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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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QUINAULT INDIAN NATION, FRIENDS OF GRAYS HARBOR,  
SIERRA CLUB, GRAYS HARBOR AUDOBON, AND CITIZENS  
FOR A CLEAN HARBOR,

Petitioners,

vs.

CITY OF HOQUIAM, WASHINGTON STATE DEPARTMENT OF  
ECOLOGY, IMPERIUM TERMINAL SERVICES, LLC, WESTWAY  
TERMINAL COMPANY, LLC, and WASHINGTON SHORELINES  
HEARINGS BOARD,

Respondents.

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**BRIEF OF *AMICUS CURIAE*  
WASHINGTON PUBLIC PORTS ASSOCIATION**

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 ORIGINAL

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## I. INTRODUCTION

The Washington Public Ports Association (“WPPA”), as *amicus curiae*, urges this Court to affirm the Court of Appeals’ holding that the Ocean Resources Management Act, Chapter 43.143 RCW (“ORMA”) does not apply to the upland terminal projects proposed by Imperium Terminal Services, LLC (“Imperium”) and Westway Terminal Company, LLC (“Westway”).

Application of ORMA to these projects would subject similar projects in public ports located on Washington’s Pacific Coast, in the Columbia River, and in Puget Sound to the onerous ORMA review criteria which, by design, is almost impossible to meet.

## II. IDENTIFY AND INTEREST OF *AMICUS CURIAE*

Authorized by RCW 53.06.030 in 1961, the WPPA’s purpose is “to promote and encourage port development along sound economic lines.”<sup>1</sup> WPPA membership is comprised of sixty-nine (69) dues paying Washington port districts located throughout the State. Each of the sixty-nine member port

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<sup>1</sup> RCW 53.06.030(3).

districts is a Washington municipal government created, organized, and operated pursuant to Title 53 RCW. The WPPA and its members have a very strong interest in supporting economic development in their respective districts and in supporting marine shipping in and out of many of the member ports' terminals and facilities. Amongst its member ports are all the public port districts in the state that account for the bulk of non-petroleum marine commerce for this State.<sup>2</sup>

In order to stop the projects at hand because of the Petitioners' objection to the proposed products that will be handled, Petitioners ask this Court to refocus and expand ORMA's application in a manner unsupported by the statute's language, its legislative history, or the Department of Ecology's ("Ecology") twenty-plus years of administrative interpretation. If adopted by this Court, this unsupported expansion would significantly hinder the ability of port districts throughout this State to fulfill their statutory purposes, resulting in a significant,

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<sup>2</sup> WPPA members include the Coastal, Puget Sound, and Columbia River ports that load or unload cargo vessels, including the ports of Anacortes, Bellingham, Ilwaco, Chinook, Peninsula, Port Angeles, Vancouver, Clarkston, Everett, Grays Harbor, Kalama, Kennewick, Kalama, Longview, Olympia, Pasco, Seattle and Tacoma.

unparalleled, and negative impact on the maritime shipping industry in Washington.

ORMA's clear legislative history and statutory language establish a scheme designed to regulate (and effectively preclude) developments or uses occurring in or on the Pacific Ocean in Washington's three-mile coastal jurisdiction and beyond to the federal government's two-hundred-mile jurisdiction, an area referred to as the "coastal waters" in RCW 43.143.020(2).

ORMA provided certain outright prohibitions within that portion of the coastal waters under Washington's exclusive jurisdiction and provided for an onerous review of all applications to use that portion of the coastal waters under federal jurisdiction. ORMA also provided this same onerous review for upland, near shore, and transportation facilities developed in support of ocean uses occurring in or on the coastal waters.

Petitioners ask this Court to turn ORMA inside out and, instead, apply it to two (2) purely upland marine terminal projects under the theory that the mere transiting through the coastal waters by marine traffic is, in and of itself, a use of the

coastal waters regulated by ORMA. If granted, this unfettered and unsupported expansion would drastically stymie well-regulated<sup>3</sup> upland developments by port districts, including the coastal ports (like the Port of Grays Harbor), Columbia River ports, and Puget Sound ports, all of which load or unload a wide variety of cargo on ships which have or will pass through the coastal waters.

