing protection devices.

B.2.42 Pilotage Act (RCW 88.16)

The Washington State Pilotage Act (RCW 88.16) establishes requirements for compulsory pilotage provisions in certain waters of the state, including Grays Harbor. A vessel that is either registered with a foreign flag or a U.S. flag but engaged in international trade is sailing on register and is required to enter Grays Harbor with a state-licensed pilot (RCW 88.16.070).

On May 14, 2015, the Governor signed House Bill 1449, changing several aspects of the regulatory programs covering the over-land and over-water transportation of oil. Provisions in the bill amend RCW 88.16 by permitting the Pilotage Commission to adopt rules to require tug escort requirements and other safety measures in state waters for oil tankers of greater than 40,000 deadweight tons, all articulated tug barges, and other towed waterborne vessels or barges within a 2-mile radius of the Grays Harbor pilotage district (RCW 88.16.050).

B.2.43 Vessel Oil Spill Prevention and Response (RCW 88.46)

RCW 88.46 establishes rules and regulations for tank vessels that carry oil and enter navigable waters of the state. Programs include tank vessel inspection, prevention plans, vessel screening, and contingency plans. On May 14, 2015, the Governor signed House Bill 1449, changing several aspects of the regulatory programs covering the over-land and over-water transportation of oil. Provisions in the bill amend RCW 88.46.

- Oil is redefined in oil spill prevention, cleanup, and financial responsibility laws to mean any kind of oil that is liquid at 25°C and one atmosphere of pressure, including any distillate of that oil. The definition also explicitly covers bitumen, synthetic crude, natural gas condensate.
- Railroads must submit oil spill contingency plans to the Ecology in the same manner as terminals, refineries, and other covered facilities. However, railroads are not made subject to the oil spill prevention planning requirements placed on other facilities.
- The oil spill prevention-planning standard of best achievable protection is applied to oil spill contingency planning, which must include access to in-state equipment to respond to a worst case spill.

B.2.44 Hazardous Chemical Emergency Response Planning and Community Right-to-Know Reporting (WAC 118-40)

The Hazards Chemical Emergency Response Planning and Community Right-to-Know Reporting (WAC 118-40) establishes requirements for federal, state, and local governments, and industry to improve hazardous chemical preparedness and response through coordination and planning; provisions include public notification about chemicals used at facilities.

B.2.45 Facility Oil Handling Standards (WAC 173-180)

The Facility Oil Handling Standards (WAC 173–180) establishes facility oil handling regulations for minimum design standards for oil storage tanks, including detailed requirements for primary and secondary containment. Additionally, these standards establish safe practices for handling and storing oils in bulk and requirements for regular inspection and reporting to Ecology.

B.2.46 Oil Spill Contingency Plan Requirements (WAC 173-182)

Requires larger oil handling facilities and commercial vessels to have state-approved oil spill contingency plans that describe their ability to respond to oil spills. Identifies specific standards for Grays Harbor.

B.2.47 Vessel Oil Transfer Advance Notice and Containment Requirements (WAC 173-184)

Requires facility operators who transfer oil to provide Ecology with a 24-hour advance notice of transfer.

B.2.48 Transport of Petroleum Products – Financial Responsibility (RCW 88.40)

RCW 88.40 defines and prescribes financial responsibility requirements for vessels that transport petroleum products across state waters and facilities that store, handle, or transfer oil or hazardous substances near navigable waters of the state. Tank vessels that transport oil in bulk as cargo may be required to demonstrate financial responsibility to pay $1,000,000,000.

B.2.49 Local Critical Areas Ordinance (HMC 11.06 and AMC 14.100)

The Critical Areas Ordinances in HMC 11.06 and AMC 14.100 address the designation and protection of certain ecosystems and land features known as critical areas per the requirements of the Washington State Growth Management Act (RCW 36.70A). As defined under the act, critical areas include several types of water resources such as wetlands, critical aquifer recharge areas, and frequently flooded areas. In addition, surface waters that provide habitat for certain fish and wildlife species are also regulated as critical areas.

The primary protection mechanisms enacted by these rules include restrictions and prohibitions on the type of development that can occur within and adjacent to these areas through the issuance of permits, and the requirement for compensatory mitigation should such areas be affected by development activities. Buffers are also required around both wetlands and surface waters that provide fish and wildlife habitat to protect these resources and the functions they perform. Development activities within these buffers are also regulated and subject to mitigation requirements. There are both geological hazardous areas and fish and wildlife habitat conservation areas on and around the project site.

In Hoquiam and Aberdeen, fish and wildlife habitat conservation areas include streams, areas that support endangered, threatened, and sensitive species, as well as specific types of vegetated habitats

such as eelgrass beds, waters of the state and their associated riparian areas, and state natural area preserves (HMC 11.06.230 and AMC 14.100.500).).

