



AGENDA

MEETING: Regular Meeting

TIME: Wednesday, September 20, 2017, 5:00 p.m.

LOCATION: Council Chambers, Tacoma Municipal Building, 1st Floor
747 Market Street, Tacoma, WA 98402

← Note the changes
in meeting time
and location

A. Call to Order and Quorum Call

B. Approval of Agenda

C. Public Comments (No public comments are accepted, since all agenda items are the subjects of recent public hearings.)

D. Discussion Items

1. Tacoma Mall Neighborhood Subarea Plan and EIS

Review public comments received at the public hearing on September 6 and through the comment period ending on September 15, discuss the Economic Comparative Analysis prepared by Community Attributes, Inc, and determine next steps for modifications to the draft proposal. (See "Agenda Item D-1"; Elliott Barnett, 253-591-5389, elliott.barnett@cityoftacoma.org)

2. Tideflats Interim Regulations

Review public comments received at the public hearing on September 13 and through the comment period ending on September 15 and consider modifications to the proposal. (See "Agenda Item D-2"; Stephen Atkinson, 253-591-5531, satkinson@cityoftacoma.org)

3. Marijuana Use Buffers Code Amendment

Review public comments received at the public hearing on September 6 and through the comment period ending on September 11 and consider making a recommendation to the City Council. (See "Agenda Item D-3"; Lihuang Wung, 253-591-5682, lwung@cityoftacoma.org)

E. Communication Items & Other Business

- (1) The next Planning Commission meeting is scheduled for October 4, 2017, at 4:00 p.m., at a location to be determined; tentative agenda (subject to change) includes: Tacoma Mall Neighborhood Subarea Plan; Tideflats Interim Regulations; Emergency Temporary Shelters Interim Regulations; and Links to Opportunity Update.
- (2) The next Infrastructure, Planning and Sustainability Committee meeting is scheduled for September 27, 2017, at 4:30 p.m., in Room 16; the agenda includes: Transportation Commission Interviews; Parking Initiative Update; and Model Traffic Ordinance Update.

F. Adjournment





City of Tacoma
Planning and Development Services

Agenda Item
D-1

To: Planning Commission
From: Elliott Barnett, Planning Services Division
Subject: **Tacoma Mall Neighborhood Subarea Plan and EIS**
Meeting Date: September 20, 2017
Memo Date: September 15, 2017

With the September 15, 2017 conclusion of the public comment period, the project will soon pass a major milestone. At this meeting, the Commission will discuss the key themes of comments received to date, hear a presentation by Community Attributes, Inc. on their economic comparative analysis, and provide direction to guide subsequent staff efforts. Staff will return on October 4, 2017 with further items for discussion. On October 18, 2017 the Commission will consider making final recommendations to the City Council.

On August 2, 2017 the Commission authorized the public release of the draft Subarea Plan, proposed code changes and streetscape design concepts, and Draft Environmental Impact Statement. After broad notification and outreach efforts, public engagement has been ongoing up to today. The City hosted the August 30th Informational Meeting and September 6th Public Hearing, and staff participated in meetings with the Transportation Commission, Bicycle Pedestrian Technical Advisory Group, and City Council Infrastructure, Planning and Sustainability Committee. In addition, staff have spoken with community stakeholders as well as with City to departments which will be involved in implementation. The City received over 40 written and verbal comments through Thursday.

Attached is a high level summary of the comments received to date, along with preliminary staff recommendations for additional analysis and policy options to address the issues raised. At the meeting, staff will provide any additional comments received through the end of the comment period and highlight any new issues. Staff will then ask the Commission for concurrence or further guidance on a list of actions to update and finalize the package. The objective is to have a clear roadmap to guide this final phase of Commission work on the project.

Information about the project is available at www.tacomamallneighborhood.com. Please contact Elliott Barnett at (253) 591-5389, or email tacmallneighborhood@cityoftacoma.org with any questions.

Attachments:

1. Preliminary Summary of Key Issues and Recommendations
2. Comments received through 09/14/17
3. Economic Comparative Analysis – Tacoma Mall Neighborhood Subarea Plan

c. Peter Huffman, Director

PLANNING COMMISSION 09/20/17 - ATTACHMENT 1

SUMMARY of KEY THEMES (through 09/14/17)

The comments received reflect diverse viewpoints and interests among residents, businesses, property owners and other stakeholders. At the time of this summary, comments are still being received. This summary is intended to help facilitate discussion at the Planning Commission's meeting on September 20, 2017, not as a full documentation of comments and public testimony.

Comments are grouped into general categories according the chapter structure of the Subarea Plan. At the meeting, staff will bring forward preliminary recommendations for actions to address the public input.

General comments:

- Support for City focus, investment and high level goals of the plan
- Avoid making anyone feel that they are losing through City actions
- A plan is appropriate and needed, thoughtful growth is needed; however the plan is too ambitious given current market realities
- Clarify that this is a long range plan and an ideal vision
- Be clear whether actions are requirements, options, and what is occurring with Plan adoption

Urban Form:

- Support for creating a more positive image and identity
- Support walkable urbanism actions
- Support for contemporary transit-oriented development and the proposed transit station
- There should be less emphasis on front stoops and more yard space
- Different views of the vision for the Northwest District

Land Use:

- General support for proposed zoning changes
- Clarify relationship between the Subarea, Downtown, and the South Tacoma Manufacturing/Industrial Center
- Support for expanding RGC, buffer with the South Tacoma M/IC
- There should be better design and landscaping and onsite open space standards
- Should the two car dealerships located just outside the proposed Subarea be included
- More parking is needed in the neighborhood
- Front doors should not face alleys
- Comments on permitted building heights (too high or too low)
- Make warehousing a permitted use at the Puget Sound Energy site

Housing:

- Concerns about involuntary displacement
- Proposed affordable housing targets are too low
- The City should be targeting the creation of housing affordable to lower incomes

Transportation:

- Support for overall transportation approach
- Transit station relocation, Loop Road, I-5 offramp are high priorities
- Differing perspectives on where the transit station should be located
- Call for a direct transit route between the Tacoma Hub and the Subarea
- Identify a funding source for transportation projects
- Various comments regarding street design

CONNECTIVITY

- Support for the proposal
- Proposal would be an excessive burden, will stifle development and take private property rights, too ambitious given current market realities
- Proposed process is onerous and complex
- Thresholds proposed are too low
- Differing opinions whether proposed S. 37th Street is necessary, and who should bear the cost
- Opposed to the proposed S. Wright Ave through the Pierce County complex
- Clarify City funding role

PEDESTRIAN ACCESS STANDARDS

- Support for proposed pedestrian access standards
- Access should not be required to areas with restricted access
- Frequency and size of connections too high
- Threshold should remain 50% not 15%
- Pedestrian connections across property reduce safety
- Clarify how standards work with topography, rounding

Environment:

- Support for stormwater strategy, green streets, and tree canopy actions
- Prioritize planting evergreen trees
- Put stronger emphasis on protecting the aquifer
- Caution regarding City implementation of the stormwater strategy, equitability of costs and maintenance of facilities
- More emphasis on green building standards

Community Vitality:

- Support for parks, open space actions
- Metro Parks Tacoma should change Level Of Service and implement parks vision
- School District should implement vision for Madison School
- Specific comments regarding various proposed park locations
- Clarify what it means to show a proposed park
- Remove the park in the Mall District which is privately owned land
- Strong support for local serving services and amenities
- Crime is a big issue in the neighborhood

Shared Prosperity:

- Prioritize bringing in businesses with a track record of good ethics and good wages
- Diversify the types of businesses in the Mall
- Consider actions support locally owned businesses versus national chains
- Bring back City culture of promoting and supporting businesses and development
- Look for strategic and catalytic city actions to create business opportunities
- Comments regarding proposed catalyst sites

Utilities and Services:

- Support for coordinated planning approach to support future growth
- Add recycling to discussions of solid waste

Implementation:

- Make sure that infrastructure is keeping pace with development
- Development should pay for the cost of addressing impacts
- Local Improvement Districts will be challenging for low income households
- The City must follow through with implementation of non-contentious catalyst projects

From: joriadkins@mac.com
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: Tacoma Mall Neighborhood Subarea Plan comments
Date: Thursday, September 07, 2017 2:59:59 PM

I listened to the comments at last night's public meeting and would like to offer these questions and observations

- The introduction 1st paragraph after the Vision refers to the proximity to Downtown (Fig. I.1) Downtown will be on the final map?

This is very important even more so than the TideFlats or even the S. Tac M/IC as this is what the people of this area are relating to, as far as planning for growth in their area. It is stated several times in this Intro that the Mall Subarea is second to Downtown in expected job and density growth.

If the M/IC is going to be shown here, it should state why that is important to the Subarea and I don't see that, did I miss it? That it is an Overlay w/additional protection for M/I uses by further restricting incompatible uses.... Is there enough buffer along S. Tac Way and Water flume Trail?

The fear of higher density and heights might be (somewhat) alleviated by better stating this relationship to Downtown, by showing Downtown as being the MUCH denser RGC with heights of 100+ ft. compared with the proposed 45' - 65' for the Mall area.

Also I think there should have been, and can be in this document, better/stronger education of what the Vision and Goals mean in the long run. Try to get it across that they are not to be achieved in the short term and maybe not even in the long term, but IDEALY they are what directs the process *toward* the Goals and the progress of getting there. It sounded, last night, like people were afraid of having their land taken, where, I believe, you are trying to get a buy-in on an ideal of a new way of looking at retail/commercial/mixed use development. It seemed to me that there was a soft buy-in on the ideas at the meeting. Retail/commercial endeavors are not really working to their expectations and most people are hearing of new ideas on creating a village feeling (read; pedestrian) to the areas around and in their developments. I do hope there have been meetings with these people and education through outside resources(LUI, trade magazines, new urbanism etc). They will do better, but betterment costs money.

- Be up front on whether Strategies are a *shall* or a *should*.

In the Actions where it is suggested to "Revise development regulations to require..." and "Revise the TMC to state....", will they be done automatically when the Plan is adopted by the Council or will the neighborhood have to raise the issue again and shepherd it through the process?

We missed some action items when we did the South Downtown Subarea Plan and now we need to go back and resurrect those initiatives ourselves.

- I am very concerned about Implementation. It is so important to make sure, if the City is going to start up these planning processes in a neighborhood, that they follow up with some of the Catalyst Projects quickly. They should be the ones that are NOT contentious, of course, but start concrete design meetings on some that all agree on (move forward with the 3 key Corridors- the new I-5 ramp, 38th and the 45th to Fife Transit connection IF those are the ones most people want). The City needs to take the lead in this. Take care of your volunteers who

have come to these meetings.

Whatever did happen to the 2 bond issues for fixing roads? Was any of this money spent in this area?

- Transit needs to pull up into the Mall area to drop people off, not have them walk across a busy street then across a sea of parking. Do not treat bus riders as second class citizens, they are the ones who should be given optimum drop off spots!

Thank you to the all volunteer Planning Commission and City staff for your work on this

Sincerely, Jori Adkins
301 Puyallup Ave.
Tacoma WA 98421

423 141st Street So
Tacoma, WA 98444
September 14, 2017

Chair Stephen Wamback
Tacoma Planning Commission
747 Market Street
Tacoma, WA 98402

Dear Mr. Wamback:

I am writing as a member of Tacoma Friends Meeting (Quakers). Our meetinghouse is located at 2508 South 39th Street and is a commercially-zoned property within the Tacoma Mall Subarea. We are one of the few religious organizations within this subarea community. Although I am the clerk of the meeting (equivalent to a chairperson) I am writing as an individual member of the meeting not as the clerk, because I have not been authorized to represent the opinions of the meeting as a group. Part of our property includes the park that was established many years ago by Hillside Community Church and the Tahoma Audubon Society.

My concern here is with several issues that have arisen as a result of the residential plans and zoning rules proposed in the subarea plan. I have also agreed to be a co-signer of the letter you will receive from John and Eleanor Brekke that addresses elements of the plan that affect the commercial property owners.

The issues I see and my opinions about the residential plans are as follows:

1. **No front doors of apartment complexes should face alleys.** This creates second-class residents of those buildings. Having one's front door face an alley is demeaning to the residents and not conducive to pride of place or care of one's place. Although it is promised that developers will have to provide street-like amenities or mews-like designs for the alleys, I do not believe these rules will be enforced.
2. **Six-story buildings seem to me to be too high for apartment buildings, if we want to promote a more attractive and safer neighborhood.** I recognize that height will give the developers more profit for their investments. However, in my travels in the US and Europe, it has seemed to me that four-story apartment buildings offer a sense of neighborhood better than taller structures. They are not so overwhelming in size.
3. **Townhouses are not suitable for many senior citizens and generally not at all for disabled people**—obviously because of the need in each home to negotiate at least two flights of stairs to use the residence.
4. **Parks should be developed in available greenspace.** I am aware that these as yet undeveloped lots are privately owned. I hope Metro Parks can be encouraged to take an interest in this subarea.
5. **The various environmentally sensitive programs for porous streets, tree canopy enhancement, and the like are excellent and should remain part of the plan.**

I also am delighted to see the proposal for the non-project environmental impact statement. That should make things easier for developers overall in both residential and business sections of the subarea.

My thinking is based on the principle that no one should suffer as a result of how we plan; all people we serve should be treated with respect.

Sincerely yours,

Angelia Alexander

Cc: Elliott Barnett, Planning Services Division

To: Elliot Barnett, Associate Planner
747 Market Street, RM 345
Tacoma, WA 98402
(253) 591-5389

September 10, 2017

tacomaneighborhood@cityoftacoma.org

RE: Tacoma Mall Neighborhood Subarea Plan

Please enter into the review process by the Planning Commission, the following comments concerning the Tacoma Mall Neighborhood Sub-area Plan. There has been a tremendous amount of work by dedicated professionals incorporated in this document, and most of the information concerning the “neighborhood’s input” has been included.

But due to the nature of the project, and the prejudice of the contracted professionals (east coast mentality), I do not believe that it represents a great neighborhood with the economic viability and increased mixed use livability that it could have. By that, I mean two issues: (1) That development must assume some of the responsibility for new usage requirement of the infrastructure, and (2) must assume the responsibility of the energy savings and ecological technology to be used in construction, not the citizens who, for a large part, will be the aging, or the extremely young (w/children), unless restrictions are incorporated along with the ideals of this proposal.

Issue (1):

- a. As the population increases, along with business and transportation, there must be a fund or incoming financing from the developer that pays for the increase use (and rates) of the infrastructure, including, but not limited to: streets, utilities, water use/disposal, communications and natural gas lines to (and possibly have to increase the size of) the main lines. New development should not be carried by the citizens of Tacoma. Development will make money from the project and by *paying forward* for usage, would only be right.
- b. The infrastructure must also be assumed to include the nature of the building and the requirements of future tenants/owners. Therefore building for residents must include some type of recreation and play area for all ages of the building, including safety of some of its tenants (whether young or old). Development for business / government must have adequate waiting & lunch room/seating for its tenants and their customers, along with accommodations for stretching and exercise for their breaks. You would think that developers would include this in their design; however, some developers interested in making a “fast buck” will skillfully exclude these items unless required by the city.

Issue (2):

- a. Development must also be mindful of the ecological concerns of Tacoma citizens. Citizens wish to continue to reduce the amount of harmful substances in the air, on the land and in the water, therefore, by using new industrial standards & technology for development materials and for excessive waste and water pollution. Developers must begin using re-useable and long usage materials for all aspects of building, including, but not limited to: framing, instillation, finishing walls and paints, wiring/piping for water/gas/communications/ electrical and heating and air-condition. Developers should be required to obtain and install the most energy efficient appliances included in each design, including waste water management systems within each building to separate, and re-use, brown water. This concept also includes a possible ‘park-like’ or community garden space on roofs. Unless mandatory requirements from the city are enacted, developers will continue to use the cheapest, and/or sub-standard, materials necessary to complete the development.
- b. The city must be vigilant to process permits that emphasizes new building requirements, but more importantly, for the city inspections to ensure proper and safe development availability for our citizens. Unlike the Ruston Way Project, where inspectors came out “periodically” and “signed-off” on the development already completed and buried without actually being inspected.
- c. All development must include the tough “green” requirements set-forth by the city where in 2-40, 40% of the city will be a green space. But that requirement is sub-standard as the city only requires 40% of

that 40% to be evergreen foliage. Tacomans know that the worst air quality in the region is in the winter, and by mandating that 60% of new foliage will be deciduous, creates two problems: (i.) not able to absorb carbon dioxide in the fall and winter months, and (ii) creates clogged drainage for streets as this is a “transient” part of Tacoma, no-body, except some of us older ones, who are gradually dying off, really cares if street drains are clear of leaves and debris. This needs to change by regulations, to include developers and the city.

- d. 2017 and beyond is not the time to continue to mix “brown and black” water together to flow into Puget Sound. Technology exists that separates water that can be re-used, or used to nourish nature/greenery. This is essential to the water use of future generations and lowering the costs of utilities to other residents. Developers must incorporate these techniques in each and every development in Tacoma.
- e. Underground main lines for all support infrastructures to the development, including, but not limited to: utilities / communications, and water, instead of overhead “telephone poles and lines.” This concept protects the utilities, communications, and possibly others by having secured access from weather, accidents or vandalism. Increasing road-ways and sidewalks (to new standards), not just outside the development, but to the main roadways that their residents / owners / customers would use to get to that development. Once again, should not be a financial burden to Tacomans already.

The design for residential living consists of the front of the complex / homes to be at the sidewalk. Unlike our counterparts from east of the Alleghenies, Tacomans do not (as stated at numerous community meetings) want to sit on their front “stoop” and stare at their neighbors across the street. We want some greenery and space that will allow for our pets to run, child to play and BBQs without having to travel to “parks along the walk-way” to enjoy our summers. We do not want our front doors to face the allies, nor be required to park in the allies where we cannot keep an eye on them. We must draw the line somewhere, and this is a must.

Travel to and from business, appointments, schools and activities is to be through the “Bicycle and Walking route,” then healthy activities, historical or educational information and resting areas should be incorporated alongside the route. Activities should include exercises challenges for both the young and the elderly. Sitting areas for the elderly and large amounts of information consisting of current events/activities, educational (challenging) material that students will need to know to complete K-12, like quizzes and answers. Seating to accommodate those in wheelchairs, walkers or mothers needing change diapers (yes, we’ll need this in 2040).

The planning committee charged with creating a functional design for this region has done an outstanding job. But just as important as the design, are the types of business that will be available for a self-sustaining neighborhood. These include (but not limited to): a major shopping center, medical (including small surgical/E.R.) and dental and retailers and suppliers that support these services, clothing retailers, community centers, young adult and underage educational and recreation area where pre-teens and older (up to 18) may go to have adult supervision while they exercise, relax and/or do home-work and not leave these folks on the street. A senior center would be a perfect neighbor to support the Youth Center as volunteers or mentors. In order to access these places of business, the road design must include a separate left turning lane (or what’s know as a “suicide-lane”) as to not back up traffic on the “drive-through” lane on two lane arterials, both directions, allowing the right lane to support right hand turns. The idea of having mediums filled with cement or foliage (hopefully not deciduous) as currently designed in the plan is not reasonable.

I strongly agree that retailers and commercial residents should be alongside major arterials (i.e., S. Pine Street, S. 38th Street, S. 47th Street and South Tacoma Blvd. The next level on the inside of that parameter should hold the multi-family living units and, inside of that, individual housing. The present design does not represent the parks and playgrounds necessary for the residents. It mostly shows that the majority of the recreational playgrounds are on (or beside) the bicycle / walking route. This is not where the residents live. Consideration should be to have the committee examine the project again to ensure that the majority of the playgrounds (that should include all types of recreation, including but not limited to: skateboard park, tennis courts, basketball courts, rock-climbing activities, outdoor exercise equipment, balancing bars/logs, hop-skip

and jump areas, four-square and “feet following designs (as in dancing instructions).” This should also be a requirement for developers.

But in order for The Tacoma Mall Project to be generated, major assistance is needed by the owners of the S. Tacoma Mall. Present vendors do not generate major participation by either the youth or the elderly. The mall must somehow provide the service needs to accommodate its present and future customers. Things like a movie theater, teen activities center, child-care, post office/outlet, nutritional vendors and resting centers for the seniors, truly accessible potable water stations and restroom facilities. Access to the mall presently competes with the residents / business owners and customers of University Place, S. Tacoma and its Business Districts along with, N. Lakewood and Chambers Bay Golf Course. The City / State / Business partnership must create an access to 47th / 48th S. Street for (mainly) mall customers off I-5. A side benefit would be a reduction in the traffic in the S. Tacoma Area. Current plan is to ask the state to build another off-ramp I-5 at S. 38th Street. That would make that region even a greater “cluster,” than it already is.

The suggestions and future requirement recommendations in the above letter to the Planning Commission are just that. But understand that if regulations are not changed, development will continue to use sub-standard, non-environmental friendly, without paying their share of taxes (city granted tax exemptions/breaks) and continue to pass on these costs to the residents of Tacoma. Interpretation of the city’s requirement for greenery can look like the deciduous trees planted under power wires on new development sites north of S. 47th Street, and Tacomans will have the responsibility to “fix” issues in the future by increased taxation / fees /etc.

For the plan to take shape, present development (or future) must begin using the requirements set forth in the plan now as to not have to begin over, correct or modify, over the next 20 years.

Thank you for the opportunity to provide input to the Tacoma Mall Project plans and EIS.

Robert Bearden
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Tacoma, WA 98409
(253) 475-2818
rbearden@comcast.net



City of Tacoma
Bicycle and Pedestrian Technical Advisory Group

September 13, 2017

**Members of the Bicycle
Pedestrian Technical
Advisory Group**

David Cook, Co-Chair
Daniel Hansen, Co-Chair
Theresa Beaulieu
Anne James
Jennifer Halverson-Kuehn
Leon Nettels
Susan Reehill
Jolene Rogers
Aubrey Rosevear

Dear City of Tacoma Transportation Commission:

Over the past few years, BPTAG has provided input into the Tacoma Mall Subarea Plan (TMSP) on multiple occasions. The city has integrated our suggestions thoughtfully and has done a nice job explaining why some suggestions did not appear in the final document. As with any large project, the integration of alternative priorities from multiple parties has required modifications and adjustments and we appreciate the difficulty of those decisions.

Ultimately, the City of Tacoma has incorporated BPTAG's input into the TMSP and has presented a plan with excellent focus on active transportation alternatives. We strongly support the city's goal of supporting connectivity through the use of a mixed road network. Consistent with Tacoma's Transportation Master Plan, the blank spaces in the Tacoma Mall subarea have been filled in with an effective balance of pedestrian, transit and cycling infrastructure. For transit, we appreciated the data supporting the movement and development of a new transit hub that will integrate the existing regional bus routes. For pedestrians, we like the updated requirements that create robust pedestrian access throughout large sites including a higher standard for central pedestrian access with frontage sites of over 450 feet. Cyclists will benefit not only from the infrastructure within the TMSP but also from the connectivity to bicycle infrastructure in the Transportation Master Plan outside of the Tacoma Mall subarea.

In our August BPTAG meeting, we spent considerable time discussing the proposed connection of S 37th street. While we understand local business and property owners concerns regarding reconnecting new roads within the right of way of businesses, BPTAG feels that the city and business owners have achieved an appropriate balance of preserving relatively large parcels for businesses (even with the addition of S 37th Street), while improving connectivity for both bicyclists and pedestrians by reducing a few of the very large parcels. The TMSP includes triggers and incentives that would govern such development, meaning these roads will not be constructed soon and developers maintain control of redesigns that would trigger such development. However, as the landscape of the Tacoma Mall Subarea changes, we feel that the connectivity goals need to be maintained, as outlined in Transportation Master Plan and reflected in the TMSP. South 37th St. is particularly strategic as it connects Pine St. (with proposed bike lanes) with the Loop Road, South Tacoma Way, and access to the Water Flume Trail.

Thank you for your hard work on the TMSP and attention to making the Tacoma Mall area accessible to active transportation options.

Sincerely

Daniel Hansen
Co-Chair

David Cook
Co-chair

Staff Liaison:
Meredith Soniat
253-591-5380

City of Tacoma
Public Works Department
Engineering Division
747 Market St.. Room 644
Tacoma, WA 98402

Cc: City of Tacoma Planning Commission

What we like about the Sub Area Plan

City interest in the neighborhood
Creating a transit center and working to bring rail to the area
Bringing more of an identity to area and creating a destination
Improvements to existing streets
Grant \$ for street improvements and help revitalizing the neighborhood.
Recognizing the neighborhood is residential, commercial, and industrial in nature.

Connectivity

We are watching the biggest economic boom in the Seattle area. 50+ cranes and not yet seeing in Tacoma. It is indicative. Looking forward to Tacoma Mall neighborhood boom.

#1 concern you have heard from property owners has been about connectivity and often overlooked onerous attributes of connectivity that stifles progress and redevelopment including the time frame up to the point of major redevelopment.

Logically happens when market demands and at the time of major redevelopment. Bulldozer comes out. Major development defined as 50% of valuation (15% trigger much too low). At that time will address connectivity within site & neighborhood

If try and have connectivity either in plan or actual prior to major redevelopment creates economic barriers. Unnecessary in this economically sensitive area. Negotiating with neighbors. Losing deals while waiting or permitting approvals

Beware of creating barriers. Need incentives to build connections, not more restrictive regulations.
Allow, but don't require, through connections to be combined with emergency access serving a parcel.

Chopping up parcels with a connectivity plan and/or actual implementation limits buildable square footage and restricts flexibility. Property owners are unable to maximize the value of property given the restrictions.

The frequency and size of connections creates a burdensome environment for current owners, businesses as well as future developers. Appropriate time for connectivity is at the time of major redevelopment and with more modest connectivity goals.

***what is being proposed is breaking down a 16 acre site into 32 one-half acre sites

Connectivity has its place but there is value in large parcels. Developers and government need assemblage. University of WA Tacoma, Convention Center, Tacoma Dome, Central Police Facility. Malls, Convention Center, Corporate Campuses, Midsize Shopping Centers = large parcel

37th Street

Continue to question the cost/benefit of 37th when there are viable alternatives at lower costs and without topography issues and significant ROW acquisitions. For example, extending 35th and Cedar Streets to connect to South Tacoma Way and the Water Flume Trail.

If 37th is deemed necessary by the City then it should be a Tier 1 Street which is City led, City funded ROW acquisitions, and City constructed. It should also be built both east and west of Pine Street as topo allows.

Eleanor Brekke
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Cedar Plaza

John Brekke
john@brekkeproperties.com
Cedar Plaza

BREKKE PROPERTIES
PO BOX 287
MEDINA, WA 98039
(425) 451-1511

September 15, 2017

Mr. Stephen Wamback, Chair
City of Tacoma Planning Commission
747 Market Street
Tacoma, WA 98402

Dear Mr. Wamback and Members of the Planning Commission:

RE: Tacoma Mall Subarea Plan and EIS

As owners of the Cedar Plaza shopping center located in the NW Quadrant of the Tacoma Mall neighborhood, we have actively participated in the public process concerning the Tacoma Mall Subarea Plan. The decisions of the Planning Commission will have a direct impact on our property and our tenants, and it is in the spirit of public-private partnership that we offer our comments on the Tacoma Mall Subarea Plan and Environmental Impact Analysis.

We want to acknowledge the tremendous effort that has been put forth by the Planning Commission and staff over the past 18 months to bring the Tacoma Mall Subarea Plan to its final stages. There are a number of initiatives we support including:

- **Neighborhood Infrastructure** – significant City investments in new sidewalks, street lights, street trees, storm water drainage system improvements, the Loop Road and additional bicycle and pedestrian connections to South Tacoma Way and the Water Flume Trail.
- **Regional Transportation Improvements** – City leadership to bring more transportation options to the Tacoma Mall neighborhood such as:
 - Second I-5 interchange to relieve pressure at 38th and Steele;
 - Pierce Transit station located more centrally within the neighborhood and the addition of express bus service; and,
 - Sound Transit light rail and Sounder stations nearby to serve the neighborhood.
- **Height, zoning, design standards, and city improvements** to the regional storm water facilities to serve the area.
- **SEPA** - The City's decision to complete an upfront Environmental Impact Statement is of considerable value to private property owners and is a tangible benefit that will help both existing businesses when they wish to expand their facilities and new development coming to the area.

While the City's proposed capital investment and economic development focus for the Tacoma Mall neighborhood is exciting and supported by the business community, there are elements of the Subarea Plan that continue to be a cause for concern.

For all the apparent hustle and bustle of the Tacoma Mall neighborhood, the economic underpinnings of this area of the City is deceptively fragile. When compared to other properties we own and manage in the South Sound region, retail-office-warehouse space in the NW Quadrant of the Tacoma Mall neighborhood rents for less than our industrial warehouse space in Kent. Of considerable concern is the structural change taking place in the retail shopping industry and the way business is conducted, making retail centers no longer the predictable property investment it has been. All this is to say that new regulations should support business retention / expansion and recruitment without creating or imposing burdens for private property owners.

Our greatest concerns fall into the broad categories of connectivity and the characterization of large blocks. These issues remain the greatest concern of private property owners in the Tacoma Mall Neighborhood

We considered several formats that might be used to most effectively provide our public comments; for instance, a narrative supported by spreadsheets or a line-by-line editing of the City's proposed code changes found in Appendices LU-2, pages 34-50, etc. In the end, we chose to outline a simple approach we can begin to support and that we feel could bring mutually desirable results. The following brief summary spells out the elements of that approach.

CONNECTIVITY

1. Use existing Rights-of-Way when available

- Use existing city-owned rights-of-way for the Loop Road bicycle and pedestrian trail.
- Extend South Cedar, So. 35th and So. 40th Streets westerly to connect with South Tacoma Way and the Water Flume Trail.

2. Proposed Future 37th Street

If the City determines the proposed 37th Street would be effective in improving neighborhood-wide connectivity, we would support the construction of 37th with these changes:

- 37th Street would be classified as a Tier 1 Street;
- 37th Street would be built on both sides of Pine Street as topography allows (east to Fife Street and west to existing 37th Street);
- 37th Street would be a City-led and City-funded project including right-of-way acquisition, design, and construction.

3. Connectivity Framework – Subarea neighborhood

Larger blocks should not be required to be divided any less than a 600' x 600' block configuration for the Tacoma Mall neighborhood to accommodate and enhance multi-mode travel (vehicles, bicycles, pedestrians, and transit).

4. Internal Connectivity

Replace the very complicated proposed connectivity requirements / connectivity plan with a 300'x 600' network of Tier 3 bicycle / pedestrian connections to establish an urban framework for the neighborhood.

- Internal pathways with alignments allowed to meander to accommodate buildings, above ground utilities, or other impediments.
 - *Note: The WSDOT bicycle and pedestrian standards for the newly constructed bike/ped trail built on a major commuter route on the north side of the SR520 floating bridge to connect nonmotorized travelers to and from Seattle and the east side of King County is 14'. There is no justification in requiring the subarea through block connection to be equal or greater than 14'. Bike/ped trail in the subarea are major commuter routes therefore a 5'-10' is more appropriate.*
- Triggered by major redevelopment defined as *"improvements exceeding 50% of the value of existing development or structures as defined by the Building Code, unless specifically exempted"* (see language taken from Appendices LU-02, page 34, TMC 13.06.12). Tenant improvements, façade and site improvements would be exempt from the major redevelopment calculation.
 - *Tenant improvements and site improvements are necessary to attract quality tenants. Façade improvements improve the aesthetics of the neighborhood. A private property owner should not be penalized for improving their property.*
- The proposed connectivity threshold triggers are much too low. Most routine leasehold improvements for larger tenants or higher value tenants would trigger the connectivity plan requirement (see proposed TMC 13.06.512 General Applicability, Appendix LU-2, page 34).
 - *In no event should thresholds be more stringent than those found in the current Tacoma Municipal Code and an exemption should be added for tenant improvements, façade and site improvements.*

The proposed connectivity plan / process is complex, rigid and onerous. It's a process that requires a private property owner to notify and then negotiate with neighboring property owners to determine connectivity alignments. It's a process that creates a recorded and legally binding document that may well have to be 'undone' when major redevelopment takes place, and it may not be suitable for highest and best use in the future.

This legally binding commitment would not only dictate future development but could have the unintended consequence of stifling property improvements because property owners won't want to make improvements that will trigger the connectivity plan requirement. The city's connectivity policies will have an impact on mortgage financing, future lease negotiations and the sale of a property. A property owner who went through the arduous process of designing a connectivity plan and having it approved would have to repeat the same approval process if the connectivity plan needs to be changed in the future. This would require additional time and money for both the private property owner and the city.

Designing a connectivity plan at the time of major redevelopment allows the property owner to design connections in context with the new development rather than guessing at what might be best, where buildings might be located, the possible configuration and size of a future building footprint, etc. To design site improvements within the constraints of a pre-determined and legally binding connectivity plan seems to be the tail wagging the dog.

As avid cyclists and daily pedestrians, we understand connectivity and the benefits it can bring to a neighborhood. Nevertheless, the proposed connectivity process and requirements spelled out in the proposed changes to the Tacoma Municipal Code are complicated with real consequences to private property owners. The same effect can be achieved without having to file and record a connectivity plan by implementing a policy calling for Tier 3 bicycle/pedestrian connections as outlined above.

We ask for your serious consideration of the simpler and yet effective approach outlined above. In addition, we have attached our recommendations for transportation improvements outlined in the Subarea Plan, Table 2, Project List, page T-26.

LARGE BLOCKS

The Subarea Plan and EIS characterize 'large blocks' and 'very large blocks' as undesirable and a condition to be remedied with a network of east-west and north-south streets supplemented by bike and/or pedestrian paths built at intervals of 150'. While the EIS states that Medium and Long-term maps for the neighborhood are 'illustrative not directive' (EIS Page UF-6), the proposed code changes (Appendices LU-2 pages 34-50) dictate a prescriptive and predictable pattern with little consideration of existing property boundaries and patterns of ownership. The proposed code changes provide connectivity requirements that would essentially subdivide properties into a grid of smaller development parcels and eliminate flexibility for future site planning.

We contend large blocks can be a benefit to business recruitment efforts of the city and local economic development agencies. Indeed, Catalyst Sites in the Subarea Plan include large blocks. The City of Tacoma has considerable experience in the assemblage of large blocks of property for signature projects in the downtown Regional Growth Center such as the Tacoma Dome, University of Washington Tacoma, Greater Tacoma Convention and Trade Center, and the original Central Police Facility site.

Recent regional examples of property assemblage include South Lake Union in downtown Seattle, Kent Station, and Bothell Crossroads project. The City of Kent purchased a 20-acre industrial site that was located next to a Sounder rail station, designed a site plan with new street and bike/pedestrian connections, and then sold the development site at a discount to a private developer that carried out the city's site plan. The City of Bothell spent \$53 million to purchase property and another \$100 million to demolish buildings and build a desired street network. Bothell then sold the remaining property they had purchased as pad-ready development sites to private developers.

CATALYST SITES

Focusing the majority of improvements in the NE and SE quadrants of the Tacoma Mall neighborhood could create a vacuum or a diversion, leaving the NW and SW quadrants in the shadow of the more improved parts of the neighborhood. In other words, the perception could become that the farther away from the area being improved, the less desirable could be the properties.

1. Consider designating an aggregation of vacant or severely underutilized properties in the north end of the Northwest Quadrant.
2. Goodwill/Outback Plaza (and potentially in combination with abutting properties to the north, east and west).

In closing, we are excited about the prospect of approximately \$125 million in infrastructure improvements that could be made in the Tacoma Mall neighborhood over the next 20 years. These changes will make a noticeable improvement in the neighborhood's image, and in turn, spur economic development and investment by the private sector.

Sincerely yours,



John Brekke
Brekke Properties



Eleanor Brekke
Brekke Properties

cc: Elliott Barnett, Planner

Attachment: Suggested priorities for Near- and Mid-Term Transportation Projects (Subarea Plan, Table 2, Project List, Page T-26)

Suggested priorities for Near- and Mid-Term Transportation Projects (Subarea Plan, Table 2, Page T-26)

Focus on near-term and mid-term improvements – These investments will enhance the neighborhood’s image and build stronger market demand that, in turn, will lead to more private investment. Incremental change will be most effective in reaching long-term goals.

Near-Term Priority Project

1. Area-wide sidewalk gaps
2. Loop Road Demonstration Project
 - Include Lawrence between So. 36th and So. 38th Street
 - Include So. 36th between Lawrence and Pine Street
3. 38th and Steele Street Intersection Improvements
4. South Cedar, 35th and 40th Streets extended to the west on existing rights-of-way to South Tacoma Way and the Water Flume Trail
5. Tacoma Mall Transit Center, Design Phase I
 - Select a location closer to the center of the neighborhood, future Sounder station and Water Flume Trail to support residents, employees, and visitors.

Mid-Term Priority Projects

1. Intersection improvements on 38th Street from Cedar to South Tacoma Way
2. Loop Road, Phase 2
3. Transit Center, Phase 2
4. Sounder Rail Station and commuter parking garage

From: [CHARLES BROWN](#)
To: [Barnett, Elliott](#)
Cc: [Art Redford](#); [VALERIE MUNOZ](#); [Jay Petersen](#); [Mello, Ryan](#); [Blocker, Keith](#); [Thoms, Robert](#); [McCarthy, Conor](#)
Subject: Tacoma Mall Neighborhood Subarea Plan
Date: Thursday, September 14, 2017 4:23:45 PM

Mr. Barnett -

It was nice to meet you yesterday and thank you for the tour of the Tacoma Mall Neighborhood. It is clear that you have put a lot of time and effort into creating a growth vision for the area.

As I noted yesterday, my client has substantial concerns with, and opposition to, the direct impacts of the proposed connectivity plans affecting the Michaels Plaza shopping area. They are particularly concerned with the proposal to establish a new road connecting Pine St. to South Tacoma Way at what would be considered 37th Street. This would effectively cut through the middle of this private property and would have a substantially negative impact on this property.

All the documents I have reviewed in the August 11, 2017, Tacoma Mall Neighborhood Subarea Plan & EIS Appendices seem to suggest that other streets could possibly be designated in this area, effectively cutting up the property in a north/south direction as well. This part of the proposal was not discussed yesterday. My client would also oppose adoption of such amendments to the code.

I would be interested in meeting with you to discuss the proposal as it stands, and suggest amendments that would eliminate my client's opposition to the proposal.

Please let me know of your availability.

Thank you,

Charlie Brown



Charles R. (Charlie) Brown
Attorney
253-906-6685
cascade_gov_affairs@me.com

From: jon.castle@comcast.net
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: New Form Entry: Comment form- Participate Page
Date: Friday, August 18, 2017 9:58:18 AM

You've just received a new submission to your [Comment form- Participate Page](#).

Submitted Information:

Name

Jon Castle

Email

jon.castle@comcast.net

Comment

It is my hope that ADEQUATE on-site PARKING and STREET SIZES are INCLUDED in the plan for increased population density!!! That, in my view, would be at least one parking spot for each anticipated adult...PLUS consideration for visitors. Also, street overpasses to accommodate added pedestrian traffic, to and from planned facilities. It is not fair to current property owners to impinge upon their existing spaces.

September 11, 2017

TO: Chair Stephen Wamback and Tacoma Planning Commissioners

FROM: Tacoma Mall Neighborhood Coalition of Private Property Owners

RE: Tacoma Mall Subarea Plan - Public Comment

As private property owners in the Tacoma Mall Neighborhood, we have been tracking the Tacoma Mall Subarea Plan for the past 18 months and are submitting the following comments for your consideration as you deliberate your recommendations to the City Council.

1. Connectivity – This issue remains the greatest concern of private property owners in the Tacoma Mall Neighborhood. The proposed connectivity process and requirements are a burden with real consequences to private property owners.
 - Any connectivity requirements and/or plan should be designed and implemented at the time of major redevelopment. Major development should continue to be defined as new development and alterations, that within a two-year period, exceed 50% of the value of existing development or structures. Threshold and changes to pedestrian and bicycle support standards should not be modified in any way to make such requirements more stringent than current existing requirements throughout Tacoma, including in the Tacoma Mall Sub Area. In addition, it is paramount that tenant improvements – both internal as well as external façade improvements -- be exempted from the threshold triggers. Tenant improvements are necessary to attract quality tenants, and façade improvements improve the aesthetics of the neighborhood. A private property owner should not be penalized for improving their property.
 - The burden of the proposed incremental requirement for through-connections across private property at intervals of 150’ outweighs the benefits – wait for the time when major redevelopment takes place for through-connections to be built in context with new buildings or site layout. Any required through-connections, including enhanced through-connections, should be completed in a manner that is least impactful to the division of existing parcels.

Existing large parcels can be a benefit when recruiting larger scale medical facilities, corporate operations such as the newly announced Amazon headquarters requirement, and public facilities including governmental offices.

The proposed code changes provide connectivity requirements that would essentially subdivide properties into a grid of smaller development parcels and eliminate flexibility for future site planning.

2. Neighborhood Infrastructure - We are excited about the prospect of approximately \$125 million in infrastructure improvements that could be made in our neighborhood over the next 20-25 years. These changes will make a noticeable improvement in the neighborhood’s image, and in turn, we hope will bring greater economic stability to those doing business in the area. We support the City’s investment in new sidewalks, street lights, street trees, stormwater drainage

system improvements, and bicycle and pedestrian connections to South Tacoma Way and the Water Flume Trail. We urge the City to:

- Use existing public Right-of-Way for the proposed Loop Road bicycle and pedestrian improvements.
 - Extend South Cedar, 35th and 40th Streets westerly to connect the neighborhood with South Tacoma Way and the Water Flume Trail.
3. Regional Transportation Improvements – We encourage City leadership and working with other agencies to bring more transportation options to the Tacoma Mall neighborhood discussed in the Subarea Plan and EIS
- Additional I-5 interchange that would take pressure off the 38th St. / Sprague intersection.
 - New Sound Transit train station nearby to serve the neighborhood.
 - Pierce Transit station located more centrally within the neighborhood and adding express bus service.
4. SEPA - The City's decision to complete an upfront Environmental Impact Statement is of considerable value to private property owners and is a tangible benefit that will help both existing businesses when they wish to expand their facilities and new development coming to the area.
5. Focus on near-term and mid-term improvements – City funded investments will enhance the neighborhood's image and build stronger market demand that, in turn, will lead to more private investment. Incremental change will be most effective in reaching long-term goals.