Given the ORMA review criteria found in RCW 43.143.030(2)(a)-(h), Petitioners' interpretation would have a profoundly detrimental impact on the maintenance and development of marine shipping facilities critical to the mission of Washington's port districts and the economic vitality of this State. The Legislature did not intend for ORMA to have such drastic impacts; accordingly, the WPPA respectfully submits that this Court must affirm the Court of Appeals' decision.

### **III. ISSUES**

**A. Does ORMA Apply to Upland Developments Such as the Facilities Proposed by Westway and Imperium?**

**B. Does ORMA Regulate Transportation Activities That Are Not Incidental or Related to a Regulated Ocean Use?**

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<sup>3</sup> Developments such as those proposed by Imperium and Westway are already examined under existing environmental regulatory schemes including, but not limited to, the State Environmental Policy Act, Chapter 43.21C RCW ("SEPA") and the Shoreline Management Act, Chapter 90.58 RCW ("SMA").

C. Would Petitioner's Interpretation of ORMA be Limited to the Four Coastal Counties?

#### IV. ARGUMENT

##### **A. Petitioners' Proffered Interpretation of ORMA and its Ecology Adopted Regulations Ignore the Legislative History and Plain Language of the Statute. ORMA Is Not Applicable to the Projects Before This Court.**

In an effort to stop these two (2) projects, Petitioners ask this Court to ignore ORMA's legislative history,<sup>4</sup> its clear statutory language and Ecology's regulations and, instead, find that any marine terminal facility in the four "coastal counties"<sup>5</sup> that will result in ships transiting the coastal waters must meet ORMA's onerous approval criteria set forth in RCW 43.143.030(2)(a)-(h).

Petitioners' core argument is that "transportation"<sup>6</sup> is an activity that, by and of itself, triggers ORMA review even where there is no underlying "ocean use." Petitioners effectively invite this Court to legislate a new category of "ocean use" which can be fairly

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<sup>4</sup> For a comprehensive discussion of ORMA's legislative history vis-à-vis the legal issues in this appeal, see Supplemental Brief of Respondents City of Hoquiam and Washington State Department of Ecology at Pgs.11-14, the Supplemental Brief of Respondent Westway Terminal Company, LLC at Pgs. 8-10, and the Supplemental Brief of Respondent Imperium Terminal Services, LLC at Pgs. 12-13, on file herein.

<sup>5</sup> Clallam, Jefferson, Grays Harbor, and Pacific counties. See RCW 43.143.020(1).

<sup>6</sup> As discussed in WAC 173-26-360(12).

described as "marine transportation that transits the coastal waters." This language, of course, appears nowhere in the statute or its regulations.

In an attempt to soften the effect of this interpretation, Petitioners promise, without legal support, that this provision would only regulate "transportation" in and out of the four coastal counties<sup>7</sup>; however, Petitioners' logic is flawed and their four coastal county limitation is illusory. Nothing in ORMA or the WAC actually restricts application of ORMA's review criteria or WAC 173-26-360 to the four coastal counties.<sup>8</sup>

It is well established that the courts read a statute and its regulations in context of the entire regulatory and statutory scheme, rather than in isolation. *State Dept. of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 10-11, 43 Wn.2d 4, 9-10 (2002); *Accord ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64, 67

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<sup>7</sup> See Petitioners' Supplemental Brief at 9 (citing RCW 43.143.020, RCW 43.143.030(1), and RCW 43.143.030(2)). While RCW 43.143.020(1) limits "coastal counties" to Clallam, Jefferson, Grays Harbor, and Pacific counties, RCW 43.143.020(2) does not similarly limit "coastal waters," which are defined as "the waters of the Pacific Ocean seaward from Cape Flattery south to Cape Disappointment, from mean high tide seaward two hundred miles.").

<sup>8</sup> Rather, the only regulation which specifically restricts itself to the four coastal counties is the requirement for Ecology to utilize its "guidelines and policies for the management of ocean uses" in its "evaluation and modification of local shoreline management master programs of coastal local governments" in the four coastal counties. See WAC 173-26-360(1) and RCW 43.143.010(1).

(1993). The courts also have a duty to avoid absurd results when interpreting statutes. *Estate of Bunch v. McGraw Residential Center*, 174 Wn.2d 425, 433, 275 P.3d 1119, 1123 (2012). When read in full, ORMA's focus is squarely on the uses in coastal waters and only seeks to regulate upland, near shore, and transportation projects that are associated to the uses or developments occurring in the coastal waters.