Fish and wildlife habitat conservation areas within 300 feet of the project site include Fry Creek, which lies along the northern and western sides of the project site as well as the Chehalis River shoreline and the open water and tidally exposed mudflats and eelgrass beds in Grays Harbor. No vegetative buffer is currently present on the project site; however, because the proposed action would encroach into a potential vegetative buffer on both Fry Creek and the Chehalis River, a critical area review of impacts from the proposed action would be required by the Cities of Hoquiam and Aberdeen.

One of the goals of AMC 14.100 is to "maintain healthy, functioning ecosystems through protection of unique, fragile, and valuable elements of the environment, including ground and surface waters, wetlands, and fish and wildlife and their habitats, and to conserve biodiversity of plant and animal species." HMC 11.06.240 indicates that, "development activities occurring on lands and waters containing documented habitats for plant and animal species in fish and wildlife habitat conservation areas shall result in no net loss of existing function." Further, HMC 11.06.260 requires that developments along the shoreline adjacent to Grays Harbor "maintain a riparian corridor of at least twenty-five feet along seventy-five percent of the shoreline length measured perpendicularly from the ordinary high water mark landward." Water-dependent developments that are not able to meet this standard may be assigned a buffer on a case-by-case basis. Wildlife and aquatic life and their habitats are also addressed under each City's respective Shoreline Master Program.

AMC 14.100.400–460 address geologically hazardous critical areas including areas susceptible to erosion, landsliding, seismic or other geological events, including tsunamis, mass wasting, debris flows, rock falls and differential settlement. A geotechnical assessment is required for geologically hazardous areas. A critical areas report will be required for a proposal within a seismic hazard area to address if the proposal conforms with applicable building codes especially as these apply to protection of structures from seismic events, if the City of Aberdeen deems the report necessary. If a site is determined to be subject to liquefaction, mitigation measures appropriate to the scale of the development will be recommended and implemented. A geotechnical report is valid for 5 years for a specific site and where the proposed land use activity and surrounding site conditions are unchanged. For tsunami hazard areas, a tsunami hazard analysis will include a complete discussion of the potential impacts on the site and an emergency management plan.

HMC 11.06.200 through 11.06.220 and AMC 14.100.400 through 14.100.430 address geologically hazardous critical areas including areas susceptible to erosion, sliding, earthquake or other geological events. Commercial, residential, or industrial development is regulated in such areas because certain uses could pose a threat to the health and safety of citizens. In Hoquiam, designated geologically hazardous areas include areas susceptible to one or more of the following types of hazards: erosion hazards, landslide hazards, seismic hazards, or areas subject to other geologic events such as coal mine hazards, volcanic hazards, mass wasting, debris flows, rockfalls, and differential settlement. Tsunami hazards are not explicitly listed under the HMC. Aberdeen identifies geologically hazardous areas as erosion hazards, landslide hazards, seismic hazards, and other geological events including tsunamis, mass wasting, debris flows, rock falls, and differential settlement. Both cities may require a technical assessment for development activities in a geologically hazardous area. The assessment must be prepared by a qualified expert and contain recommended mitigation measures. HMC 11.06.220 and AMC 14.100.430 address mitigation in geologically hazardous areas.

B.2.50 Land Development—Erosion and Settlement Control (HMC 10.05.120 and AMC 13.70)

Both Hoquiam (HMC 10.05.120) and Aberdeen (AMC 13.70) include regulations in their respective municipal codes that address the management and control of storm and surface water runoff on residential, commercial, industrial, and institutional development sites. The intent of these regulations is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased storm and surface water runoff from development activities.

HMC 10.05.120 specifies that all new development shall minimize erosion and sedimentation caused by storm water runoff through minimizing removal of vegetation, use of temporary measures for sediment control during construction, and planting exposed areas promptly after construction. Aberdeen (AMC 13.70) specifies that the *Stormwater Management Manual of Western Washington* and Low Impact Development Approaches are to be used as minimum storm and surface water management. The applicant will be required to follow these regulations for erosion and settlement control.

B.2.51 Shoreline Management—(HMC 11.04 and AMC 16.20)

The City of Hoquiam and the City of Aberdeen have adopted Shoreline Master Programs (SMPs) that carry out responsibilities imposed by the Shoreline Management Act of 1971. Both Cities have adopted a regional SMP written for Grays Harbor County. The SMPs contain policies and regulations for different uses and development in and on shorelines of the state and the associated shorelands. Both the Chehalis River and Grays Harbor are both shorelines of statewide significance. The proposals trigger shoreline substantial development permits from both cities.

B.2.52 Adoption of International Fire Code 2012 Edition (HMC 2.38 and AMC 15.12)

Both Hoquiam and Aberdeen have officially adopted the IFC, which regulates and governs the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property.