Signed - Tacoma Mall Neighborhood Coalition of Private Property Owners:

Paul Etsekson, Active Investment Co., LLC

David A. Shammass, McDonald's USA

Glenda Hollenbeck, McDonald's USA

Dave Dearth, Dobler Management Co Inc

Dennis L. King, NEI Investors, LLC

Dr. David Clark, Bioclear Matrix

Patrick L. Hughes Sr., Hughes Group

Valerie Fyalka-Munoz, KAMG Management Corp.

Jay Petersen, KAMG Management Corp.

Andy Jessberger, First Western Properties

Byron Richmond, Action Business Furniture

Ray Velkers, First Western Properties

Art Redford, Michael's Plaza

Jack Menashe, CAP Associates

Dr. J Antonio Garcia, CAP Associates

John Burkhalter, CAP Associates

Stan Huse, CAP Associates

Brent Norris, CAP Associates

John W. Brekke, Cedar Plaza Partners, LLC

Eleanor Brekke, Cedar Plaza Partners, LLC

Phyllis Ohrbeck, Coronet Apartments

cc: Elliott Barnett, Planner

From: [Barnett, Elliott](#)
To: [Barnett, Elliott](#)
Subject: Comments on the Tacoma Mall Plan PLEASE!
Date: Thursday, September 14, 2017 3:43:14 PM

From: Kristine Coman [mailto:kcoman@uw.edu]
Sent: Thursday, September 14, 2017 3:08 PM
To: Barnett, Elliott
Subject: Re: Comments on the Tacoma Mall Plan PLEASE!

Hello Elliott,

I just finished reading the Subarea Plan (just about every page) and briefly checked out the Appendices (I could not get the font to enlarge so I just skimmed it to prevent eye strain). First, I thoroughly enjoyed reading the Tacoma Mall Subarea Plan. It was easy to read, well laid out, and the colors and graphics are relevant and pleasing to the eye.

What I like about the Subarea Plan:

- The emphasis of a Triple Bottom Line approach (very nice) which was explained well and makes one realize the City of Tacoma cares about their residents.
- You know my favorite part of the Subarea Plan is the Loop Road. This is going to be a key factor in bringing the neighborhood 'together' as well as providing a tourist/exercise attraction if art and green spaces are liberally placed. Although, being a 'park head', I would have like to see more green spaces in the long-term plan.
- Five minute walkable neighborhoods: well defined and another favorite attribute of the Subarea Plan. This, along with the Loop Road, will make the neighborhoods very desirable places to live. Even employees will be able to enjoy walking outside in the fresh air at lunch...easy access to food and easy access to mid-day walking to increase health and make one's day more engaging.
- Under Internal Loop Road and Parks, it was mentioned that residents will be able to participate in art and art placement - excellent way to retain residents, create partnerships and increase human and social capital.
- Expanding the RGC's boundaries to include the section(s) by South Tacoma Way is a great idea and will expand the tax base for the neighborhood.
- The Chapter 3 Goals and Actions Table is great - easy to follow and use as a resource while looking through the Subarea Plan. The only thing that would make the chart better would be to add the page numbers where each goal or action is addressed in the Subarea Plan.
- A lot of the goals were making me smile: CV-2, CV-4, CV-6, CV-22, CV-23, SP-2, SP-9; as well as Actions CV-11, CV-13, CV-15, SP-10.
- Another great tool is Table IMPL-3 for Priority Early Implementation Actions and Prioritization Criteria. Great job.
- The Subarea Plan mentions that it will work to prevent displacement of current residents; and, Community Development Corporations and Community Land Trusts are mentioned in Chapter 11 for implementation tools. If I lived in he neighborhood, my biggest concern with the Subarea Plan would be - will I be able to afford to stay in my home/residence once new/re-development beings or is complete? Establishing

Community Land Trusts may be a great way to make sure current residents are not displaced.

What I would like to see:

- In the very beginning (page 1-4), the importance of the neighborhood as a watershed for the South Tacoma Aquifer should be emphasized more. Yes, the area is a RGC, but is also a main supplier of ground water and needs updated to green standards, which benefits everyone connected to the Tacoma watershed.
- The Local Improvement District (LID) idea sounds like something a neighborhood should be able to vote on. I understand the need to impose an LID; however, if I was a senior citizen that owned my home, maybe I would be more likely to support an LID IF my lot could be grandfathered in without the new tax with some sort of restriction when the homeowner sells (so that the new owner picks up the lot's LID tab). I'm not sure how to work something like this out. I just know that a lot of senior citizens are on a fixed income. Of course they want improvements, but they cannot afford it nor should they be denied access to them.

Questions:

- Goal H-2: this discussed AMI percentages pertaining to new housing. Do current figures for the neighborhoods match what the plan proposes? For example, 25% new housing for households earning 80% PC AMI & 12.5% at 50% of AMI or less - would these percentages be able to support the residents in need now that currently meet the AMI's presented?

There are a couple typos. I noted this one: page 1-10 Paragraph Header "City Council and City Commissions" is not in Bold like the other headings. Also, I noticed some of the extra information on the left side of the pages (which I enjoyed reading) had grammar errors or did not end in a complete sentence (when I looked for the rest of the sentence on the next page it was not present or by then I had forgot to look for the ending).

Regarding the EIS, no action is not good. I didn't have time to read every page, but what I did read made perfect sense.

I hope this input is useful. Thank you for all the hard work you put into the Tacoma Mall Neighborhood Subarea Plan.

Best Regards,

Kristine Coman



September 14, 2017

Mr. Elliott Barnett, Senior Planner
City of Tacoma Planning and Development Services
474 Market Street
Tacoma, WA 98402

Subject: Tacoma Mall Subarea Plan – Comments on Draft Plan

Dear Mr. Barnett:

Thank you for the opportunity to comment on the draft Tacoma Subarea Plan. The County is pleased to have had the opportunity to be a partner in the Subarea Plan development and continues to be very interested in the progress of the Plan. The County supports the general directions of this planning effort but with one specific objection regarding a proposed road crossing the County's Annex Campus.

Request for Removal of S. Wright Avenue Future Road Alignment

The draft Plan shows an extension of So. Wright Avenue between South 35th Street and South Tacoma Way, as shown on Figure I-5 of the Draft Plan, which bisects the existing Annex building and Annex campus. The County objects to this proposal of the Plan and specifically requests that the connection be removed from the County's Annex campus location.

The County has expressed concerns and objections regarding this proposed road on several occasions. We expressed our concern and need for coordination in our letter of August 30, 2016 and later registered specific objections to the road during regular stakeholder meetings over the last year-- specifically in our one-on-one stakeholders meeting with the City in the fall of 2016; in testimony before the Planning Commission on January 15, 2017; and most recently, on September 6, 2017.

The proposed road connection would conflict with the existing Annex Building, which will be retained for the foreseeable future, and with the possible future use of the Annex Campus. A required road across the site would seriously impair the ability to use the Annex campus site.

The proposed road is shown as a Bike Boulevard in Figure T-3 in the Draft Plan. As a Bike Boulevard, the road does not advance the overall connectivity scheme or creating of the street grid as envisioned of the Subarea Plan. It is a 10-15% grade road that is far from bike friendly. There are better grades and access alternatives on Sprague Avenue which is used more by cyclists. The Bike Boulevard also does not appear to be a priority as it does not show up on the Near and Mid or Long term priority maps as shown in Figures T-12, 13 and 14 in the draft Plan.

For the above reasons, the County stridently and respectfully requests the removal of the proposed connection from the Tacoma Mall Subarea Plan.

Other Recommendations

Transit and Transportation

We recommend a direct transit route between the Tacoma Hub and the Tacoma Mall Subarea by way of South Tacoma Way. We see this connection as critical to serving employees who live in unincorporated Pierce County or outlying cities who may use the train to commute into Tacoma.

Parks and Greenspace

We recommend the Plan include the enhancement of existing park facilities or the addition of new park and or open space in close proximity to the Annex site. This will enhance the employee experience by providing areas for the employees to get outside during lunch times and breaks.

County Support for Plan Elements

The County supports many of the elements of the Subarea Plan that will benefit the Tacoma Mall area and the County Annex site. The County appreciates that the City provided the opportunity for the County to financially contribute to the Subarea Plan work and thereby expand the scope of analysis so that the Annex Campus is included in the Plan area and agrees that the campus is an asset as a major employer as is recognized in the Shared Prosperity section of the Plan (SP-17). The County supports:

1. The Loop Road and improved pedestrian crossing of South 38th Street;
2. The Green Streets program,;
3. The relocation of the transit station, which will make it much closer to the Annex;
4. The Storm Management plan and use of Low Impact Development techniques; and,
5. The proposed zoning for the Annex Campus.

Thank you again for the opportunity to comment on the draft Tacoma Mall Subarea Plan. We look forward to participating in the remainder of the planning process.

Sincerely,



Bruce F. Dammeier
Pierce County Executive

C: Bret Carlstad, Director, Facilities Management
Dennis Hanberg, Director, Planning and Public Works
Rick Tackett, Real Property Specialist, Facilities Management
Sean Gaffney, Planning Manager, Planning and Public Works

From: [Dave Dearth](#)
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: Re: COMMENTS DUE THIS FRIDAY
Date: Wednesday, September 13, 2017 11:28:18 AM
Attachments: [image002.png](#)

Mr. Barnett,

I wanted to provide you with these written comments for consideration as they pertain to your Tacoma Mall Neighborhood Subarea Plan Project. My company has had an investment in the success of the Tacoma Mall Area since 1973. We currently have 803 apartment units and the largest vacant land parcel within the Subarea, our commitment totals over 125 million dollars. I very much appreciate yours, and the City's intensive interest, and commitment in the area the last couple of years.

There is very much to like within the plan, and also some major problems, in my opinion the good and bad are as follows:

1. The new I-5 off-ramp to Tacoma Mall Boulevard is great.
2. The Loop is a great way to create a sense of community and identity, but it does not need to be so heavy handed. In order to not chop existing businesses in half and punish longstanding investors in the area, the Loop can look very green and snake along in some areas, and look more urban (along 38th) with 90 degree turns and brick pavers in others.
3. I have a 136 unit apartment on Cedar St between S47th and S45th, I spent 300k to run the storm line three blocks to S Pine ST and then more to the City for the right to dump storm water into there system, and then a bill every month. The threshold for conforming to the new Subarea Plan should be a 50% reconstruction not 15%, one medium fire and I throw my previous infrastructure investment out the window and I'm installing new infiltration lines, no disrespect but ten years later the City will be scratching there head wondering why there is no Affordable Housing, and I don't mean low income.
4. The Plan calls for it's highest density housing closest to the Mall, this makes total sense, but the quickest way to achieve the goal is not to draw a line around the largest undeveloped parcel (ours) and label it a Proposed Park. Large parcel developments can have great opportunities for open spaces, urban plazas with retail mixes, mid rise buildings stuffed on small infill lot's only have so much appeal. This proposed park site should be on the Old School Site already publicly owned and more central to the Subarea and it's housing.

Thank you for your consideration, Elliott, you have been a pleasure to work with and get to know, and you are a great ambassador of the City. There has got to be a way to achieve some of the great ideas in the plan, without crushing the very people that have worked hard to survive and promote the area.

Dave Dearth
President or Asset Development
Dobler Management Co Inc

From: Tacoma Mall Neighborhood Subarea Plan project <tacmallneighborhood@ci.tacoma.wa.us>
To: Tacoma Mall Neighborhood Subarea Plan project <tacmallneighborhood@ci.tacoma.wa.us>
Sent: Tuesday, September 12, 2017 3:05 PM
Subject: COMMENTS DUE THIS FRIDAY

REMINDER – Friday, September 15, 2017 is the deadline to submit your comments on the draft

September 13, 2017

Mr. Barnett
RE: Tacoma Mall Neighborhood Subarea Plan Project

Dear Mr. Barnett,

I want to thank you for the time and energy you have invested in the city's proposed future development of the Tacoma Mall Neighborhood.

My management company, Dobler Management Company, Inc. and my various investment LLCs have been involved in the Tacoma Mall area since 1983. I have managed multi-family properties, renovated and built new properties in the Mall vicinity and currently own over 850 apartment units. I take pride in producing affordable, safe, highly attractive housing for my residents. The Mall area is a working class neighborhood with very solid people looking for well maintained housing. I provide that for them. I have invested heavily. My office is on 47th Street. I see a lot in the happenings around the vicinity and know the community well.

Attributes of the development proposal are the new road off of Tacoma Mall Boulevard and the green "loop" road. But I do have concerns about the condemnation of property, the storm system and roads.

We need walkability. I agree with the concept of the loop. But, you do not need to force the loop into developed properties. The loop can stay on current city streets and be effective. Use what we already have, but augment with landscaping, lights, plantings and rest stops. Do not force the loop into new developments either without first utilizing the existing streets and sidewalks. A walk way in the middle of a development is not exactly positive in the neighborhood.

The schools in South Tacoma are weak. Families do not live here and won't live here until the schools are academically attractive. My residents have babies, but leave to better school districts once the children are school age. This will not change. It hasn't for fifty years. The city should expect a diverse, but younger resident base or childless base in its population demographic. Although I always have play areas designated in my properties, they are only used by toddlers. A large proposed park, which has been depicted on the City's plan is actually proposed on my property. In a neighborhood with few children, a large park will not bring families. It will just bring crime, gangs and homeless people. Concentrate on attractive smaller green areas within the area. The current head start school is a far better choice, since it is flat, can handle court surfaces and is an underutilized government property. It will be less expensive to develop than a hillside with double the land value. I have no intention of selling my commercial site for a park.

Crime has been and continues to be a huge issue in the Mall area. Stop the townhome developments. They are low quality, low density structures and are the tenements of Mid-Tacoma. No one should enter their home via an alley for a front entrance. If the city continues allowing these substandard developments, the crime will never be contained. We need alley ways closed off to thru traffic. We need our streets, especially the arterials as our main traveling roads. If all people, vehicles, etc. are in the open, visibility will deter crime. Remove the hiding areas like the alleys. Do not require walkways and connectivity through the residential developments. Use the perimeter streets and sidewalks. Otherwise you will only increase the crime in the residential communities.

I have concerns about the proposed storm system I agree whole heartedly with utilizing rain and containing water, but I have concerns about how the city implements the program. I have paid handsomely for hooking up to the city's storm system. I cannot reconvert to a contained system on sites that are already developed. It would be far too expensive. I also have sites with internal storm systems. Currently, I have a 100% contained storm system at Tudor Village Apartments on Pine Street. I am being billed as though the water leaves the site, I am not happy about this at all. I have incurred the cost and maintenance for the internal system, yet am also paying full storm fees. I highly doubt this will be well received by property owners once they see the true situation here.

In regards to any and all road improvements planned. Good luck. I will believe it, when I see it. The roads in the Mall area are the utmost embarrassment to the city. The city had personally neglected the area and is a major reason for the poor homeownership in the vicinity. In the thirty-four years of working in the Mall area the city has never paved a street. Never, I have paved more streets in the area than the city has since the roads' inception. I do not believe the drawn plans will ever happen. But, by some remarkable situation, if the city ever addresses the roads give us what we need, main arterials, sidewalks, lighting and most importantly, safety. We cannot walk, drive or ride with dark streets, missing sidewalks, potholes, etc. If you incorporate landscaping make sure it is maintained too. In fact in order to be successful. I suggest you start with the road improvements first. Then we might believe the other improvements could be a reality.

Thank you again for your work on the Mall area.

Kathryn J. Dobler
Broker

From: [Barnett, Elliott](#)
To: [Barnett, Elliott](#)
Subject: FW: PUBLIC REVIEW DRAFT SUBAREA PLAN AVAILABLE
Date: Thursday, September 14, 2017 2:59:12 PM

From: Engel, Dennis [mailto:EngelD@wsdot.wa.gov]
Sent: Monday, September 11, 2017 11:52 AM
To: Barnett, Elliott
Cc: Alam, Nazmul; Sutmiller, Forest
Subject: RE: PUBLIC REVIEW DRAFT SUBAREA PLAN AVAILABLE

Here is WSDOT Olympic Region Planning's comments on the Subarea Plan, the EIS will be sent separately.

- Page T-27 project 2 – The title says “I-5 Direct Access/HOV Ramp-Phase 1”, this is the first I have seen HOV. I suggest dropping the HOV from the title and description. During the study, we could look at HOV as an option, but that is not something in the previous study.
- Page T-34 I-5 Direct Access Ramp, first paragraph – plan says “through a formal scoping and project development process with WSDOT”, this should say “through a Feasibility Study process with WSDOT”. The original study was a Feasibility Study in 2001. We currently have funding to redo this study.
- Page T-34 I-5 Direct Access Ramp, last paragraph – says “initial design and permitting studies (known as an Interchange Justification Report)”. I am assuming this project is the Feasibility Study, we are not doing the Interchange Justification Report with the current funding. The Interchange Justification Report would be the next step before right-of-way and design phases.

Please let me know if you have any questions or want to discuss these comments.

From: Engel, Dennis [mailto:EngelD@wsdot.wa.gov]
Sent: Monday, September 11, 2017 2:58 PM
To: Barnett, Elliott
Cc: Alam, Nazmul; Sutmiller, Forest; Liufau, Yvette
Subject: Tacoma Mall Subarea Plan DEIS

Here are comments from the WSDOT Olympic Region Planning on the Draft Environmental Impact Statement:

- Page P-26, 2nd paragraph, 2nd bullet – suggest removing “HOV” from the proposed project. This has not been an HOV access in the past, the HOV part could be looked at during the current study.
- Page T-37 Figure 3.6.7 Study Intersections – Not sure why the SB I-5 off and on ramp intersection with 38th street was not studied, but yet the intersection on the east side of the freeway is included in the analysis for existing and future LOS impacts.
- Page T-30 Figure 3.6.10 Collisions and T-31 Figure 3.6.11 Pedestrian + Bicycle Collisions – use Section 409 disclaimer –

Under 23 U.S. Code § 409 and 23 U.S. Code § 148, safety data, reports, surveys, schedules, lists compiled or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential crash sites, hazardous roadway conditions, or railway-highway crossings are not subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data.

- Page T-35 Appendix B, project 2 Description – change to “Feasibility study for new direct access freeway off ramp”
- Page T-35 Appendix B project 6 – I assume this is related to project 2, Suggest add This will implement results from Project 2. I would also remove the statement “It will directly connect to a new or relocated multi-modal transit center.” The location of the new transit center is not confirmed, I thought one option is over on Pine, this ramp would not connect to Pine St.

Thank you for the opportunity to comment on this DEIS, if you have any questions or need clarification on any of these please let me know.

*Dennis Engel, P.E.
Olympic Region Planning Manager
Wellness Coordinator
(360) 357-2651
(253) 381-2673 Cell*

From: hansenjsdl@aol.com [mailto:hansendljs@aol.com]
Sent: Monday, August 21, 2017 10:38 AM
To: Tacoma Mall Neighborhood Subarea Plan project
Subject: concern for development of master plan

Hi Elliott Barnett, the total plan for the neighborhood limits of this project looks good (actually great). However, those of us in the southwest quadrant of the study area are not receiving any benefit from this master plan. More specifically, Puget Sound Street looks like a rural road (and a rough one at that) rather than a city street. I own 4 houses and a 6 plex from 4334 to 4350 South Puget Sound and the street in front of these properties is a disgrace. Attached are some photos of this roadway. I also own Cascade Park Gardens, an 85 bed memory care assisted living facility around the corner at 4347 South Union Ave.

There was discussion of an improvement LID for sharing costs with the city along South Puget Sound Street several years ago that was disbanded after the city funding was not available. Additionally, there are many children living in this area that have no place to play except in the street (and they do). This is an area hit by crime in various forms, including gun shots, fires, vandalism, robberies, drug dealing, and domestic violence. Providing streets with sidewalks, curbs and gutters, and playgrounds in this area won't solve all the problems but it will go a long way in making this a better neighborhood in keeping with the intent of this planning program. How about extending the bicycle path discussed to include South Puget Sound Street.

I will be out of town on September 6 so cannot be at the public hearing. I request that the information herein be included.

Thank you for your consideration.

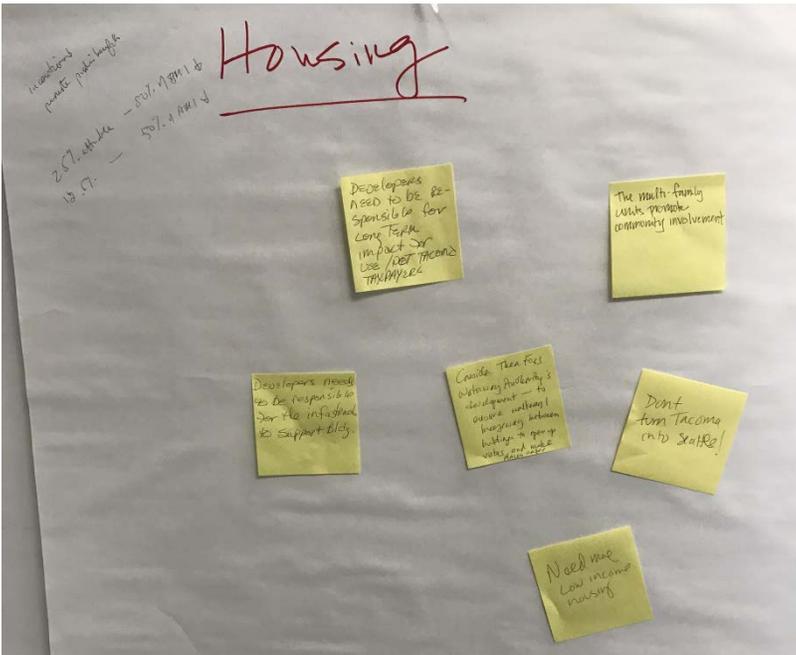
Donald L Hansen 4339 South Union Ave. Tacoma WA 98409





Informational Meeting 08-30-17

Written comments



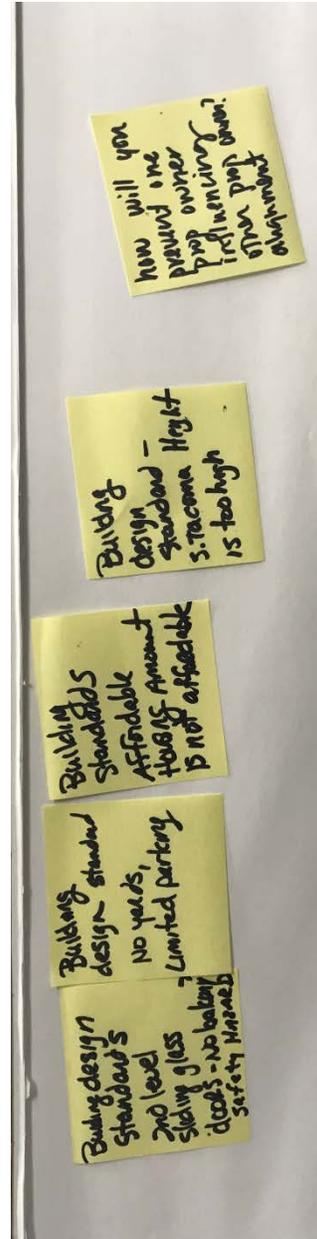
- Transit Connection from Tacoma Dome to the Sub-Area Plan Area

- Delete road through County Annex Campus at 35th

- I-5 Access via S 48th ST TO Tacoma Mall (NORTH & SOUTH)

→ Signal Coordination S-56th ST.

→ I-5 Direct Access/7011 Ramp → Need to Reconsider & Wrong Concept.



Dog Park • Forest by Apex

5 Right Sound
Filters
Trees
can over

Where do kids play? •
- developments don't provide ones
- or yards •

566th
- Trees planted
& all died
Tyler says
trees 662

Skate Park - at Lincoln Park

Depave & Trees are great
- need to address maintenance!

REQUIRE MORE (OR ONLY) EVERGREEN TREES

CV LOCAL #1) IDENTITY

Identity
NO CONCERNS

CV #2) ARTS/CULTURE ↑

MALL
= opportunity
for more
retail

CV #3) MORE SERVICES CONVENIENCE

NO service
commitment
yet.
School District
ignores
this.

NOT the
unwanted
North End
services

CV #4) NEIGHBORHOOD LEADERSHIP on Implementation

Home-
Owners
= LIMITED
= MIN. input

Demographic
Challenge
"transient"
Influence

CV #5) SAFETY ↑

Go after
derelict
owners
more than
banks.
INCENTIVE

CV #6) IMPLEMENT OPEN SPACE/PARKS

ACTIVATE
TRAILS
w/amenities

Activate the
open
space!
Develop
Positive
feedback for
amenities

September 14, 2017

Dear City of Tacoma,

Thank you for the opportunity to comment on the draft of the Tacoma Mall Subarea Plan. The Puyallup Watershed Active Transportation Community of Interest is a community-based coalition working to build access to safe, healthy, and affordable active transportation options for all. We see the Tacoma Mall neighborhood as a critical gap in our community's active transportation network and hope that the Tacoma Mall Subarea Plan will help ensure that everyone who lives, learns, works, and plays in the Tacoma Mall neighborhood can safely travel through and within the neighborhood –whether they are on foot, on a bike or skateboard, or in a car or bus.

We are very impressed with the strong vision set forth for the Tacoma Mall Subarea in this plan and commend staff for their work in crafting it. We are in support of many pieces of this plan and would like to highlight specific strengths below.

Complete Streets Approach

The Tacoma Mall neighborhood presents a significant barrier for people travelling on foot or by bike. Whether they are headed to destinations within the neighborhood or it's on their route to other parts of the City, this area is consistently cited as significant area of concern. We are in support of taking a Complete Streets approach as existing streets are maintained and redesigned and when new streets are built, including the new multi-modal inner Loop Road. Designing and constructing Complete Streets will significantly increase walking and bicycling access within this neighborhood and to the larger transportation network.

Connect the Street Network

The current conditions, with large blocks that lack public through access, inhibit people's ability and desire to walk, bicycle, and skate for transportation purposes. These large blocks also exacerbate congestion on the few arterials that span this neighborhood, which creates more hazardous conditions for vulnerable road users. New connections are essential for the development of a multi-modal, layered transportation system. We support the creation of a new Connectivity Requirement to extend and enhance the existing grid network by creating smaller, more walkable blocks to provide easier access to various destinations.

Transportation Mode Shift to Walking, Bicycling, and Transit

This plan sets forth specific and formidable goals for shifting the mode split away from single occupancy vehicle trips to more sustainable modes. Enhancements such as investing in the pedestrian and bicycle networks, encouraging the expansion of transit and transit oriented development and implementing parking management strategies will have a significant impact on how Tacoma Mall Subarea residents and visitors will navigate these streets.

Identify Dedicated Funding

We are pleased to see a number of potential opportunities to dedicate funding to build the ambitious list of projects stated in this plan. We encourage the City to begin to explore opportunities to build dedicated funding sources and engage with partners to begin designing and constructing this vision.

Thank you for the opportunity to comment on this draft plan. This plan takes a multi-faceted approach to mapping out what it will take to build a vibrant, livable and diverse space! We look forward to seeing this plan progress.

Sincerely,



Liz Kaster

Active Transportation COI Manager
Puyallup Watershed Initiative
www.pwi.org/activetransportation
Safe, healthy & affordable active transportation for all

From: writeeveryday@comcast.net
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: New Form Entry: Comment form- Participate Page
Date: Wednesday, September 06, 2017 6:53:06 AM

You've just received a new submission to your [Comment form- Participate Page](#).

Submitted Information:

Name

kathy Kelly

Email

writeeveryday@comcast.net

Comment

1. Please, consider aesthetics. Make it a beautiful area where a citizen will feel good when they go there.

Since it is a busy shopping area. As it is now, there is stress and tension as the traffic congestion during holiday shopping, where it could possibly be a peaceful enjoyable experience at beautiful times of the year.

2.I would like to see more vegetarian restaruants.

Thank you, and good luck with the project.

September 13, 2017

Elliott Barnett, Associate Planner
City of Tacoma
747 Market Street, Room 345
Tacoma, Washington 98402
tacmallneighborhood@cityoftacoma.org

Re: Draft Tacoma Mall Subarea Plan

Dear Mr. Barnett:

Thank you for the opportunity to comment on the Draft Tacoma Mall Neighborhood Subarea Plan. Puget Sound Energy (PSE) has been a fixture in the Tacoma Mall Subarea for 54 years. Our offices at 3130 S. 38th Street opened in 1963 and serve residents and community businesses, as well as provide a local employment base. The PSE property is made up of several parcels totaling approximately 7.28 acres bounded by SE 38th Street to the north, S. Lawrence Street to the west, S. 40th Street to the south, and S. Cedar Street to the east (See Attachment).

The Tacoma Mall Neighborhood Subarea Plan provides a vision for the subarea as a place for people to live, work and shop. As a public service provider, our business does not fit neatly into most long-range plans or land use code provisions, but provides an important benefit and service to the community. PSE's desire is to remain in our current location for years to come and continue to serve the Tacoma community. We appreciate efforts by the City of Tacoma to foster the need to accommodate service providers such as PSE.

Based on PSE's review of the Draft Tacoma Mall Neighborhood Subarea Plan, we have the following comments:

1. Figure LU-1: *Existing land uses in the Tacoma Mall Neighborhood* identifies the PSE property use as Warehousing. There are multiple uses on the property that comprise the utility service. These include: office, warehouse, communications, and service yard. These uses are interconnected and function together as one property. The use charts in 13.06.300D classify the office uses on the property as Permitted and the warehouse uses as Conditional Uses. PSE requests that all uses on the property be classified as Permitted.
2. Per Figure LU-6: *Proposed Zoning*, the subarea proposal includes split zoning the existing PSE property, with the northern half zoned as UCX 75-120 and the

southern half zoned as UCX Transition 65-85. PSE supports the desire to provide transition in terms of height variations as long as the uses on the property continue to be regulated collectively as if the site was zoned the same.

3. Proposed code section 13.12.090 addresses large parcel connectivity plans. This requirement applies to development sites at least one acre in size which are located within a block that is 8 acres or larger in size. The block in which the PSE property is located is over 8 acres in size, so this provision would apply to the PSE property if the thresholds in subsection C are met.

The code section does not address application of the connectivity plan requirement in cases where there is multiple property ownership within the block. If the retail property on the corner of S. 38th Street and S. Cedar Street (parcel # 9710001651) meets the redevelopment thresholds for the connectivity plan, is connectivity now required through the PSE property, which makes up the remainder of the block? Due to the nature of the PSE service use, maintaining secure access and limiting public entrance on the property is a necessity.

4. Similar to the comment above, the proposed revisions to code section 13.06.512 would require additional pedestrian walkways if an addition or alteration exceeding 15 percent of the value of the existing development were proposed. Public access is provided to the front of the office building, as this is where the public service function of the site is located. However, additional access to other areas of the site by the public is not warranted and violates security requirements of PSE facilities. Particularly access required to attract the public with amenities such as lighting, street furniture, and landscaping.
5. As shown in Subarea Plan Figure T-3. *Subarea Complete Streets typologies*, S. Lawrence Street is designated as a Signature Street: Loop Road and S. 40th Street is designated as an Urban Residential/Green Road. It is not clear by information and cross sections provided whether these street typologies require additional right-of-way or will have impacts on adjacent properties.

Thank you for your consideration of these comments. Should you have questions or would like to discuss these comments or other aspects of the Subarea Plan further, please feel free to contact me at 425-462-3821 or kerry.kriner@pse.com.

Sincerely,



Kerry Kriner, AICP
Senior Land Planner



Puget Sound Energy Tacoma Mall Neighborhood Subarea Property

From: [Evelyn Lopez](#)
To: [Barnett, Elliott](#)
Subject: Tacoma Mall Sub-Area Plan
Date: Wednesday, September 13, 2017 11:31:35 AM

Good morning! I wanted to provide some comments on the proposed sub-area plan for the Tacoma Mall Neighborhood. Thank you for your attention to this section of our city.

I don't live in this neighborhood, but I had the opportunity to walk around with Beverly Bowen-Bennett and to doorbell the area when I was running for Mayor. I was surprised at how few amenities were available--especially open space for the children. Frankly, the area will become blighted if there are not some changes.

It should be no surprise that areas planned for density and for affordability attract young families, but there appear to be no provisions made for the children of these families. Even their local schools are across the freeway and some distance away. The logical open space and potential play area is Madison School. I would strongly urge the City to work with TPS to make grassy areas and the playground available now, and to eventually work with Metro Parks to develop a park and play area there.

In addition, I suggest the City consider changing some of the streets in the residential area to one-way streets. Many residents only have a single garage, and therefore park a second car in the driveway or street. That makes the streets very crowded, and unsightly. One-way streets might allow for more flow through the area, and might look better.

Anything the City can do--resurface the most damaged streets, clean up the alleys--will help make the residents feel more positive about their neighborhood, and may help install more pride in the area. From there you may see gardens started and lawns cared for--if there is a start toward something more attractive. And I wholeheartedly support not having front doors on alleys--we can do better.

Thank you for working on this project. I hope you can move the area in a positive direction, and make the neighborhood more nurturing for the children and adults who live there.

Regards,

Evelyn Fielding Lopez

From: [Barnett, Elliott](#)
To: [Barnett, Elliott](#)
Subject: RE: Brekke Position 9.15.17.docx
Date: Thursday, September 14, 2017 2:50:20 PM

From: J.J. McCament [mailto:JJ@mccamentandrogers.com]
Sent: Wednesday, September 13, 2017 11:28 AM
To: Barnett, Elliott
Cc: 'John Brekke (john@brekkeproperties.com)'; eleanor@brekkeproperties.com
Subject: RE: Brekke Position 9.15.17.docx

Thank you, Elliott. The process is really complex and quite onerous. A recorded legal document and going back through the same approval process if the connectivity plan needs to be changed adds so much time and money. Designing a connectivity plan at the time of major redevelopment allows the property owner to design connections in context with the new development rather than guessing at what might be best, where buildings will be located, footprints, etc. To design a site plan with the constraints of a pre-determined connectivity plan seems to be the tail wagging the dog. At least from a developer/private property owner's point of view.

From: [Kristen Mclvor](#)
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: Tacoma Mall Neighborhood Subarea Plan
Date: Friday, September 15, 2017 9:48:29 AM

Comments on the subarea plan for the Tacoma Mall area:

I was happy to see so many different aspects of quality of life taken into account – and I have several concerns:

Goal H-2: I see that there are some percentages for the target amount of low-income housing, and that is great – but I wonder how those compare to the incomes of current residents (i.e. are there currently less than 25% of residents low income and less than 12.5% very low income?) Are the proposed percentages sufficient so that there will not be displacement of current residents? These types of plans always speed up gentrification, of large concern to many in Tacoma, so I am just questioning whether the current proposed amount of low-income housing will mitigate those concerns. I see there is the intention to work with housing partners (Action H-8) but since there are no numbers there it is hard to see if that is sufficient to keep people in their homes.

Goal CV-3: I also see that there is a plan for increased development and new businesses in the area – is there a plan to prioritize locally-owned businesses vs. national chains so that the neighborhood can continue to reflect the interests/ambitions of residents vs. which corporations are interested in this demographic?

Goal CV-1: I have heard many times of efforts like this that ‘renovate’ neighborhoods and then give them a new name being compared to colonization – I think it’s worth examining and working to ensure that the name that is chosen is actually a name that comes from the existing community, rather than one that would be attractive to others looking to come into a community like this will be after all this work – It’s always important to ensure that the process has authentic community engagement (it looks like you have attempted that, it’s hard to know who actually showed up and how representative they were of the neighborhood), and the naming process is important.

Goal CV-8: I see that affordable food sources are top priorities for the community – we have been working on a parallel research project with the community in S. Tacoma focused on this and should have results and an action plan by mid-2018 – there may be opportunities for partnerships there.

Thanks for all the work to put together such a comprehensive plan and for the opportunity to provide comments!

From: toweywf10@gmail.com
To: [Tacoma Mall Neighborhood Subarea Plan project](#)
Subject: New Form Entry: Comment form- Participate Page
Date: Thursday, September 14, 2017 1:33:38 PM

You've just received a new submission to your [Comment form- Participate Page](#).

Submitted Information:

Name

William Towey

Email

toweywf10@gmail.com

Comment

Affordable housing should be provided so that 15% of total mall area housing stock is available at 50% AMI.

September 11, 2017

Planning Commission
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98402

Re: Tacoma Mall Neighborhood Plan—Tacoma-Pierce County Health Department Comments

Dear Planning Commissioners:

Thank you for collaborating with the Health Department to develop this important sub-area plan. Tacoma Mall Neighborhood is home to a diverse, highly transient, and low-income population. Typically, residents experience worse health outcomes and shorter life expectancy than in other areas of Tacoma.

Last year, the Board of Health adopted a [Health-in-all-Policies Resolution](#) that encourages local jurisdictions to consider health in all decisions. The sub-area plan demonstrates this approach. We have partnered with the City of Tacoma and other stakeholders over the past 30 months to infuse health into each decision-making step. We engaged diverse populations through non-traditional methods to understand their livability needs and to support policies to improve the community.

Many approaches proposed in this plan would help to achieve more walkable neighborhoods, including:

- A playable loop road.
- The Madison school and community hub.
- Tree canopy and green infrastructure, etc.

To address involuntary displacement, we empowered local residents to champion the implementation of the plan, while welcoming new comers to join build a healthy neighborhood. Maintaining the current level of affordable housing units in this neighborhood is crucial.

The neighborhood affordability target performance measures in the Housing Chapter are too low. According to the American Community Survey's five-year estimates (2011-2015), about 90% of the current housing stock is renting less than \$1,250 per month and 25% renting less than \$750. To help minimize the adverse impact of gentrification, we strongly encourage the City to maintain closer to the current percentage of affordable housing within the neighborhood for low and very low-income households, earning 80% and 50% of the Average Median Income respectively.

With the above comments incorporated, I encourage you to recommend this draft plan and draft EIS to the Tacoma City Council for adoption and future implementation. Once implemented, the Tacoma Mall sub-area community will be a healthier community for all who live, learn, work and play there.

Sincerely,



Anthony L-T Chen, MD, MPH
Director of Health

Tacoma Mall Neighborhood Subarea Plan and DEIS
Editorial Comments from Core Staff Committee Member
Amy Pow, Principal Planner
Tacoma-Pierce County Health Department
September 12, 2017

DEIS

Recommend giving this document a good proof-read to ensure:

- All information is complete, particularly references to Figures and Tables.
- Any action numbers referred in this DEIS align well with the final draft plan's.

Some obvious examples include:

- P. H-3: The 2nd sentence in the second paragraph under **Housing Cost** is incomplete.
- P. H-4: The 3rd sentence in the third paragraph under **Affordable Housing** is incomplete.
- P. H-12: Cross-check Action H-9 referred in the 2nd paragraph with the revised Action H-9 in the draft plan to ensure alignment. From a public health perspective, we support the original policy language which calls for “maintaining a no net loss of the current stock of affordable housing”. In fact, the City should encourage the rehabilitation of the current stock to ensure that those currently relying on these units would not be displaced.
- Recommend using a smaller font for footnotes on P. T-6, 11 and 12, similar to that of footnote 4 on P. T-20. Ensure consistency throughout.
- P. T-11: Footnote 2 seems incomplete.
- P. PS-26, Figure 3.7.4: Expect some concentric circles or “walkshed” in light green (if network analysis is used) shown on this figure to show where the open space gap is, as mentioned in the text on P. PS-18. The school site should also be shown as “hatched blue” on the map/figure.
- Similarly for Figures 3.7.2 and 3.7.3 on P. PS-24 and PS-25, not all items shown on map legends can be found on the maps/figures. Readers typically read the map in conjunction with the legend.

Draft Plan

- P. 1-8: Add the word “Department” after “Health” in the title.
- P. UF-4, Figure UF-1: Consider adding the subarea plan boundary. It's misleading to show a huge green area south of Madison, as if this subarea plan area has a huge open space.
- P. UF-7 and UF-8: Outline the loop road would be useful. Add map legend to annotate the use of different colors.
- P. UF-13: Check if the Figures numbers (UF-9 through UF-11) in the last paragraph are correct?
- P. UF-14: It would give readers a better orientation if street names are added to those Figures.
- P.LU-5: Would the word “address” be a better choice than “reflect” in the opening sentence of the 2nd paragraph?
- P.H-8, Action H-5: The paragraph under Action H-5 seems out of place.
- P.H-8, Action H-7: See TPCHD Letter to Planning Commission dated September 11, 2017 Re. Comments about “maintaining 25% and 12.5% affordable housing units for the entire neighborhood (vs. solely for new housing development) for low (80% AMI or less) and very low income (50% AMI or less) households respectively are NOT sufficient”.

- P. H-9 Performance Measures, last two bullets: See comment above and TPCHD Letter to Planning Commission dated September 11, 2017.
- P.T-7, first paragraph: Recommend changing the last two words from “business health” to “businesses and health”.
- P. T-10, Figure T-3: Add the term “Complete Streets” after “Signature Street” to denote the Loop Road.
- P. CV-12, Action CV-21: Check reference to Photo 8. Where is the photo?
- P. IMPL-4 Side Bar: The last paragraph is incomplete. Recommend replacing the last word “and” with “open their arms to welcome new comers to jointly build a healthy neighborhood”.

September 10, 2017

To: Elliott Barnett, Planning Services Division

I was unable to attend the September 6 meeting, but still would like to comment for the record.

- I believe that all buildings for human habitation should be required to have green space available for its residence. Depending on the size and occupancy of the development a certain amount of green space should be required.
- No front doors facing alleys. It should be required to have all access for residences to be through the front doors. The back doors should be open for green space.
- There should be requirements for a certain amount of housing to be affordable and some senior developments with easy access to the transit system. This can be done through some sort of incentives.
- No buildings should exceed more than six stories and have adequate off street parking to include visitor parking. Depending on the size of the building would determine the amount of parking spaces and visitor parking. Buildings more than six stories should be built downtown.
- It should be required by the developer to pave streets, put in curbs and handicap accessible sidewalks in front of the development to make it a more walkable area.
- As for the environment, it should be required to have all new streets pervious, so water can penetrate into the ground instead of going into the Puget Sound and developers should be required to plant trees, shrubs and other plants because of the air quality during the winter months.