As evidenced through ORMA's legislative history, its statutory language and its administrative regulations, the Legislature adopted ORMA to protect the "coastal waters"<sup>9</sup> by regulating (indeed, effectively precluding) activities such as resource extraction and marine salvage in Washington's "coastal waters." To this end, ORMA bans certain activities within its three-mile jurisdiction and directs the State of Washington and its local governments to take certain factors into consideration when developing "...plans for the management, conservation, use, or development of natural resources in Washington's coastal

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<sup>9</sup> While Washington has regulatory control over the first three (3) miles of off-shore of its coastline, the federal government exercises control from mile three (3) to two-hundred (200) of the "coastal waters" RCW 43.143.005(4) and WAC 173-26-360.

waters<sup>10</sup>..." and to "participate in federal ocean and marine resource decisions to the fullest extent possible to ensure that the decisions are consistent with the state's policy concerning the use of those resources." RCW 43.143.030(1) (emphasis added) and RCW 43.143.010(6). ORMA's regulations also require that the regulations "be used for federal consistency purposes in evaluating federal permits and activities in Washington's coastal waters," further evidencing that ORMA's purpose is to give Washington a pathway to impact or prevent unwanted development in that portion (outside three miles) of the "coastal waters" over which it does not exercise exclusive permitting authority. WAC 173-26-360(4).

Being particularly concerned with activities that would impact Washington's coastal waters, such as off-shore oil and gas extraction in these coastal waters, ORMA includes extremely restrictive approval criteria for ocean uses and the ancillary upland, near shore, and transportation facilities that support ocean uses. See RCW 43.143.030(2)(a)-(h). The approval criteria were designed to be difficult, if not impossible, to meet so that Washington could exert maximum influence on projects proposed

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<sup>10</sup> Defined as "the waters of the Pacific Ocean seaward from Cape Flattery south to Cape Disappointment, from mean high tide seaward two hundred miles." RCW 43.143.020(2).

in the federal government control portions of the coastal waters. By adopting these criteria, ORMA sought to effectively preclude oil and gas extraction in the federally controlled portion of the coastal waters just as the Legislature had specifically banned such activity in the first three miles of the coastal waters over which it had direct control. See RCW 43.143.010(2).

Ecology refined and supported ORMA's focus on the uses within the coastal waters by adopting ocean management regulations to serve as "guidelines and policies for the management of ocean uses..." WAC 173-26-360(1) (emphasis added).

The WAC defines "ocean uses" as:

...activities or developments involving renewable and/or nonrenewable resources that occur on Washington's coastal waters and includes their associated off shore, near shore, inland marine, shoreland, and upland facilities and the supply, service, and distribution activities...circulating to and between the activities and developments...

WAC 173-26-360(3) (emphasis added). Ecology's regulations proceed to provide examples of "ocean uses" which are all activities with their primary focus occurring (not surprisingly) on or in the coastal waters, for example:

- “Extraction of oil and gas resources from beneath the ocean,”<sup>11</sup>
- “Mining of metal, mineral, sand, and gravel resources from the seafloor”;<sup>12</sup>
- “...The production of energy in a usable form directly in or on the ocean... [such as] facilities that use wave action...to generate electricity,”<sup>13</sup>
- “Ocean disposal uses involve the deliberate deposition or release of material at sea,”<sup>14</sup> and;
- Other uses that can only occur on or below water such as fishing, aquaculture, pleasure craft use, ocean salvage and ocean research.<sup>15</sup>

This “ocean use” focus continues in WAC 173-26-360(12) which addresses transportation and provides as follows (emphasis added):

Ocean transportation includes such uses as: Shipping, transferring between vessels, and offshore storage of oil and gas; transport of other goods and commodities; and offshore ports and airports. The following guidelines address transportation activities that originate or conclude in Washington’s coastal waters or are transporting a nonrenewable resource extracted from the outer continental shelf off Washington.

Petitioners ask this Court to ignore these words and instead focus only on that portion of this regulation stating “ocean transportation includes such uses as...shipping” as justification that

<sup>11</sup> WAC 173-26-360(8); Accord WAC 173-26-360(3) (emphasis added).

<sup>12</sup> WAC 173-26-360(9); Accord WAC 173-26-360(3) (emphasis added).

<sup>13</sup> WAC 173-26-360(10); Accord WAC 173-26-360(3) (emphasis added).

<sup>14</sup> WAC 173-26-360(11); Accord WAC 173-26-360(3) (emphasis added).