The ICF contains provisions that involve earth and geologic resources include the requirement that certain structures (e.g., aboveground storage tanks for flammable liquids) be constructed in accordance with industry standards (e.g., API 650) that include foundation and seismic loading specifications. The ICF also includes provisions regarding onsite fire safety standards and emergency management requirements. The applicant would have to ensure that buildings and operations meet the fire code. Relevant specifications include, but are not limited to, the number and distribution of fire hydrants, fire-resistance-rated construction, materials, fire protection systems, means of egress, construction requirements of existing buildings, fire safety during construction and demolition, hazardous materials, flammable and combustible liquids, gases, and fluids.

B.2.53 Adoption of International Building Code 2012 Edition (HMC 2.08 and AMC 15.08)

Both Hoquiam and Aberdeen have officially adopted the IBC, which has provisions for activities affecting earth and geologic resources include specific requirements for structural design (Chapter 16), structural testing (Chapter 17), soils and foundations (Chapter 18) and construction; grading, excavation, earthwork construction (Appendix J); and tsunami-generated flood hazards (Appendix M). These code sections include specific requirements for the incorporation of various analyses (e.g., climatic and geologic load analyses, geotechnical report, liquefaction potential evaluation), engineering design standards (e.g., ASCE-7-02), and the preparation of various plans (e.g., erosion control, stormwater drainage) related to earth and geologic resources.

B.2.54 Stormwater Management Regulations (HMC 10.05.120 and AMC 13.70)

Both the City of Hoquiam (HMC 10.05.120) and the City of Aberdeen (AMC 13.70) regulate management and control of storm and surface water runoff on residential, commercial, industrial, and institutional development sites. The intent of these regulations is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased storm and surface water runoff from development activities. Both Cities require developers to submit detailed storm and surface water drainage plans as part of a grading/fill, building, or other development permit application. Such plans must provide a detailed description of how storm and surface water runoff will be managed on the site, demonstrate that runoff from the proposed development will not cause flooding on adjacent properties, show that the proposed stormwater system has been designed and adequately sized to accommodate the appropriate storm event, and describe any required stormwater control infrastructure (e.g., oil-water separator, detention/retention facilities). Hoquiam and Aberdeen have both adopted the *Stormwater Manual for Western Washington* (Washington State Department of Ecology 2012) as the minimum standard for stormwater control and management.

B.2.55 Landscaping and Screening Ordinance (HMC 10.05.65)

The landscaping and screening regulations are intended to maintain and enhance the urban forest and providing landscaping and screening that will promote a healthy and aesthetically pleasing environment. Specific landscaping development standards are enumerated in HMC 10.05.065 and AMC 17.88.

The Hoquiam Landscaping and Screening Ordinance (HMC 10.05.65) requires that 18 inches total caliper of new trees be planted per gross acre of new development. Deciduous trees are to be a minimum of 2 inches caliper (as measured at 4.5 feet above the ground); coniferous trees are to be a minimum of 3 feet high. If a site's soils are not adequate for the long-term survival of trees, plantings in other, offsite locations acceptable to the City can be proposed, per HMC 10.05.65.3.

B.2.56 Public Noise Nuisances (HMC 3A.30)

HMC 3A.30 outlines local noise regulations. Noise limits defined in HMC apply to public noise nuisance, or "conduct which unreasonably disturbs or interferes with the peace, comfort, and repose

of another person." These local regulations contain exemptions for particular sound sources. The following construction and operational noise sources associated with the proposed action are exempt from local noise regulations (HMC 3A.30).

- Noise created by safety and protective devices, if noise suppression would defeat the safety release intent of the device.
- Noise created by motor vehicles when regulated by WAC 173-62.[14]
- Construction-related noise during daytime hours.[15]

B.2.57 Zoning (HMC 10.03 and AMC 17.00)

The Hoquiam and Aberdeen comprehensive plans classify land in their respective cities into various zoning districts that are assigned appropriate designations to regulate the use of land, buildings, and structures within each district. Regular land use zoning districts for Hoquiam under HMC 10.03 are low density residential (R-1); high density residential (R-2); general commercial (C-1); downtown commercial (C-2); industrial (I); and natural resource (NR). Regular land use zoning districts for Aberdeen under AMC 17.00 are single-family district (R-S); multiple-family district (R-M); residential professional (R-P); major institutional (M-I); commercial residential (C-R); downtown commercial (C-D); general commercial (C-G); light industrial (I-L); and Industrial (I).

B.2.58 Density and Dimensional Requirements (HMC 10.03.100)

The City of Hoquiam Density and Dimensional Requirements specify a maximum height standard (55 feet) for its Industrial District (HMC 10.03.100.3). As part of Hoquiam's development permit application, the applicant would be required to submit a conditional use permit, because the height of the proposed storage tanks (64 feet) would exceed the city's maximum.