Sincerely,

Heidi White, S Tacoma Resident

Draft Tacoma Mall Neighborhood Subarea
Plan and EIS



Help shape the future of the Tacoma Mall Neighborhood

Please provide your comments on any aspect of the draft Plan, code changes and EIS below:

Average Median Income in
Tacoma is too high - forcing
people to move.
Low Income - affordable housing is
not affordable.
Building design is too high.
Not ~~enough~~ enough Parking
No open space at development
(yards)

Comments due by September 15, 2017

Return to:

Elliott Barnett
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98407
tacmallneighborhood@cityoftacoma.org
(253) 591-5389

After the lecture, I was in
- 1000m is too high - tonight
feels to me.
I am in a good mood tonight
not at all.
Tonight is too high.
I am in a good mood tonight
not at all.
I am in a good mood tonight
not at all.

Draft Tacoma Mall Neighborhood Subarea
Plan and EIS



Help shape the future of the Tacoma Mall Neighborhood

Please provide your comments on any aspect of the draft Plan, code changes and EIS below:

Environmental

Developers need to incorporate
into their designs a H₂O recovery
system for re-use of Brown
Water & collection & use of
Rain Water

Bob Brouder

Comments due by September 15, 2017

Return to:

Elliott Barnett
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98407
tacmallneighborhood@cityoftacoma.org
(253) 591-5389

Draft Tacoma Mall Neighborhood Subarea
Plan and EIS



Help shape the future of the Tacoma Mall Neighborhood

Please provide your comments on any aspect of the draft Plan, code changes and EIS below:

All utilities lines, communications
cable and piping (H₂O, sewer, gas), to
be under ground - all owner
for growing trees, NO damage
& a better community appearance.
- prevents damage (car crash / signage)
& easier to maintain. Can be
accomplished when roads get fixed.

Comments due by September 15, 2017

Return to:

Elliott Barnett
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98407
tacmallneighborhood@cityoftacoma.org
(253) 591-5389

Bob
Barnett

Stakeholder Group Comments and Questions (07/20/17):



City staff asked the stakeholders for input on two topics:

1. How to be effective in engaging broadly with the community?
2. What questions do you need answered to understand the proposals?

peer - medium individual impact.

We appreciate your help! While our resources are not unlimited we are doing our best to implement the suggestions from the stakeholders. The goal is to get as much community input as possible in order to represent the community's desires for the neighborhood.

NOTES:

1. How can the City engage as broadly as possible to get input on the draft proposals?

- Make it clear that this is the time to comment
- Not just emails
- Engaging seniors?
- What is the core of the community?
- Do gated communities act as a barrier?
- Use radio and local media
- Offer food at meetings
- Farmers Market
- Flyers in Starbucks, Marlene's, etc
- Marlene's - first Sundays
- Share and communicate the vision

*Bob
Berkson*

Contact local organizations:
- Community Mtgs
- Service Organization (VFW, AARP, etc)
= posts in business windows

2. What questions do you need answered to understand the proposals?

Proposed roadways/streets:

- How will new roads be funded?
- Road patterns are a key/controversial topic
- No roads through Michael's Plaza

Transportation:

- Why should Warner Street be changed/redesigned?
- Are there transit connections to downtown Tacoma?
- Would one way dead end streets support the goals?
- Why are we having a Loop Road?
- What does the plan say about gated communities?

Stakeholder input:

- Does the proposal address the community's input?
- Who are the stakeholders – are they only residents and business owners?
- Are we collaborating with the school and parks districts?

Implementation:

- How will implementation of the Plan unfold over time?
- Don't want the Post Office to go away

Zoning, land use and development:

- How has zoning changed under the proposal?
- It would be useful to make comparisons of the proposed scale to help people to understand what's being proposed
- No front doors on alleys
- How do we limit the number of townhouses and encourage more high density housing?

Housing:

- What are we doing for senior housing?

Transcript of Proceedings

September 6, 2017

In Re Planning Meeting for the Tacoma Mall Neighborhood Subarea Plan



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CITY OF TACOMA PLANNING COMMISSION

Meeting: Public Hearings)
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VERBATIM RECORD OF PROCEEDINGS

September 6, 2017

Tacoma, Washington

Byers & Anderson, Inc.

Court Reporters/Video/Videoconferencing

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1 APPEARANCES

2

Planning Commission:

3

Stephen Wamback, Chair

4

Anna Petersen, Vice Chair

Carolyn Edmonds

5

Jeff McInnis

Brett Santhuff

6

Andrew Strobel

Dorian Waller

7

Jeremy Woolley

8

Also present: Brian Boudet, Planning Manager

9

Lihuang Wung, Senior Planner

Elliott Barnett, Associate Planner

10

Jeff Lueders, Audiovisual

John Griffith, Admin. Support

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1 BE IT REMEMBERED that on Wednesday,
2 September 6, 2017, at 4851 South Tacoma Way, Tacoma,
3 Washington, at 5:01 p.m., the following meeting of
4 the City of Tacoma Planning Commission was had, to
5 wit:

6
7

<<<<<< >>>>>>

8
9

 CHAIR WAMBACK: All right. I will
10 call to order the City of Tacoma Planning Commission
11 meeting for Wednesday, September 6th.

12 First item is the quorum call. Do we have a
13 quorum present?

14 UNIDENTIFIED SPEAKER: Yes, you do.

15 CHAIR WAMBACK: Great. And I am
16 not going to get used to this speaker system. I feel
17 like I'm talking down a well.

18 All right. Item B on our agenda, the approval of
19 the agenda and the minutes. We'll start with the
20 agenda for tonight's meeting. Is there a motion that
21 we approve it?

22 COMMISSION MEMBER: So moved.

23 CHAIR WAMBACK: And it has been
24 moved.

25 COMMISSION MEMBER: Second.

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1 CHAIR WAMBACK: And seconded that
2 we approve tonight's agenda.

3 Is there any discussion on that? All those in
4 favor of approving the agenda say "aye."

5 MULTIPLE COMMISSION MEMBERS: Aye.

6 CHAIR WAMBACK: All those opposed?
7 The agenda is approved.

8 Turning to the minutes. We have two sets of
9 minutes, from the meetings of August 2nd and August
10 16th. And they are separately stapled in our
11 packets. Very long meetings. Where is -- where is
12 John? Thank you, John. Excellent job on the
13 minutes.

14 Do we have a motion before us on them?

15 COMMISSION MEMBER: I move we
16 approve the minutes.

17 COMMISSION MEMBER: I second.

18 CHAIR WAMBACK: It's been moved and
19 seconded that we approve the minutes from August 2nd
20 and August 16th. Is there any discussion?

21 Seeing no indication that anyone wants to
22 discuss, all those in favor say "aye."

23 MULTIPLE COMMISSION MEMBERS: Aye.

24 CHAIR WAMBACK: All those opposed?

25 The minutes from August 2nd and August 16th are

1 CHAIR WAMBACK: After Elliott's
2 presentation, I'll call for oral testimony using the
3 signup sheets. Same as we went through for the
4 previous hearing. Testimony will be limited to three
5 minutes apiece. Your testimony can be brief. It's
6 not necessarily to repeat testimony previously given
7 by other people.

8 After the testimony is complete, the public
9 hearing record on this item will remain open to
10 accept written comments until Friday, September 15,
11 2017, at 5 p.m. The Planning Commission will
12 consider all oral and written testimony at subsequent
13 meetings. Elliott will be talking about the
14 schedule. And then we'll be forwarding a
15 recommendation on to the city council. The council
16 may conduct a study session of its own, hold a public
17 hearing, and then make their final decision after
18 that.

19 So I now call on Elliott Barnett to present this
20 topic. Thank you.

21 ELLIOTT BARNETT: Thank you, Chair,
22 Planning Commissioners, and everyone who's come here
23 this very hot afternoon. Thank you very much. I'm
24 really happy to see the room filled with people who
25 are here to comment on and share your insights into

1 this plan for a very important neighborhood of our
2 city. And thanks also to all of the Planning
3 Commissioners for bearing up in this hot weather.

4 I wanted to mention from the very beginning, if
5 you haven't already found the signup sheet over here,
6 this is a good time to go over there and make sure
7 that you get your name on there. That way you'll be
8 called in the order that you signed up. And then at
9 the end, the Chair will make sure that everybody who
10 wants to comment has that opportunity.

11 I'm going to go through a presentation that
12 provides an overview of this full package of
13 materials. And I want to thank those of you who have
14 seen portions of this presentation before for your
15 patience, which is many of you. And I also want to
16 apologize for turning my back towards the audience
17 because of the setup here. So I will do my best.
18 And thank you.

19 So the meeting objective or -- of this public
20 hearing is really to ask -- ask everyone -- excuse
21 me -- is really to ask for everyone's input as we're
22 finalizing a package of plan, code -- plan and code
23 changes as well as an environmental impact statement.
24 Really it's an opportunity to provide your
25 perspective to help shape the future of the Tacoma

1 Mall neighborhood. And so our objective is to hear
2 from all of you who each have a unique perspective
3 and stake in the neighborhood.

4 The Planning Commission is of course listening to
5 this testimony. We are recording it as well, and a
6 transcript will be created. And all this input is
7 going to be invaluable to the Commission, to staff,
8 as we work to finalize this package. It's been a
9 couple of years in the making. And again, thanks to
10 everyone who has contributed to this.

11 In terms of our timeline, we will come back to
12 the Planning Commission at your next two meetings,
13 September the 20th and October the 4th, tentatively.
14 And at those meetings, we will start to go through
15 the public input and comments that we have received
16 and start to flesh out the issues that need further
17 work and analysis and options.

18 At that point, we will tentatively come back in
19 mid October and ask the Commission to make a
20 recommendation on this package to the full city
21 council. At that point, the Commission will be able
22 to step back and the city council will make its
23 decision on the package. So according -- if all goes
24 according to plan, we will have this project wrapped
25 up this calendar year.

1 In terms of what is in this package of proposals,
2 there are three components. And it's worth going
3 through what each one of those is. The draft subarea
4 plan, itself, is a vision, goals, and actions for the
5 neighborhood, going over -- it's got a total of 11
6 chapters, multiple goals. There -- it really sets
7 the vision, sets the policy direction.

8 Proposed for adoption along with the subarea plan
9 are several appendices, a code changes summary and
10 code changes text, as well as some streetscape design
11 guidelines. So with the plan will be a policy
12 adoption as well as zoning design standard and other
13 changes at the same time.

14 Finally, we're also presenting a draft
15 environmental impact statement. What that is, is
16 it's really an in-depth review and analysis of all of
17 the required mitigation steps, all of the actions
18 necessary to make this plan work, to make it work for
19 the neighborhood, to handle the impacts of growth, et
20 cetera.

21 The important thing to know about this draft EIS
22 is that it takes the place of project-level SEPA
23 review, which is currently applicable to larger-scale
24 projects in this neighborhood as well as throughout
25 the city. So it's a way of coordinating that review,

1 coming up with the mitigation actions up front, and
2 then streamlining development that's consistent with
3 that plan.

4 So we are about two years into the process, which
5 has had a very broad community engagement component
6 to it, as well as some very specific technical
7 analysis. So starting about a couple of years ago,
8 we did a major push, similar to what we just got --
9 got finished doing, mailing, e-mail, media, various
10 different -- every way that we could to reach out to
11 the people who live and work and own property in the
12 neighborhood, and did a very intensive push in late
13 2015. Through that, we came up with some themes in
14 terms of what the neighborhood needs to -- to be a
15 place that a lot of people are going to want to be,
16 invest, live, and shop.

17 And some of those key themes were that this is
18 a -- we need to work on a more positive identity, a
19 sense of place here. Needs to be more walkable,
20 bikable, and transit-ready. Parks, open space, and
21 green infrastructure are very much needed here. We
22 need to continue to support economic development and
23 growth here in this area, which is a very important
24 employment base for Tacoma. Safety, both in terms of
25 the neighborhood and in terms of our streets. Access

1 for the people who live here to services, needs,
2 healthy affordable food. Housing affordability and
3 choice, and other elements needed to make this a
4 healthy community. Those are some of the key themes
5 that we started out with, started the process, and
6 became the foundation or the -- or the objectives of
7 the policies that we're bringing forward now.

8 We also have a regional and city policy
9 framework. This is a designated regional growth
10 center, as you know, meaning that this is where, as a
11 region, we have gotten together and said we're going
12 to support jobs and housing growth here with
13 infrastructure investment in order to make that work.
14 So this is something that -- this is a vision that's
15 been in place for over 20 years, and there really has
16 been a lot of growth and change during that period.
17 This is our opportunity to try to shape it and direct
18 it and encourage further growth that's consistent
19 with the community's desires.

20 Perhaps the main theme animating all of our
21 discussions are the desire to shift the character of
22 this neighborhood from its current, more suburban,
23 more auto-oriented structure, to one which is just
24 more focused on people, both in terms of
25 transportation options, in terms of making a place

1 that people actually want to be, place-making,
2 positive identity, and so forth.

3 So we've proposed a -- a pretty ambitious vision
4 for this neighborhood to make it a thriving center of
5 regional significance and a distinctive, connected,
6 livable and healthy place with opportunities for
7 everyone to live, work, invest, and fulfill their
8 potential. As part of that, there really is a lot of
9 change proposed.

10 However, our overall objective is to try to
11 create the opportunities for change through targeted
12 city investment and other actions so that over time
13 it's in everybody's interest to see significant
14 change even to the street network and block scale of
15 the neighborhood.

16 We had a -- there's an urban form chapter of our
17 plan, which really points out that in many ways this
18 600 acres does not hang together as a single
19 connected neighborhood right now. So there are six
20 design ideas which are reflected throughout the plan.
21 Place-based districts in each of the four quadrants
22 of the neighborhood, focusing our density and
23 concentrating on transitions. A loop road and park
24 system, green infrastructure investments, and
25 enhancing the neighborhood's edges and transitions.

1 Coupled with that are the ideas of making this a
2 walkable neighborhood where people could walk within
3 five minutes and get to most of what they want to,
4 what they need on a daily basis that way, and
5 supporting a transition to a transit-ready community.

6 To support that urban form vision, we have a
7 package of proposed zoning changes. To a large
8 extent, zoning is recommended to continue what's here
9 today, but there are some significant changes. Two
10 areas in Madison and Lincoln Heights are proposed to
11 be zoned for residential as opposed to mixed-use
12 development to reflect their existing character. And
13 we are proposing some -- rather than the one-size-
14 fits-all zoning height limits that are here today --
15 high, medium, and lower height limits. And finally,
16 an industrial transition area in an area which is
17 currently light industrial along South Tacoma Way.
18 So the expanding the center and changing the zoning
19 from light industrial to commercial and industrial
20 mixed use.

21 Finally, the Planning Commission asked us to
22 bring forward two alternatives for zoning in the
23 Madison district, which is the area to the west of
24 Pine. And they are up on the screen. The difference
25 is that, in the staff recommendation, the height of

1 the core of the area would be 45 feet. In the
2 alternate, there are two areas along Warner Street
3 and at Madison School where the height would be
4 allowed to go up to 65 feet. So that's something
5 that members of the public here may wish to comment
6 on as part of this process today.

7 There is a package of design standards changes
8 both to residential and commercial development that
9 would take place in the future. The primary thrust
10 of these is really just to make sure that development
11 is oriented towards pedestrians so that buildings are
12 oriented towards the sidewalk, so that pedestrian
13 pathways and connections are attractive and safe and
14 prominent. There's also some increase in landscaping
15 and street trees requirements and some other -- some
16 commercial design standard changes to drive-throughs
17 and to pedestrian access.

18 It's a very exciting and ambitious transportation
19 and infrastructure package here. And again, we're
20 looking to handle and facilitate 25-plus years of
21 growth in this one plan. And to do that, we know we
22 need to invest heavily in our transportation
23 infrastructure.

24 So that the approach here is, we have a list of
25 city capital projects which really will transform

1 some of our streets so that they are safe and
2 comfortable for people who are walking and biking,
3 enhance our transit access, create a central transit
4 hub closer to the center of the neighborhood. Very
5 exciting. Over a hundred million dollars' worth of
6 capital projects over the next 25 years. And we do
7 really believe that will not only help with
8 transportation, but also a major place-making benefit
9 to the neighborhood.

10 In addition, the area currently has several very
11 large blocks or larger than what is recommended in
12 terms of a urban center district like we are trying
13 to achieve here. So the largest is actually the
14 Tacoma Mall, itself, which is over 50 acres without
15 any street connections, and there are some others
16 that are close to 20 acres in size. So the plan does
17 include a proposal to create new street connections
18 along with major private development.

19 And I know that we will hear some comment and
20 input on this topic from people here tonight. As the
21 Commission well knows, we've spent a lot of time
22 talking about this topic. And I will just mention
23 that, at the outs -- or at the conclusion of our
24 process here when we come back to you, staff is
25 prepared to come forward with a range of alternatives

1 related to those transportation proposals. So we
2 know we're going to be talking more about those.

3 For the audience, very briefly, why are we
4 emphasizing the importance of creating some new
5 street connections? It boils down in simple terms
6 to, if you have a small number of streets, all the
7 traffic has to go to those streets, so they have to
8 be big streets. That means that it's more difficult
9 to make them attractive and safe for pedestrians.

10 So the more street alternatives that you have,
11 the finer-grain street network that you have, the
12 more that you can make those streets calm and
13 attractive and more pedestrian oriented. So that's
14 really the thrust of the activity proposal. It also
15 is important in handling and accommodating the growth
16 that we are planning for here and in promoting a
17 shift in the urban form.

18 So moving on, we have some very exciting green
19 storm water and tree canopy proposals here. This
20 happens to be an area of the city where it's ideal
21 for green storm water techniques. That means that
22 water is able to go back into the ground rather than
23 having to get piped out and dumped into the Puget
24 Sound. So that's better in multiple different ways.
25 Environment, life of the infrastructure, even

1 creating a new funding source for us to -- to rebuild
2 many of our streets. So very ambitious green storm
3 water and green streets proposal.

4 In addition, we have proposed a major increase in
5 the amount of tree canopy in the neighborhood here.
6 It's currently about nine percent, which is not a lot
7 of trees. And through a range of actions, we believe
8 it's reasonable to reach 25 percent tree canopy
9 coverage by the year 2040.

10 Parks and open space proposals. The gist of this
11 proposal is that we heard from the beginning that
12 residents here really would like to have more
13 attractive and safe places for children and for
14 people of all ages to be in the neighborhood and that
15 that was one of the main missing features here. So
16 the plan is proposing some parks principles,
17 including a park or open space in each of the four
18 quadrants of the subarea, and then connected by a
19 green loop road that would allow you to walk from one
20 to the other. So that's the gist of the parks and
21 open space proposals. Madison School is also
22 strongly emphasized in the plan as a very important
23 community hub and asset.

24 Finally, this -- this is very much an economic
25 development plan. From Day 1, the actions that we

1 have put forward here and been working on are
2 intended to remove barriers that we have heard from
3 the development community are reasons why they would
4 choose not to invest in the area. And those are
5 things like problems with the transportation network,
6 that lack of neighborhood amenities and other things.
7 So we do really believe this is a way of encouraging
8 growth.

9 The upfront environmental impact review is also
10 very much an economic development strategy. And
11 finally, we have a chapter that really focuses on
12 other things we can do to promote growth and
13 investment here.

14 Housing choices are also something we have heard
15 over and over from the community are a very big issue
16 here. While this area is currently affordable as
17 compared to other areas of Tacoma, that could change
18 with time. And, in particular, if we really channel
19 a lot of growth here, it could really exacerbate
20 affordability. So the housing chapter includes
21 actions and benchmarking to try and track that issue
22 and take more, again, action if it becomes a big
23 problem in the future.

24 So local culture and identity. What makes a
25 neighborhood an attractive place to be? A lot of

1 that has to do with just attractive places. Places
2 where people can gather and have community events.
3 It has to do with making the public infrastructure
4 not only functional but again attractive and doing
5 things to bring in public art and support local
6 culture. So we're very excited about some of those
7 actions.

8 And finally, in the implementation chapter, we
9 have proposed a prioritization of the actions in the
10 plan. One of the most important is to initiate a
11 funding study early on in the implementation of the
12 subarea plan, in particular to focus on those
13 infrastructure investments and the connectivity
14 proposals.

15 Very last point. While the City is bringing this
16 forward, many of the actions would need to be
17 implemented by other public agencies, Metro Parks,
18 transit agencies, the school district, as well as
19 private property owners, who after all are the people
20 who would be investing and growing our economy, and
21 of course by people who live here. So this plan is
22 not intended as the City's plan but as the
23 community's plan.

24 So we're well -- we're over halfway through our
25 public comment period. Comments are requested and

1 due by September the 15th. I really hope everybody
2 will comment during that time. I wanted to provide
3 the Planning Commission with a brief overview of the
4 themes that we've been hearing so far in our
5 comments.

6 We have gone to the transportation commission as
7 well as the bike and pedestrian technical advisory
8 group, again to focus primarily on connectivity on
9 proposed South 37th Street, which is one of the
10 proposed new streets, as well as on the overall
11 transportation proposals. So we've got -- we are
12 expecting comments from both of those two groups.

13 And I think it's fair to say that they -- they
14 wrestled with those, with those issues, the same ones
15 that the Planning Commission has, in terms of seeing
16 the need and the importance of additional streets and
17 needing to make sure that it's fair, equitable,
18 avoids impacts to property owners and businesses, and
19 is feasible. So their comment letters will speak for
20 themselves, but do expect those.

21 We also had the informational meeting last
22 Wednesday right here in this room. And during that --
23 during that session, of course the street network and
24 connectivity was a very big theme. A lot of people
25 wanted to talk about design standards, so I expect

1 that you'll hear some more comments on that. Parking
2 comes up a lot. Functional and attractive yard
3 space. Development that has front doors facing
4 alleys. That's something that we'll continue to hear
5 about.

6 I expect we'll also hear comments on the zoning
7 proposals; in particular, the industrial transition
8 areas. There are some more industrial uses in those
9 areas, and those folks may come forward and have
10 something to say about them, which I hope that they
11 will.

12 And then residential heights. Again, we are
13 proposing some height changes there. So that's
14 something that people have been asking about.

15 I already mentioned housing affordability. That
16 continues to be an emerging issue, and I expect we'll
17 hear on that as well. Making the neighborhood more
18 safe, reducing crime, addressing nuisances. A lot of
19 enthusiasm about parks and open space. And I would
20 also just say a lot of enthusiasm for the capital
21 projects, the transportation projects, and the green
22 environmental projects, the parks and open space
23 proposals have come through as priorities.

24 I would encourage everybody here tonight to let
25 us know, let the Commission know what you think your

1 priorities are. There is a lot in this plan, and we
2 would love to know -- we'd love to have your help in
3 prioritizing implementation.

4 So again, written comments are due by September
5 the 15th. Between now and then, on September the
6 13th, the City Council IPS Committee, the
7 Infrastructure, Planning, and Sustainability
8 Committee, will be doing a tour, a bus tour of the
9 neighborhood.

10 And a quick order of business. I wanted to ask
11 Planning Commissioners who are able to attend that,
12 despite your busy schedule, would you -- would you
13 let us know tonight so that we can just confirm and
14 make sure we have -- the voice of the Planning
15 Commission can be represented there?

16 And after that, again we'll be back before you
17 with some of the summarized comments that we've heard
18 from the public on the 20th and October 4th and
19 October 18th. Again, we hope that we will be able to
20 bring forward a package for your consideration to
21 recommend to the city council.

22 And last word. I hope I haven't spoken too long.
23 To everyone here tonight, if there's any way that I
24 or other people can help you to understand the
25 proposals, please don't hesitate to let us know. I'm

1 happy to come talk to you in your workplace or
2 residence. And we really would like to hear from
3 you.

4 So thank you for your patience with my
5 presentation.

6 CHAIR WAMBACK: Thank you very
7 much, Elliott.

8 So we will now begin the public testimony
9 process. I'm going to receive the sign-in list.

10 All right. So it appears that we have 17 people
11 signed up to speak. When I call your name -- and
12 what I'm going to do is call up three names at a
13 time. So invite a speaker up, and then the next two
14 people in queue will know who they are. You'll be
15 speaking from that microphone in the center of the
16 room.

17 It's important for the -- with this extensive
18 record and for this extensive plan that we are able
19 to identify you by name, your address, and your
20 affiliation for the record. Looks like many of you
21 have already signed that information up here. If you
22 haven't provided that to us, please provide your
23 name, address, and affiliation, and we can get that
24 on the record.

25 After exhausting the signup sheets, I'll do what

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1 I did on the previous hearing and open it up for
2 other people to come forward.

3 As with the other hearing, testimony is limited
4 to three minutes. So with that, I will begin in the
5 order that was signed up. Forgive me, between my
6 glasses and the long day. Valerie Fyalka-Munoz.

7 VALERIE FYALKA-MUNOZ: Yes.

8 CHAIR WAMBACK: Followed by John
9 Brekke and Eleanor Brekke.

10 VALERIE FYALKA-MUNOZ: Hi. I'm
11 Val, Valerie Fyalka-Munoz. I have been in real
12 estate for 40 years --

13 UNIDENTIFIED SPEAKER: We can't
14 hear.

15 VALERIE FYALKA-MUNOZ: -- in the
16 Tacoma --

17 UNIDENTIFIED SPEAKER: We can't
18 hear.

19 VALERIE FYALKA-MUNOZ: Oh. In the
20 Tacoma area. I'm from --

21 UNIDENTIFIED SPEAKER: Please turn
22 up the microphone.

23 VALERIE FYALKA-MUNOZ: I'm from
24 Tacoma -- wait. Let me start over.

25 I'm Valerie Fyalka-Munoz. I have been in real

1 estate for 40 years in the Tacoma area. I'm from
2 Tacoma. I help manage Michael's Plaza at 2921 South
3 38th. I have been going to the Tacoma Mall
4 neighborhood meetings for over a year. The Tacoma
5 Mall neighborhood plan places an excessive burden and
6 encumbers Michael's Plaza with new roads on the
7 median-term and long-term vision maps. The roads and
8 37th Street will restrict businesses, devalue the
9 property, and restrict the ability for future
10 development.

11 The topography has a difficult 20-foot slope
12 coming off of Pine Street. The cost to construct a
13 road will be costly endeavor and will restrict the
14 property. Presently, Michael's Plaza has eight
15 entrances for ingress and egress. The city planners
16 would be wiser to development and improve the
17 existing road system and not encumber and burden the
18 commercial property owners with 37th and other roads.

19 The Tacoma Mall neighborhood plan is an excessive
20 taking of private property rights. The plan is
21 unconstitutional. The nexus and proportionality is
22 unreasonable. We are going to defend our
23 constitutional rights and will let the courts decide.
24 Thank you.

25 CHAIR WAMBACK: Thank you.

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1 John Brekka, Eleanor Brekka, and Nikki Rohloff.

2 ELEANOR BREKKA: I'm Eleanor
3 Brekka.

4 JOHN BREKKA: And I'm John Brekka.

5 ELEANOR BREKKA: And we're going to
6 do our testimony together since both each have three
7 minutes, but...

8 We are brother and sister, and our parents
9 developed the raw land in the northwest quadrant 35
10 years ago, which is now Cedar Plaza, and our family
11 takes great pride in our property. We also own
12 commercial real estate in several other urban
13 transition areas such as SoDo, Southcenter, and
14 downtown Auburn.

15 We have been participating in this process for
16 over a year now. Overall, we are for having a
17 subarea plan. I'd like to start by specifically
18 stating what we like about the subarea plan. The
19 City's interests in the neighborhood, creating a
20 transit center, and working to bring rail to the
21 area, bringing more than identity to the area and
22 creating a destination, improvements to existing
23 streets, grant money for street improvements and
24 helping revitalize the neighborhood, recognizing the
25 neighborhood is residential, commercial, and

1 industrial in nature.

2 JOHN BREKKA: We've had a chance to
3 read through the several hundred pages. And the one
4 overriding theme that is still a concern is
5 connectivity. And this is shared by not just us but
6 the 30 or 40 other people that expressed, the
7 commercial property owners and businesses that
8 expressed these concerns earlier on in the process in
9 the stakeholder meetings that went on.

10 We need to arrive at a connectivity plan that
11 allows owners to operate their properties and
12 businesses. And we don't want to stifle development
13 in this neighborhood. We have an above-average
14 vacancy rate in our well-managed project, and we're
15 receiving rents in the Kent Valley and some of our
16 warehouses higher than the rents we're receiving in
17 our complex here. So it needs to be done right.

18 And we're not starting with raw land. That's
19 what our family started with 35 years ago when we
20 developed this center. And if we are going to make
21 connectivity changes, it needs to happen when the
22 bulldozers are out, when it possibly becomes raw
23 land, and there needs to be room for incremental
24 development on the sites where additions can be made
25 to the build -- to buildings, additional small

1 buildings can be added to the site, and not before
2 that. A 15-percent trigger point has been mentioned
3 in the plan, and that's far too low and is out of
4 touch.

5 So the other major concern is the filing of
6 connectivity plans. These plans will burden the
7 property for the next, you know, 15 to 20 years.
8 Large parts of the property. It requires the
9 property owners to negotiate with the City, negotiate
10 with neighborhood property owners, and it's really
11 rather unrealistic in nature. And it's going to
12 stifle development and stagnate the area, and I don't
13 think we want -- we don't want that. I don't believe
14 anybody in Tacoma wants that. So we need to be wise
15 about what we're proposing.

16 And with a connectivity requirement of a pathway
17 of various sizes every 150 feet, you're talking about
18 dividing a 16-acre parcel into 32 smaller chunks of
19 half an acre apiece. That is very far-reaching in
20 nature. And there's room for connectivity in the
21 subarea. There already is some connectivity in the
22 subarea. But there's also justification for larger
23 parcels with. And we've seen that need with the
24 University of Washington in Tac -- University of
25 Washington Tacoma branch, the Convention Center, the

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1 Tacoma Dome, the central police facility, the mall,
2 corporate campuses, midsize -- midsize shopping
3 centers, and such. So there needs to be room, and it
4 makes sense to have room for those larger parcels
5 along with some smaller parcels in nature.

6 ELEANOR BREKKA: The last thing I'd
7 like to bring up is something that we previously
8 shared, and it's -- we continue to question the cost-
9 benefit of 37th Street when there are viable
10 alternatives at lower cost and without topography
11 issues and significant right-of-way acquisitions.
12 For example, extending 35th Street and Cedar Street
13 to connect to South Tacoma Way and the Water Flume
14 Trail.

15 If the proposed 37th Street is deemed necessary
16 by the City, then it should be a Tier 1 street, which
17 is City-led, City-funded right-of-ways, acquisitions,
18 and City-constructed. Thank you.

19 CHAIR WAMBACK: All right. So we
20 have Nikki Rohloff, Kate Lantiff, and Zak.

21 NIKKI ROHLOFF: Hi. My name is
22 Nikki Rohloff, and I live in the Tacoma Mall
23 neighborhood. I'll be honest. I thought that was
24 just a sign-in for the meeting. So my comments are
25 informal, but just to give perspective for somebody

1 who lives in that area.

2 I live in the Apex, right by the mall. I
3 basically tell people I live in the Tacoma Mall
4 parking lot. But in that short little block from
5 where I live to the mall, I only have a sidewalk that
6 goes halfway to the mall. There's no crosswalk to go
7 over to the pet store, to Joann's. And getting over
8 to Red Robin is nearly impossible. So even though I
9 live right there and could walk to anything in a
10 minute, it's nearly impossible. So sidewalks, I
11 think, would be -- are great and would be a priority.

12 I'm excited about the new I-5 ramp going directly
13 to Tacoma Mall Boulevard. That intersection at 38th
14 and Steele is a nightmare, especially with
15 Chick-fil-A. And I feel, with all of the multifamily
16 units that I've been going in, a great idea in the
17 green area would be a dog park, an unleashed dog park
18 for the people who don't have a place for their dogs
19 now.

20 And then with the multiunit living spaces, I
21 would just encourage more parking. Right now where I
22 live, we have five parking garages and it's still not
23 enough to accommodate everybody that lives there.
24 And Heaven forbid if you want to have a guest over.
25 Nearly impossible. So thank you.

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1 CHAIR WAMBACK: Thank you.

2 All right. We have Zak Klineman (phonetic). No?

3 Jack Knottingham.

4 Jeffrey Mann. No, Jeffreys here.

5 After Jeffrey will be Angelia Alexander.

6 JEFFREY MANN: Good evening,

7 Mr. Chairman, members of the Planning Commission.

8 Jeff Mann with Pierce County Planning -- well,

9 Planning and Public Works now, a new department, and

10 they're representing the County's interest in our

11 annex campus that is located within the -- within the

12 plan area.

13 I've been on the stakeholder group for the last

14 couple years. And we asked in 2015 to be a part of

15 the plan. And we're grateful that we were included

16 in the plan, and of course want to see our -- and

17 feel like we are an asset to the plan area as a major

18 employer. And that's recognized in the plan on Page

19 SP17. And I appreciate that, that's recognized as an

20 asset as a major employer.

21 We've been very supportive of some of the key

22 concepts of the plan, the loop road. I think

23 that's -- that's a wonderful concept with the

24 improved crossings on 38th. Also the storm water

25 management approaches there, the low-impact

1 development techniques, the green streets program,
2 and increased parks and recreation area, as well as
3 the zoning scheme, which I feel is appropriate for
4 the annex campus.

5 We've made a couple of recommendations. Among
6 other things, to provide a transit connection between
7 the Tacoma Dome and the subarea plan area. And feel
8 like that's necessary. And also we have a
9 recommendation for additional park land close to the
10 annex campus.

11 However, our primary concern with the plan is the
12 impact of the connectivity proposal. Specifically
13 with regard to the bike boulevard, the street
14 connection from South 35th to South Tacoma Way, which
15 is on Wright Avenue. That is shown in the plan area
16 as bisecting -- completely bisecting the annex
17 campus, including going right through the existing
18 building, and would have a significant impact on our
19 potential to develop the site in the future. We may
20 need to use the site for a significant County
21 facility, and a street going directly across the
22 property would have a significant impact.

23 It is a bike boulevard. If it's just something
24 that goes around a building, through a parking lot,
25 that's different than doing an actual boulevard right

1 through the middle of the property. That boulevard
2 does connect to Wright Avenue, which is about a 10-
3 to 15-percent grade. So it'll be very difficult for
4 biking. I don't see anybody using it now, and I
5 don't foresee that being used in the future.

6 So our request, kind of bottom line, is -- and
7 it's not shown on the priority maps for that road,
8 but our request is that that road crossing the annex
9 campus would be deleted from the plan and so we can
10 continue to use that site as a major employer and
11 further the goals of the -- of the subarea plan.
12 Thank you very much.

13 CHAIR WAMBACK: Thank you.

14 All right. Angelia -- is that right --
15 Alexander, followed by Amy Pow and Venus Dergan.

16 ANGELIA ALEXANDER: I'm the clerk,
17 which means something like a chairperson, for the
18 Tacoma Friends Meeting, which is the Quaker meeting
19 whose meeting house is located at the top of South
20 39th Street on the hill, the eastern end. If you --
21 if you leaped off the end of that street, you'd land
22 on Chick-fil-A, just to give you an idea of where we
23 are for sure.

24 The original map I saw of the plans for bike
25 paths, by the way, had a bike path going down there.

1 And I think I was able to convince Elliott that that
2 wouldn't work. Didn't see it on any of the
3 subsequent maps. I too thought I was just signing up
4 to let you all know I was here. So I'll try to keep
5 this brief and speak from the heart.

6 It struck me pretty early on that this whole area
7 has not really much of a sense of place or
8 neighborhood. And I think we've struggled with that
9 over the conversations in the last year. Nobody
10 could come up with a substitute name for it, for
11 example. That will come with time. But it means
12 that people who work, own property, live here, and so
13 on, need to have a sense of what that identity and
14 sense of place is.

15 That means to me that the neighborhood
16 development, the business-side developments, and all
17 of that have to be sensitive to quality as well as
18 quantity, and also to the kinds of costs it can mean
19 for -- to the business owners, for example. You've
20 already heard about that.

21 On one of the original plans that I saw, it
22 looked as if the City was going to be prepared to buy
23 us out on our little place at the top of the hill.
24 And I don't think that's going to happen anymore
25 either. We might choose to sell to the City, but I

1 don't think the City's planning to buy us out. If it
2 ends up that way, I'll be surprised.

3 But we're prime to be a kind of spot that could
4 connect well to whatever parks might be planned for
5 the green space that's just to the east of that huge
6 post office complex. That's undeveloped land, and it
7 could be perhaps developed better into some kind of
8 parks, green space.

9 I guess that's -- that's probably all I can think
10 of to say at the moment. I will be bringing this
11 topic up to our Quaker meeting. We have our business
12 meeting this coming Sunday around 11:15. If anybody
13 would like to see how we Quakers do business, we come
14 to unity around whatever we're going to decide.

15 I would suggest that you-all think about moving
16 in that direction so that property owners who would
17 like to have a better quality for their residences
18 and the business owners who would like us to be
19 sensitive to their needs don't ever feel like any of
20 them are losers in this whole concept. Thank you.

21 CHAIR WAMBACK: Thank you.

22 All right. Amy Pow, Venus Dergan, and then
23 Christian Kopuski (phonetic). I'm sure I just
24 massacred that one.

25 CHRISTIAN KONOPASKI: Close enough.

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1 CHAIR WAMBACK: Thank you.

2 Good evening.

3 AMY POW: Good evening, Planning
4 Commissioners. I'm Amy Pow, principal planner for
5 Tacoma-Pierce County Health Department. Thank you
6 for collaborating with the health department to
7 develop this very important subarea plan. This
8 neighborhood is very diverse, filled with a lot of
9 low-income populations, and is very transient.
10 Residents in this area has experienced a very low --
11 a very high health disparities and a shorter life
12 expectancy than average Tacomans.

13 Last year, the board has adopted a resolution on
14 health in our policies, encouraging cities and towns
15 to consider health in all decision-making. We have
16 demonstrated with your City staff how this can be
17 done in your subarea plan. We have partnered with
18 the City and stakeholders in the last 30 months to
19 infuse health in every step of decision-making. We
20 outreached and empowered local residents to
21 understand their needs to make it more livable and
22 decent area.

23 Above all, we also apply a triple bottom line
24 health framework to make sure that health is embedded
25 in each chapter in throughout the plan, to create the

1 vision that we all envisage for.

2 There are several health issue that we hold very
3 dear to our heart from the get-go of this planning
4 process. Amongst them, we have particular concern
5 about the possible involuntary displacement of low-
6 income residents in this neighborhood as the economy
7 and the environment improves over time. We strongly
8 feel that maintaining the current level of affordable
9 housing in this neighborhood is crucial. Besides we
10 try our best to make sure the local residents will
11 champion on for to implement this plan as well as to
12 welcome newcomers to join them to build this
13 neighborhood together.

14 To actualize walkable urbanism, there are many
15 good policies and actions in this plan, including a
16 playable loop road, the Madison School hub, tree
17 canopies and green infrastructure. The only comment
18 that the health department particular concerned is,
19 is that the current performance measures in the
20 health chapter talking about the target performance
21 for the entire neighborhood is too low.

22 Our quick analysis shows that according to
23 American community survey, five years estimates,
24 about 90 percent of the current housing stock of the
25 entire neighborhood is renting less than \$1,250 per

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1 month, and 25 percent is actually renting less than
2 \$750. To help minimize the impact of gentrification,
3 we strongly encourage the City to maintain a closer
4 percentage of affordable housing for the entire
5 neighborhoods over time for those low- and very-low-
6 income neighbors.

7 Today I encourage you to support this plan to the
8 council for adoption together with the DEIS, with our
9 comments being incorporated. Once fully implemented,
10 I'm sure the social fabric and economy will be
11 improved, the natural environment be improved as
12 well, and the motor vehicle traffic will be reduced,
13 and after all, health and equity will be bettered.
14 Thank you.

15 CHAIR WAMBACK: Thank you.

16 Okay. So we have Christian is next. Oh, I'm
17 sorry. Venus. Excuse me. Venus Dergan, Christian,
18 and then Fran?

19 CHRISTIAN KONOPASKI: Francesca.

20 CHAIR WAMBACK: Francesca. Thank
21 you.

22 CHRISTIAN KONOPASKI: I'll be
23 speaking for her.

24 CHAIR WAMBACK: All right.

25 CHRISTIAN KONOPASKI: We're

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1 together.

2 CHAIR WAMBACK: So Venus.

3 VENUS DERGAN: Okay. Hello again.

4 My name is Venus Dergan. I'm a longtime resident in
5 south Tacoma, live in Manitou, and I'm a Manitou
6 representative. I again had just signed up just to
7 state that I was here, but I did make a couple of
8 notes because I did attend the meeting last
9 Wednesday. And I'm just going to follow up to the --
10 to the lady here in regards to affordable housing.
11 That was one of the notes that I -- that I made.

12 I've lived in south Tacoma most of my life, and I
13 represent people who I believe a lot of us are median
14 to low income. And we have a lot of seniors that
15 live in our area as well. And when you have an AMI
16 that's too high, I don't think that these multifamily
17 dwellings are really considered affordable housing at
18 the rents that you plan on renting them out at, and
19 that was one of the concerns that I had.

20 I also viewed a couple as a person who might want
21 to rent one of these apartments that have just been
22 developed. And a couple of things that I noticed in
23 regards to those apartments is that my quality of
24 life living in those apartments. And what I've
25 noticed is, I saw multifamily dwellings that had

1 their front door in the alley. I would not want my
2 front door in the alley. I don't know why that
3 design was ever allowed, but I would not want my
4 front door in the alley.

5 There's no open space. It's -- they're
6 stacked on -- you're stacked on top of each other.
7 There's no open space for children. There's no
8 parking for anybody who has a vehicle of any size.
9 So I don't know anybody with a large vehicle who
10 would be able to be accommodated at one of these
11 apartments.

12 I think that we're -- that the height restriction
13 is too high. I saw a rendering of 38th Street, the
14 new design. And the height of 65 feet is too high.
15 I like a skyline, myself, and I didn't see a skyline
16 there. And I think if you want to live in a concrete
17 or work in a concrete jungle, you need to keep that
18 in the downtown area and not in the south Tacoma
19 area. That's -- that's my feeling.

20 And in regards to transit, I ask that in regards
21 to transit, that the transit station have a stop at
22 the mall again like it used to. Being across the
23 street from the mall is burdensome to every disabled
24 senior, anybody who has to get to the mall. And I
25 think it's dropped people coming to the mall because

1 the transit bus drop-off is across the street.