<sup>15</sup> WAC 173-26-360(3), (13)-(14).

any project involving any shipping over the coastal waters requires ORMA review. This is an absurd reading of WAC 173-26-360(12), which ignores the Legislature's and Ecology's regulation of "ocean uses" to read one phrase of a large regulation in isolation and out of context. The Court should reject this myopic reading of a discreet portion of WAC 173-26-360 that completely ignores the remainder of that specific regulation and ORMA as a whole. When ORMA's statutory and regulatory language is viewed as a whole, it is clear that the statute is designed to (and indeed does) regulate developments which occur on or in the Pacific Ocean off of Washington's coastline<sup>16</sup> and not upland developments occurring on land which are unrelated to any "ocean use" arising in the "coastal waters."

As noted by others now before this Court, it is well settled that Ecology's interpretation of its own regulations are afforded "great weight" by the courts. *Puget Soundkeeper All. v. Pollution Control Hearings Bd.*, 189 Wn. App. 127, 136, 356 P.3d 753, 756-757 (2015). It is uncontested that Ecology interprets WAC 173-26-

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<sup>16</sup> ORMA also regulates upland facilities that are related to and part of a regulated "ocean use." See WAC 173-26-6360(3). That is not, however, the case here where there is no underlying regulated "ocean use" at issue.

360(12) to apply to transportation activities only when those transportation activities are tied to, or related to, an "ocean use" that is regulated under ORMA.<sup>17</sup> For over twenty (20) years Ecology has consistently interpreted WAC 173-26-360(12) in this fashion, and that interpretation should not be contravened now. Had the Legislature intended to further regulate routine shipping activities, it could (and would) have clearly expressed that intent in ORMA's legislative history and statutory language. It did not do so, and the Court should reject reading that language into the statute from whole cloth as Petitioners urge.

**B. Petitioners' Proffered Interpretation Could Not Be Limited to the Four Coastal Counties and Would Have Significant and Unintended Impact on Washington's Marine Shipping Industry.**

In a facially apparent effort to win this Court's support, Petitioners promise that their tortured reading is limited to the four coastal counties. Petitioners are wrong. While ORMA requires the four coastal counties to incorporate ORMA concepts in the applicable shoreline master programs,<sup>18</sup> there is no statutory

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<sup>17</sup> See Supplemental Brief of Respondents City of Hoquiam and Washington State Department of Ecology at Pgs. 14-20, on file herein.

<sup>18</sup> See WAC 173-26-360(1) and RCW 43.143.010(1).

language limiting application of the approval criteria found in RCW 43.143.030(2)(a)-(h) to the four coastal counties.

Petitioners' request to turn the central focus of ORMA away from the "ocean use" and instead refocus ORMA on the geographic location of the upland facility makes no sense and has no support in the statute. If the ORMA approval criteria were to apply to any upland terminal facility in Grays Harbor County based only on the ship transiting the coastal waters, or even on its hydrocarbon cargo, why would not the same approval criteria apply to a similar facility on the Columbia River or in Puget Sound where the vessels would transit the same coastal waters? Indeed, since Petitioners argue that ORMA application is based upon transiting the coastal waters without regard to the cargo in the ships, why would it not apply to all cargo vessels transiting coastal waters and then to all upland facilities in the State of Washington servicing those vessels? Petitioners' arguments for applying ORMA to the two proposed facilities before the Court would necessarily and logically apply to those facilities wherever they were located.

There can be no doubt that a significant portion of Washington's economy is based upon marine trade. The unintended consequence of Petitioners' ORMA interpretation on

this vital segment of the State's economy cannot be overstated nor ignored. Today, upland facilities throughout the State, like the two before this Court, are subject to the uniform SEPA analysis and consistent SMA regulations.<sup>19</sup> These laws and regulations are designed to allow for a meaningful consideration of environmental impacts, including the impacts from transiting marine vessels. See *Public Utility District No. 1 of Clark County v. Pollution Control Hearings Bd.*, 137 Wn. App. 150, 158, 151 P.3d 1067, 1071 (2007). If Petitioners' reading of ORMA applies, the careful analysis contained in the SEPA process and the SMA would be overridden by the onerous approval criteria in RCW 43.143.030(2)(a)-(h) which were designed to effectively prevent approval. State and local governments' hands would be tied and development that meet the requirements of the SMA and would otherwise be approved after a thorough SEPA review would be denied out of hand.