B.2.59 Historic Preservation (HMC 10.06 and AMC 17.50)

Both the Cities of Aberdeen and Hoquiam maintain local registers of historic places, which include individually registered city landmarks, historic districts, or conservation districts (HMC 10.06 and AMC 17.50). The historic preservation commissions in each city are responsible for the administration and oversight of these regulations. Properties are nominated to the local registers of historic places and designated by city council resolution. Changes to the exteriors of listed properties in the cultural resources study area would be subject to review by these respective commissions.

B.2.60 Solid Waste and Recyclable Materials (HMC 3.16.030 and AMC 13.08)

Both the Cities of Hoquiam and Aberdeen regulate safe, reliable, and responsible use of public services by establishing a system for collection, removal, and disposal of solid waste and recyclables

[14] WAC 173-62: Motor vehicle noise performance standards.
[15] Defined as 7:00 a.m. to 8:00 p.m. in HMC.

and indicating other forms of disposal is unlawful. HMC 3.16.030 states that it is unlawful for a person to dispose of solid waste originating within the incorporated area of the city at a site or facility other than a disposal site or other solid waste handling facility designated by the county. AMC 13.08 mandates that using the established system for the collection, removal, and disposal of solid waste and recyclables is compulsory and mandatory for business establishments in the city. It is unlawful to bury, burn, dump, collect, remove, or in any manner dispose of solid waste and recyclables at any site other than a designated solid waste handling facility, with the exception of water paper, boxes, brush, ashes, and waste foods, which may be disposed of on private property following specific protocol. During construction and operations, the applicant will be required to dispose of solid waste and recyclable materials in accordance with these regulations.

B.2.61 Water System Regulations (AMC 13.56)

AMC 13.56 provides a set of requirements and specifications for use of City of Aberdeen water supply regarding connections and maintenance of pipelines, provisions to avoid insufficient supply for fire flow, permitting, emergency water use restrictions, and fire protection services. The City of Aberdeen would supply water at the project site and the applicant must abide by the specific use standards outlined in AMC 13.56.

B.2.62 Traffic Regulations (AMC 10.64 and HMC 1.45)

The City of Aberdeen regulates vehicle traffic on property owned by the Port of Grays Harbor (AMC 10.64) as well as industrial area traffic and emergency medical services in the area (AMC 13.80), and ambulance and emergency medical services utility. The City of Hoquiam regulates ambulance services (HMC 1.45) and an arterial street fund to pay the cost of construction, repairs, and improvements to arterial streets (HMC 1.88). WSDOT is the road authority for state highways, including state highways located within city limits (RCW 47.24.020).

B.3 Additional Oversight

B.3.1.1 U.S. Army Corps of Engineers

USACE provides environmental and navigational engineering services regarding the maintenance of maritime commerce on the nation's waterways. USACE is primarily responsible for maintaining the Grays Harbor navigation channel, including anchorage areas and turning basin, at its authorized depths and widths.

USACE performs periodic soundings of the navigation channel, anchorage areas, and the turning basins in Grays Harbor. Maintenance of these areas, plus the periodic soundings, provides critical information to the pilots at Grays Harbor so vessel movements can be scheduled most appropriately (WorleyParsons 2014).

B.3.1.2 U.S. Department of Transportation

USDOT is responsible for ensuring a safe and efficient transportation system, and has operating administrations with regulatory responsibilities over specific modes of transportation. The USDOT Maritime Administration deals directly with waterborne commerce activities. The Maritime Administration supports merchant mariners, vessels, terminals, ports and intermodal facilities by

providing financial assistance from federal funds and oversight of federal legislative activities. It also plays a key role in implementing U.S. marine transportation policies for meeting commercial vessel security needs (WorleyParsons 2014).

B.3.1.3 National Oceanic and Atmospheric Administration

NOAA is the lead federal agency for implementing the national Integrated Ocean Observing System that contributes to the greater Global Earth Observation System of Systems. NOAA actively monitors oceans (and the Great Lakes) and provides other government agencies, such as USCG and USACE, and industry with the information for timely and informed decisions. NOAA maintains a network of buoys, tidal stations, and satellite measurements that provide a continuous picture of the state of the ocean.

B.3.1.4 Grays Harbor Safety Committee

The Grays Harbor Safety Committee is a voluntary, local group formed to coordinate marine transportation safety issues (U.S. Coast Guard Navigation and Inspection Circular 1-00). The committee includes public and private stakeholders and regulatory agencies (USCG, USACE, and Ecology) with interests in assuring safe navigation to protect personnel, property, and environment on the waterways of Grays Harbor. The committee has developed a harbor safety plan for Grays Harbor that complements existing regulations by advising mariners of unique conditions and requirements in Grays Harbor and by providing standards of care and protocols for the area.

B.4 References

B.4.1 Written References

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