2 I took the bus once in the winter and had to walk
3 from across the street to the mall, and I swore I'd
4 never do it again. And that's because my vehicle was
5 broken down. I don't know how the elderly do it. I
6 don't know how disabled people do that. But it has
7 to be reconsidered in the plan, that people be
8 dropped off. If you want buyability at the Tacoma
9 Mall and people to attend the Tacoma Mall, the
10 transit center needs to be there at the mall where
11 people can have access, direct access to the mall.
12 Thank you.

13 CHAIR WAMBACK: Thank you.

14 Okay. We have Christian, then Francesca, and
15 Beverly.

16 CHRISTIAN KONOPASKI: Okay. I'm
17 Christian. I'm here to represent myself and
18 Francesca. We own a multifamily property in the area
19 that's under discussion. And while I'm in favor of a
20 lot of the concepts in the plan, the City has failed
21 to implement a number of the concepts that are
22 already in the plan; namely, paving streets,
23 sidewalks, storm water.

24 We've had two years now of new taxes that are
25 supposed to be funding this. We have third-world

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1 streets in our neighborhoods. We have no sidewalks.
2 We have gigantic lakes when it rains. And the City
3 is not funding any of these neighborhoods. They're
4 funding streetscaping projects in the Lincoln
5 District or downtown. And we want to spend a hundred
6 million dollars on this project.

7 I object to any funding by the City for any new
8 projects until they bring the City's infrastructure
9 standards of streets, sidewalks, and storm water
10 drainage up to modern standards.

11 CHAIR WAMBACK: So that was
12 Christian speaking on behalf of himself and
13 Francesca. So that means Beverly Bowen Bennett,
14 Gerald Pleasant, and Stuart Johnston. And then
15 Stuart is actually the last person that's signed up.

16 And as I mentioned earlier, after we exhaust the
17 sign-in list, I'll see if there's anybody else who
18 wishes to speak who hasn't already spoken.

19 BEVERLY BOWEN BENNETT: Thank you.
20 There's a man who understands a short woman when he
21 sees her. Does that count on my three minutes?

22 CHAIR WAMBACK: No.

23 BEVERLY BOWEN BENNETT: Okay.

24 CHAIR WAMBACK: We'll start the
25 three minutes now.

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1 BEVERLY BOWEN BENNETT: All right.
2 I wanted to make sure that you knew that I read this
3 entire document and understand it perfectly.

4 CHAIR WAMBACK: Excellent.

5 BEVERLY BOWEN BENNETT: Not.

6 CHAIR WAMBACK: Just don't quiz me
7 when you go for a walk.

8 BEVERLY BOWEN BENNETT: I stalk him
9 because he works by where I walk. I think it's his
10 fault, not mine.

11 I'm going to limit myself to three things tonight
12 because you only gave me three minutes. No front
13 doors on alleys. Now, I read in one of those
14 documents that we were going to kind of make it okay
15 if the developer was willing to make it look like a
16 street or a mews. Well, I say then, if it's a street
17 or a mews, the front door's not on the alley. So
18 there would be no reason in God's green Earth that it
19 could not say in clear terms that everyone would
20 understand "no front doors on alleys." And actually,
21 in the very original document that was given to me,
22 Elliott, at the very, very first meeting and showed
23 the goals of this plan, no front doors on the alley
24 was one of those goals. I was surprised when I found
25 that.

1 Now I want to talk about Metro Parks. It has
2 come to my attention that the matrix that they use
3 for deciding where to put their parks has to do with
4 the geography of an area and nothing to do with the
5 population. So the number of apartments, townhouses,
6 four-bedroom units that are now existing in the west/
7 southwest quadrant of the subarea plan is not
8 reflected as a need. We have one little corner,
9 according to one of the pictures in there, that says
10 that we are not currently having enough parks.

11 Did any of you go by that park that is not a
12 park, that is in the Lincoln Heights? It's not a
13 park. But I tell people there's a park there. They
14 say, "Where?" Then when they go by, they say, "Oh,
15 yeah, I see it now." But it's not a park.

16 And then I'm going to stand up for the wall
17 walkers -- mall walkers. I said that wrong. Mall
18 walkers. It has come to my attention -- I know in
19 the winter I've been doing it, walking in the mall.
20 And rather than the rain or the snow, I go to the
21 mall. There are hundreds of people of all ages that
22 walk in the mall. We even have a secret entrance
23 where we go in before it's quite ready for us to go
24 in and walk the mall.

25 There's a gentleman who comes all the way from

1 Eatonville to walk our mall because the mall that's
2 in Puyallup on the South Hill is not conducive for
3 walking. So when we talk about our connectivity,
4 it's a little scary to me if we do something to make
5 it difficult for the mall walkers to do their loops.
6 So I know it's a small thing, but there really are
7 hundreds of people who walk every single day in that
8 mall. Thank you.

9 CHAIR WAMBACK: Thank you.

10 All right. The last two people that we have
11 signed up are Gerald Pleasant and Stuart Johnston.

12 No? Gerald? Stuart? Neither of you?

13 All right. Well, that concludes the list of
14 people that had signed up to testify. If you have
15 not already spoken tonight, but you would like to
16 avail yourselves of three minutes to speak your piece
17 to the Planning Commission, I would invite you to
18 first raise your hand to let me know if there is
19 anybody interested. I see a couple people.

20 All right. So could you -- we don't have another
21 sign-in list, do we? Oh, we do? Okay. So let's do
22 this. We'll just start at the front of the room and
23 work our way back. Either before you speak or right
24 after you speak, if you would do me the favor and
25 write your name down on the sign-in sheet. Then we

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1 have the record. Thank you.

2 BOB BEARDEN: Hi. My name is Bob
3 Bearden. I've been working with Elliott and his
4 group since the onset of this project started. And
5 just like Beverly before me, I have read the EIS.
6 Okay? Believe it or not, I borrowed it from him last
7 week and was able to finish it. There's a couple of
8 issues in there that is just concerning that either
9 the public did not get a chance to -- or really state
10 what they really wanted to even though we heard it at
11 these numerous public groups.

12 One is the vegetation. The mayor wants 40
13 percent of the town covered in the next 10 years.
14 Okay. We know we're getting rid of the mayor. No
15 problem there.

16 However, what has been decided is deciduous trees
17 versus evergreen. Tacoma has a problem in the winter
18 with the pollution in the air. Most of us old folks
19 and younger ones or those with disabilities have
20 problems breathing during that time. If you continue
21 to plant deciduous at 60 percent versus 40 percent,
22 that's not going to help us.

23 Besides that, as was previously stated, this is a
24 transient community. Nobody takes care of the
25 gutters. They wait until there's huge water puddles

1 out there and they call the City as an emergency.
2 Evergreen trees will prevent that. So we need to
3 take a look at the types of trees that's going to be
4 presented overall. And this is going on for future
5 projects throughout Tacoma also.

6 Another thing is, when the City brought in
7 designers to start this project, they brought them in
8 from New York City and Washington, D.C. You probably
9 know who they are already. You probably talked to
10 them. They continually talked about people liv -- or
11 enjoying their afternoon on stoops. Tacoma does not
12 have stoops. New York City and "Washington, D.,"
13 has stoops.

14 Now, for those who don't know what stoops are,
15 it's their front porch or their steps, which is right
16 on top of the sidewalk next to the roadway. In other
17 words, there is no yard. There's nothing but street,
18 sidewalk, and stoops to sit on. Kids and family does
19 not have an opportunity to sit out and enjoy what
20 little summer we do have here in Tacoma. So we
21 really need to get rid of that concept design where
22 peoples gonna sit on their front porch and love what
23 Tacoma has to offer.

24 Developments. Development had a strong input
25 into this project. Development came on strong at

1 almost every community meeting, saying that, "We
2 need, we need, we need. We need the City to give us
3 this and this and this." We need to stop giving
4 development everything in the world, 10 years' worth
5 of tax-free property, 10 years' worth of tax-free
6 water/sewer. We need to stop doing this and make the
7 developers responsible for brown water recycling in
8 the future. They can build a multilevel apartment
9 complex and not be responsible for collecting
10 rainwater or anything else within their building.

11 Technology has allowed us to do this on numerous
12 occasions. So to cut down even the water issues in
13 the, not necessarily sewer, but definitely brown
14 water, they can make some recycling or utilize
15 holding tanks on brown water instead of just putting
16 it down the sewers and sending it on down the system.
17 They can utilize this.

18 It is important that -- and Elliott caught
19 this -- that development and the City and community
20 buy into these things together so that parks that can
21 be built outside of large apartment buildings or
22 whatever can be possibly purchased by the developers
23 and put in place, maintained by the parks department
24 or whatever, in addition to what's already being
25 planned, which is, as Beverly suggested, doesn't

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1 really fit the population of where people live. I
2 mean, it's great if you're a bicyclist. You've got
3 places to stop along the way between mercantile, but
4 not residential.

5 So my time's up, but thank you very much, folks,
6 for listening.

7 CHAIR WAMBACK: Thank you very much
8 for your time tonight. Make sure you sign up on
9 that --

10 BOB BEARDEN: I will.

11 CHAIR WAMBACK: -- sheet that he
12 has right back there.

13 I don't know who signed up next, so just...

14 JOHN BURKHALTER: I'm taller than
15 that. My name is John Burkhalter. I represent
16 Michael's Plaza. And I know I stand before you many
17 times talking about connectivity. And I do want to
18 thank you for listening to us and taking our
19 comments, and I'd like to thank Elliott for, I'm
20 sure, countless more meetings that he's been to than
21 I have.

22 You know, the plan is -- is needed. I mean, we
23 need to have a plan. We need to know where we're
24 going in the future. The idea is to have thoughtful
25 growth and revitalization, which the community in

1 that area really needs and we would love to see. I
2 even heard Elliott mention today that, you know, the
3 plan is to promote growth. And I agree with that.
4 But some of the things in the plan I think don't
5 promote growth. And, you know, as you all know, one
6 of those issues for us is connectivity.

7 And the reason being is, we currently have 65
8 feet of height in zoning, and we will not build a
9 project that's 65 feet tall in the next 20 years,
10 unfortunately, unless something radical happens. And
11 so by requiring dedication of right-of-way and all
12 the improvements that go along with that, and I -- I
13 think you guys -- I don't know if you heard my speech
14 in the transportation commission, but we're talking
15 an acre and a half of roads, sidewalks.

16 For every acre, that's roughly 20,000 cubic feet
17 of detention and storage. At 10 bucks a foot, it
18 would be about thirty -- \$300,000 for just that, not
19 to mention the collection systems, the asphalt, the
20 curbs and gutters. I can't even remember the
21 numbers. But it's a lot of money, and it all adds
22 up.

23 So if we can't build a 65-foot project now, the
24 zoning that we're getting out of the plan is 75 feet,
25 up to 120 feet with bonuses. You could see where

1 that devalues the property because we can't even
2 build a project today. So in some respects, by
3 having such a vision, we're actually stifling growth.

4 And so I was hoping that the Commissioners would
5 think about potentially stepping back and maybe
6 softening the language. You know, at least saying,
7 Hey, when the development happens, you need to look
8 at this and you need to provide, you know,
9 consultants and information about how that
10 connectivity would benefit your project or our
11 project and, you know, benefit the neighborhood.

12 I'm sure it would benefit the neighborhood. I'm
13 not sure it would benefit our project, but that's a
14 whole nother story. And then if we couldn't think
15 about that, maybe think about the idea where, you
16 know, if we're gonna have ground-floor retail, it
17 certainly behooves us to provide sidewalks and
18 connectivity to make sure that we have plenty of
19 storefronts and plenty of opportunities for people
20 to, you know, spend money and bring in sales tax.

21 So if we could -- you know, we can do biking, we
22 can do pedestrian stuff, but we don't have to
23 dedicate a road to do it. There's so many things
24 that come out of that, that cause problems for
25 development, that I just hope that you'll think about

1 that.

2 And then one final thing is, in the interim to
3 get there, to make sure that whatever the triggers
4 are -- and I'm a little scared about some of those
5 triggers, Elliott -- that they don't -- aren't --
6 aren't too onerous. Meaning, why do I need to come
7 up with a plan for connectivity when you already told
8 me what the connectivity plan is? So that -- those
9 kind of things like, I don't want to write a report,
10 hire some consultants, and spend \$25,000 in order to,
11 you know, do a 10,000-square-foot addition. Things
12 like that.

13 And then one final thought was, I was reading in
14 the zoning code stuff, and it said, Oh, hey, if you
15 have X amount of foot or you built something right
16 next to a right-of-way over here, that you would have
17 connection to it. And I was thinking, I thought that
18 was already sort of in the building code as part of
19 ADA. It was, like, Hey, you need to be able to get
20 out of a building, have ADA access to the
21 right-of-way, I'm assuming in case of an emergency or
22 something. So I just -- some stuff to think about.
23 Anyway, I appreciate it. Thank you.

24 CHAIR WAMBACK: Thank you.

25 Welcome.

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1 J. J. McCAMENT: Thank you. J. J.
2 McCament, McCament & Rogers, 708 Broadway in downtown
3 Tacoma. Elliott had challenged us at last week's
4 public meeting about coming up with our vision for
5 the northwest quadrant of the Tacoma Mall subarea
6 plan. And I cannot say that there has been any work
7 done on a -- on a northwest division with all of the
8 property owners. And I'm not a property owner
9 either. But being familiar with the area, I thought
10 that I would put together some rough notes and at
11 least share those with you. So, Elliott, this is in
12 response to your request.

13 My vision for the northwest quadrant. I'm
14 speaking only for myself. City-led improvements and
15 economic development efforts that help create a
16 strong and healthy neighborhood economy necessary to
17 spur a fresh look and feel for the neighborhood where
18 pride of ownership is evident and property owners and
19 tenants prosper.

20 An overall cool physical setting that encourages
21 property owners to invest in their properties,
22 existing businesses to expand, and new businesses to
23 bring jobs, services, and entertainment. The private
24 dollar follows the public dollar as the northwest
25 quadrant responds to stronger market demand. In

1 essence, a riding -- a rising tide that lifts all
2 boats.

3 Contributing to the fresh look and reputation for
4 the northwest quadrant, a couple items that I saw:
5 Newly surfaced streets with underground utilities,
6 street trees, sidewalks, streetlights, sidewalks
7 built the length of every street, and bicycle and
8 pedestrian connections to regional trails.

9 Landscaped commercial frontages with regular
10 maintenance. Crime-free and garbage-free. Tasteful
11 signage. South Cedar and 35th extended westerly to
12 connect to South Tacoma Way on the Water Flume Trail.

13 Expanded Pierce Transit bus service and a new
14 Sound Transit station to serve the neighborhood. And
15 finally, a medical campus, restaurants, and
16 entertainment that combine to make this a happening
17 place, both day and night. Thank you.

18 CHAIR WAMBACK: All right. Since I
19 don't have the sign-in sheet. Justin.

20 JUSTIN LEIGHTON: Steal my thunder.

21 Justin Leighton. I live in the Hilltop, 2149
22 South "M" Street. I'm here, I'm going to do what I
23 effectually call the David Bowe, where I'm going to
24 wear several hats. And I will let you know when I
25 take one hat off and put on another.

1 The first hat that I'm going to put on tonight is
2 I'm the cochair of the transportation commission.
3 And at our last meeting we had a good discussion with
4 Elliott about this subarea plan. And it is my
5 understanding that at one of your meetings you had
6 sought the transportation commission's point of view
7 on 37th Street. We haven't had an opportunity to get
8 there yet.

9 However, we -- I just want to let you know we do
10 have a subcommittee working on it and we will discuss
11 it at our next meeting and get a comment letter to
12 the Planning Commission, what we think not just about
13 37th Street, but generally how the plan in a
14 transportation perspective fits into the rest of the
15 city and what -- the transportation master plan. I
16 was telling Beverly, only us nerds carry around plans
17 in our cars and in our -- our bags.

18 Taking that hat off and just putting on "citizen
19 Justin" hat, I've had the great opportunity to
20 doorbell this district three times over and talking
21 with these neighbors about their community, folks
22 like Beverly Bowen Bennett. And not just walking
23 through their neighborhood, but understanding what
24 they want.

25 And I think that we all want a shared community

1 that is vibrant, that we encourage places where we
2 live, work, and play all in the one spot so we don't
3 have to rely on our vehicles. I think it's quite
4 interesting. We talk a lot about walkability. And
5 in the current environment -- and this is not just in
6 this neighborhood, but in all parts of our own city
7 and other cities -- these large parking lots. If you
8 end up having to park at the end of it, there's no
9 sidewalks to get you from your car all the way to the
10 front door of the businesses. That's today. In
11 fact, I actually encourage the Planning Commission to
12 work with the transportation commission to figure out
13 code to address that issue now for the entire city.

14 When I think about street trees and lighting and
15 curb gutters, I think about a city. And I am lucky
16 enough to travel around, not just this country, but
17 the world. But the places I find myself wanting to
18 continue to come back to are places that have all of
19 these elements.

20 The master plan talks a lot about super-blocks
21 and not creating those. And we need to break down
22 those barriers. There are reasons why connectivity
23 is important. It goes to the health of folks, from
24 what we've heard from the department of health. When
25 we encourage walking, when we encourage biking, when

1 we encourage folks to use transit, they're healthier.
2 And when we have a healthier community, they're
3 actually cheaper for us to serve on.

4 I was able to cochair the Hilltop subarea plan.
5 It took a long time. In fact, Commissioner Waller
6 was a part of that effort. And I understand that
7 this plan, just like that plan, is very aspirational
8 and it's going to take years and decades to even see
9 it through. And nothing in these two plans are
10 saying that it has to happen today or it's being
11 forced upon you.

12 And my last comment, if I may. As a fellow
13 commissioner that's served on other committees, it's
14 our jobs to not just hear what is being heard today,
15 but also try and represent those people that don't
16 have the privilege to come to this meeting tonight
17 because they're putting food on the table for their
18 kids or they're at work or they just didn't have the
19 ability to get here. Thank you.

20 CHAIR WAMBACK: Thank you.

21 All right. Was there anybody else?

22 Okay. So I'll remind everybody that the Planning
23 Commission will continue to accept oral testimony on
24 this topic through Friday, September 15th, 2017, at
25 5 p.m. And with that, I will close the public

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1 hearing. Did I say written testimony? Yeah, written
2 testimony. Excuse me. Thank you, Vice Chair
3 Petersen. "At the conclusion of oral testimony,
4 state that written comments may be submitted."

5 All right. So we are moving on to -- we have two
6 communications items on the agenda. So we'll start
7 with Mr. Wung.

8 LIHUANG WUNG: Thank you, Mr. Chair
9 and members of the Commission.

10 So just to reiterate your communication items.
11 First of all, you will be conducting a special
12 meeting next Wednesday, September 13th. It's a
13 special meeting because it's scheduled outside of the
14 regularly scheduled first and third Wednesdays'
15 meeting. And this particular meeting on the 13th
16 will be a public hearing. The subject of the public
17 hearing is the proposed tideflats area land use
18 interim regulations. The location will be the
19 Greater Tacoma Convention Center. The starting time
20 of the public hearing is 6 p.m. For -- interested
21 citizens can check more information on this Web
22 address: www.CityofTacoma.org/TideflatsInterim.

23 The second item is the council's IPS Committee
24 will be conducting a tour.

25 CHAIR WAMBACK: Mr. Wung.

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1 LIHUANG WUNG: Yes.

2 CHAIR WAMBACK: Before you go on to
3 that, can I ask the Commissioners to -- I'd like a
4 show of hands of Commissioners that are planning to
5 attend next Wednesday's hearing. Make sure that we
6 are not running into a quorum problem. So one, two,
7 three, four, five -- is that a "yes" or a "maybe"?

8 COMMISSIONER WALLER: That's a
9 "yes."

10 CHAIR WAMBACK: That's a "yes." So
11 that's six Commissioners. I, unfortunately, will be
12 traveling out of town. Some family matters have come
13 up. So that is six members. That is just one above
14 our quorum.

15 UNIDENTIFIED SPEAKER: That's
16 correct.

17 CHAIR WAMBACK: So that directly
18 relates into the next item. So let's transition to
19 the IPS tour.

20 LIHUANG WUNG: Very good. Thank
21 you, Mr. Chair. I'm going to call on Elliott to talk
22 about this IPS tour that will get into your
23 scheduling of the 6:00 hearing. Elliott.

24 ELLIOTT BARNETT: Testing. Ah,
25 thanks, Jeff.

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1 CHAIR WAMBACK: I think that
2 Commissioner Beale had expressed an interest, but I'm
3 not sure. I'm playing e-mail tag. I'm not sure if
4 he's actually going to be available next week.

5 The thing that I am concerned about -- again, I
6 apologize. I'm not going to be able to be in town.
7 But it's crucial that we have a quorum of
8 Commissioners present so we can start the hearing at
9 6 p.m. Since we're expecting so many people to
10 attend, I would say that the hearing at 6 p.m. is far
11 more important than joining the city council, so...

12 ELLIOTT BARNETT: Agreed.

13 CHAIR WAMBACK: I think if
14 Commissioner Edmonds is the only Commissioner that's
15 going to go on the tour, I think it's good to have a
16 Planning Commission presence, but at least having
17 five people so we can start the meeting on time,
18 'cause we may have a lot of people there. And the
19 longer --

20 COMMISSIONER EDMONDS: I will be
21 there at --

22 CHAIR WAMBACK: So --

23 COMMISSIONER EDMONDS: -- the
24 meeting.

25 CHAIR WAMBACK: All right. Well...

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1 COMMISSIONER EDMONDS: I'll drive --

2 CHAIR WAMBACK: Good luck on --

3 COMMISSIONER EDMONDS: -- behind --

4 CHAIR WAMBACK: -- parking.

5 So -- so that's -- is there any special
6 arrangements made for parking at the Convention
7 Center for all the attendees? Are the garages going
8 to be open that night? We'll take -- take transit.
9 That's a good -- busses and transit? I've heard of
10 those things.

11 Okay. So Commissioner Edmonds will be joining
12 you, Elliott. And we'll get some other folks, as
13 long as we don't run into a quorum problem.

14 ELLIOTT BARNETT: And other folks
15 who are here, if you're interested in joining that
16 tour, come and ask me about it and I can give you the
17 details. Thank you.

18 CHAIR WAMBACK: Thank you.

19 Is there any other business before the Commission
20 tonight? Any members have anything else they'd like
21 to add?

22 All right. Well, I'd like to thank everybody for
23 joining us tonight. Thank you for staff for
24 arranging this location in the south Tacoma area.
25 And with that, I'll call this meeting closed.

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1 (Meeting adjourned at
2 6:36 p.m.)
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1 STATE OF WASHINGTON) I, JOHN M.S. BOTELHO, CCR, RPR,
) ss a certified court reporter
2 County of Pierce) in the State of Washington, do
 hereby certify:

3
4

5 That the foregoing meeting of the CITY OF TACOMA
6 PLANNING COMMISSION was had in my presence and adjourned on
7 September 6, 2017, and thereafter was transcribed under my
8 direction; that the transcript is a full, true and complete
9 transcript of the said meeting, transcribed to the best of
10 my ability;

11 That I am not a relative, employee, attorney or counsel
12 of any party to this action or relative or employee of any
13 such attorney or counsel and that I am not financially
14 interested in the said action or the outcome thereof;

15 IN WITNESS WHEREOF, I have hereunto set my signature on
16 the 13th day of September, 2017.

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18



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John M.S. Botelho
John M.S. Botelho, CCR, RPR
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32 to this litigation, Byers & Anderson shall disclose the
33 agreement to all parties.

Attachment 3

Economic Comparative Analysis

Tacoma Mall Neighborhood Subarea Plan

September 15, 2017

WORKING DRAFT

Submitted to:



City of Tacoma
W A S H I N G T O N

Submitted by:





*Community Attributes Inc. tells data-rich stories
about communities that are important to decision makers.*

President and CEO
Chris Mefford

Project Management and Analysis
Mark Goodman
Madalina Calen
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INTRODUCTION

Background and Purpose

The City of Tacoma has developed a draft subarea plan for the Tacoma Mall Neighborhood (see the Tacoma Mall Neighborhood Subarea Plan) . CAI has contributed to the development of the subarea plan by providing real estate market analysis and an initial existing conditions assessment. The City now seeks to gain a better understanding of how proposed actions and investments called for in the subarea plan will impact the neighborhood, with a focus on economic impacts and indicators. In particular, the City desired an assessment of how proposed regulations and investments may impact the neighborhood economically. The analysis will in turn help guide policy level decisions related to the subarea plan and its adoption. Key ideas and priorities discussed with City staff included:

- Existing property owners need more information regarding the actions proposed through the subarea plan
- Work should provide additional context for policy makers and property owners
- The action should focus on the potential value created by the subarea plan and the proposed actions that it includes for the future
- The City has a package of proposals – (infrastructure, regulations, new roadways through connectivity requirement) and wants to illustrate the potential value of these changes for stakeholders and land owners

In responses to the City’s aforementioned needs, the following analysis attempts to accomplish three things:

1. Illustrate the impacts of actions taken in other communities in the region
2. Provide examples of how other cities have implemented similar actions
3. Provide lessons and observations from other market areas to guide future implementation of the proposed subarea actions studies in the analysis

Methodology and Approach

The approach to this work focuses on evaluating the proposed actions for the Tacoma Mall Neighborhood Subarea and providing context and data, through detailed case studies, on how such investments have impacted other neighborhoods and cities. The case studies examine the effects of City-led infrastructure investments on rents, property values, development opportunities and other metrics where possible. The projects studied through the case study analysis are selected based on their similarity to the investments called out in the Tacoma Mall Neighborhood Subarea plan. They

are intended to provide a more definitive picture of potential impacts and illustrate how such investments can affect the local market area.

This report relies on analysis of existing and published data sources, supplemented by custom data queries of economic data by local government officials, and supplemented by interviews with expert stakeholders in industrial land for Pierce County and the region.

The methodology is based on the following framework:

1. Establish high-level objectives for the comparative case study analysis:
 - a. Identify key factors that have affected the successes, challenges and barriers to effective implementation of similar actions in other comparable areas
 - b. Assess the extent to which similar projects in other comparable areas were able to achieve their key objectives
2. Establish a set of criteria to help guide selection of 2-3 final case studies for each action
 - a. Economic – land use and employment mix, household income distribution etc.
 - b. Socio-demographic – population, connectivity etc.
 - c. Real-estate market conditions – vacancy rates, property values etc.
3. Establish a set of criteria for evaluation
 - a. Objectives and design
 - b. Implementation and efficiency
 - c. Effectiveness and results

Study Limitations. The analysis is not an appraised valuation. Community Attributes is not a licensed appraiser and this analysis is not intended to be used as a valuation of property in the Tacoma Mall Neighborhood Subarea or intended for investment purposes. The analysis is an attempt to provide context regarding the economic impacts of infrastructure improvements and other investments called for in the Tacoma Mall Neighborhood Subarea Plan.

Organization of Report

. The report is organized as follows:

- **Action Review.** The section describes the evaluation and selection process of actions selected for analysis.
- **Comparative Analysis.** The section is broken into the following components:
 - *Review of Tacoma Mall Neighborhood Existing Conditions.* Provides context for case study examples and conditions.
 - *City Action and City Profile.* For each City, the section is divided into a profile of the actions taken in that City followed by a summary of indicators that describe changes in the local economy and real estate market.
 - *Addition Connectivity Analysis.* Provides additional research on the connectivity requirement.
- **Findings and Observations.** Summary of findings from the comparative analysis.

ACTION REVIEW

Action Review and Evaluation

The City and CAI worked collaboratively to review the subarea plan proposed actions. The process included a workshop with the City's project team as well as a stakeholder representative to review and select projects for further study. A formal survey of the workshop attendees was also conducted to help inform the action selection process. The survey and workshop were leveraged to narrow the analysis down to several actions that the City has identified.

Exhibit 1 illustrates the initial snapshot of actions reviewed through the staff workshop and follow up survey.

Exhibit 1. Initial Actions Reviewed, Tacoma Mall Neighborhood Subarea Plan, 2017

Qualitative

Establish a coherent attractive neighborhood structure
Foster a positive identity for the Tacoma Mall Neighborhood
Support community engagement efforts

Upfront EIS

Permit streamlining - no project level SEPA review
Data available on stormwater and transportation infrastructure
Certainty that utilities will be available with planned development.

Public infrastructure investments

Near, mid, and long-term transportation projects
Regional bus service, high capacity transit, and a new central transit station
Complete streets design guidelines for public and private streets
Area-wide stormwater and green streets investments

Development regulations

Zoning changes that create transitions in scale, establish 2 residential areas, add industrial area to the Center
Commercial and residential design standards updates
Connectivity requirement for large-scale development
Zoning flexibility through Development Regulation Agreements

Funding actions

Strong case for getting grants
Calls for new funding sources (e.g. City catalytic fund, impact fees)

Public agencies focus

City community and economic development programs, cleanups, enforcement
WSDOT, transit agencies focus
Redevelop Madison School as a community hub
Focus efforts on catalyst sites
Parks improvements and new parks construction

The following section describes the action selected for further study. In addition, it provides context on the selection of case study examples and the framework through which examples were selected.

Actions for Review

The comparative analysis is centered on the following actions selected for further study. The previously described framework for the analysis provides for a review of similar actions taken in communities with the Puget Sound Region. **Exhibit 2** describes the actions selected for analysis within the study.

Exhibit 2. Subarea Plan Actions Selected for Study

Proposed Actions	Findings and Observations
NEAR, MID, AND LONG-TERM TRANSPORTATION PROJECTS	Examining projects that improved circulation and in incorporated new roads in existing urban areas
CALLS FOR NEW FUNDING SOURCES	Reviewing funding strategies and implementation at the subarea and city wide level, including mechanisms similar to Tacoma’s Catalytic fund
CONNECTIVITY REQUIREMENT FOR LARGE-SCALE DEVELOPMENT	Focused on understanding how other cities have incorporated connectivity and circulation requirements on large block developments
PERMIT STREAMLINING – PLANNED ACTION EIS	Many cities have incorporated this as a development tool and incentive with varying levels of impact

COMPARATIVE ANALYSIS

Case Study Selection Framework

Case studies were selected based on the following criteria:

- Actions- Types of actions and investments made by the City
- Timeframe – when were the actions implemented
- Economic Activity – Has the area attracted recent investment
- Implementation – What role did the City play in implementation

Exhibit 3 illustrates the cities and evaluation process leveraged to select comparisons for the Tacoma Mall Neighborhood Subarea. Many communities are implementing similar efforts across the region.

Exhibit 3. Case Study Evaluation by City

Action Type	Kent	Bothell	Bel Red Corridor (Bellevue)	Federal Way	Northgate (Seattle)	Downtown Tacoma	Mountlake Terrace	Totem Lake (Kirkland)	Tukwila	Everett	Northgate (Seattle)
Permit streamlining - no project level SEPA review	X	X				X					
Near, mid, and long-term transportation projects		X	X	X	X			X			X
Connectivity requirement for large-scale development	X		X	X							
Calls for new funding sources (e.g. City catalytic fund, impact fees)	X	X	X	X			X	X	X	X	

For the purposes of the analysis Bothell, Kent and Bellevue were selected based their alignment with the aforementioned criteria. In addition, Bellevue and the BelRed Subarea was selected because of its recent implementation of large block connectivity requirements (**Exhibit 4**).

Exhibit 4. Case Study Example by City

Action Type	Kent, WA - Downtown and Kent Station	Bothell, WA - Bothell Crossroads and Landing	Bellevue, WA - Bel-Red Subarea Plan
Permit streamlining - no project level SEPA review	Downtown Subarea Action Plan	Bothell Crossroads Plan Action EIS	
Near, mid, and long-term transportation projects - <i>Loop road / road realignment</i>		Bothell Crossroads	
Connectivity requirement for large-scale development	Kent Station Plan/Ramsay Way	Bothell Landing Downtown Development Requirements	Bel-Red Subarea Plan Connectivity
Calls for new funding sources - <i>Impact Fees</i>	Transportation impact fees	Transportation impact fees	
Calls for new funding sources - <i>City catalytic fund</i>		TIF program	

The following section provides more detail on each case study. The section begins with an overview of Tacoma existing conditions, which can be referred to as context when evaluating the applicability and relative market position of each community studied,

TACOMA CURRENT CONDITIONS

CAI initiated the analysis with a cursory review of real estate conditions in the subarea and Tacoma Market. CAI completed an existing conditions analysis at the outset of the plan and recently completed a feasibility assessment for the planning effort as well. As such, the focus of the existing conditions update was on real estate indicators to test whether conditions had changed significantly since the previous analysis was completed. In addition, the baseline data provides a comparison for the comparative analysis provided later in the report.

Development History

The subarea's commercial stock is generally older than its multifamily stock (**Exhibits 5 and 6**). After the Mall was built in the 1960s, the most productive time for commercial development in the subarea, there was still fairly strong development through the 1990s. This has since tapered. Most of the multifamily development in the subarea has taken place since 2000, though a significant portion occurred in the 1970s.

Exhibit 5. Commercial Dev. Sq. Ft., Tacoma Mall Neighborhood Subarea, 1930-2016

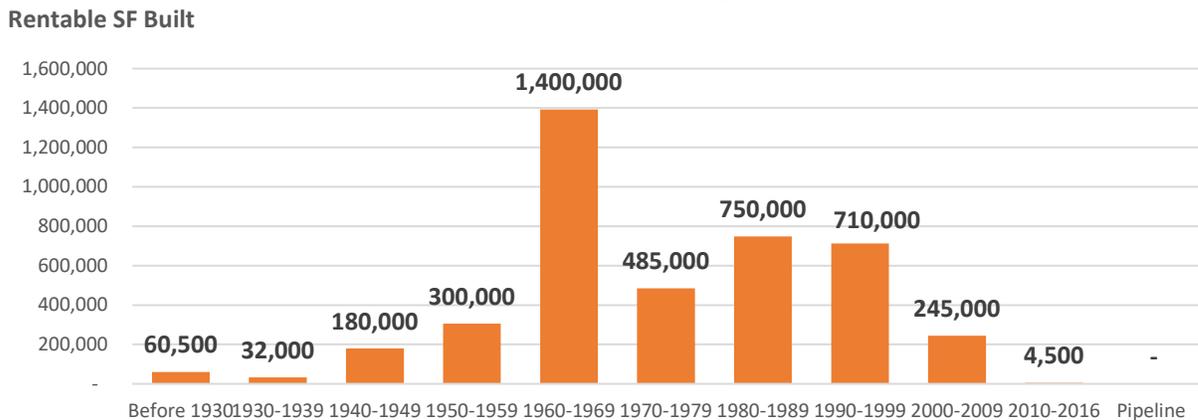
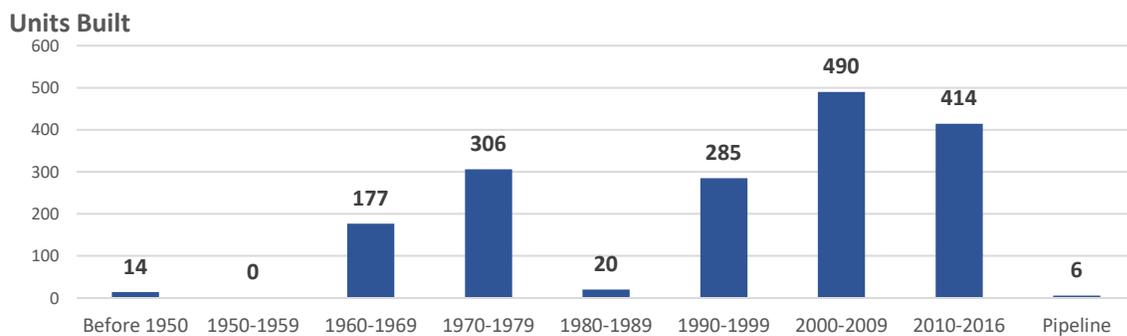


Exhibit 6. Multifam. Units Produced, Tacoma Mall Neighborhood Subarea, 2007-2017

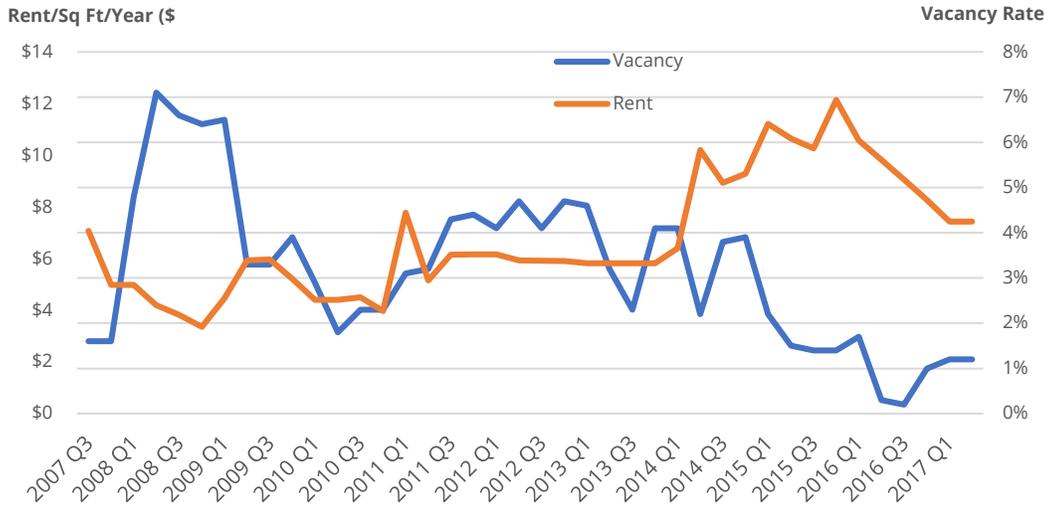


Source: CAI, 2017; CoStar, 2017

Industrial and Retail

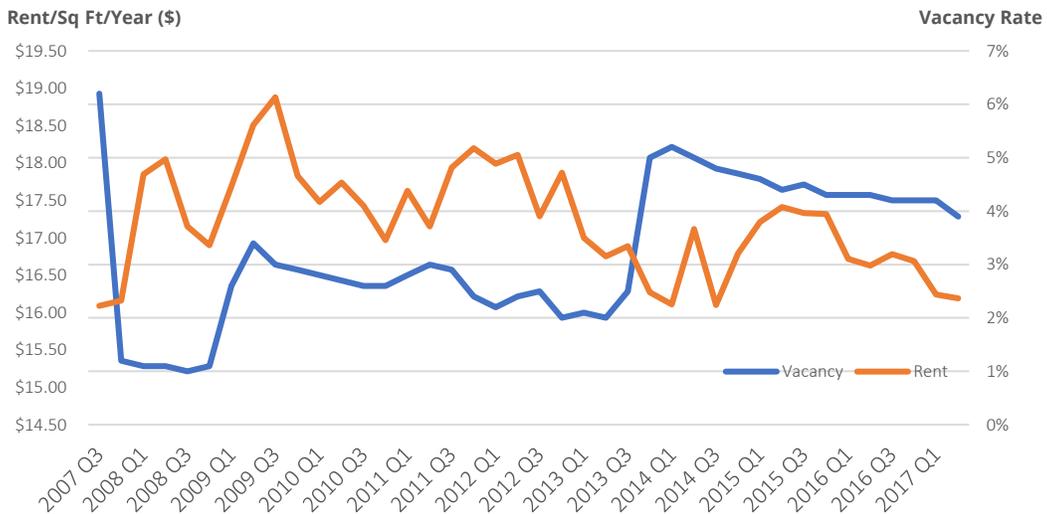
Across Tacoma, industrial rents average \$6.28 per square foot and the average vacancy rate is 2.6%. Retail vacancy rates have fallen from just over 10% in 2016 to around 7% in Q1 of 2017.

Exhibit 7. Industrial Vacancy Rate and Rents, Tacoma Mall Neighborhood Subarea, 2007-2017



Source: CAI, 2017; CoStar, 2017

Exhibit 8. Retail Vacancy Rate and Rents, Tacoma Mall Neighborhood Subarea, 2007-2017

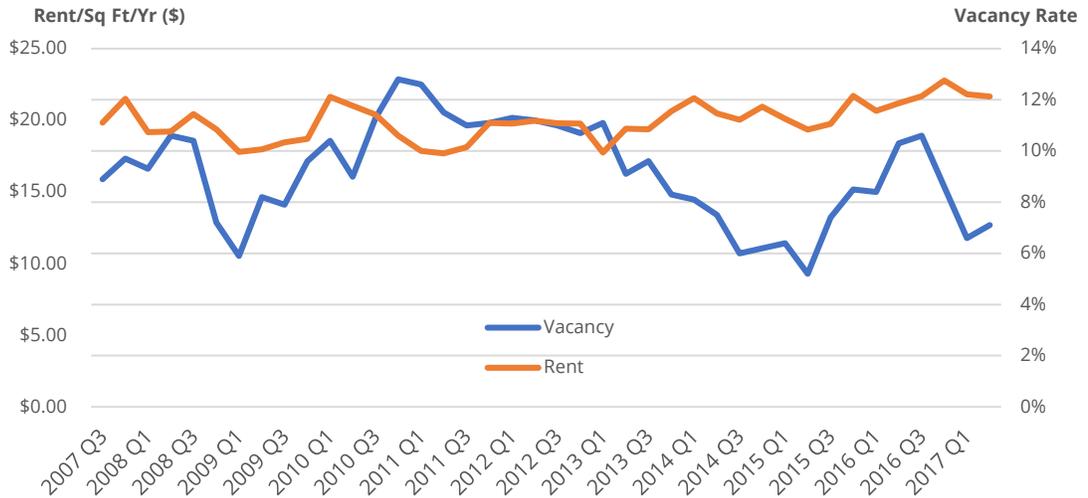


Source: CAI, 2017; CoStar, 2017

Office and Multifamily

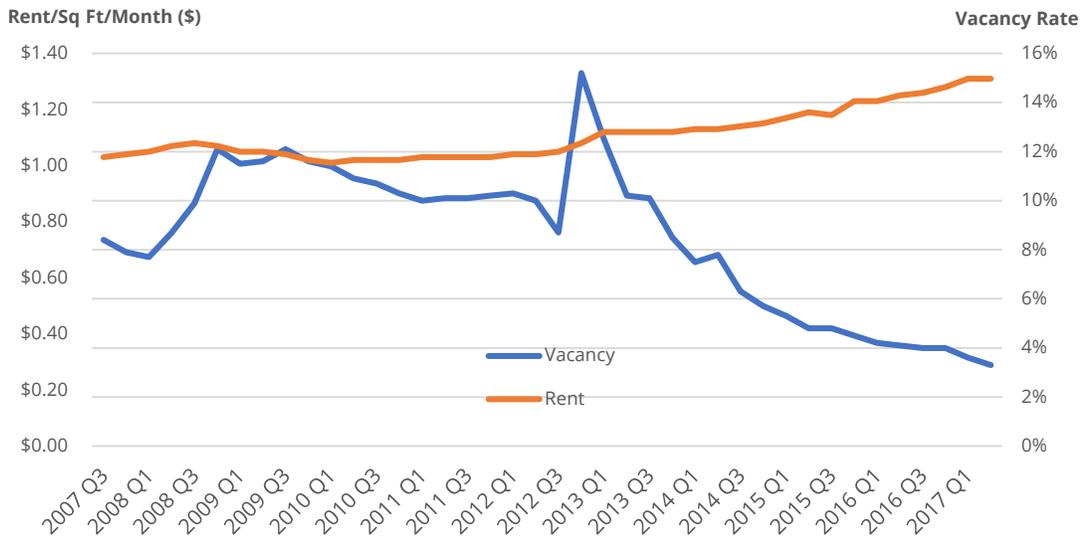
The current office market in the subarea is very similar to that of the larger Tacoma area, where office rent currently averages \$21.05 per square foot and vacancy is at 7.3%. Across Tacoma and across all unit types, the average multifamily vacancy rate is 4%.