One can see that the Legislature enacted ORMA to address a specific issue – oil and gas development in the coastal waters. In doing so, the Legislature employed very strong and onerous measures to prevent development in the coastal waters along with

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<sup>19</sup> There are also special reviews for energy Facilities under EFSEC, chapter 80.50 RCW.

upland or near-shore facilities related to developments in the coastal waters. It was clearly never the intent of the Legislature to turn these measures against all upland development that might result in ships transiting the coastal waters, for to do so would and will damage the very fabric of Washington's maritime trade industry. This is an absurd result which ORMA's statutory language simply does not support.

**C. Even if the Petitioners' Interpretation Only Applied to the Four Coastal Counties, it Would Result in Unfair and Unintended Results.**

If Petitioners' interpretation limiting the application to the four coastal counties was accepted on its face, it leads to absurd results where the exact same upland facility built in one of the four coastal counties would be subject to a different review and approval standard than if built at a Puget Sound port<sup>20</sup> or on the Columbia River. This would create two separate environmental review standards for port facilities shipping the same products depending on where the port facility is located - one standard where SEPA and SMA review would be trumped by the onerous ORMA approval

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<sup>20</sup> As noted given its reading Port Angeles and Port Townsend would be similarly disadvantaged since they are located in Jefferson and Clallam counties respectively.

criteria for ports in the coastal counties and another standard applying only SEPA and SMA review for all other Washington ports.

Viewed another way, Petitioners' false entreaty to limit ORMA's application to the four coastal counties would allow developers of uses within the coastal waters, (for example, an oil drilling platform was permitted by the federal government in coastal waters) to avoid ORMA's application for their ancillary upland facilities merely by selecting an upland site outside the four coastal counties in the Puget Sound or up the Columbia River. Instead, by focusing ORMA on the "ocean uses" in "coastal waters," the Legislature and Ecology avoided this absurd result. ORMA applies to any ancillary facility supporting a use of the coastal waters.

Surely, if faced with such a development, it would be expected that these Petitioners would pivot to the position that it is the "ocean use" that triggers the ORMA approval criteria of ancillary facilities no matter where the ancillary facility were located. And, this would be a rational reading of ORMA, a statute designed to regulate and preclude uses within the coastal waters.

Moreover, there is no rational reason the Legislature would have treated shipments of the same products originating from Grays Harbor differently than shipments from Puget Sound or

Columbia River ports, as all shipments pose the same theoretical environmental risks during transit. The Court should reject Petitioners' absurd and unsupported interpretation of ORMA.

**D. Petitioners' Attempt to Claim Their New "Transportation" Use Will Be Narrowly Construed Is Unpersuasive and Wrong.**

It is important to keep in mind that the Legislature adopted ORMA's approval criteria with the goal of establishing standards that would be difficult, if not impossible, to meet. See RCW 43.436.005(4) and 43.143.010(6). Few, if any, developments could meet the approval criteria. Seeing this conundrum, Petitioners try to argue that the expansive application of ORMA resulting from their new "transportation" use would be minimal due to RCW 43.143.030(2)'s statement that the approval criteria apply only to developments that would "adversely impact" renewable resources.<sup>21</sup> Petitioners contend this is a threshold standard akin to SEPA's requirement for full environmental review only if a development is likely to result in a "significant adverse environmental impact."<sup>22</sup> See WAC 197-11-330.

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<sup>21</sup> See Petitioners' Supplemental Brief at Pg. 9, on file herein.

<sup>22</sup> *Id.*

This “no big deal” argument is a blatant false equivalence. SEPA is a process statute that requires a full environmental review after there is a threshold determination of “significant”<sup>23</sup> environmental impact. Petitioners’ interpretation of ORMA would not include any such “significance” threshold; instead, any project with any “adverse impact,” no matter how insignificant, would trigger ORMA review.

Moreover, SEPA is a process statute. After full SEPA environmental review a government has the discretion to approve a project after taking into account the information in the environmental review even if there are significant environmental impacts. Conversely, ORMA is a substantive statute that mandates denial unless high standards for both need and impact are met:

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

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

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

RCW 43.143.030(2)(emphasis added).

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<sup>23</sup> Defined in WAC 197-11-794(1) as “a reasonable likelihood of more than a moderate adverse impact on environmental quality.”

Petitioners themselves illustrate precisely how broadly the “adverse impact” standard could be used to bar new shipping related developments by arguing that the mere presence of vessels in the coastal waters without anything more, constitutes an “adverse impact” on navigation and fishing thereby requiring full ORMA review under the approval criteria.

These projects would have uncontested adverse impacts on Washington’s ocean coast due to routine oil leaks, increased vessel traffic, and other ongoing harms, in addition to the ever-present risk of a catastrophic oil spill. Indeed, the substantial increase in vessel traffic alone is an adverse impact to navigation and fishing, both activities ORMA explicitly protects.<sup>24</sup>

In the same breath that Petitioners argue equivalence with SEPA, they prove ORMA’s “adverse impact” standard is actually a substantive hair trigger which, coupled with the exceedingly difficult to meet approval criteria, would act as an effective bar to approval

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<sup>24</sup> Petition for Review at Pg. 12, on file herein. Extending Petitioners’ arguments to their logical conclusion would result in ORMA’s onerous criteria being applied to any new upland development in, by way of example only, the Port of Grays Harbor facilitating “ocean transportation” of “goods and commodities” (WAC 173-26-360 (12)) on a vessel that uses fuel oil to power its engines. Any vessel carrying logs, agricultural products, wood chips and other cargo across the “coastal waters” in a ship using fuel oil and lubricating oil could have “routine oil leaks” or a collision that would have an “adverse impact” on “ocean resources” and, therefore, fit under the Petitioners’ broad argument. Accepting the argument of the Petitioners would result in devastating consequences to the Port of Grays Harbor any other similarly situated port districts.

of any project related to marine shipping in any port throughout Washington.

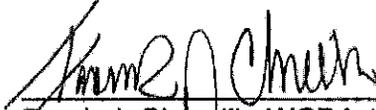
## **V. CONCLUSION**

In an effort to stop a development to which Petitioners are ideologically opposed based on the nature of the cargo being shipped, Petitioners urge this Court to ignore ORMA's clear statutory language, ignore ORMA's clear legislative history, ignore Ecology's clear administrative regulations, and disregard over twenty (20) years of Ecology's interpretation of the regulations it drafted. Petitioners urge this Court to adopt a strained and unsupported interpretation of ORMA that, if adopted, would, at best, illogically distinguish and disadvantage development in four Washington counties and, at worst, significantly impair Washington's marine shipping industry as a whole.

The WPPA respectfully requests that this Court reject this absurd reading of ORMA and, instead, leave the focus of ORMA and the Ecology regulations where they belong and have been for twenty (20) years – on "ocean uses" within the "coastal waters". The WPPA respectfully requests that this Court uphold the Court of Appeals' decision.

Respectfully submitted this 24<sup>th</sup> day of August, 2016.

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## DECLARATION OF SERVICE

I, Frank J. Chmellk, declare under penalty of perjury under the laws of the State of Washington that I am one of the attorneys for Amicus Curiae Washington Public Ports Association, and that on August 24<sup>th</sup>, 2016, I caused the foregoing BRIEF OF *AMICUS CURIAE* WASHINGTON PUBLIC PORTS ASSOCIATION to be served on the following in the manner indicated:

**WASHINGTON STATE SUPREME COURT**  
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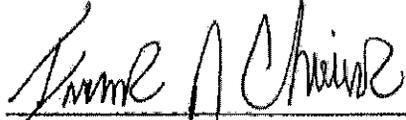
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DATED this 24<sup>th</sup> day of August, 2016, at  
Bellingham, Washington.



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**Subject:** Quinault Indian Nation et al. vs. City of Hoquiam et al.; Supreme Court No. 92552-6

Supreme Court Clerk:

**RE: QUINAULT INDIAN NATION ET AL. VS. CITY OF HOQUIAM ET AL.  
SUPREME COURT NO. 92552-6**

**FILED BY: Frank J. Chmelik, WSBA #13969 and Seth A. Woolson, WSBA #37973; CHMELIK  
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Attached for filing are the following pleadings:

1. The Washington Public Ports Association's Motion for Leave to Participate as an *Amicus Curiae* (including Declaration of Service), and;
2. Brief of *Amicus Curiae* Washington Public Ports Association (including Declaration of Service).

Please confirm via return email that these documents have been received and filed.

Thank you.

*Most Sincerely,*

*Annette*

**Annette M. Arp**

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