Exhibit 9. Office Vacancy Rate and Rents, Tacoma Mall Neighborhood Subarea, 2007-2017



Source: CAI, 2017; CoStar, 2017

Exhibit 10. Multifamily Vacancy Rate and Rents, Tacoma Mall Neighborhood Subarea, 2007-2017

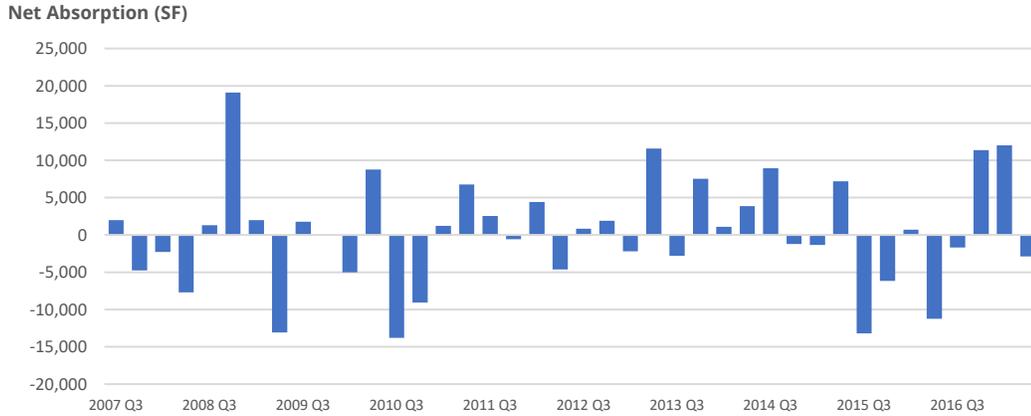


Source: CAI, 2017; CoStar, 2017

Market Absorption

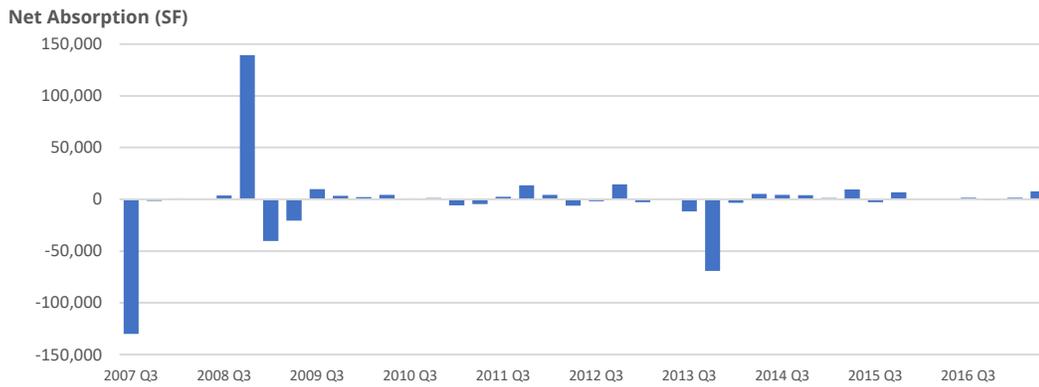
Retail absorption has experienced a few dramatic swings over the past decade, with otherwise minimal activity. Net office absorption has not experienced the same swings in this period.

Exhibit 11. Net Office Absorption, Tacoma Mall Neighborhood Subarea, 2007-2017



Source: CAI, 2017; CoStar, 2017

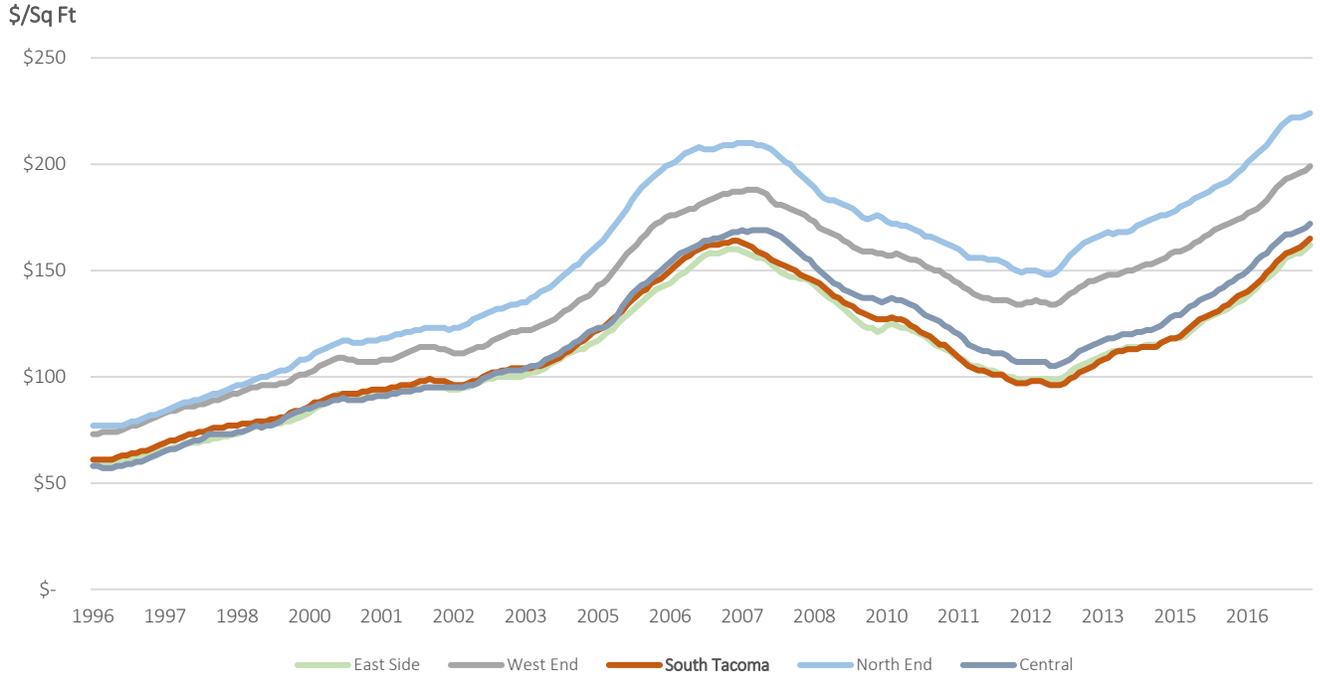
Exhibit 12. Net Retail Absorption, Tacoma Mall Neighborhood Subarea, 2007-2017



Source: CAI, 2017; CoStar, 2017

Exhibit 13 shows how median home sale values per square foot (both single and multifamily) in South Tacoma, home to the Tacoma Mall Neighborhood Subarea, compare to those in nearby neighborhoods over the 20 years. As shown, values have been low compared to neighbors, but have been steadily rising since 2012.

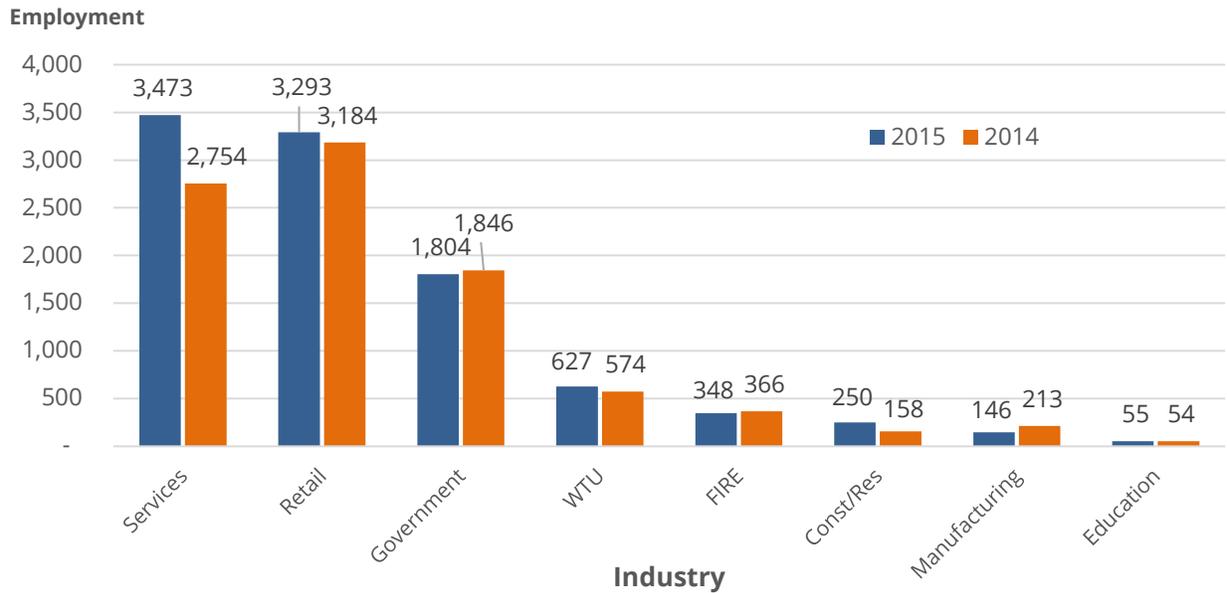
**Exhibit 13. Median Home Value/SF,
South Tacoma and Other Neighborhoods, 1996-2017**



Source: Zillow, 2017.

In 2015, there were an estimated 9,996 jobs in the Tacoma Mall Neighborhood Subarea, 9.3% more than in the previous year (**Exhibit 14**). Despite the proximity of the South Tacoma Manufacturing and Industrial Center, the focus of employment in the study area is primarily as a retail center anchored by the Tacoma Mall. Services, particularly accommodation and food services, as well as government services are also key sectors for employment in the neighborhood. The services sector has added more than 700 jobs between 2014 and 2015, an increase of over 26%.

**Exhibit 14. Employment,
Tacoma Mall Neighborhood Subarea, 2014-2015**



Source: Puget Sound Regional Council, 2017.

Note: Certain industries are suppressed in the PSRC data for this geography; approximate values estimated from larger geographies, control totals.

Definitions: Warehousing, Transportation and Utilities (WTU), Finance, Insurance, Real Estate (FIRE)

BOTHELL ACTION PROFILE

The following section provides a profile of application actions studies in the City of Bothell, WA.

- Near, mid and long term transportation projects
- Connectivity Requirements

Near, mid, and long-term transportation projects – Bothell Crossroads

The Bothell Crossroads project is part of Bothell’s Downtown Revitalization Plan launched in 2006 that capitalizes on the historic charm of the City's Main Street, bringing new residential, retail, office, mixed-use and an expanded park system in the downtown district.

Background and objectives

The Bothell Crossroads project was generated by the community through a long and intensive public process. This process began with interaction between Kenmore and Bothell to define the corridor needs within their city limits. In 2003 and 2004 a public planning effort concluded with the City of Bothell’s Council’s endorsing Alternative G (also known as the Bothell Crossroads). During the 2006 and 2007 Bothell Downtown Plan visioning process, Bothell Crossroads was solidly endorsed by both the public and Council. The project was central to the vision that emerged: a pedestrian friendly downtown with a vibrant Main Street that is not overshadowed by the nearby highway.

Previously, downtown Bothell was bisected by two state routes (SR 527 and SR 522) which served as barriers to local traffic, as well as pedestrian and bicycle circulation. The downtown was invisible to passing motorists and had a poor entrance to welcome visitors to Bothell. It was also disconnected from the historic Sammamish River waterfront that includes the regional Sammamish Rivers/ Burke Gilman Trail system. The critical intersection of SR 522/ SR 527 / Main Street was experiencing high levels of peak-hour traffic congestion and was projected to degrade further without any improvements. All of this made creating a cohesive downtown core difficult which, in turn, inhibited economic development and sustainability.

The Bothell Crossroads project aimed to provide remedies to the existing conditions by realigning State Route 522 to the south between Hall Road and 102nd Avenue NE. This creates a new grid of downtown blocks, eliminates physical barriers and reduces heavy traffic congestion during peak hour on a major commute corridor around Lake Washington. Despite the two highways running through the community, the changes allow residents to easily walk

and cycle in an attractive setting between the downtown amenities. The project also integrates community expectations related to promoting economic revitalization and sustained urban land use.

Costs and funding

The City of Bothell has completed public investments of over \$150 million as part of the revitalization of the downtown: \$ 50 million has been spent on buying property and another \$100 million was spent on infrastructure. To facilitate the effort, Bothell brought together approximately 15 people from departments across the City to form a dedicated project and management team. These staff members were supplemented by external consultants who worked with the City team on downtown planning efforts (\$300,000); marketing and economic studies (\$150,000), environmental impacts study, engineering and design of parks, open space, five major roadways, etc. *(Source: Association of Washington Cities, 2011 Municipal Excellence Awards Submission, City of Bothell Downtown Redevelopment; City of Bothell Media Release, State Highway 522 Realignment Opens - Significant Regional Transportation and Downtown Redevelopment Project)*

The Crossroads project is one of the highest ranked economic development projects proposed by the State Community Economic Redevelopment Board and is included in the City's \$150 million public infrastructure improvements. The project was developed in three phases. Crossroads Phase I was completed for a total cost of \$339,224. Crossroads Phase II had a final project cost of \$2,094,747, with \$1,135,048 allocated to the Downtown Contaminated Soil and Groundwater Cleanup project.

Crossroads Phase III costs included: predesign (\$62,000), design (\$6,779,000), ROW acquisition (\$25,615,000) and construction (\$20,747,000). The breakdown of Phase III estimated project funding is shown in the table below (**Exhibit 15**). The main source of funding was the city's Capital Improvement Fund which covered approximately 42% of total project costs for this phase.

**Exhibit 15. Crossroads Phase III Estimated
Costs and Funding Sources (\$ Mil)**

Funding Source	Total Secured Funding
Capital Improvement Fund (Real Estate Excise Tax)	\$20,816
Capital Improvement Fund (Traffic Impact Fees Transfer)	\$1,373
Arterial Street Fund	\$1
Bond Anticipation Note	\$9,635
Grant Awarded (CTED)	\$6,980
Grant Awarded (TIB)	\$3,671
State Contribution (WSDOT Overlay)	\$500
Mitigation - Brightwater	\$650
Public Works Trust Fund	\$7,994
Utilities - Sewer	\$518
Utilities - Water	\$835
TOTAL	\$52,973

Source: Crossroads Phase III Estimated Costs and Funding Sources, City of Bothell

Implementation

The project started in 2010, finished in 2014, and was implemented in three stages:

1. Phase I of the work began in 2010 and was physically completed later that year. This phase of the project involved demolishing fourteen buildings in the area of the future SR 522 alignment, hazardous materials abatement and utility disconnections.
2. Phase II started the same year (2010) and was physically completed later that year. This phase included site clearing, stockpiling of preload material and contaminated soil cleanup.
3. Phase III began in 2012 and finished 2014. This third and final phase of Bothell Crossroads consisted of site grading, roadway construction, utility installation and landscaping.

Several important actions taken by the city of Bothell over the last eight years have contributed to the current success in transforming its downtown: *(Source: Association of Washington Cities, 2011 Municipal Excellence Awards Submission, City of Bothell Downtown Redevelopment; City of Bothell Media Release, State Highway 522 Realignment Opens - Significant Regional Transportation and Downtown Redevelopment Project)*

- To create a funding account for future downtown investments, in 2005, City leadership established a policy that required all its one-time revenues to be set aside. These revenues would be used only for one-time expenses, such as infrastructure and facility improvements. Money from the fund has significantly shaped the revitalized downtown core.
- To create developer interest and market demand for Bothell's downtown parcels, the City of Bothell has taken on the role of master developer. The City purchased 25 acres of land within the Downtown. Seven of those acres were set aside for parks and infrastructure while the rest was to be sold to developers. The city used its ability to apply for state money and grants to install the necessary infrastructure and conduct environmental cleanup of the properties before selling back to developers.
- To provide a framework for the downtown redevelopment, City leadership focused first on the design, development and funding of important roadway infrastructure projects such as the Bothell Crossroads project. In 2007 the City of Bothell applied for, and was awarded the opportunity to participate in the Local Infrastructure Financing Tool (LIFT) Program pilot, a limited form of tax increment financing that provides up to \$1 million/year (for 25 years). This allowed the City of Bothell to invest \$53 million in acquiring property and design projects to catalyze private investment in the City's downtown redevelopment.

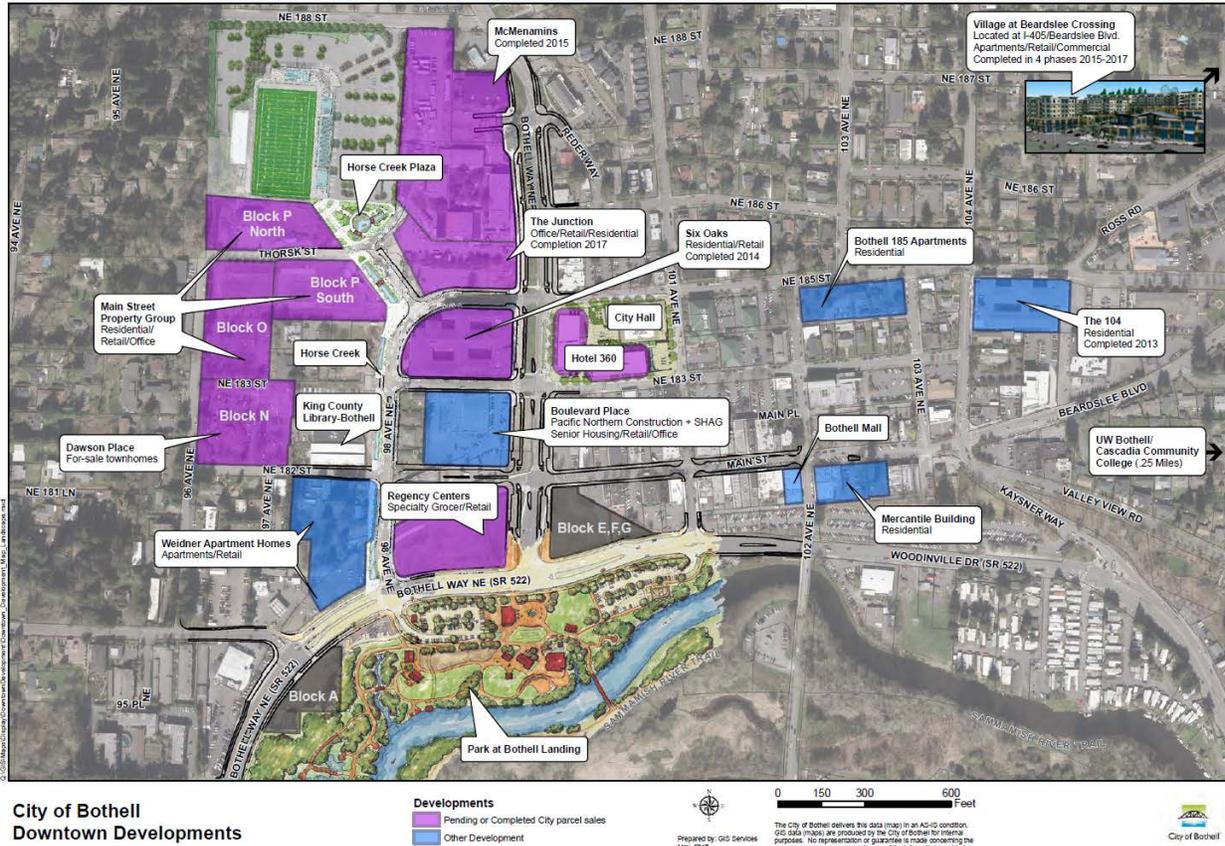
One of the biggest challenges of the Crossroads project as mentioned by Ryan Roberts, the project engineer, was coordinating with all the different government, regional, and utility agencies and to meet their needs. This was resolved by developing lines of communication early on with all key agencies and addressing all issues and concerns as quickly as possible. (*Source: Walkable Washington Case Study - Bothell Crossroads Project, Feet First*)

Outcomes

In a three year comprehensive process, Bothell city and its citizens defined a clear vision for the City's future. Their efforts to create a vibrant downtown have not gone unnoticed and have proven influential in the recruitment of major businesses. On the heels of the planning process, McMenamins, an Oregon based company known for repurposing historically significant buildings as hospitality hubs agreed to purchase and redevelop the historic Anderson School in downtown Bothell. The company created a complex that includes a hotel, a movie theater, a brewery, three bars and three restaurants and a community pool. The public-private partnership with McMenamins gives Bothell citizens free access to the pool, meeting space and garden for 15 years.

Other private developers followed as more parcels were sold and redeveloped into retail, office and residential space. The Bothell Downtown Development map shows the pending or completed city parcel sales in purple together with information on the buyer and the proposed development for each parcel. Other developments are highlighted in blue.

Exhibit 16. Bothell Downtown Development Map



Source: Downtown Revitalization Plan, City of Bothell, May 2017

Due partially to the positive energy created by the redevelopment, existing business centers outside of downtown, including Canyon Park and North Creek, are becoming more desirable locations for firms in biotech, information and other related industries. This is a case where a major planning process focused on creating an excellent sense of place is retaining and attracting key firms and industry clusters and improving local business viability (*Source: Economic Development Roadmap for Washington Cities, Washington APA Support Economic Development Working Group*).

An economic impact study of the downtown redevelopment reports the following potential impacts over 25 years of development:

- \$668 million in private investment is prompted by the proposed public projects catalyzed by the Crossroads and other public investments here;
- 2,700 diverse housing unit types providing high-quality work force housing;
- 250,000 sq. feet of new Class A office space providing an attractive lure to employers;
- 400,000 sq. feet of new retail space adding amenities and convenience to downtown;
- 1,600 net new permanent jobs – FTE engineers, scientists, attorneys, financial analysts, health care, retail and food service jobs being created;
- Estimated net new State and Bothell taxes generated by development within the RDA is a combined total of \$190,129,000.

Bothell Crossroads was a primary catalyst project of the downtown revitalization plan. Crossroads created a better connection between the new downtown development to the historic Main Street and safer pedestrian access to this area. It also stimulated business development with its two new blocks for retailers that were created after the construction. Crossroads also improved traffic and freight flow by eliminating a bottleneck and is expected to improve transit ridership and provide more reliability.

The Crossroads project triggered other important transportation improvements in the area such as: the SR 527 Multiway Boulevard, that creates a pedestrian-friendly boulevard with street parking while maintaining arterial traffic volumes; the Main Street Extension, that creates a vital east-west connection and completes the city street/block grid; the Main Street Enhancement, that rebuilds the entire streetscape to allow the street to compete with the new development.

Connectivity Requirements for Large Development

Without proper internal circulation, large block developments can exacerbate traffic issues and create inefficient routing patterns by establishing the need to travel around the development rather than straight through along the existing grid. These challenges will be especially acute for pedestrians and cyclists, who may have to physically travel much further.

Background and objectives

Connectivity Requirements are an effort to avoid these issues by requiring that certain new developments provide internal road and/or pedestrian circulation. This can be accomplished as part of a development agreement or formalized in the zoning code.

There are two broad approaches to setting connectivity requirements, depending on project intent. If there are a few specific connections required, these can be established and mapped as new pre-located streets or pedestrian paths, with specific locations and standards set to be provided by the developer of the property. If there is a broader goal in breaking up large blocks or encouraging finer-grained street networks, tools like a connectivity index standard or setting a maximum parcel perimeter for new development can be considered for subdivision regulations. A connectivity index is calculated by dividing the number of nodes (intersections) by the number of links (street segments between nodes). Cities can establish minimum index values by zone. Maximum parcel perimeter rules establish that parcels over a certain maximum perimeter must be divided with new streets to create parcels under the maximum perimeter. These tools give the developer flexibility in where they decide to place new streets and pedestrian pathways.

Before implementation of Bothell Crossroads, there was a lack of connections from Bothell Way to the neighborhoods on its western side. In addition, there were a number of very large parcels ready for development. The City desired a walkable downtown district, which would require a finer grained street network.

BOTHELL CITY PROFILE

The Bothell City profile includes analysis and data on the following indicators:

Economic and Demographic Conditions

- Population Density (Persons per Square Mile), 2010 – 2016
- Median Household Income
- Mean Quintile Household Income
- Covered Employment
- Change in Industry Employment

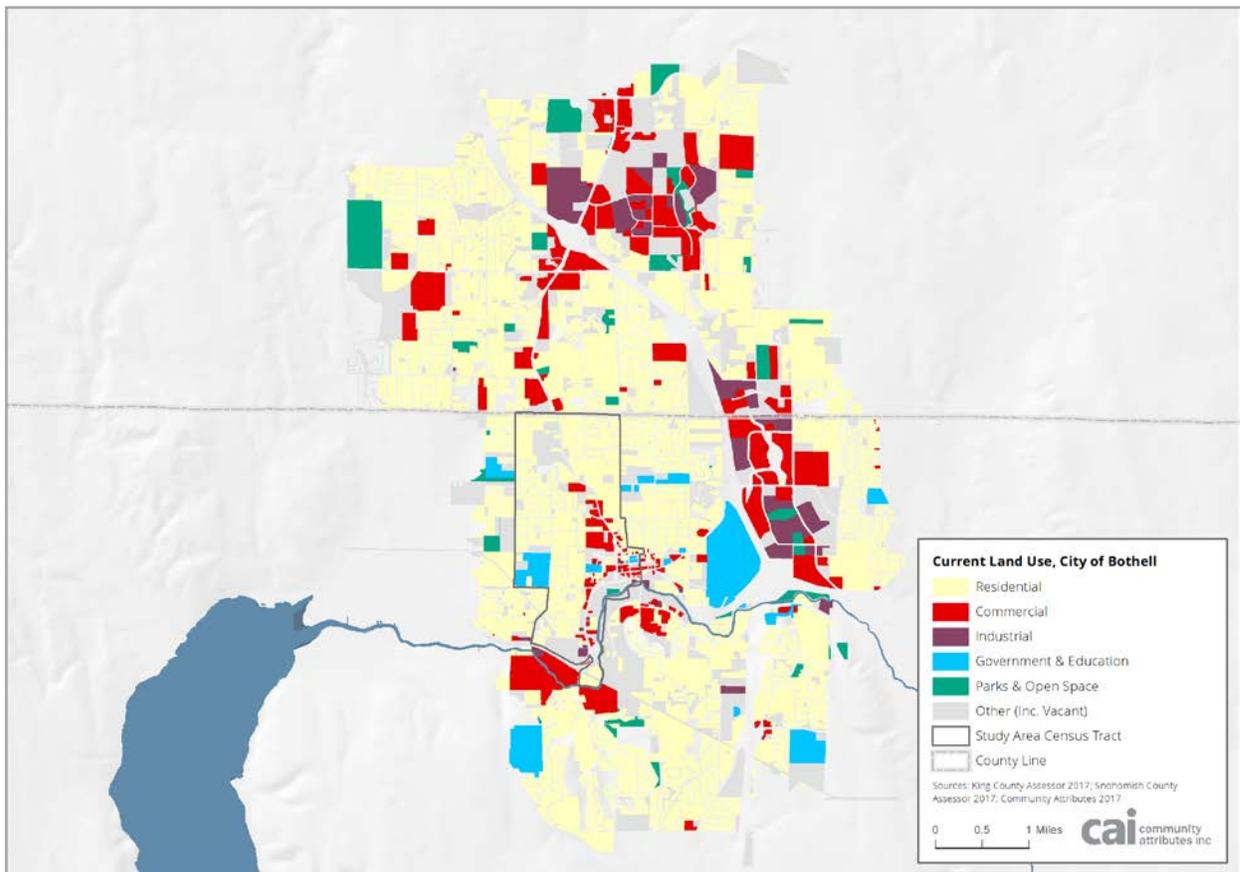
Real Estate Market Conditions

- Multifamily Rents and Vacancy Rates
- Multifamily Development History and Pipeline
- Office Rents and Vacancy Rates
- Office Development History and Pipeline
- Retail Rents and Vacancy Rates
- Retail Development History and Pipeline

Land Use and Development

The City of Bothell features two major commercial centers with divergent character – its downtown, located within the study area tract shown above, and Canyon Park, located to the north and east of the City. Downtown Bothell represents the City’s historic core, with shops and restaurants catering to local residents, while Canyon Park is home to business centers and light industrial campuses for a range of internationally-known businesses.

Exhibit 18. Land Use by Parcel, City of Kent, 2017



Bothell Economic and Demographic Conditions

Exhibit 19. Population Density (Persons per Square Mile), 2010 – 2016

	2010	2011	2012	2013	2014	2015
Study Area Bothell	3,493	3,415	3,438	3,504	3,518	3,696
City of Bothell	2,728	2,745	2,767	2,804	3,004	3,073
Eastside Region	3,218	3,242	3,351	3,398	3,464	3,484
King County	913	918	925	937	954	970
Washington	101	102	103	104	105	106

Exhibit 20. Median Household Income (2015 Dollars), 2009 – 2015

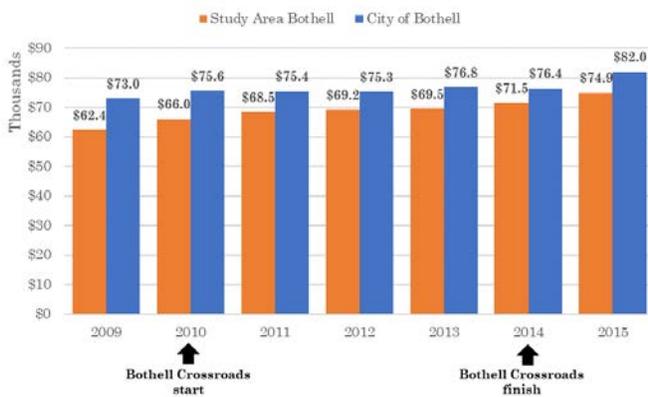


Exhibit 21. Mean Quintile Household Income, 2010 - 2015

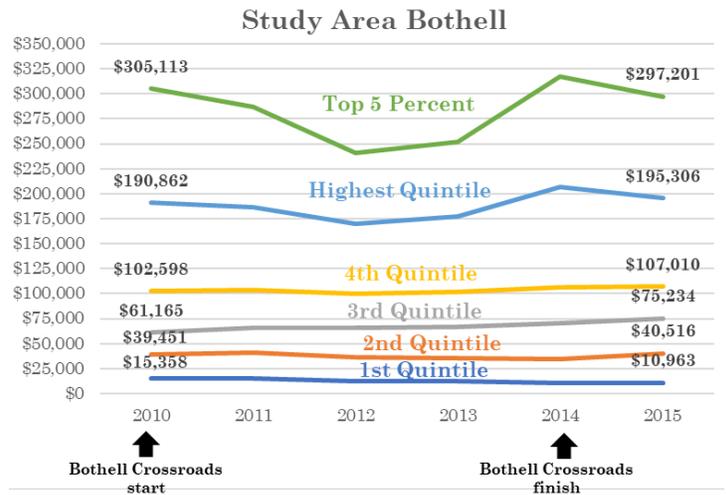


Exhibit 22. Covered Employment, 2005 – 2015

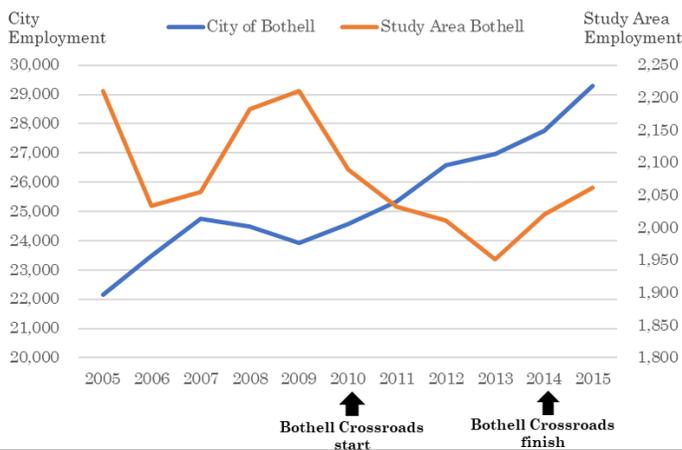
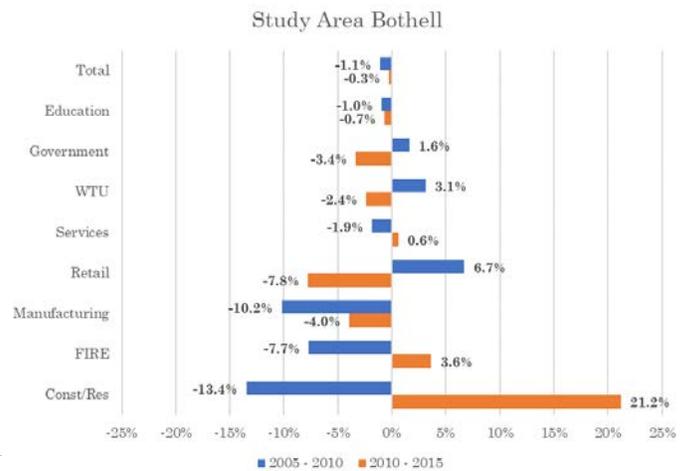


Exhibit 23. Change in Industry Employment, 2005 – 2015



Sources: Office of Financial Management, Forecasting and Research Division, 2017; U.S. Census Bureau, American Community Survey 5-Year Estimates, 2017; Puget Sound Regional Council (PSRC), Covered Employment Estimates, 2017; CAI, 2017

Bothell Real Estate Market Conditions

Exhibit 24. Multifamily Rents and Vacancy, 2008-2017

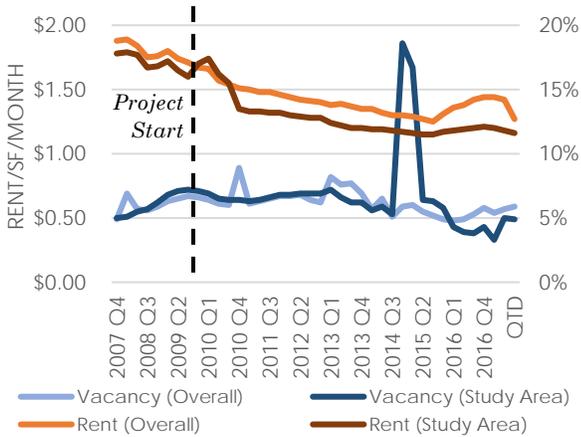


Exhibit 25. Multifamily Development History & Pipeline

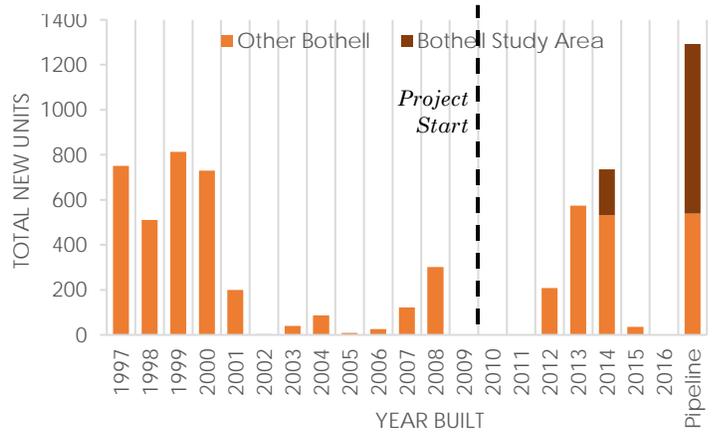


Exhibit 26. Office Rents and Vacancy, 2008-2017

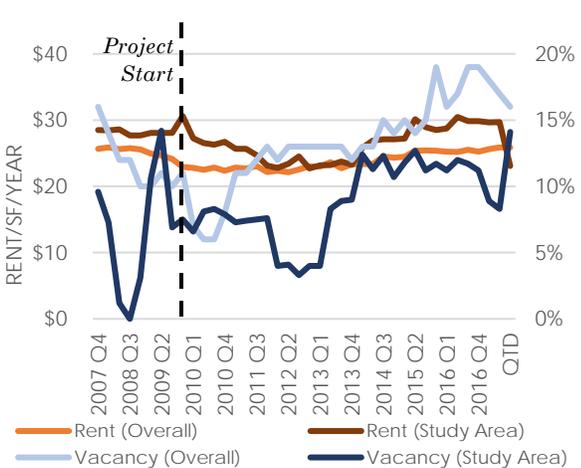


Exhibit 27. Office Development History & Pipeline

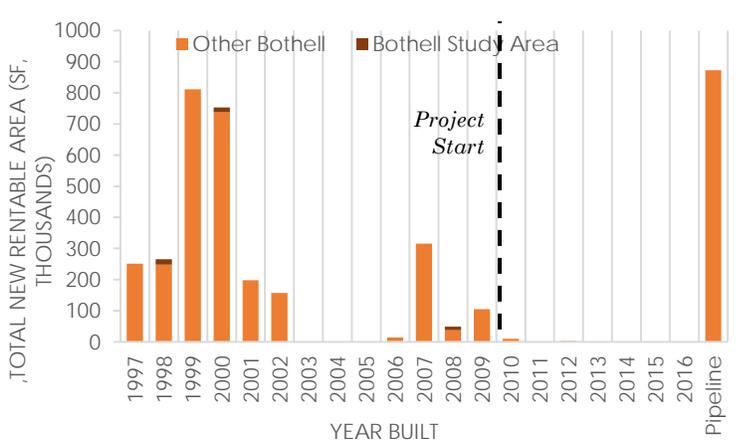


Exhibit 28. Retail Rents and Vacancy, 2008-2017

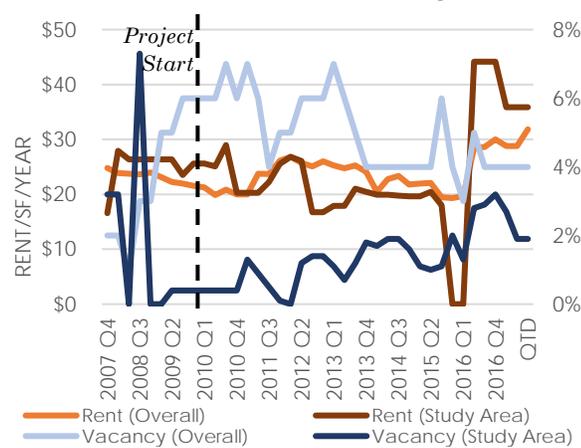
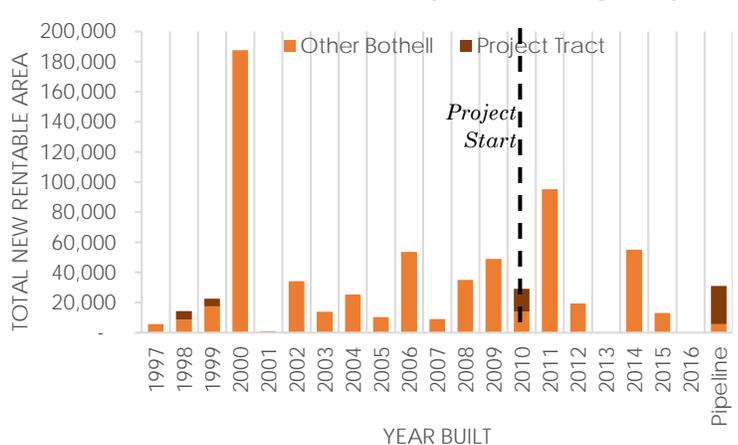


Exhibit 29. Retail Development History & Pipeline



Source: CAI, 2017; CoStar, 2017

Demographics

The population of the study area neighborhood in downtown Bothell was approximately 4,700 persons in 2015, which represents 11% of the total population of the City of Bothell. The downtown neighborhood population increased by 1.1% on average per year between 2010 and 2015, compared to 4.9% for the city's population. The area is more densely populated than the City of Bothell, with almost 3,700 persons per square mile in 2015. Future residential development resulting from the Bothell downtown revitalization could lead to even stronger growth in population density.

Median household income in the study area neighborhood has followed an upward trend between 2009 and 2015, increasing at an annualized rate of 3.1%, as opposed to 1.9% for the City of Bothell. **Exhibit 21** illustrates the evolution of mean quintile household income in the study area between 2010 and 2015. Mean income grew the most for the third quintile at an average annualized rate of 4.2% and fell for the lowest quintile at an average annualized rate of 6.5%.

Employment

Employment in the study area neighborhood in downtown Bothell was approximately 2,062 jobs in 2015, which represents 7% of the total employment of the City of Bothell. While employment in the City of Bothell has experienced relatively steady growth between 2005 and 2010, the downtown neighborhood employment has dropped significantly following the recession. It has started to recover in 2013 but remains below the pre-recession level. The decline in employment was likely linked to the departure of several businesses, including a downtown grocery store which moved to another neighborhood within the City. New development activity and retail is also not likely represented in the current covered employment data, which only reflect employment levels through 2015. New restaurants and hotels (McMenamins for example), will have a significant impact on the amount of employment in the City's downtown.

Study area employment is mainly concentrated in the services sector (51%), followed by retail (12%) and government (12%). Employment in the construction and resources industry has increased significantly between 2010 and 2015, most likely as a result of the construction work happening in the area as part of the downtown revitalization plan. More industries such as retail are expected to continue to experience a growth in employment as more developments are added to the Bothell downtown area as a result of revitalization efforts.

Taxable Retail Sales

Bothell City taxable retail sales have grown at an annualized rate of 2% from \$396 million in 2005 to \$495 million in 2016. Taxable retail sales from restaurants, hotels and entertainment have grown at a significantly faster rate (5.6%) than general retail taxable sales (0.9%).

Real Estate Indicators

As shown in the dashboard (**Exhibits 24-29**), multifamily development in Bothell has refocused downtown in the years since its revitalization efforts began. Nearly all of the currently planned multifamily development is slated for the development area as well, while new office development has yet to take hold there.

Over the past 20 years, downtown multifamily rents have tracked consistently lower relative to the City overall, while vacancy has remained close to the overall average. This trend is likely to be impacted by several large new apartment buildings about to open downtown. While there has been little office production in recent years downtown, downtown office rents have trended higher compared to the City overall and vacancy has been lower, though there has been a recent disruption resulting from a local fire incident. Downtown retail vacancy has generally trended much lower compared to the City overall, though it has been uneven. Downtown retail rents jumped in 2016, reversing the trend in recent years.

KENT ACTION PROFILE

The following section provides a profile of applicable actions studies in the City of Kent, WA.

- Permit Streamlining
- Connectivity Requirements
- New Funding Sources

Permit streamlining - no project level SEPA review – City of Kent Station Planned Action

The City of Kent adopted planned actions in 2002, for Kent Station, and in 2014, for its downtown subarea. This profile will detail the 2002 planned action.

Background and objectives

In the late 1990s, the City of Kent was challenged with high levels of retail leakage to surrounding communities and an undiversified tax base that relied heavily on industrial uses. The downtown area lacked identity and activity.

Borden Chemical operated a glue factory downtown, Kent's last active downtown industrial use, and was planning to expand. The City took the opportunity to negotiate with Borden to instead acquire the 20-acre property and help the company relocate. Located immediately adjacent to the Sounder commuter rail station and blocks from the historic downtown, the site was well-positioned for redevelopment as a new, modern mixed-use center.

Implementation

The City had set some specific requirements as part of its vision for the redevelopment, including connectivity requirements to maintain a public, pedestrian-friendly street through the development. In addition to its active role in acquiring the site, the City pursued a Planned Action EIS to facilitate the site cleanup.

The planned action, which was adopted in 2002, encompassed 25 acres and allowed for development capacity of 514,800 sf commercial, 200 hotel rooms, a 169,400 sf conference center, 480 housing units, 53,000 sf parks and open space and 2,932 parking spaces.

In order to attract a developer that would meet these requirements in an uncertain market, the City decided to sell the property at a below-market price. While controversial within the community, this was the critical factor in attracting a private developer to build the project as planned.

Outcomes

Kent Station was developed consistent with the City's plans. The City's tax base is diversifying and growing, and has attracted new types of tenants beyond retail, such as the Green River College. Following the City's work in another public-private partnership to develop apartments near Kent Station, several multifamily developments have been built in the neighborhood.

Kent Station has become well known, and by extension, Downtown Kent has become better known and more attractive to development. According to City staff, "rooftops have followed retail" in this case, as opposed to the traditional saying that "retail follows rooftops". There is a current challenge related to this, as some businesses in the historic downtown relocated to Kent Station, and these old spaces have remained vacant.

Land values have been rising in the area around Kent Station, though there are many legacy property owners in the area who have not been opting to sell yet. The City anticipates that it will soon attract its first hotel, which will serve the nearby convention center.

Kent's 2002 Planned Action EIS successfully facilitated a large redevelopment, but it was not the only factor. While this project had the particular challenge of a brownfield redevelopment, a Planned Action alone is still not sufficient to overcome unfavorable economics. By selling the property below market and developing a clear vision for its use, the City was in a better position to negotiate the redevelopment.

Connectivity Requirements for Large Scale Development – Ramsay Way

While Bothell has benefited from a strong market to support the viability of new development in its Crossroads project, the City of Kent needed the Kent Station project to serve as a catalyst for its struggling downtown. As a result, the City had to take on an active role in ensuring the site was redeveloped to a higher standard to serve as a community asset.

Background and Objectives

While the City wanted to attract a single developer for Kent Station, it did not want to see a standard auto-oriented strip mall, as would likely be supported by rents at the time. It planned for a pedestrian-oriented lifestyle center than could blend into the downtown urban network. As a result, it was key to maintain a public road through the center, which would eventually be known as Ramsay Way. This street was planned to feature a quality pedestrian environment, on-street parking, and other pedestrian-friendly features. Once successfully developed and occupied, Kent Station would demonstrate that this type of development is desirable and economically viable in Kent. In addition, it would provide a better sense of identity for

downtown, which suffered from retail leakage to neighboring areas and a lack of foot traffic even from local residents.

Implementation

As the City was the owner of the property, it was able to negotiate directly with potential developers and set conditions on the property's sale and redevelopment. It conceded that requiring the developer to provide public infrastructure in the form of a new street and pedestrian improvements would not be economically feasible in an emerging market. To overcome this barrier, the City decided to sell the property below market value in exchange for the public street.

Outcomes

The City was able to find a developer willing to work with its terms and build Ramsay Way as planned. With the public street, Kent Station provides a unique shopping experience compared to the typical suburban retail development, and has drawn more residents back to Downtown Kent.

Calls for new funding sources – City of Kent Transportation Impact Fees

Impact fees are one-time charges assessed by a local government against a new development project to help pay for new or expanded public facilities that will directly address the increased demand created by that development. Cities can impose impact fees for several different purposes, specifically for: transportation; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities.

Background and objectives

The primary enabling mechanism for imposing impact fees in Washington is the Growth Management Act (GMA). The GMA of 1990 specifically authorized the use of impact fees for areas planning under the Growth Management Act.

These fees are collected to improve the transportation system to accommodate the higher travel demand added by new development. Local governments, in line with the Revised Code of Washington (RCW 82.02.050), use transportation fees:

- To ensure that adequate public facilities will be constructed to serve new development and growth;
- To implement a public policy that new development should pay a portion of the cost of facilities that it requires, and that

- existing development should not pay all of the cost of such facilities; and
- To obtain revenue to pay for some of the cost of new public facilities.

The City of Kent adopted transportation impact fees in 2010. In addition to transportation impact fees, the City of Kent funds transportation capital projects using the General fund, Street fund, Local Improvement Districts, Business and Occupation Tax, Solid Waste Utility tax, and grant revenue from local, state and federal governments.

Implementation

For the City of Kent to impose GMA impact fees, the following requirements had to be met:

- The city must have an ordinance authorizing impact fees that follows the requirements of RCW 82.02.050 et seq.
- The city must establish one or more service area for fees
- A formula or other method for calculating impact fees must be established
- The fees must be based on, and used for, specific improvement projects in the Transportation Master Plan
- The projects must be “system improvements” that provide a service to users

Scoping and consultant procurement, analysis and fee development and a plan for program implementation was required to develop the transportation impact fee program. The City also needed to put in place business processes to support the operations of its impact fee program.

The development of a transportation fee program for the City of Kent followed several steps. Firstly, an impact fee project improvement list was compiled, which included selected transportation capacity projects from the City’s Transportation Element adopted in June 2008. During the development of the City's Transportation Master Plan and Comprehensive Plan Element, the City identified street and road projects needed by 2030 to meet the adopted Level of Service (LOS) standards. These capital projects form the basis for the City's impact fee project list.

This list of projects was then analyzed to determine what proportion of need is due to existing deficiencies. RCW 82.02 requires impact fees to be based on the City’s Capital Facilities Plan which must identify existing deficiencies in transportation system for current development, capacity of existing transportation system available for new development, and additional transportation system capacity needed for new development. Future development cannot be held responsible for the portion of added capacity needed to serve existing development.

Cost allocation was the next step in the process. Eligible project costs were distributed either within the City and Annexation Areas or to external areas. Travel modeling and land use data were provided by the City's travel demand model. The final step was the actual calculation of the impact fees that resulted in a fee schedule which shows fees as dollars per unit of development for different land use categories.

Outcomes

Impact fees, like user fees, offer a more efficient way to pay for infrastructure than general taxes, and ensure benefits to those who pay them. Academic literature suggests that the aggregate benefits of impact fees improve efficiency in the provision of infrastructure. Impact fees can directly fund vital infrastructure improvements, while increasing the supply of buildable land, improving predictability in the development process, and indirectly promoting local employment at the same time.

In some cases, impact fees can slow growth by increasing costs to developers, pushing some developers out of the market and/or putting downward pressure on land values which may reduce the number of transactions. Impact fees could also indirectly support future growth by making neighborhoods more attractive for new development through investments in infrastructure, possibly leading to more population growth and attracting additional businesses. It is difficult to predict the likelihood of these countervailing forces cancelling one another out as opposed to either dominating the other.

KENT CITY PROFILE

The Kent City profile includes analysis and data on the following indicators:

Economic and Demographic Conditions

- Population Density (Persons per Square Mile), 2010 – 2016
- Median Household Income
- Mean Quintile Household Income
- Covered Employment
- Change in Industry Employment

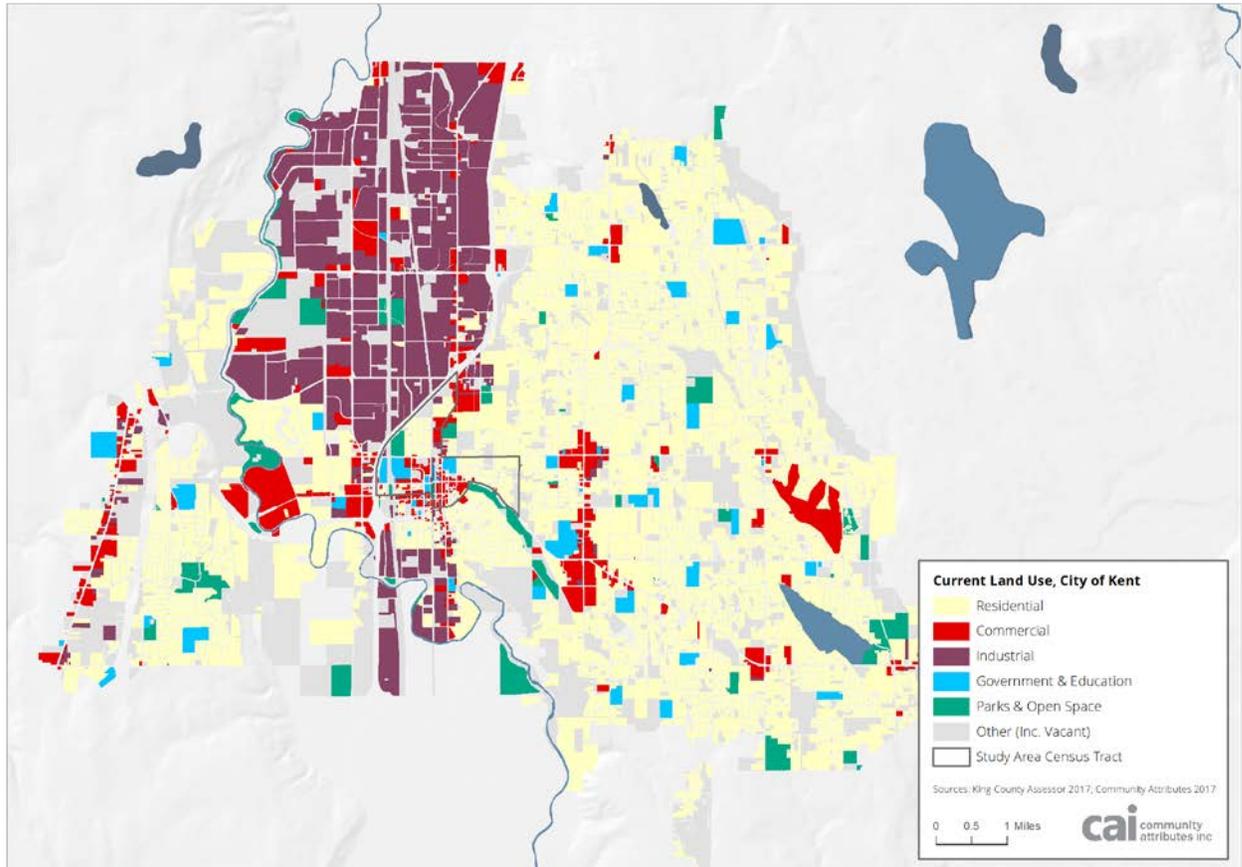
Real Estate Market Conditions

- Multifamily Rents and Vacancy Rates
- Multifamily Development History and Pipeline
- Office Rents and Vacancy Rates
- Office Development History and Pipeline
- Retail Rents and Vacancy Rates
- Retail Development History and Pipeline

Land Use and Development

Kent is one of the region's industrial centers, and this is reflected in its land use. Most of northwest Kent consists of industrial uses. Its downtown sits on the southern tip of the City's largest industrial concentration, and features both historic commercial streets and a newer lifestyle center, Kent Station. Two other commercial areas with big box and other auto-oriented retail lie to the east and west.

Exhibit 30. Land Use by Parcel, City of Kent, 2017



Kent Economic and Demographic Conditions

Exhibit 31. Population Planned Density (Persons per Square Mile), 2010 – 2016

	2010	2011	2012	2013	2014	2015
Study Area Kent	2,575	2,591	2,769	3,072	3,662	3,817
City of Kent	3,096	3,370	3,396	3,436	3,461	3,495
King County	913	918	925	937	954	970
Washington	101	102	103	104	105	106

Exhibit 32. Median Household Income (2015 Dollars), 2009 – 2015



Exhibit 33. Mean Quintile Household Income, 2010 - 2015

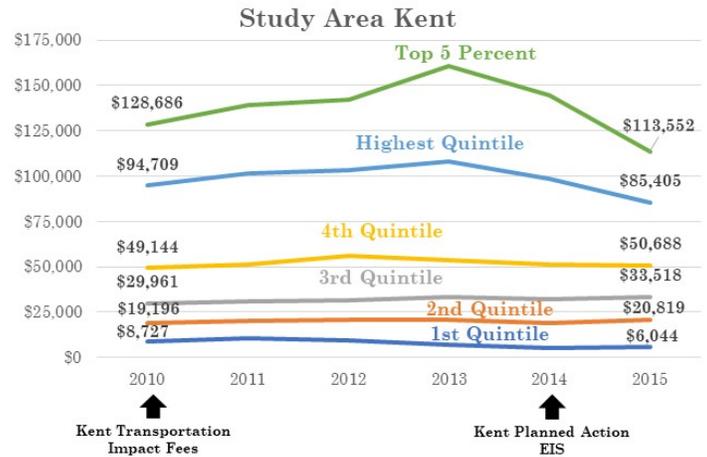


Exhibit 34. Covered Employment, 2005 – 2015

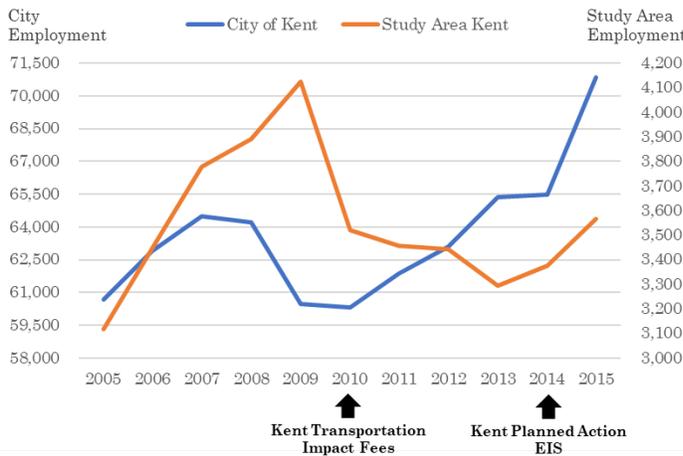
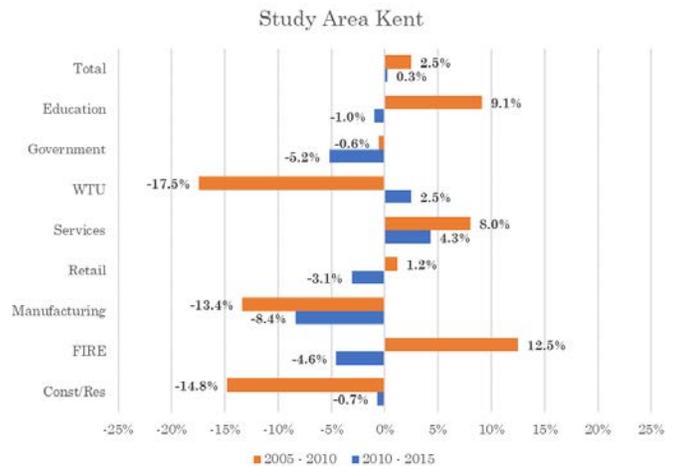


Exhibit 35. Change in Industry Employment, 2005 – 2015



Sources: Office of Financial Management, Forecasting and Research Division, 2017; U.S. Census Bureau, American Community Survey 5-Year Estimates, 2017; Puget Sound Regional Council (PSRC), Covered Employment Estimates, 2017; CAI, 2017

Kent Real Estate Market Conditions

Exhibit 36. Multifamily Rents and Vacancy, 2008-2017

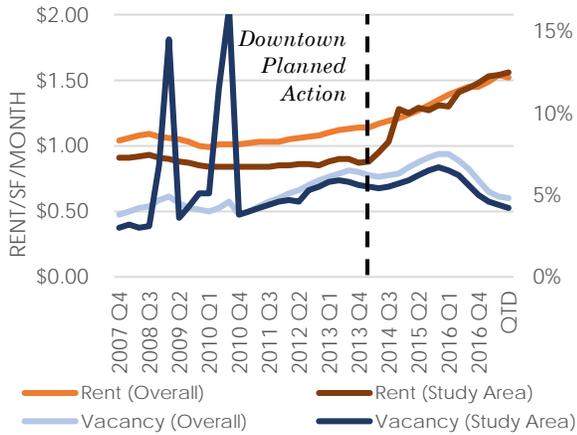


Exhibit 37. Multifamily Development History & Pipeline

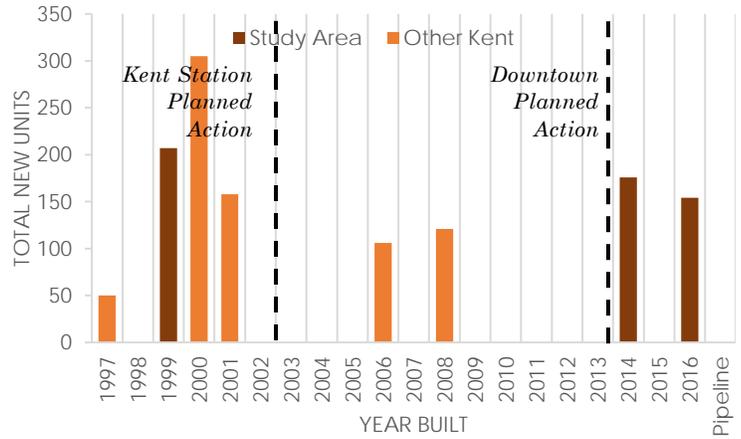


Exhibit 38. Office Rents and Vacancy, 2008-2017

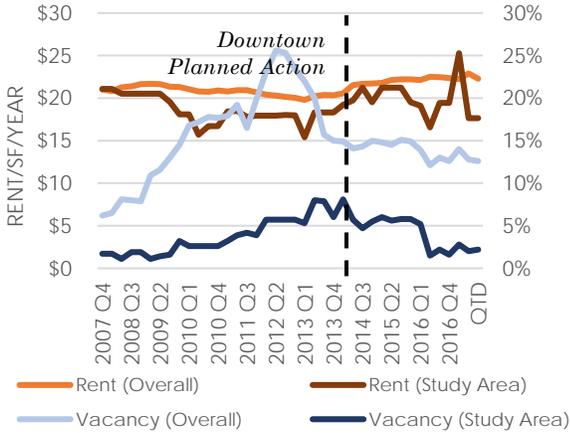


Exhibit 39. Office Development History & Pipeline

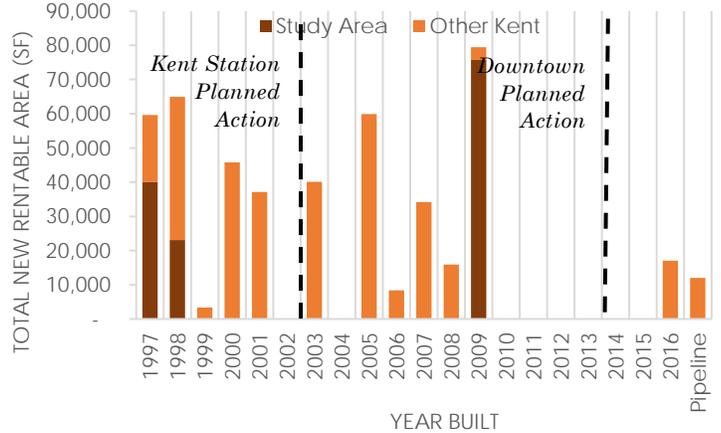


Exhibit 40. Retail Rents and Vacancy, 2008-2017

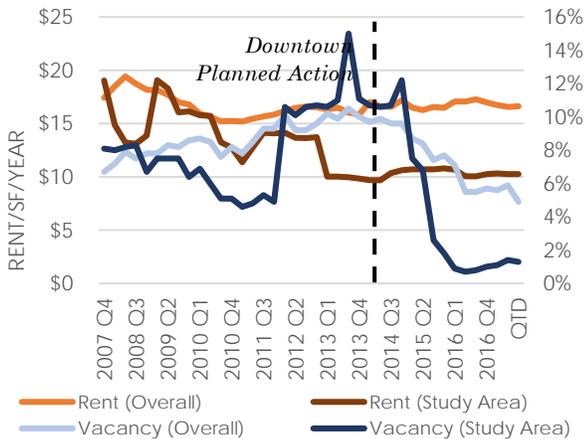
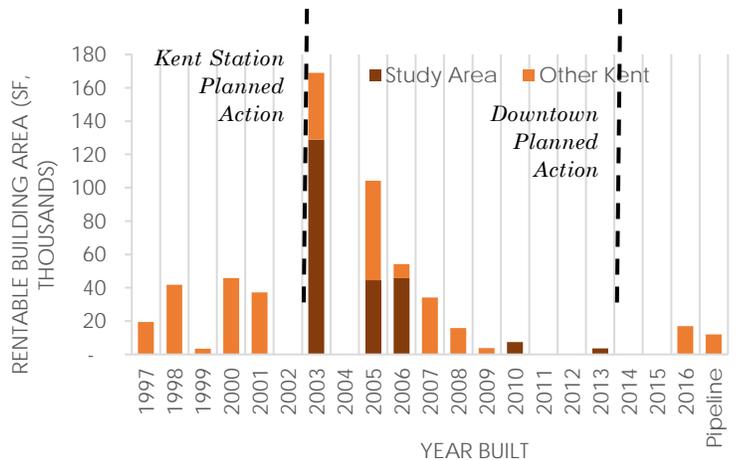


Exhibit 41. Retail Development History & Pipeline



Source: CAI, 2017; CoStar, 2017

Demographics

The population of the study area neighborhood in Kent was approximately 3,800 persons in 2015, which represents just over 3% of the total population of the City of Bothell. The population of the study area increased by 8.2% on average per year between 2010 and 2015, compared to 5.9% for the city's population. The area is more densely populated than the City of Kent, with almost 4,900 persons per square mile in 2015.

Median household income in the study area neighborhood has not changed much between 2009 and 2015 and has remained significantly lower than the median income for the City as a whole. **Exhibit 33** illustrates the evolution of mean quintile household income in the study area between 2010 and 2015. Mean income grew at an average annualized rate of 1.6%, 2.3% and 0.6% for the second, third and fourth quintile and fell by 7.1% and 2% for the lowest and highest quintile respectively.

Employment

Employment in the study area neighborhood in Kent was 3,566 jobs in 2015, which represents 5% of the total employment of the City of Kent in that year. Following the recession, employment in the study area has dropped from 4,126 jobs in 2009 to 3,294 jobs in 2013. The start of a recovery can be observed in 2013 but employment in the study area remains below pre-recession levels. In contrast, employment in the City of Kent has recovered much sooner and at a faster rate after the recession, increasing on average by 3.3% per year between 2010 and 2015.

Study area employment is mainly concentrated in the services sector (57%), followed by government (18%) and retail (10%). The number of jobs in the service sector have been increasing steadily since 2005, as opposed to employment in the manufacturing sector which has been in decline during the same period.

Taxable Retail Sales

Kent City taxable retail sales have decreased at an annualized rate of 3% from \$1,336 million in 2005 to \$1,008 million in 2016. The most significant decline has been in the furniture and home furnishings sector as well as miscellaneous store retailers sector.

Real Estate Indicators

As shown in the dashboard (**Exhibits 36-41**), all of the City's post-recession multifamily development has been located downtown. While retail and office deliveries have been light overall recently, the Kent Station development,

which began in 2003, represented a significant portion of the City's retail and office development from 2003-2009.

Downtown multifamily rents suddenly climbed to rise above those across the City in 2014, while vacancy has dipped below the City average and will drop below 5% if trends continue. Downtown office vacancy has been much lower compared to the City overall, and rents have been slightly higher. Downtown retail vacancy has dropped well below overall retail vacancy in the past three years. While downtown rents have been fairly stable, rents in the City overall have dropped in recent years.

ADDITIONAL CONNECTIVITY ANALYSIS

The following section provides additional perspective on connectivity requirements

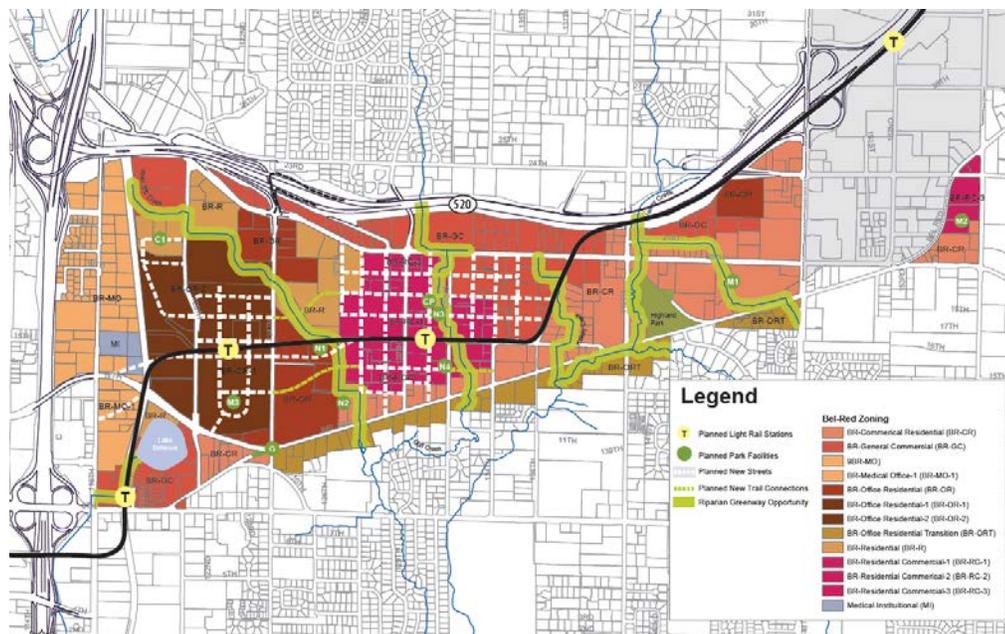
Connectivity Requirement – BelRed Subarea, Bellevue, WA

The City of Bellevue adopted the BelRed Subarea Plan in 2009 after four years of community input, public meetings and analysis. Amongst many of the policy, code and capital improvements planned for the area, the City faced an existing street and block network that was a major hurdle to redevelopment. The following provides a review of the connectivity requirements developed for the BelRed Subarea with a focus on how the City has implemented the new development regulations related to large block development.

Background and Objectives

The BelRed Subarea was formerly an underutilized light industrial. With its proximity to downtown Bellevue and the future planned light rail line through the neighborhood, the City identified this area as a key component of the City's future growth. As such, the plan focused on transforming the neighborhood into a mixed use center with a dense mix of housing and commercial uses. The physical character of the existing neighborhood, similar to portions of the Tacoma Mall Neighborhood Subarea, was largely defined by large block sites with little connectivity and infrastructure for pedestrians.

Exhibit 42. Bel-Red Subarea, City of Bellevue



Source: City of Bellevue, 2017

Implementation

The City, much like the City of Tacoma and the Tacoma Mall Neighborhood Subarea Plan, developed a comprehensive series of infrastructure improvements, with a particular focus on improving transportation and mobility for all modes of travel.

- Significant development rezones in terms of permitted density, concentrating higher densities in strategic areas
- Allowed existing uses to remain and transition over time
- Inclusion of a comprehensive incentive program to encourage development and supply of neighborhood amenities and desired uses including affordable housing
- Identification of key transportation infrastructure improvements needed and funding needs identified

Connectivity Requirement Approach. In terms of the connectivity requirement, the city is generally responsible for new and/or expanded arterials. Private land owners and developers are responsible for what are designated as “local streets” in the BelRed development code. Developers can obtain transportation impact fee credit for frontage improvements they make on city arterial projects. A key component of the commitment to development of new arterial roads is funding through the City’s transportation impact fees, which has been leveraged for new road development. (Source: City of Bothell, 2017)

The following three subarea policies reflect the intent of the plan and zoning regulations that were adopted to implement the plan.

POLICY S-BR-80. Reserve the right-of-way needed for the Bel-Red public infrastructure and amenities identified in this Plan as early as practicable.

POLICY S-BR-82. Require the dedication and improvement of local streets at the time of development, consistent with Figure S-BR.2, to enable development of frontage improvements and a local street pattern that provides for access and loading, and improved transportation connectivity.

POLICY S-BR-83. Encourage master planned developments and other processes that better coordinate and integrate this Subarea Plan’s objectives rather than individual development of small parcels. Consider mandatory use of master planned development approval for large sites, to facilitate site planning for vehicle access and pedestrian needs

Required Local Streets. The development code itself is clear in its requirement for local streets within the Subarea. The intent of the City’s connectivity requirement is to...*introduce a public right-of-way system that improves mobility by increasing access for local vehicular and pedestrian traffic throughout the Bel-Red District.* In addition, the language provides for flexibility in terms of how the local streets are implemented over time, allowing the City to *approve modifications to the local street grid to respond to specific site conditions, property ownership, and phasing considerations.* (Source: City of Bellevue Municipal Code, 2017) . **Exhibit 43** from the City’s municipal code illustrates the street grid proposed in the Subarea and relative street designations.

Exhibit 43. Required Local Streets, City of Bellevue, 2017

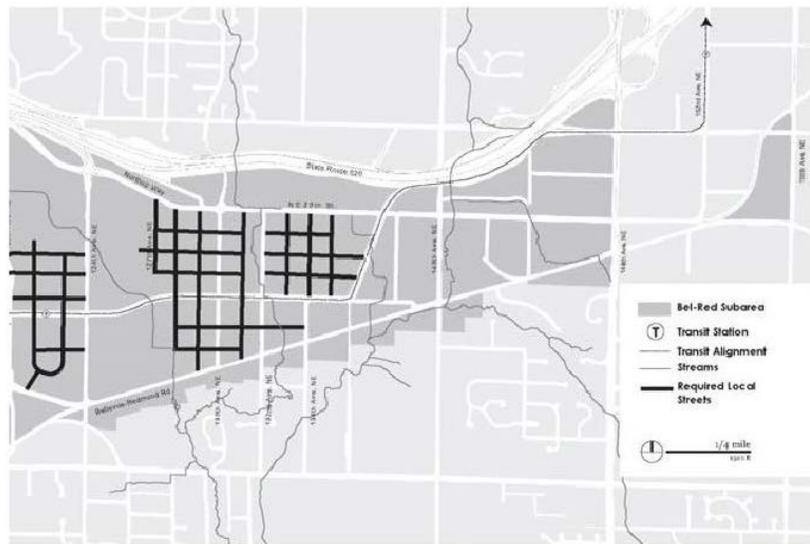


Figure 20.25D.140A: Required New Local Streets

Source: City of Bellevue, 2017

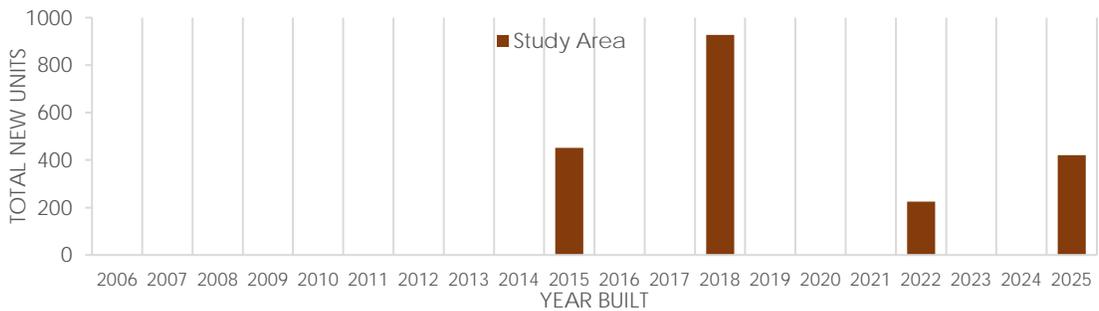
Outcomes

The Bellevue economy, much like other major urban centers in King County, has experienced tremendous growth since 2009. Broader market context is important to consider when evaluating the impact and success of the BelRed Subarea Plan and the level of development occurring at this time. The following outcomes reflect both the relative impact of the planning effort as well as the broader economic climate in the City of Bellevue.

- 1,700+ housing units built or permitted through 2016
- Approval of Master Plan for the Spring District and construction of initial phases
- Planned relocation of REI headquarters to the BelRed Subarea
- Implementation of 3,700 feet of roadway improvements with more under construction or design

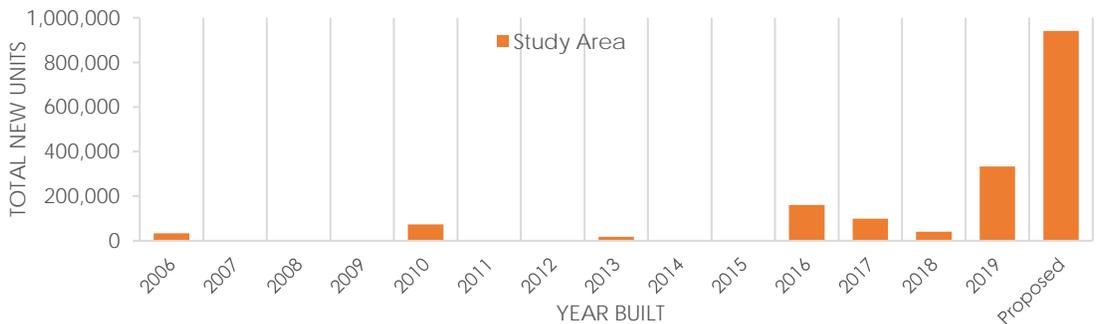
Exhibits 44 and 45 illustrate the current and planned development activity in the BelRed Subarea. The amount of investment occurring in the area is reflective of both market conditions and the planning efforts made by the City.

Exhibit 44. Multifamily Development History and Pipeline, BelRed Subarea



Source: CoStar, 2017.

Exhibit 45. Commercial Development History and Pipeline, BelRed Subarea



Source: CoStar, 2017.

KEY OBSERVATIONS AND FINDINGS

The following is a summary of key observations related to the analysis of actions taken in the cities of Bothell and Kent. Key findings and observations related to economic performance as well as implementation are include for each case study example.

Implementation

A description of the key decision points, methods and results associated with the case studies analyzed. The observations and findings are intended to provide guidance to Tacoma policy makers and clarity on what lessons can be taken away from each example.

Economic and Market Observations

Also included are summaries of the economic, demographic and market changes experienced within the study areas selected. Local and regional economic conditions influenced the changes experienced in each City and study area. It is important to note that the actions taken by each City undoubtedly impacted the local economy and level of private investment but are not solely attributable to the actions studied herein.

Overall	Lessons for Tacoma - Implementation
	<ul style="list-style-type: none"> • In both Kent and Bothell, the City spearheaded both revitalization/subarea efforts through the purchase and disposition of land within the subarea • In both cases, private investment was initially made through collaboration and partnership with the City through the purchase and sales of land and close collaboration and partnership on future uses • Partnerships with local developers and landowners were key in all examples • Clear mechanisms to allow for collaboration and negotiation between the City and private investors were critical, especially in the case where the City did not own or acquire land
Case Study	Lessons for Tacoma - Implementation
<p>City of Bothell</p>	<p>NEAR, MID, AND LONG-TERM TRANSPORTATION PROJECTS</p> <ul style="list-style-type: none"> • The City engaged the Bothell community in a multi-year planning process to define a clear vision for the City's future. • The City of Bothell used the SR 522 alignment to provide an east-west connection with future development that extends historic Main Street, create new city blocks for development and complete the city's downtown street grid. • The City actively purchased properties within the Downtown, invested in infrastructure and environmental cleanup and then solicited development opportunities, all under the City's role as a master developer. • The City relocated/aided 32 businesses and tore down 30 buildings, turning back decades of auto oriented/strip mall development to make way for a re-imagined Downtown. • The City led major road and pedestrian infrastructure improvements that cut through traffic, reduced commute times, encouraged local shopping and entertainment, and created a place where the community will interact.

CONNECTIVITY REQUIREMENT FOR LARGE-SCALE DEVELOPMENT

- Bothell used two approaches to connectivity requirements downtown, both formalized in code
- One of these approaches was to define a specific “pre-located street” needed to establish a key connection, while the other places limits on parcel perimeter anywhere in the district. The second approach requires new roads to break up large parcels and allows for more flexibility in how developers place new roads.
- While multiple new connections were desired, the City placed the most emphasis and the most strict requirements on the most important new connection. The success of this node may serve as a catalyst for development elsewhere in the district.
- The City was able to find a developer to build the pre-located street and fully develop the parcel as envisioned. The City took an active role in this process.

ECONOMIC AND MARKET IMPACTS

- The population of the downtown study area neighborhood increased by 1.1% on average per year between 2010 and 2015, compared to 4.9% for the city’s population.
- Median household income in the study area neighborhood has followed an upward trend between 2009 and 2015, increasing at an annualized rate of 3.1%, as opposed to 1.9% for the City of Bothell.
- The City of Bothell has added more than 7,000 jobs between 2005 and 2015. While employment in the City of Bothell has experienced relatively steady growth following the recession, employment in the downtown study area neighborhood has dropped from 2,200 jobs in 2009 to 1,950 jobs in 2013.
- The fastest growing industry in the downtown study area neighborhood between 2010 and 2015 was Construction and Natural Resources, most likely as a result of the construction work happening as part of the Bothell Revitalization Plan.
- Bothell City taxable retail sales have grown at an annualized rate of 2% from \$396 million in 2005 to \$495 million in 2016.
- 1,684 units of multifamily have been built in Bothell since the Crossroads project began, 12% of which were in the study area. 58% of the 1,292 multifamily units currently in the pipeline are located in the study area.

City of Kent

CONNECTIVITY REQUIREMENT FOR LARGE-SCALE DEVELOPMENT

- The Kent Station development took place on contaminated former industrial land in an area without a strong retail market. In order to encourage high-quality development in this environment, the City had to identify appropriate incentives for development to overcome serious economic hurdles.
- The City was highly particular in terms of where the new street was to be located and how the pedestrian environment would look. The new street had an entirely new form for the area. The City was able to negotiate these terms because it owned the land and could choose to sell the land below market rate.
- In cases where there is not a bargaining chip this strong, standards for the new street connections may need to be scaled back accordingly.

PERMIT STREAMLINING

- The City of Kent’s two planned actions have been successful in facilitating new types of development for the area – a lifestyle center and mixed use apartment buildings.
- These planned actions were effective as part of a coordinated strategy. While they facilitate development, they are not sufficient to overcome adverse economic conditions. Supplementary incentives should be considered based on the level of challenge.

FUNDING SOURCES

- Scoping and consultant procurement, analysis and fee development and a plan for program implementation was required to develop the City of Kent transportation impact fee program. The City also needed to put in place business processes to support the operations of the program.
- Impact fees can provide a revenue stream directly proportional to the amount of development occurring in the City.
- One of the primary concerns surrounding impact fees is who ultimately bears the cost of the fee. There is a practical limit on how much cost can be added to development without causing significant distortions in the marketplace.
- Impact fees are complementary funding sources by design and it is unlikely they could be wholesale substitutes for any other funding source. This is because impact fees cannot be used to address existing facility deficiencies.

ECONOMIC AND MARKET OBSERVATIONS

- The population of the study area increased by 8.2% on average per year between 2010 and 2015, compared to 5.9% for the city's population.
- Median household income in the study area neighborhood has not changed much between 2009 and 2015 and has remained significantly lower than the median income for the City as a whole
- Employment in the study area neighborhood in Kent was 3,566 jobs in 2015, approximately 560 jobs less than in 2009. Employment for the city has surpassed pre-recession levels and increased by over 10,000 between 2009 and 2015.
- The number of jobs in the Services sector in the study area neighborhood in Kent has almost doubled since 2005.
- Kent City taxable retail sales have decreased at an annualized rate of 3% from \$1,336 million in 2005 to \$1,008 million in 2016.
- The Kent Station development included more than 183,000 square feet of retail, which represented nearly half of the total retail development across the City of Kent since 1997. Over 75,000 square feet of office was developed in 2009 in the Kent Station area, the largest single year delivery across the City over the same period.

**City of
Bellevue**

CONNECTIVITY REQUIREMENT FOR LARGE-SCALE DEVELOPMENT

- The City implemented strong master plan and catalyst development incentives that have been leveraged for large block development (Spring District for example). Such provisions provided flexibility and allowances for negotiating inventive requirements and transportation infrastructure improvements
- The City is responsible for major arterial road improvements, while developers/land owners are responsible for “neighborhood streets” that are required to be developed per the transportation and circulation plan developed for the area. The City has taken the lead in funding these major road improvements while being clear about the responsibility of property owners and their requirements on “neighborhood roads”
- The City has clearly defined how and when new arterial roads will be implemented
- The City has provided flexibility in terms of the final alignments and location of new neighborhood through streets for site that are being development in phases

ECONOMIC AND MARKET OBSERVATIONS

- Neighborhood development and revitalization has been spearheaded by the master planned development known as the Spring District.
- Bellevue's market conditions vary greatly from those found in Tacoma and the Tacoma Mall Neighborhood Subarea, meaning much of the success of the plan can be linked to strong market demand for the development products under developed.
- A key component of the market demand in the area is the future implementation of transit in the form of light rail, which is a major catalyst for developer interest.



City of Tacoma
Planning and Development Services

**Agenda Item
D-2**

To: Planning Commission
From: Stephen Atkinson, Planning Services Division
Subject: **Tideflats Interim Regulations**
Meeting Date: September 20, 2017
Memo Date: September 14, 2017

On September 13, 2017 the Planning Commission held a public hearing on the proposed Tideflats Interim Regulations. At the hearing, approximately 81 people provided testimony. While the majority of testimony was focused on the proposed heavy industrial use restrictions, the Commission received comments and testimony on each of the proposed elements for the Interim Regulations. An additional 17 comment cards were submitted to staff and as of the close of business on Thursday, September 14, 2017 approximately 110 written comments had been submitted (attached). Comments are accepted through Friday September 15, 2017. These additional comments will be provided to the Commission as an addendum to this agenda packet.

Staff is requesting Planning Commission guidance on potential modifications to the proposed interim regulations in response to testimony received during the public comment period. Staff will facilitate a discussion regarding the submitted comments and the options the Commission can consider in response to testimony. The intent of the meeting is to provide staff with a basis for returning on October 4, 2017 with an updated draft Findings and Recommendations report such that the Commission may make a recommendation to the City Council at that time.

To support the Commission's discussion, Steve Victor, Deputy City Attorney, will be present to advise the Commission on legal issues raised in the public testimony as well as on questions the Commission may have relating to potential modifications to the Proposed Interim Regulations.

*Additional Note: The Planning Commission has suspended public comments on this item during the regular meeting. Written and oral comments provided to the Commission during the public comment period will be considered in the Commission's deliberations and recommendation to the City Council.

If you have any questions, please contact me at (253) 591-5531 or satkinson@cityoftacoma.org.

Attachments:

1. Summary of Public Comments
2. Public Comments received by 5:00 pm on Thursday, September 14, 2017.

c. Peter Huffman, Director



Tideflats Interim Regulations

Summary of Public Testimony

Planning Commission Review – September 20, 2017

The comments received reflect broad and diverse viewpoints and interests among residents, businesses, labor interests, property owners, environmental representatives, adjacent jurisdictions, and Puyallup Tribal members.

At the time of this summary, comments are still being received. This summary is intended to help facilitate discussion at the Planning Commission's meeting on September 20, 2017, not as a full documentation of comments and public testimony.

Category 1: Expanded Notification for Heavy Industrial Uses

- Overall, comments have been supportive of expanding notification.
- Some concerns expressed that the notification does not go far enough, that certain uses are of a city-wide import and notification should reflect that.

Category 2: Non-industrial Uses in the Port of Tacoma M/IC

- Some confusion over why these uses are included.
- Concern expressed that these uses cannot expand, but industrial uses can.
- Concern over the scope of uses identified.

Category 3: Marine View Drive Residential Development Restrictions

- Concerns over the immediate and long term impacts of heavy industry on nearby residential areas.
- Some acknowledgement that recent residential developments in this area may not have been appropriate.
- General recognition that a transition area is appropriate.
- Some concern was expressed that these restrictions put greater focus on residences and not on impacts from heavy industry.

Category 4: Heavy Industrial Special Use Restrictions

- The scope of uses identified (should be broader/should be more narrowly focused)
- Expansion of existing uses
- Economic impact of the restrictions
- Environment and health impacts from heavy industry (existing and new)
- Risks and vulnerability to environmental hazard and natural disaster
- Opposition to any restrictions
- General support for the restrictions

Continued on next page...

Summary of Public Testimony

Planning Commission Review – September 20, 2017

Other Themes:

- Support for the Subarea Planning Process
- Timeline for adoption
- Concern over potential impacts to Joint-Base Lewis-McChord and other communities
- Job creation and retention
- Existing regulations are adequate and effective to address community concerns
- Concerns and questions regarding consultation with the Puyallup Tribe of Indians
- Basis for interim regulations:
 - No emergency basis identified
 - Fossil fuel facilities are an emergency issue
 - Existing uses are already impacting residents and workers and causing health impacts
- Legal concerns:
 - Recent cases pertaining to fossil fuel bans and Interstate Commerce;
 - Reasonable use of residential lots along Marine View Drive
 - State Environmental Policy Act (SEPA) review
 - Port Container Element and Growth Management Act requirements
 - Correctional facilities and essential public facilities

Tideflats Interim Regulations

Public Comments Received*



* Compiled in this document are written comments received through Thursday, September 14, 2017, 5:00 p.m. Additional comments received thereafter and prior to the deadline of Friday, September 15, 2017, 5:00 p.m. will be incorporated into this document at a later date.

Prepared for
Planning Commission Meeting
September 20, 2017

City of Tacoma
Planning & Development Services Department
Planning Services Division
747 Market Street, Room 345
Tacoma, WA 98402-3793
(253) 591-5030
www.cityoftacoma.org/planning



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Thomas L Absher
Absher Construction Company
P.O. Box 280
Puyallup, WA 98372
253-845-9544
tom.absher@absherco.com

September 13, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Tidel flats Interim Regulations – No need for a “pause”

Dear Mr. Beale and members of the Planning Commission:

As a member of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region's economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. Absher Construction Company has been at the forefront of many of these efforts in our community and believe those things can be balanced in any project we undertake.

The proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses,” will undermine the balanced approach to the creation and retention of jobs in Tacoma. They will create a chilling effect on not only the manufacturing sector, but on other industries that are already wondering which among them is next to be targeted by the City's increasingly volatile regulatory climate. This would produce a negative impact on the development and construction industry as well. Uncertainty creates a bad business climate

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.

We will make more progress as a region not when we merely cater to extremists but when we work together to balance our shared interested in our economic, social, and environmental wellbeing. Let's do the hard work of applying current regulations and having open dialogue to allow a fair process of evaluating businesses and projects.

The proposed interim regulations are unnecessary, arbitrary, and unsupported by facts. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Absher', with a long horizontal flourish extending to the right.

Thomas L. Absher
Absher Construction Co.

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, and Planning Commission members



SOUTH SOUND MILITARY & COMMUNITIES PARTNERSHIP

6000 Main St SW, Lakewood, WA 98499 | www.ssmcp.org

Executive Leadership Team:

- City of Lacey
- City of Lakewood
- Joint Base Lewis-McChord
- Pierce County

Steering Committee:

- City of DuPont
- City of Tacoma
- City of University Place
- City of Yelm
- Thurston County
- Nisqually Tribe
- Washington State Military Department

Working Group Chairs:

- Clover Park School District
- Pierce Transit
- Puget Sound Energy
- South Puget Sound Community College
- Tacoma-Pierce County Health Department
- Tacoma-Pierce County Chamber of Commerce
- Thurston Regional Planning Council
- United Way-Pierce County
- Washington State Department of Transportation

11 September 2017

Peter Huffman, Director
City of Tacoma Planning and Development Services Department

City of Tacoma – Planning Commission,

SSMCP seeks clarification from the City of Tacoma on a possible Planning Commission recommendation to impose interim regulations that will limit current fuel supply and delivery activities such as the delivery of fuel resources to Joint Base Lewis-McChord (JBLM). The SSMCP is a partnership positioned to provide regional leadership to bridge military and civilian communities. Our regional partnership consists of 52 organizations and local jurisdictions from across the South Puget Sound.

The SSMCP understands the Commission will hold public hearings in September on a proposal to regulate fossil fuels. Further, it is understood that “existing uses would be considered allowed and not subject to limitation on expansion”. Given this understanding, this letter provides SSMCP’s position on any proposed limitations to future storage capacity.

In steady-state training conditions the current storage supply might be sufficient, however, military installations must be able to surge military capability during times of national crisis. As the service member population expands and deployments increase, much like the JBLM experience from 2001 to 2010 supporting the wars in Iraq and Afghanistan, the steady-state storage capacity becomes inadequate. Contingency crises necessitate greater reliance on the civilian infrastructure to support military missions. USAF operations rely on the fuel pipeline and storage tanks at the port to sustain global airlift missions. Any limitations on fuel storage capacity and delivery capability could quickly become a national security issue.

The Department of Defense (DOD) evaluates continued utilization of military installations based upon their operating costs, their ability to carry out missions, and their ability to undertake new missions. DOD contingency plans rely on civilian infrastructure to enable execution of its plans and operations. Key factors in determining the defense department’s requirement for increased storage capacity would be the nature of the crisis and where the crisis occurs. If the crisis occurs in Northeast Asia instead of in the Middle East, JBLM would be the main power projection platform for deployments to Asia-Pacific.

An inability to access adequate fuel supplies would adversely impact JBLM’s mission readiness and have a detrimental impact on our nation’s national security. And its ability to provide and support humanitarian and disaster relief efforts nationally and internationally would be decreased. It would also negatively impact JBLM and our region when the next BRAC process gets underway. **SSMCP opposes any regulatory action restricting or limiting JBLM’s readiness to execute its mission.**

Sincerely,

COL (R) WILLIAM G. ADAMSON, USA
Program Manager, South Sound Military & Communities Partnership

From: joriadkins@mac.com
To: [Planning](#)
Subject: Comments on Draft Tide Flats Interim Regulations
Date: Thursday, September 14, 2017 12:21:15 PM

Category 1 Expanded Notification for Heavy Industrial Uses

Since ALL property tax payers and interested parties would be notified under this Amendment, is the 2,500' for those outside the City Limits and/or renting?

If so, the distance should be extended to 2 miles to cover those Heavy Industries that are high risk/high impact.

Category 2 Amend Non Industrial Uses in the Port of Tacoma M/I C

Not sure why these new uses are being prohibited at this point. They are not high risk/high impact to Tacoma like chemicals and fossil fuels are, nor are they expanding like the fossil fuels want to.

These uses should be addressed in the Subarea Plan, use by use. Remove this Category.

Category 3 Marine View Drive Residential Development Restrictions

This is something that should have been done long ago, before there were housing developments on the down side of the hill toward the Tide Flats.

Maintaining a buffer is important not only here but along South Tacoma Way if that area is truly to stay a Heavy Industrial Zone.

The Brewery District needs to drop its M-2 designation in that Warehouse Residential Zone. Existing industrial businesses would be grandfathered in. But that is part of the Subarea Plan.

Category 4 Heavy Industrial Special Use Restrictions

It would be less ambiguous to say, prohibit *all* new Heavy Industrial uses that pose high risk/high impact on neighboring areas.

Those that don't pose high risk/high impact would not be included in this list.

This is the statement that does not work it is the 3rd point. This one small sentence - "Existing uses would be considered allowed and not subject to limitations on expansion."

There is no justification for this and flies in the face of prohibiting new or expansion of highrisk/highimpact uses until the Subarea Plan has been adopted. This is why we asked for this interim regulation in the first place. Drop Category 2 and this one sentence from Category 4 and we will live with the rest.

Map 1 - Area where Nustar tanks are at the end of E Street at E 3rd is in the Buffer. Change to Dark Blue,

actually all the way down to E 7th should be Heavy industrial with a buffer all along the west side to buffer the Downtown.

Why is the buffer in the middle of this peninsula rather than on the west side facing the downtown? What is the name of this peninsula?

Map 2 -

Map 3 - Shows the buffer commented on above as it should be - protecting the downtown.

What is the difference between M-2, M-2StGPD and M-2StGPD-M/I C? Where is glossary or legend explaining these acronyms?

New Section TMC 13.06.580

2. Existing uses. Legally permitted uses at the time of adoption of this code are allowed and may continue existing operations

and expand storage and production capacity without limitation.

Remove this from the list of amendments. It is so blatantly wrong.

Findings of Fact

D. Findings of Fact Part 3: Assessment of Need For Interim Regulations (6 -25) *There are two D's, this one and Planning Mandates, also Part 2 & 3 are messed up.*

25. Pause -

The city needs to face it, this is all about Fossil Fuel and LNG, so to prohibit all these other Non Industrial uses and exempt *Existing* Heavy Industrial uses will NOT maintain a status quo in the Port/TideFlats during the Planning process and is certainly NOT protecting the *integrity* of that process until these issues are resolved through an adoption of a Subarea Plan.

The only Heavy Industrial high risk/high impact uses that are expanding in the Tide Flats are Fossil Fuel or LNG related.

F. Findings of Fact Part 4: Public Notification and Involvement (27-29)

27. Public Hearing Notification Process -

Don't forget to change the dates on this. Right now(9/12/17) would be good. I did have to recheck to make sure I had the times right when I saw this.....

H. Conclusions:

Though the 4 points the Commission states here may be seen as factual and plausible justification, there is no mention of the elephant in the room, Fossil Fuel and LNG, the two industries that are high risk/high impact and growing by leaps and bound right now! US Oil has just submitted a permit placeholder, *a placeholder* for expansions to its Tacoma facility! How can the Commission not mention these existing industries, were they not party to the decision to exempt them?

The commission needs to rewrite these statements with integrity. Start now protecting the integrity of the process....

With statements like "Therefore, limitations on new uses that are potentially high risk/high impact are appropriate until such time as the Subarea Plan is completed" must have expansion of existing Heavy Industrial uses included in that statement. Why shouldn't they be, they are the high risk/high impact industries that brought about the idea of having an interim pause in the first place.

And what is *wrong* with these Non Industrial uses currently allowed in the zone? Who is so against having them out there?

If there are allowed uses that are not wanted out there, like a new stadium, then we will deal with that when we do the Subarea Plan.

Why **no** new or expansion of existing Non Industrial uses when they aren't even high risk/high impact?

What about all the Distribution Centers and warehousing, why are they different than Vehicle Storage?

The decision to limit some at this time and not others is very curious. And not justified or explained.

Is it all a smoke screen to protect existing businesses like Targa, US Oil and PSE?
The expansion of an existing Heavy Industrial facility (like adding new tanks) is a *new* development to that facility, and should not be allowed until the Subarea Plan is adopted.

Thank you for taking public comments, please do the right thing for Tacoma's future.

A Dome District land owner, resident and very involved volunteer for Tacoma
Jori Adkins
301 Puyallup Ave.
Tacoma, 98421
253-365-1459

Jennifer Adrien
512 S 53rd St
Tacoma, WA 98408
Jenn.L.Adrien@gmail.com

September 13, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

Dear Mr. Beale and members of the Planning Commission:

I grew up in North Tacoma at a time when living in the shadow of the ASARCO smokestack was a fact of life. Like many children in the North End, my neighborhood play was aligned to the shift whistles, with strict instructions to return home "when the smelter blows."

As a high school student in the early 90s, I used to think that the only way to be successful was to get out of Pierce County. After commuting to Seattle for a few years, I landed a good job at UW Tacoma, where I spent seven years helping students and company leaders internalize what it means to be a socially responsible leader in today's business world. During that same time, I also co-founded and chaired a group called Women Working in Sustainability. Last spring I become the VP for Communications for the Economic Development Board for Tacoma-Pierce County, where I get to apply these same principles and help great companies create good jobs right here in my home town.

True sustainability is about more than electric cars or recycling: it requires that our entire community balance social equity and economic prosperity and environmental stewardship. Social responsibility hinges on the core tenet that balancing the 3 Ps – People, Profit, Planet – forms the foundation of real sustainability for our community.

I am proud and thankful that the polluted Tacoma I grew up in is not the Tacoma my son enjoys today. Thanks to regulations and interventions at federal, state, and local levels, we have mitigated much of the pollution done in the last century. Those very same regulations are met and exceeded on a daily basis by the companies located in the Tideflats, keeping us safe and ensuring financial stability for families from all walks of life.

The proposed interim regulations are not needed and will prove ineffective in the long term. Focus instead on the forthcoming Tideflats subarea plan and remember to keep the delicate balance of social responsibility in place when you do.

Sincerely,



Jennifer Adrien

From: [Linda Allison](#)
To: [Planning](#)
Subject: tide flats
Date: Wednesday, September 13, 2017 9:35:08 PM

In my youth this city was called the "Tacoma Aroma". It seems that this generation has no inclination of what it was to live in the constant pollution especially when the wind blew. One would come out of school and your eyes would burn and throat dry out. Young people are so concerned today about making money, importance of position, and jobs that they really don't believe that any thing such as this could happen in some form. I believe that your minds are set but I will as a senior citizen who's been here long before highway 90 or the Tacoma Mall to tell you yes there will be consequences to your plan.

The TNT paper had a glorious review of all the wonderful things that will come to our city but in the middle of there proclamations was a small sentence that said "limited pollution".

INTENT OF PROPOSED INTERIM REGULATIONS

"the intent..to limit the establishment of certain new industrial uses.

In this paragraph it doesn't say that you are not allowing heavy but control it. Is that not correct?

The new jobs I see will be the needs for more doctors and hospitals. I see our over crowded schools added onto from the influx of new residents. I see the property of many residents injured. People are so busy that all of this will happen because they have no time to research for themselves and only believe your presentations.

So, you say the pollution the Arco plant left us with won't happen again because you will regulate? Maybe, not in the same way but there will be pollution. Yes, not much and not the same but enough to create illness in some.



September 13, 2017

City of Tacoma Planning Commission
747 Market Street, Room 345
Tacoma, WA 98402

Don Anderson
Mayor

SENT VIA EMAIL: planning@cityoftacoma.org

Jason Whalen
Deputy Mayor

SUBJECT: Public Hearing - Proposed Interim Tideflat Regulations

Planning Commission Members:

Mary Moss
Councilmember

This letter addresses the public hearing regarding the proposed City of Tacoma Tideflats Interim Regulations and future Subarea Plan. It is requested that this letter be included into the Planning Commission's public record. The City of Lakewood provides the following comments:

Michael D. Brandstetter
Councilmember

John Simpson
Councilmember

Marie Barth
Councilmember

Paul Bocchi
Councilmember

John J. Caulfield
City Manager

- The development of a subarea plan for a port facility is a highly complex task and involves many diverse interests. It is fraught with many challenges. Thus, the subarea plan process may take considerable time to develop. In the meantime, there is a concern that if the interim regulations are adopted they may stay in place for longer than expected; they may 'more or less' become permanent regulations; this could adversely affect the economic vitality of the Port. There is an expectation that should Tacoma adopt interim regulations and, thereafter, follow suit with a subarea plan, that such actions occur expeditiously, while at the same time assuring public outreach, not just to Tacoma property owners, but for those business interests within the region that could be adversely affected by major land use changes within the Tideflats.
- The proposed interim regulations, if approved, confer an interest in the port properties of each landowner to those who control the political power in Tacoma. This allows Tacoma to shape the port environment and its property tax base. However, the Port of Tacoma was established by Pierce County voters many years ago as a port authority and its boundaries and interests far exceed Tacoma's City limits. It is a public agency that today has regional, international, and National Defense related implications. The Commission is asked to take great care in promulgating rules so as to not develop interim or permanent regulations that address a local rationality at the expense of some of these other broader interests.
- The proposed interim regulations will result in unintended consequences. Case in point and of particular concern to Lakewood is any regulation that limits fuel supply and/or the delivery of fuel resources to Joint Base Lewis McChord (JBLM). In times of national crisis, to include humanitarian and disaster relief efforts, the proposed interim local zoning regulations could have a detrimental impact on the nation's security.

Moreover, JBLM is the nation's only West Coast power projection platform and has definite connections with the Port of Tacoma for deep-water access of heavy military equipment. Any land use proposal, whether temporary or permanent that impacts military operations is opposed by the City of Lakewood. Additionally, such regulation could cause considerable consternation should the federal government choose another round of Base Realignment and Closure (BRAC).

This is an area, military-related topics, where Lakewood has a greater degree of familiarity than most other cities. There are likely other unintended consequences that are out there that have yet to be identified. Unintended consequences provide the basis for many criticisms of government programs. When government imposes new rules, or regulations, it creates outcomes that often differ from the original intent. In some cases, these outcomes are so severe that they render the policy a failure.

Of concern to Lakewood is the economic impact these proposed regulations could have on the Port. The Port supports 29,000 jobs and generates \$3 billion in economic activity. Will these regulations take away jobs and reduce revenues?

Significant new government policy is being considered here. Much more detailed review must be given to the range of potential unintended consequences before any action is taken to change land use, a practice that is rarely or accurately undertaken. Members of the Commission, please take the time to look beyond the moment, be wise, and carefully examine all aspects the proposed regulations before they become law.

We understand and appreciate the challenging nature of the assignment. As the process unfolds, we would hope that the City of Tacoma would focus on values held in common, and that problems can be resolved through partnerships, collaboration, and cooperation. We thank you for the opportunity to comment.

Respectfully,



Don Anderson
Mayor, City of Lakewood

Copies:

- Tacoma Mayor Marilyn Strickland
- Tacoma Councilmember Anders Ibsen, Position 1
- Tacoma Councilmember Robert Thoms, Position 2
- Tacoma Councilmember Keith Blocker, Position 3
- Tacoma Councilmember Marty Campbell, Position 4
- Tacoma Councilmember Joe Lonergan, Position 5
- Tacoma Councilmember Lauren Walker Lee, Position 6
- Tacoma Councilmember Conor McCarthy, Position 7
- Tacoma Councilmember Ryan Mello, Position 8
- Lakewood Councilmember Mary Moss, Position 1
- Lakewood Councilmember Michael Brandstetter, Position 2
- Lakewood Councilmember Jason Whalen, Position 3
- Lakewood Councilmember John Simpson, Position 5
- Lakewood Councilmember Marie Barth, Position 6
- Lakewood Councilmember Paul Bocchi, Position 7

From: [Curt Anderson](#)
To: [Planning](#)
Subject: Tideflats Interim Regulations
Date: Thursday, September 14, 2017 9:51:27 AM

Commissioners:

Please oppose the portion of interim regulations that limit uses for the tideflats area. It appears the underlying purpose of proposed limitations is to prevent the construction and usage of any facility that processes, stores, or utilizes any type of fossil fuel. Please consider:

1. There exist several facilities within designated areas that operate under existing regulations, federal, state and local and do so without significant negative environmental or safety effects to life and property.
2. There are adequate laws and regulations presently to accommodate good quality of life in the surrounding areas.
3. Addition of new facilities bring high paying jobs to our area, both during construction and operational phases.
4. New jobs created will be across a broad spectrum, both "blue collar," and "white collar" and high tech as virtually all industries are utilizing technology to a high degree.
5. There is a shortage of properties suitable for such facilities. The Port is blessed to have considerable land that can be used for such.
6. To rule out utilization of the Port of Tacoma for facilities involving fossil fuels simply means they may locate to Canadian , California, or Southeastern ports.

My family and I located to Tacoma in 1968 and have seen substantial tangible improvements in air and water quality during this period. I was active in the HVAC engineering and construction industry for 40 years prior to retirement, 35 of those as head a company working in commercial, industrial and institutional work. One of our company goals was to strive for perfection, but accept excellence. I believe that goal should prevail in all environmental matters as well.

During the referred to 40 year period our industry and the industries we served experienced a multitude of new laws and regulations covering virtually all areas of business. Many regulations served good purposes and produced good results. A large number of regulations, however produced negative consequences with no discernible improvement in processes or quality of environment. As a result we observed many attempts to begin or expand a business fail due to increase of costs in permitting or potential business operations.

On the larger picture, a word about the ideal of elimination of all fossil usage as some appear to advocate. Obviously the prime users of a major fossil fuel, gasoline, are automobiles and trucks. While some see an ideal world where all ground transportation would be fueled by electricity, consider the necessity to rework and add to the power grid, both in main and local lines for accommodating power charging stations. Imagine the million tons of copper required for such a large undertaking. Added copper must necessarily be mined, either domestically or imported. While domestic sources exist, the idealists who oppose the usage of fossil fuel and added facilities such as might be built in the Port, in general are the ones who oppose any mining, citing environmental concerns. Applications for major copper mining operations currently may take 8 to 10 years or more, may require approval from more than 30 agencies and cost hundreds of millions of dollars in permit fees and litigation.

Please consider carefully the impact on new regulations, both local and on the larger scale.

Respectfully,

Curt Anderson
1 Stadium Way North # 3
Tacoma, 98403
253-405-2207

From: [Maria Anderson](#)
To: [Planning](#)
Subject: Tideflats
Date: Thursday, September 14, 2017 12:05:15 PM

In regards to the Tideflats Interim Regulations (proposed Amendment to the Tacoma Municipal Code, including the Shoreline Master Program), I have an opinion.

I do not want to see our economic bloodline fall due to regulations and permits not being granted in the future. I am an electrician. I have worked at two of the large industrial entities on the port, Westrock and U.S. Oil, and was always on improvement projects and in training programs for environmental concerns and how we handle them. The improvements alone are creating livable wage jobs all the time. I think it is an asset that our city is a major backbone in industry and trade. We can be both environmentally friendly and industrial here. Most of the housing that sprung up near this area was built by and for the families that created and worked at these industrial sites. Living there now should be awe inspiring, not something newbies want to change.

We will always continue to grow and improve. It can be done responsibly. Stifling work for the population is not responsible for our future. Please consider what power these regulations could hold over continued improvements and keeping our backbone way of life viable.

Thank you for your time and consideration in this.

-Maria Anderson

IBEW Local 76 Member

From: [Rita Andreeva](#)
To: [Planning](#)
Subject: A comment for Tideflats Interim Regulations
Date: Thursday, September 14, 2017 4:33:12 PM

I am a homeowner living on Hilltop in Tacoma. Every so often at nights/early mornings, usually after midnight, the air has a horrible smell, like the burned tires or bad car breaks or like if I'm standing next to a grinder in a machine shop. It is much worse than the customary Tacoma-aroma. It makes my throat sore. I can never leave my windows open through the night. It is very likely that one or more of the industrial facilities in the port do some sort of cleaning the smoke stacks, releasing the dirt into the air, and they are doing it at night, so they don't get caught. I brought it to the attention of the Air Quality people, and they said they couldn't do anything about it, because they are home in bed at nights, and are not willing to get out of bed and go to check out the air. The point is, whoever was saying during the public comment meeting yesterday that we have sufficient regulations - we don't. There is lots of room for cheating, as well. And those businesses do cheat as much as they can get away with.

Historically, all the towns with heavy industry - coal mining towns, oil refineries, chemical plants, etc. had depressing streets covered with soot, no shops, no beauty, no fun, short life expectancies, lots of lung diseases and poverty. Only the poorest people would live in those towns. Only the owners of the factories benefited, and that never even lasted for very long time. The factory owners sucked the towns dry, and moved on. There are many ghost towns in the US like that. I implore you not to sacrifice Tacoma.

If you want economic growth you have to have clean air, clean water, clean soil, to attract businesses and people with money. Tacoma has not been growing as it should have been because of the industrial contamination. No one with money would want to buy a home in a place where the tap water and the soil are full of lead and arsenic and air stinks, and there are banging noises coming from the port all the time. Only the poor people who can't afford to live anywhere else end up in Tacoma, resulting in lots of crime and general feelings of hopelessness and resignation and no one wanting to care about their neighborhoods. Trash is everywhere, houses with peeling paint and boarded up windows. The only way to turn Tacoma's economic growth in positive direction is to prohibit any further fossil fuel industries, coal terminals, oil refineries and chemical manufacturing. And clean up the area as fast as possible to make it attractive for clean businesses and residential builders. People need somewhere to live, there is a housing shortage in the NW and prices are going up. But Tacoma's prices are still only a fraction of Seattle prices because people don't want to live in a place that is smelly, dirty, and populated mainly by very low income people who purposely dirty the streets and sell drugs on every corner and do everything to scare investors and home-buyers away and to impede the gentrification, so the prices don't go up.

I implore you to go with the Interim Regulations in Category 4, and to start actively reviewing the current existing uses in that category and making sure that they don't pollute on the sly, like at nights. And do vigorous cleaning of the soil.

Tacoma homeowner
Margarita Andreeva
718 Yakima Ave. Tacoma WA 98405

Atkinson, Stephen

From: Julie Andrzejewski <julieruth17@gmail.com>
Sent: Wednesday, September 13, 2017 12:14 AM
To: Planning
Subject: Strong support for Interim Regulations

Because I am unable to come to the hearing Wednesday evening, Sept 13th, I am writing to express my strong support for the draft Interim Regulations including:

- A prohibition on “high risk/high impact” uses concerning fossil fuels, mining and quarrying
- A prohibition on any unlisted industries (those not falling under an existing category)
- A prohibition on new non-industrial uses in the Port (hospitals, group housing, etc)
- Extended notification about new projects in the Port (2500’ from boundary of Port of Tacoma)
- A moratorium on new housing development along Marine View Drive

I believe Tacoma and the surrounding area deserves to have clean water and air. We do not want to have a facility like ICE that violates human rights and dignity. We do not want fossil fuel industries that contribute to global warming. We do not want dangerous industries like the LNG plant. We want to save the rivers, Puget Sound, and our wildlife which are already suffering from extreme pollution. We want a healthy environment now and in the future for the public. We want decent paying jobs that are good for workers and good for the environment. We do not want our elected or appointed public officials serving industries and the wealthy at the expense of the public.

Sincerely,

Dr. Julie Andrzejewski
703 Short Street
Steilacoom, WA 98388

Atkinson, Stephen

From: Dale N Bickenbach <dbick@wamail.net>
Sent: Tuesday, September 05, 2017 9:19 AM
To: Planning
Subject: Tideflats Interim Regulations, Comments

-Concur with the majority of zoning proposals.

Coal is a fading dying industry besides the environmental effects we want eliminated.

Oil or other fossil fuel development usages are unneeded as described in announcement. Mining, quarrying, or smelting are, also, unneeded.

Land use zoning along the unused cliffs outlined is in the public interest. Other uses for public use to include natural areas, parks, bike and pedestrian pathways would be an improvement.

Bulk chemical storage or processing can be done to include all of the items stated in the public information announcement with available technology and regulations. This industry would provide jobs and infrastructure development in the public interest.

Pedestrian, bikeway access across the tide flats should be considered. Current State transportation planning does not consider non-motor means of transportation as demonstrated along the Nalley Valley interstate freeway construction experiment.

dnb

Dale N Bickenbach
5232 South Mason Avenue
Tacoma, Washington
98409-1817

Only Phone 253 475 5242 (Please e-mail 1st)

SKYPE: dale.n.bickenbach

Atkinson, Stephen

From: David Bingham <winston3609@yahoo.com>
Sent: Tuesday, September 12, 2017 5:00 PM
To: Planning
Subject: Tideflats Regulations

To the Planning Commission;

I, David Bingham, and my business partner, John Crabill, are the owners of the Marina, the restaurant, and the real property known as Johnny's Dock 1900 East D Street. We have owned the property since 1985 and the restaurant has been on this site since 1977.

Quite simply stated, our portion of the tideflats needs to be left open to Mixed use development because it has the best view of the skyline and cityscape of Tacoma from any angle. Residential and commercial properties on the east side will provide an adjunct to the cramped downtown core, giving Tacoma the urban city room to grow

David Bingham

From: [Don Blagsvedt](#)
To: [Planning](#)
Subject: intermin regulations regarding the sub-area planning process
Date: Wednesday, September 13, 2017 4:04:03 PM

planning@cityoftacoma.org;

Members of the planning commission,

My name is Don Blagsvedt. My wife and I are homeowner in North Tacoma,. I am a former science teacher and district science coordinator in TPS, and active member in my faith community and a kayaker. My wife works as a rehab doctor and physiatrist at the Veterans administration we love where welive. We care deeply about sustaining and contributing to a healthy environment in our city and for a viable, thriving Port that can be leader in creating non-polluting industries. I stand in support with 350 Tacoma and the Tideflats Coalition in favor of imposing intermin regulations that would put a ban on any new fossils fuel development or expansions of and new permits for current fossil fuel projects while the sub-area plan for the Port of Tacoma is being developed.

All of us experienced a climate nightmare this summer,and continue to witness, the devastating effects of wildfires and hurriances upon social life, families health , job disruption. This is our new reality. This is not some freak accident of nature. Science has been predicting since 1980's that the continued use of fossils fuels will contribute to extreme temperature rise, increased rainfall during storms, the warming of the seas, increased flooding and increased droughts. All of this has occurred as predicted by 97% of climate scientists. Ultimately this is a social justice issue The people most vulnerable to the new climate reality, are the poor, whether that be the in Syria, Central Africa, India or the low lying tidal plains in Houston, Miami, or Mew Orleans.

For me this is a spiritual issue. If we say we care about God's creation if we are serious about our commitment to the Paris Climate Agreement or the implementation of 100% renewables, we cannot do business as usual. That would be a sin. Keep the poison of fossil fuels in the ground. Do not contaminate the sub-area planning process for the Port by allowing new permits or expansion of current operations for the oil and gas industry. Rather use already existing technologies and your creative energies to plan for a Port that uses 100 renewable energy to create living wages and meaningful work.

I thank you for your time.

Don Blagsvedt

5414 N. 42nd Street

Tacoma, Washington

98407

--

Don L Blagsvedt

1-360-359-8370

don@350Tacoma.org

dblagsvedt@gmail.com



City of Tacoma
Sustainable Tacoma Commission

September 12th, 2017

Send to:
Stephen Atkinson
Senior Planner
satkinson@cityoftacoma.org

Please forward this message to the Planning Commissioners:

Commission Chair - Stephen Wamback
Commissioner Chris Beale
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis

Commissioner Anna Petersen
Commissioner Carolyn Edmunds
Commissioner Jeremy Woolley
Commissioner Andrew Stroebel

Dear members of the Tacoma Planning Commission,

As the Sustainable Tacoma Commission, we welcome this opportunity to provide input on the proposed Tideflats Interim Regulations. We also look forward to engaging as a strong voice in the the Tideflats subarea management plan initiative that was approved to proceed earlier this year. We believe both of these initiatives are the right direction for Tacoma to redefine itself as a thriving place for both economic prosperity *and* environmental stewardship.

We agree with the City Council and Planning Commission in seeing the urgency for interim regulations to limit the uses that may be able to take root before a well thought out plan is complete. Without these temporary regulations, Tacoma may see the expansion of the fossil fuel industry as a result of permit applications. We want to avoid a situation similar to the big box retail moratorium, whereby delay of implementation led to an outcome at odds with community desires. Pausing fossil fuels now is essential not only for Tacoma's protection in the short term, but also for a high-quality subarea plan.

The subarea plan will provide an opportunity to review any number of issues within the Tideflats to create a comprehensive, long-term solution. In contrast, interim regulations will appropriately and meaningfully address the critical, urgent threats that cannot wait for the subarea plan. *There can be no doubt that new fossil fuel proposals are the urgent environmental and economic threat.*

These fossil fuel proposals could take many different forms. It is critical that the pause covers all new and existing expanded industrial fossil fuel facilities and infrastructure. Please ensure that the pause is as broadly encompassing as possible. With regards to fossil fuel industries, the latest proposal, as presented at the 9/6/2017 informational session, only covers *new* coal, oil, or other liquid or gas fossil

fuel facilities. We strongly believe that this falls short in that it would not restrict the expansion of existing fossil fuel facilities, yet these are exactly some of the facilities that are of concern. The interim regulations should absolutely restrict the expansion of existing fossil fuel facilities.

We also appreciate the proposed expanded notification for heavy industrial uses, however we do not believe that it goes far enough. Given Tacoma's storied environmental legacy, we believe that such notification should include the entire City of Tacoma, and not be restricted to 2500' from the manufacturing and industrial center boundary, or tax parcel. The environmental degradation that plagues Tacoma affects all of the residents. If we are to fully break from our dirty past, this requires entire community involvement and that begins by making the entire community aware.

In considering these Tideflats Interim Regulations, we also call your attention to the Tacoma Environmental Action Plan (EAP) that was signed by the Mayor and City Manager in 2016. As noted in the cover letter, the EAP "outlines the actions that our City government and local community will take over the next five years to become more environmentally sustainable." We call your attention to a number of the EAP goals, all of which align closely with the need to implement the Tideflats Interim Regulations restricting new or expanded fossil fuel facilities:

- M2 - Support and advocate for strong product stewardship policies at the state and national levels, minimizing environmental impacts of product and packaging throughout all lifecycle stages, especially manufacturing.
- N1 - Reduce stormwater quantity and/or increase quality in each of the city's watersheds by developing Management Plans that use best practices appropriate to each watershed's natural and built conditions.
- N2 - Implement code that discourages development on lands where such development would endanger life, property or infrastructure, or where important ecological functions or environmental quality would be adversely affected.
- C1 - Incorporate climate resilience actions into equity initiatives and programs, and consider future climate risk in emergency planning and hazard mitigation planning updates.
- C3 - Prioritize the most vulnerable neighborhoods for capital improvement, development, and planning activities to ensure that these communities receive the services they need to build resilience to climate change and other stressors.
- C4 - Begin a conversation with the business community around climate impacts and resilience.
- C5 - Engage with and support community organizations that enhance community resilience.
- C6 - Ensure that near-term capital improvement projects consider climate change risks.
- C7 - Conduct additional studies (including data gathering, research, and mapping) to identify infrastructure that will be impacted by sea level rise and flooding.

Finally, the urgent threat of fossil fuels warrants as rapid a response as possible. Interim regulations need to pause proposals before any new ones can be made and grandfathered in. While we understand the sensitive nature of this issue, Tacoma cannot wait to take action. We are speaking up as volunteer citizens using the processes already in place for citizen input. Please implement interim regulations to pause new fossil fuel proposals as quickly as possible. With this protection in place, we can then take the time necessary to address other issues and long-term solutions.

Thank you for your work on the commission and for considering this input.

Sincerely,

A handwritten signature in black ink, appearing to read "Lexi Brewer", is centered within a light gray rectangular background.

Lexi Brewer, Chair
Sustainable Tacoma Commission

Cc: Kristin Lynett, Office of Environmental Policy and Sustainability

From: [phil brooke](#)
To: [Planning](#)
Subject: interim tideflats regs YES!
Date: Thursday, September 14, 2017 10:48:29 AM

Dear Planning Commission:

Had I known Carolyn Lake was going to deliver a threat-laced lecture on the US Constitution to you late last night, I would have signed up and spoken after her.

Tacoma is a sitting target for fossil fuel expansion due to grandfathered existing uses. This should be clear by now. I wanted to encourage you to pass these emergency interim regulations, and maintain your sense of urgency on this important topic. Locally, we absolutely must shift course away from the tar sands, Bakken crude and fracked gas/LNG, which are inundating the Port of Tacoma. A simple reading of MSDS sheets will show these fossil fuel products are fundamentally different, carrying both higher safety and environmental risks, which render them incompatible with existing current and future uses.

As we see the monster fires consuming our beautiful Northwest, while monster hurricanes consume the South and East, the social license for dirty energy infrastructure projects will quickly evaporate. Failing to act sets up the City and Port for a great deal of future economic disruption, 'opportunity cost', and pollution.

Whether it's immoral oil companies [Oregon Regulators Issue \\$117,000 Fine For Oil Terminal's Permit Violation](#) or the disruption to jobs when public pressure finally forces closure of dirty dangerous energy sources <http://faculty.washington.edu/jwilker/382/CoalPlant.docx> , we must get out in front as most ports have and begin to plan for a just transition to sustainable industry, high tech and safe renewable energy.



Oregon Regulators Issue \$117,000 Fine For Oil Terminal's Permit Violation

The Oregon Department of Environmental Quality imposes an unusually big fine against a crude oil terminal on the...

Most sincerely,

Phil Brooke
Summit-Waller
oldbrickhousefarm@yahoo.com

Atkinson, Stephen

From: Gwynne Brown <akgwynne@hotmail.com>
Sent: Wednesday, September 13, 2017 6:39 AM
To: Planning
Cc: Jim Brown
Subject: Public comment re Tideflats Interim Regulations

Dear Members of the Planning Commission,

I write to strongly urge you to instate a pause on fossil fuel and other potentially harmful energy infrastructure and activity, to protect the health and safety of Tacoma's residents, the quality of our air and water, and the future of the planet. Our current policies and procedures are not sufficient. The economic benefits to Tacoma of allowing out-of-state and non-US companies to build, transport, and store fossil fuels are not enough to warrant waiving our rights to health and safety.

Sincerely,
Gwynne K Brown

1112 N Fife St
Tacoma, WA 98406
(253) 301-2591

Matt Campbell, President
General Mechanical, Inc.
2701 South J Street
Tacoma, WA 98409

September 13, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma WA 98402

RE: Tideflats Interim Regulations – No need for a “pause”

Dear Mr. Atkinson:

Having various conversations with local businesses and members of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. General Mechanical, Inc. embrace’s a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

We rely heavily on local industry to be a viable local employer. Our core business includes working in the industrial and heavy commercial markets here in Tacoma and the “Tide Flats”. Locations we work include US Oil, Targa, Graymont, Westrock, Nustar, Pabco, GP Gypsum, Glenn Springs Holding, Stericycle, Gardner Fields, Olin Bleach, BHS, Arclin Overlays, just to name a few. We also work at the Tacoma Waste Water facility (which I would love to know how new regulation may impact this site).

The proposed regulation changes we are hearing about will have an impact. There will be fewer man-hours worked at General Mechanical, Inc. thus affecting families. There will be less material and consumables purchased affecting those local businesses and their families. There will be fewer subcontractors hired, affecting their craftsmen and vendor’s and families. And in the end, there will be less tax generation for the City of Tacoma. It just doesn’t make much financial sense.

The proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses,” will undermine the balanced approach to the creation and retention of jobs in Tacoma. They will create a chilling

effect on not only the manufacturing sector, but on other industries that are already wondering which among them is next to be targeted by the City's increasingly volatile regulatory climate.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interested in our economic, social, and environmental wellbeing.

The proposed interim regulations are unnecessary, arbitrary, and unsupported by facts. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,



Matt Campbell
President

From: [CR COLLERAN](#)
To: [Planning](#)
Subject: Tideflants Interim Regulations
Date: Thursday, September 14, 2017 6:14:45 AM

Dear Planning Commission Members:

Thank you for taking the steps in planning the interim regulations and for listening to the public.

I fully support your recommending to the city council implementing interim regulations. These regulations should include all of your proposed amendments with the following changes:

1. In Category 1, specific property owner/user notifications should be sent to all within a 1 mile radius.
2. Agree with Categories 2 & 3.
3. Category 4 should include prohibition of expansion of heavy industrial uses that have a potential for high risk or impact to neighboring area and fish/sea life.

It is impossible to predict worse case scenarios, but as we have seen recently in Texas, Louisiana and Florida, the worse case does happen. As you know, we are sitting in an area of the planet that will have a major earthquake with catastrophic destruction. Additionally, should we have rains that are even 1/2 as bad as what happened in Texas, the tideflats area would be forever changed by the water that would drain into the Commencement Bay. What would 25 inches of rain in 24 hours look like? Then we also must consider Mt Rainier is an active volcano though I certainly hope it doesn't get angry while we humans live around it! We can either look at the world on a minute by minute basis or we can be prudent and plan for the worse case scenario. Please be wise.

Thank you.

Carol Colleran

PS: I have been toying with the idea of solar panels and an all-electric car. Many people would install renewable energy if it were promoted and presented in a logical manner. Right now, I think, the idea of renewal energy is downplayed due to negative input from the fossil fuel industry. All the while, manufacturing of these solar panels or wind energy equipment is a very fast-growing industry to be considered.

From: [John Crabill](#)
To: [Planning](#)
Cc: [David Bingham](#)
Subject: Tideflats Interim Regulation
Date: Wednesday, September 13, 2017 6:08:34 PM

To Whom it may Concern,

My name is John Crabill and I am co-owner of Johnny's Dock Restaurant and Marina (City Waterway Investments). I am opposed to any changes to the current regulations. These proposed changes would have a negative effect on this property now and in the future.

John Crabill
Johnny's Dock Restaurant and
Marina
City Waterway Investments

Sent from my iPhone

September 11, 2017

Tacoma City Planning Committee

My name is Linda Craig I have worked on the tide flats for over 20 years along with many family and friends. **I am extremely opposed** to any interim or permanent zoning changes to properties within the port tide flat area. This area has been zoned and used in this manner since the very beginning of the City of Tacoma. This so called buffer zone nonsense will do absolutely nothing, to quiet the people of Point Woodworth who knew exactly where they were moving to and the businesses have been there way before them. They have a big hillside and elevation buffer. A few hundred more feet will not stop pollution or the noise from the tide flats which has been going on for decades. **The city of Tacoma should never have allowed the change of zoning from industrial gravel pit (Woodworth and Company) to residential zoning in the first place. Please take into consideration all the employees you are putting in danger of losing their jobs for this absolute nonsense. We have worked hard to raise our families and be good tax paying citizens, just to have a few people putting our livelihoods in danger. We will fight you at every opportunity.**

Sincerely X _____

Linda Craig

From: [Ryan Cruz](#)
To: [Wung, Lihuang](#)
Cc: [Atkinson, Stephen](#); [Melissa Malott](#); [Rebecca Ponzio](#); [Mindy Roberts](#)
Subject: Protect Tacoma's Tideflats - letter to Planning Commission
Date: Wednesday, September 13, 2017 2:52:40 PM
Attachments: [Protect Tacoma's Tideflats Letter - Moratorium.pdf](#)

Dear Planning Staff,

Thank you for your work to create balanced protections for the Tacoma Tideflats via interim regulations.

Attached is a letter signed by members of the Protect Tacoma's Tideflats Coalition voicing support for a swift, focused and complete pause on all fossil fuel and petrochemical projects, be they new uses or expansions of existing facilities. Please forward this along to the Planning Commissioners in preparation for tonight's public hearing.

We look forward to continuing our participation in the interim regulation discussion as well as in the subarea planning process to come. Please let me know if you have any questions.

Thanks again,

Ryan Cruz

Conservation Engagement Coordinator

Citizens for a Healthy Bay

535 Dock Street, Suite 213

Tacoma, WA 98402

T 253-383-2429 | **W** healthybay.org

Connect with us: [Facebook](#) | [Twitter](#) | [Instagram](#) | [LinkedIn](#) | [Subscribe to our enews](#)

May 21, 2017

Dear members of the Tacoma Planning Commission,

Fossil fuel industries have significant negative impacts on the community – from the congestion caused by mile-long oil trains that stopped other flow of commerce to the air pollution to the threat of oil spills, derailments, and other types of disasters. We believe that the future of the Tideflats should be transitioning away from fossil fuel industries and towards clean energy industries that provide family-wage paying salaries without the health and safety risks.

While the City and Port of Tacoma as well as the Puyallup Tribe undergo a multi-year sub-area planning process for the Tideflats, our community will be left vulnerable. An interim regulation is needed immediately to preserve the ability of the City and broader community to put in place the policies and vision for the future of the Tideflats without being tied to projects that are 'grandfathered in' during this uncertain time when the fossil fuel industry is looking to increase its extraction and increase the amount of products being transported through the Pacific Northwest.

I support passage of an interim regulation to put a pause on any new fossil fuel proposals in the Tideflats.

Key items include:

- Pass an interim regulation, or moratorium, effective for not longer than 180 days following its effective date, but may be renewed as necessary until the sub-area planning process is complete and the recommended policy changes are made,
- Cover fossil fuels, including but not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats; and condensate.
- Apply to bulk fossil fuel facilities that provide access to marine, rail, or pipeline transport; or that provide storage capacity.

This will not impact:

- Non-fossil fuel industrial activity in the Tideflats. For example, the temporary regulation would have no impact on WestRock, Schnitzer Steel, etc.
- Approved fossil fuel facilities, such as Targa Sound Terminal or the PSE LNG plant.
- Improvements to existing facilities to upgrade for the safety, efficiency, seismic resilience, or operations of existing energy infrastructure.
- Jobs or job creation in the Port of Tacoma.

Sincerely,



Melissa Malott
Executive Director
Citizens for a Healthy Bay



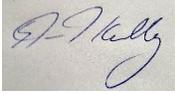
Becky Kelley
President
Washington Environmental Council



Alex Ramel
Field Director
Stand.earth



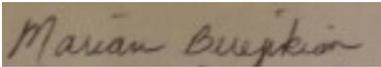
Aaron Ostrom
Executive Director
Fuse Washington



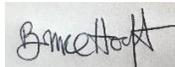
Steven J Kelly
Senior Organizer
Pierce County Activist Council



Chris Wilke
Executive Director
Puget Soundkeeper Alliance



Marian Berejikian
Executive Director
Friends of Pierce County



Bruce Hoeft
Conservation Committee Chair
Tahoma Audubon



Laura Skelton, MS
Executive Director
Washington Physicians for Social Responsibility



Alexandra Brewer
Chair
Sustainable Tacoma Commission



Emily Johnston
Board President
350 Seattle



Taylor Wanhoff
Chairperson
Surfrider Foundation, South Sound Chapter

North End Neighborhood Council

From: [Denise L. Despres](#)
To: [Planning](#)
Subject: ethical development
Date: Thursday, September 14, 2017 2:52:17 PM

Dear Planning committee of Tacoma: When I arrived in Tacoma in 1985, the city was polluted, in a state of recession, and property value was at an all-time low. Over the years, I've been proud to live in Tacoma amidst the concerted efforts of citizens in its various neighborhood to revive Tacoma. The cleanup of our waterfront and the polluted land in the North End has resulted in the kind of positive economic change I voted for and waited for, while many of my colleagues at the University of Puget Sound decided to live in Seattle. Now, your short-sighted, unethical, and greedy practices, far from serving the voters of Tacoma, threaten once again to devalue my property and poison the environment. I can promise you that I will not be complacent about returning to a 1985 scenario of Tacoma.

I write to register my opinion on the matter of interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma. I strongly urge the committee to prohibit the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to prevent the expansion of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am aware that the latest amendment to interim regulations includes a loophole that permits the expansion of existing terminals, and I urge the committee to close the loophole. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to allow non-polluting businesses to expand if needed in order to encourage non-polluting industry over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business--as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally--and foundationally--the committee must respect the wishes of the Puyallup Tribe when formulating and monitoring interim regulations.

If you are interested in securing the health and well-being of all Tacoma residents you must put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide together how to move forward. Since the City of Tacoma and the Port affiliates often raise "jobs" as a reason to promote dirty industry, I assure you that clean industry

provides job opportunities too. Take a look at the world around you and forget about short-term profits. You will see many, many examples of successful shifts of this sort. Institute a moratorium on all petrochemical growth in our beloved city of Tacoma NOW. If not, prepare for the lawsuits those of us will initiate to protect our property, our families, and our city.

Professor Denise L. Despres (University of Puget Sound)

3818 North 35th St Tacoma WA 98416

From: [David Fenbert](#)
To: [Planning](#)
Subject: Future of the Tideflats, Public Comment
Date: Thursday, September 14, 2017 1:09:01 PM

Tacoma Planning Commission,

I have lived in the South Puget Sound area for 52 years. The last ten years I have lived in Tacoma. I would like to live the rest of my life in Tacoma because I love the city. If the city does not change it's policy toward toxic industries however, I will leave Tacoma. We have 100 years of toxic pollution. We are always in the top ten most polluted cities in the country! It's disgraceful. It's time to change the direction of Tacoma and re-invent ourselves as a clean renewable, progressive city that is on the cutting edge of the 21st century. Please stop the building of the Liquid Natural Gas Pipeline in the Tacoma Tideflats. I was one the thousands who protested the methanol plant and I am just as passionate about stopping the LNG project. Please listen to the citizens of Tacoma. We want a clean livable city that we can be proud of.

Sincerely,

David Fenbert

Sent from [Mail](#) for Windows 10

Atkinson, Stephen

From: Kenney Fengler <kef@harbornet.com>
Sent: Tuesday, September 12, 2017 6:05 PM
To: Planning
Subject: Tideflats Interim Regulations

September 12th 2017
Planning Commission:

I object to the proposed amendment to the Tacoma Municipal code, including the Shoreline Master Program. We have lived at 1244 and 1242 Browns Point Blvd for over 40 years. We have paid taxes all these years. And now you want to rezone my property line. This is unfair to all the people on the Northeast Tacoma Hill I feel the Planning Commission is taking advantage of us the property owners.

Patricia M. Fengler
1244 Browns Point Blvd. N.E.
Tacoma, Wa.98422

David Fischer
708 Market Street, #411
Tacoma, WA 98402
(253)468-0749
Email: ghotier59@gmail.com

September 11, 2017

Mr. Chris Beale, Chair
Mr. Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Tideflats Interim Regulations

Dear Mr. Beale and members of the Planning Commission:

As an active advocate for Tacoma and Pierce County, I work across many sectors – at my day job it’s obviously arts and culture. Not as visible is my service as a volunteer and advisor: I am active in both K-12 education and higher education causes, civic engagement and social justice causes, as well as deeply experienced in environmental, and urban planning issues from my days working with Lawrence Halprin, F-AIA, F-ASLA. My investment of education, time and financial contribution in these causes has given me the opportunity to learn how important it is to keep our economy diversified; and recognize how interdependent is our entire community!

As a non-profit leader, I see that our social fabric is fraying, and our economy is tenuous. I am committed to conversations, actions and policies that will hold us together. Pitting one sector against another will not help us advance our common goals and strengthen our community. Making progress on safety, environmental protection and our economic strength are NOT mutually exclusive. We can navigate the issues that are in conflict, ensure progress, compromise and keep strong our focus on jobs all at the same time!

I do not support the proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses.” This will further divide us, and undermine the balanced approach to the creation and retention of jobs in Tacoma. Such a policy will create a chilling effect on much of the business sector, from trade to manufacturing, from finance to legal support, and of course, will impact our community’s capacity to give and support the non-profit sector.

Washington State's environmental laws are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. The City of Tacoma has sufficient regulations and ordinances in place to protect our environment. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations.

The proposed interim regulations are unnecessary. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities. Thank you, and your fellow commissioners for your time and energy in serving our community.

Sincerely,

A handwritten signature in blue ink that reads "David Fischer". The signature is written in a cursive style with a large, sweeping initial "D".

David Fischer

Karen Fleckner
1922 Lighthouse Lane NE
Tacoma, WA 98422

City of Tacoma Planning Commission
747 Market Street, Room 345
Tacoma, WA 98402
planning@cityoftacoma.org

September 13, 2017

Dear Planning Commission:

My name is Karen Fleckner and am a resident of Pointe Woodworth in NE Tacoma. I am writing you this communication in support of creating a buffer zone between residential neighborhoods and unabashed industrial growth located at Marine View Drive from Taylor Way to the 11th Street bridge. Our residents deserve a balanced consideration for their health and well-being as well as the commercial viability of the businesses at the Port.

I recognize the need for economic growth for Tacoma, but it is also necessary to remedy the poor planning of permitting a residential neighborhood so close to industrial processes that will no doubt imperil citizens health. I believe there needs to have some interim regulations that protect Tacoma's NE taxpayers, voters, friends and families that are being negatively impacted. We need our planning commission and elected officials to provide regulatory protection against carcinogenic pollution continuously showering our homes and endangering our lives.

Our community is requesting limitations on allowed uses and growth of certain industrial processes; namely fossil fuels. We need to have a voice in this process and to know that our concerns are not only being heard, but heeded. An outcome that will work for all of us (businesses and residences alike) in Tacoma is required.

Sincerely,

Karen Fleckner

Atkinson, Stephen

From: Scott Fortino <scott14oh@gmail.com>
Sent: Monday, September 11, 2017 7:42 PM
To: Planning
Subject: Clean Tacoma

Please support clean energy and environmentally responsible project to make and keep Tacoma beautiful.

Atkinson, Stephen

From: Gunnar Gehring <gunnar@pugetpaving.com>
Sent: Tuesday, September 12, 2017 4:14 PM
To: Planning
Subject: RE: Public Hearing on Proposed Industrial Use Regulations

Dear Planning Commission,

I am a business owner and employer. In addition to providing quality civil construction and asphalt paving services, our business provides 65 family-wage jobs in the Tacoma area.

We here at Puget Paving are all concerned about the proposed regulations that seek to drastically alter or limit industrial uses on the Tacoma tideflats. The environment and our shared social values are important, but please consider jobs, and any adverse impacts to our Port's competitiveness, while also balancing our economic, social and environmental values. This is NOT a choice between jobs and the environment.

Thank you.

Gunnar Gehring
President



From: [Alison Tracy Hale](#)
To: [Planning](#)
Subject: Public Comment: Sub-area Plan Interim Regulations
Date: Wednesday, September 13, 2017 4:01:42 PM

Dear Members of the Planning Commission:

I am writing to share my thoughts on interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma.

As a Tacoma homeowner, employee, and mother, I urge the committee to act now to **prohibit** the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to **prevent the expansion** of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am deeply concerned that the latest amendment to interim regulations includes a loophole that **permits the expansion of existing terminals**, and I ask the committee to **close the loophole**. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to **allow non-polluting businesses to expand** if needed in order to **encourage non-polluting industry** over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business--as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally--and foundationally--the committee must **respect** the Puyallup Tribe and their preferences when formulating and monitoring interim regulations.

If you care for the health and well-being of all Tacoma residents you will put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide **together** how to move forward. Since the City of Tacoma and the Port affiliates often claim "jobs" as a reason to promote dirty industry, I wish to remind you that clean industry provides job opportunities too--and that continued or expanded dirty industry only makes our Port undesirable to such forward-looking corporations.

The many natural disasters of the past few weeks attest to the urgency of making our nation truly **green** if we and the planet are to survive. Please don't keep Tacoma stuck in our dirty and toxic past. Institute a moratorium on all petrochemical growth in our beloved city of Tacoma NOW and help us develop a healthy, clean, and profitable future!

Thank you for your serious and thoughtful consideration and for your service to our community. We look to you for moral and ethical action that will ensure the health of our environment, our citizens, and our economy.

Sincerely yours,

Alison Hale

4419 N 30th St
Tacoma 98407

SITTS & HILL ENGINEERS, INC.

Professional Engineers and Planners
4815 Center Street, Tacoma, WA 98409
sittshill.com
(253) 474-9449

BRENT K. LESLIE, P.E.
KATHY A. HARGRAVE, P.E.
LARRY G. LINDELL, P.E.
MICHAEL A. McEVILLY, P.L.S.

September 14th, 2017

CITY OF TACOMA
Planning and Development Services Department
747 Market Street
Tacoma, Washington 98402

Attn: Mr. Brian Boudet, Planning Division Manager

Subject: Interim Regulations for the Tideflats

Dear Mr. Boudet:

Thank you for the opportunity to comment on the proposed Interim Regulations for the Tideflats and Tacoma M-IC Zoning areas. To better understand the changes that the Planning Commission is considering with respect to industrial projects, we have reviewed the following:

- The current Zoning Code for M2, PMI, and the M/IC Overlay District
- The City of Tacoma Zoning Reference Guide 2015
- Resolution No. 39723 (Amended 5-19-2017)
- The Tideflats Interim Regulations prepared for the September 13, 2017 Planning Commission Public Hearing.

We consider the industries in the Port of Tacoma and the South Tacoma M/IC Overlay Zones to be an integral part of the varied economic base that makes Tacoma successful. This is consistent with language presented by Council Members Campbell, Ibsen and Walker Lee in City of Tacoma Resolution No. 39723, "Whereas, the City has identified the following overall goals and guidelines for the Tideflats Subarea Plan... (2), the plan will support continued growth of this community's economy and employment base, and the important role of the Tideflats area as an economic engine for the City, Pierce County, and the region." We believe that interim and future Zoning Regulations should be: transparent; predictable; equally protective of the environment and the ability of industrial users to develop and expand their operations in appropriate locations.

A considerable portion of our core business at Sitts & Hill is for industrial clients in the City and the Port of Tacoma. There are many provisions that are under consideration in the proposed Interim Regulations for the Tideflats which would affect Industrial Districts citywide that we find encouraging. These include preservation of industrial land for industrial uses, restricting further residential development adjacent to Marine View Drive, and existing uses would be considered allowed and not subject to limitation on expansion.

Our clients consider many factors prior to beginning a new industrial project or expanding industrial uses. The following are some of these considerations:

1. Understanding the complexity of and timelines for the permitting process
2. Project pre-planning access with City Departments
3. The ability to work with Staff to help define SEPA Mitigating Measures that are appropriate to the project, if required
4. The ability to work with Staff after a Draft Staff Report has been prepared for a project prior publication and dissemination for a Public Meeting or a Public Hearing. This gives the Applicant an opportunity to obtain a favorable final Staff Report
5. A defined permit intake and review process

Industrial developers, like all large project developers, want to know that when they propose an industrial project that is allowed in the M2, PMI and M/IC Overlay Zones, if they follow the City Codes and Ordinances for development, their project can be constructed.

We know that our industrial businesses have choices when it comes to where to invest in their future. We also know that many industrial businesses provide living wage jobs to the communities in which they choose to invest. We want to see Tacoma continue to be a preferred location for industrial growth and expansion.

We do not recommend The Tideflats Interim Regulations, as "Emergency Measures" be implemented. We recommend the normal process by which the Zoning Code may be changed is followed for the Tideflats Subarea Plan. This allows all stakeholders, including the Port of Tacoma's tax base supporters (extending to all of Pierce County), to be included in the public process prior to implementation of proposed changes.

Sincerely,

SITTS & HILL ENGINEERS, INC.



Kathy A. Hargrave, P.E., Principal

From: [Kathy Hewitt](#)
To: [Planning](#)
Subject: Comments on Interim Regulation
Date: Thursday, September 14, 2017 3:38:45 PM

9/14/17

Dear Tacoma Planning Commission,

I've been a resident of Tacoma since 1988.

Last month I attended my 1st Port Commissioner's meeting. A majority of the meeting concerned contaminated areas at the port.

<!--[if !supportLists]-->1. Additional funds were approved for a study involving the Arkema Manufacturing area at the port. Arkema is the same company that walked away from chemical tanks in Crosby TX during Hurricane Harvey, allowing the tanks to explode and cause harm. These additional funds include looking at the sheet pile wall that is meant to stop contaminants from entering the Hylebos Waterway. They are concerned it could be making things worse, instead of better. They also need to study the stability of a plume containing arsenic.

<!--[if !supportLists]-->2. Funds were also approved for environmental cap repairs for another piece of property on the Hylebos Waterway.

<!--[if !supportLists]-->3. There was also a 1st reading for a new 5-year lease agreement with Fibres International, Inc. at 401 Alexander Ave. According to the Dept of Ecology's website, this is a superfund site with contaminants consisting of chlorinated solvents, PCBs, pesticides, and metals (especially zinc). The website also gives the status of the clean up and listed it as having started so I was surprised the port would even consider an extended lease on a site that is not fully cleaned up and more surprised that an industry is willing to place its employees on contaminated land.

I mention this port meeting because it really disturbed me. All I could see for the rest of that day and days that followed was a vision of port and city officials running on something like a hamster wheel – just running around and around in circles – with nobody willing or able to jump off.

I'm asking you to recommend a moratorium on all fossil fuels. The LNG plant must be halted. Stop the conversion of the Targa tanks to natural gasoline and stop US Oil expansion. The proposed interim plan allowing expansion is unacceptable. For the sake of Tacoma take the opportunity now to move forward and get off this self destructive cycle. I'm convinced that there are many viable, sound and economical possibilities for our port. It's past time to turn the port and Tacoma around.

Reflecting on this last month of environmental disasters, I don't want Tacoma, WA to be the next Crosby, Texas. I don't trust PSE, Targa, US Oil or any other fossil fuel industry to do the right thing during a critical time like an earthquake? It's obvious - they are in survival mode for themselves, not for us. We also saw that in such disasters, it is deemed unsafe for emergency personnel – they can't do a thing. Without a doubt, there is potential for a similar

or worse disaster to happen right here in Tacoma.

Please protect our citizens and recommend a moratorium of all fossil fuels, including the LNG plant, during this period before adoption of a subarea plan. My 2 grandchildren and grandchildren everywhere need a future of clean air, land and water.

Thank you for your work on this matter.

Sincerely,
Kathy Hewitt

Atkinson, Stephen

From: Janet Higbee <forliz@harbornet.com>
Sent: Sunday, September 03, 2017 8:26 AM
To: Planning
Subject: Interim Regulations

Dear Planning Commission,

I am a Tacoma Citizen with a view of the Salish Sea out my window that I have enjoyed these past 21 years. Recently I bought solar panels for my home instead of a car. I bike commute or use public transit and I support community based agriculture. So I try to decrease my personal dependency on carbon.

I thank you for your influence and work on behalf of the Port of Tacoma. I think you are the most important people in the world at this moment in history, not just for Tacomans but for the world. I mean this! You have a great opportunity to make the right decision. Please protect the Tideflats. Local governments must step in since the federal government supports continued reliance on fossil fuels.

Interim Regulations must be immediately put into place to prevent further fossil fuel projects from being constructed in our Tide Flats. It is imperative that we make local decisions about how to best use the precious land at the port. Otherwise powerful multinationals will reap profits for themselves while they pollute our waters, air and soil. Projects from outsiders like the Liquefied Natural Gas Plant take too much space and wipe out the potential for other sustainable industries that could employ Tacomans into the future. The Port is uniquely deep and will continue to attract fossil fuel industries, so we must protect it now with a pause on new and existing projects.

Thank you for your service. I beg you to protect the Salish Sea and Tacoma!

Janet Higbee-Robinson

From: [Eric Johnson](#)
To: [Planning](#)
Subject: Tideflats Interim Regs-Comment
Date: Thursday, September 14, 2017 10:46:41 AM

This will be very short. We seriously NEED Regulations for this area that heavy, relative dirty, industry companies see as a goldmine. PLEASE step up as our representatives and institute the well thought out plan.

Methane?, Steel, LPG?, Gas Refining and loading?...It's all a ticking time bomb down there below me with serious environmental consequences for Puget Sound and the Bay.

Lets focus on attracting a clean soft industry, if any. I heard Amazon is looking for a new headquarters....

Seriously, Thanks for your service and focus on this important initiative. Last thing on the labor front, I see help wanted signs and advertisements all over Tacoma, including Milgard Windows. A Labor shortage is a weak argument at best.

Thanks again,

Eric Johnson
1418 Browns Point Blvd
Tacoma
Office 253-576-3040

Atkinson, Stephen

From: tacmark10@comcast.net
Sent: Tuesday, September 12, 2017 2:01 PM
To: Planning
Subject: port of tacoma

Tacoma being a working class city and one which i have made my living, needs to keep the port of Tacoma industrialized. It is hard enough finding work now days in the industrial work and one which pays a livable wage.

please see that the shore and the port of Tacoma keeps it standard the way it is. for the sake of the working class. Please

thank you

mark jones
1426 military rd south
spanaway wa 98387

From: charles_joy
To: [Planning](#)
Subject: Interim
Date: Wednesday, September 13, 2017 1:02:13 PM

Lihuang,
Planning Commission,

Thank you for taking the time to review my comment. I will keep this short as I have already submitted a comment.

I would appreciate the commission to consider the following.

I continue to believe the best course regarding Fossil Fuel based businesses in the Tideflats is a complete moratorium. The Planning Commission could use the pause without interference to concentrate on preparing a concise, thorough, workable, generational, Sub Area Plan.

I would also ask the commission to consider including businesses that are not obvious abusers of our environment. Such as acres of warehouses serviced by fuel burning vehicles. The degradation to our home is not limited to the exhaust pollution but also particulate matter released from rubber and concrete contact, noise pollution, drippings from the chassis, traffic stoppages. As the tideflats are mostly off the public transportation grid employees will be asked to provide their own transportation, adding to the polluting congestion.

Thank you for your time and work with this difficult task, I sincerely appreciate all that you do.

Charles Joy
Tacoma, WA
[253 459 3319](tel:2534593319)



August 17, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

950 Pacific Avenue, Suite 410
Tacoma, WA 98402

253.383.4726
edbTacomaPierce.org

RE: Tideflats Interim Regulations (New) Staff Recommendations – Exacerbating the Problem

Dear Mr. Beale:

My letter to you dated August 2, 2017 (enclosed) expressed the EDB's concerns regarding the Planning Commission's Staff Recommendations relative to proposed Tideflats Interim Regulations. As I indicated then, and re-emphasize now, the recommendation that would have the City of Tacoma create a category called "high risk/high impact industrial uses" and lump a variety of existing and potential businesses into that category is arbitrary and unjustified.

Unfortunately, staff has exacerbated the problem with its updated recommendations. I refer to the memo dated August 11, 2017 from Stephen Atkinson addressed to the Planning Commission, subject: Tideflats Interim Regulations. This memo recommends the City (1) expand its arbitrary list even further to include additional categories of businesses as well as (2) expand the geographic reach of the recommendations to include additional industrial areas of Tacoma which are completely outside the boundaries of the subarea plan. Once again, I respectfully urge the Commission to reject these recommendations to ensure that the Tideflats Sub-Area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

A handwritten signature in blue ink that reads "Bruce Kendall". The signature is fluid and cursive.

Bruce Kendall
President and CEO

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, and Planning Commission members

ENCLOSURE

COPY



950 Pacific Avenue, Suite 410
Tacoma, WA 98402

253.383.4726
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August 2, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
City of Tacoma Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402



RE: Tidel flats Interim Regulations Staff Recommendations

Dear Mr. Beale:

I am writing with regard to the memo from Stephen Atkinson dated July 27, 2017 to members of the Planning Commission, subject: Tidel flats Interim Regulations. Specifically I would like to address Attachment 1: Tidel flats Interim Regulations: Summary of Staff Recommendations.

The staff recommendations would have the City of Tacoma arbitrarily create a category called "high risk/high impact industrial uses" and lump a variety of existing and potential businesses into that category. This is beyond the pale.

There is neither scientific research nor quantifiable method to the proposed categorization of industrial uses in the Tidel flats. In addition, the recommendation to limit existing companies' growth potential by 10-20% creates a chilling effect across the Tacoma economy.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is good for their employees, customers and the bottom-line.

COPY

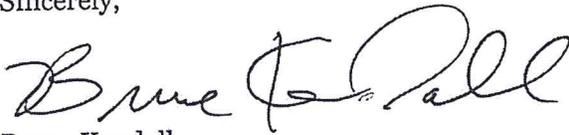
edb

edbTacomaPierce.org

The Tideflats area is designated by the City of Tacoma and the Puget Sound Regional Council as a Manufacturing/Industrial Center. That very designation was, by design, created to encourage the very kind of industrial uses that the proposed interim regulations now seek to block. The family-wage industrial jobs in the Tideflats pay among the highest in Tacoma and are well above the City and County average. Randomly slapping prohibitions or limitations on the creation of these jobs will have detrimental effects for the quality of life of hundreds of families as well as the city's tax base.

The staff recommendations for interim regulations are unnecessary, arbitrary, and unsupported by scientific evidence. I respectfully urge the Planning Commission to reject these recommendations to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,



Bruce Kendall
President and CEO

Cc: Marilyn Strickland, Mayor
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division

September 13, 2017



Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Tideflats Interim Regulations – No need for a “pause”

Dear Mr. Beale and members of the Planning Commission:

The Economic Development Board for Tacoma-Pierce County places equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is good for their employees, customers, and the bottom-line.

The proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses,” will undermine the balanced approach to the creation and retention of jobs in Tacoma. They will create a chilling effect on not only the manufacturing sector, but on other industries that are already wondering which among them is next to be targeted by the City’s increasingly volatile regulatory climate.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interests in our economic, social, and environmental wellbeing.

The proposed interim regulations are unnecessary, arbitrary, and unsupported by facts. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,



Bruce Kendall
President and CEO

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, and Planning Commission members

Atkinson, Stephen

From: Kriss Kevorkian <drkkevorkian@gmail.com>
Sent: Tuesday, September 05, 2017 5:44 PM
To: Planning
Subject: PSE Tideflats

Dear Planning Commission,

2017. Let me remind you of the year again, 2017. There is NO need for fossil fuels of any kind any longer!

Please don't let the corporations tell you that jobs will come and money will increase the coffers of city government b/c one tiny accident will destroy everything!

How many times do people have to repeat history before realizing that it's NO LONGER NECESSARY to use fossil fuels, FRACKED GAS, when solar is available, clean and won't cause a DISASTER if there is an accident.

What I find so remarkable is the news that we're told almost on a daily basis that we are in for a HUGE earthquake! With that news, how can any sane individual consider anything but solar!?

PSE is playing Tacoma for a fool. They will lose nothing if an accident occurs b/c we see constantly what little corporations ever pay for their environmental disasters. The people will lose not only their property but their health if an accident occurs.

Please take a stand to put our planet and our neighbors first.

WATER IS LIFE!

Sincerely,
Kriss

3716 103rd Ave CT NW Gig Harbor, WA 98335
Kriss A. Kevorkian, PhD, MSW
www.drkkevorkian.com

It is horrifying that we have to fight our own government to save the environment. ~Ansel Adams

Atkinson, Stephen

From: Carol Kindt <Carolkindt@msn.com>
Sent: Sunday, September 10, 2017 3:33 PM
To: Planning
Subject: Tideflats subarea plan

I am writing to express my concerns for the Tideflats subarea plan as proposed:

1. I am concerned that the proposed 2500 foot “expanded notice” area for any heavy industrial projects city-wide which would require a SEPA determination or discretionary permit is not wide enough. 2500 feet from the current PSE LNG plant, which is now in the process of preliminary construction as permitted, does not give notice to most residents, either in single family residences, or multi-family residences, who would be adversely affected in the event of a worst-case scenario, i.e., an explosion or even severe leakage from that liquefied natural gas storage tank.

As of this date there has not yet been issued a permit from the Puget Sound Clean Air Agency, which jurisdiction covers emissions from that plant. To date, Puget Sound Energy has attempted to convince PSCAA that they will be in full compliance with all air quality requirements. The Puyallup Tribe published a 51 page report on climate change and its impacts in 2016. It listed multiple concerns, from damage to sea life to an increase in asthma rates in children in Tacoma, all as result of the decrease in air quality in this region due to pollution directly related to heavy industrial projects within the Port of Tacoma.

“This threat is especially critical in Pierce County, where asthma is already a concern; studies have shown a 1 to 7% increase in asthma diagnoses between 2002 and 2012, with 30% of children in Pierce County public schools experiencing an asthma attack in 2012.**[69]”

The above is directly from the report prepared by the Puyallup Tribe. It obviously doesn’t pertain only to indigenous children but affects all of our children and grandchildren.

Nevertheless, the Port of Tacoma entered into a 25-year lease with Puget Sound Energy to construct a storage tank for the purpose of storing liquefied natural gas. That LNG would in turn be used by TOTE to fuel their ships, and to a lesser degree for use by consumers in “peak” periods of usage.

The fact that the City of Tacoma is NOT a consumer of energy provided by PSE, but rather has its own utility for its customers, was apparently not taken into account. The sole purpose of this storage facility seems to be for the purpose of fueling the TOTE vessels.

I would request that given the fact that the 2500 foot “notice” area does not include most residences or schools which would be directly adversely affected by the pollution produced by this LNG plant, that notice be expanded to a **one mile wide area in all four directions surrounding the site of this heavy industrial project.**

I would further ask that since #2 of the proposed subarea plan prohibits “the expansion of existing **non-industrial uses in the Port/Tideflats**, that it would be nonsensical to not have this same prohibition apply to **Heavy industrial uses in existence**. Why would existing facilities such as the LNG plant (which has not yet been constructed, and is still in the middle of the permit process), **which has the potential to cause widespread harm, not just from leaks or explosions but also inherent air pollution, be allowed to expand under this subarea plan, while non-industrial uses be prohibited from expanding its uses?**

Further, I am concerned that as of this date, there is NO fire station or other facility in place to mitigate any damage the existence of the LNG plant might incur.

We have seen first hand in the last few weeks the extreme damage in Texas and Florida caused by natural disasters, including the explosion of a large chemical plant in Texas. We have witnessed and felt first hand the damage caused by the rampant forest fires throughout the West, including the State of Washington. We have experienced the increased difficulty of even breathing the air, caused by ash and smoke from those fires which hung over the skies of this region. We are aware of the massive earthquake which took place in Mexico earlier this week.

If we continue to ignore the fact that we live in a fault zone, that we live on the water, and that we are not immune to such natural disasters, and we allow such an industry such as a liquefied natural gas storage facility in our backyard, we must at least give notice, and have the very minimum response mechanisms in place. We do not.

We have no fire station. We have no viable evacuation routes out of that area. We are not immune from the pollution from forest fires which occur hundreds of miles from where we live. How can we possibly think that pollution which occurs from toxic emissions in our own neighborhoods would not affect us? This concern is immediate. There is no legal language which guarantees 100% protection and mitigation of all disasters. That is clear at this very moment in time.

There is, however, language which would address the planning necessary to prevent some of the worst consequences of heavy industrial uses within the Port of Tacoma, which is part of this subarea interim regulations plan.

This city, and the Puyallup Tribe of Indians, has been subject to contamination and pollution from heavy industrial uses (including all of the uses included in #4 of the Subarea Plan) for over 100 years. Hundreds of millions of dollars have been spent by the EPA, the State of Washington, and the City of Tacoma to mitigate some of the damage from these sites.

It is insane to look at what it has cost to clean up this subarea, and to blindly enter into yet another contract with another polluter, if not destroyer of this body of water and land. The lease contract has already been signed between the Port of Tacoma and Puget Sound Energy.

I am not asking for the Port to rescind its contract. I am asking that protections be put in place to protect the residents of Tacoma, native and non-native, in the event of a catastrophic event exacerbated by the existence of a liquefied natural gas storage plant within this subarea. That includes expanded notice, beyond which is being proposed, and the construction and full operation of a fire station before any consideration of "expansion" by existing heavy industrial facilities take place.

Respectfully submitted,

Carol M. Kindt
5939 North 26th Street, Apt. 100
Tacoma, WA 98407
(253) 576-5248
Sent from [Mail](#) for Windows 10

**GOODSTEIN
LAW GROUP**

PLLC

501 S. G Street
Tacoma, WA 98402
Fax: (253) 779-4411
Tel: (253) 779-4000

Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

June 19, 2017

Hand Delivered & Email

Tacoma Planning Commission
Tacoma Municipal Building
747 Market Street #345
Tacoma, WA 98402

Subject: Tideflats Interim Regulations

Dear Chair Beale & Commission,

We serve as the Port of Tacoma’s General Legal Counsel. We have had the pleasure of working closely alongside the City Staff in successful defense and support of numerous City land use planning decisions. However, today we speak in opposition to adoption of the proposed interim Regulations. We outline the reasons below.

1. Interim Regulations Disrupt Important State, City and Regional Planning Processes & Mandates.

Given how state law mandates have already been thoughtfully implemented and regionally synchronized, the proposed interim regulations are both unnecessary and legally disruptive.

A. State Law. Numerous state planning elements extend protections to the industrial and Port uses within the Tideflats, which the proposed interim regulations do not recognize or comply with.

The Growth Management Act (GMA) requires a mandatory “Comprehensive plan—Port element”,¹ applicable to the City and Port of Tacoma. This State planning law establishes

¹ RCW 36.70A.085-Comprehensive plans—Port elements.

(1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.

(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.

(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

several protections for the Port, and provides that the City and Port are to work together and “must establish policies and programs” to:

- (a) Define and protect the core areas of port and port-related industrial uses within the city;
- (b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and
- (c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

Rather than limit and stifle growth, state law provides that the Container Port Element must “**retain sufficient planning flexibility to secure emerging economic opportunities.**” Id.²

-
- (b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and
 - (c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.
- (4) Port elements adopted under subsections (1) and (2) of this section must be:
- (a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and
 - (b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.
- (5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.
- (6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:
- (a) Creation of a port overlay district that protects container port uses;
 - (b) Use of industrial land banks;
 - (c) Use of buffers and transition zones between incompatible uses;
 - (d) Use of joint transportation funding agreements;
 - (e) Use of policies to encourage the retention of valuable warehouse and storage facilities;
 - (f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and
 - (g) Use of other approaches by agreement between the city and the port.
- (7) The *department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.
- (8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071.

² Other tools available under this section include authorization for the City to:

- (a) Create a port overlay district that protects container port uses;
- (b) Use of industrial land banks;
- (c) Use of buffers and transition zones between incompatible uses;
- (d) Use of joint transportation funding agreements;
- (e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

Additional ways the current process for developing Interim Regulations conflict with state law include:

- **State law** requires Collaboration with Port is required when adopting elements of a Port Container Plan³.
- **State law** RCW 36.70A.085 (6) lays out a menu of available actions that cities and port may use to develop Container Port Element – which do NOT include the unilateral city action of imposing interim regulations⁴.
- In fact under **state law**, deviation for the list of available planning actions laid out in RCW 36.70A.085 (6) expressly requires “**agreement between the city and the port,**” which is not present here.
- The interim regulations, as proposed, have the **state law** concept of buffering for incompatible uses exactly backward. ⁵ RCW 36.70A.085 (f) calls for the Use of

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port

³ “Port elements adopted ... must be developed collaboratively between the city and the applicable port” RCW 36.70A.085 (3).

⁴ In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:

(a) Creation of a port overlay district that protects container port uses;

(b) Use of industrial land banks;

(c) Use of buffers and transition zones between incompatible uses;

(d) Use of joint transportation funding agreements;

(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) **Use of other approaches by agreement between the city and the port.**

⁵ “Finally, existing core area buffers need to be reviewed against Policy CP-1.4, which states “Reduce the potential for land use conflicts between industrial development and surrounding non-industrial uses by providing for adequate Industrial/Commercial buffer areas ” Given recent development activity, the CPE observation that “ ... to the east, the steep bluff rising above Marine View Drive provides a clear transition from the industrial area to the residential development at the top of the bluff ... ” and the CPE conclusion that “ ... the existing geography provides a very effective buffer and no additional transition area is necessary ... ” needs to be reviewed against current best practices and the changing development landscape. This review will complement the citywide Open Space Corridors regulatory review that is currently underway.” *Office Of The City Council Consideration Request (CCR)*. Significantly, the CCR is signed by only one council person, lacks the additional two supporting Council signatures and should not override Resolution #39723, adopted by the full City Council, which provides that “that **a subarea planning process is the best course of action to comprehensively address land use issues associated with the future of the tideflats/port area in Tacoma**”.

“Currently zoned as PMI, parcels along Marine View Drive and east of the Hylebos waterway and creek do not provide a sufficient transition area that would allow the long-term viability of the industrial areas while **protecting the surrounding residential areas from unreasonable impacts.**” *North East Tacoma Neighborhood Council*.

limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; not elimination or watering down of industrial uses within the Port areas.

- The interim regulation proposals are contrary to the purpose and intent of why **state law** requires inclusion of a Container Port Element in the Comp Plans of qualifying cities and counties, including Tacoma, because:
 - “industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and
 - directly create thousands of high-wage jobs throughout our region, and
 - “container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, ...and limit the opportunity for improvements to existing port-related facilities ⁶

B. City Comprehensive Plan and Codes. The City of Tacoma adopted its Container Port Element of the City’s Comp Plan in 2009⁷. The current proposed, interim regulations impermissibly conflict nearly every one of these over-arching, adopted Comp Plan policies:

- Protect the **long-term function and viability** of this area, GOAL CP–1.⁸

“Within the City, the Tidelands area is regionally and locally designated as an important Manufacturing/Industrial Center (M/IC) - a location with unique characteristics that should serve as a long-term and growing employment center. As required by State law (RCW 36.70A.085), the City adopted a Container Port Element (CPE) in its Comprehensive Plan in 2014. Consistent with State requirements, this CPE provides policy guidance relative to protection of core areas of container port and port-related industrial areas within the City and to protection against potential land use conflicts, both within and along the edge of the core area.”

⁶ RCW 36.70A.085, - Findings—Intent—2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

⁷ RCW 36.70A.085

⁸ GOAL CP–1 Identify the core port and port-related container industrial area and protect the long-term

- Protect the **continued viability** of the Core Area, GOAL CP–2.⁹
- Promote the continued **growth** and vitality of port and port-related industrial activity. GOAL CP–3¹⁰
- **Work in partnership with the Port of Tacoma** and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers. GOAL CP–4 ¹¹
- Identify, **protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods** within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system. GOAL CP–6¹²
- Provide, **protect and preserve the capital facilities and essential public services needed to support** activities within and beyond the Core Area. GOAL CP–5 ¹³

In addition:

- The interim regulations which propose to downzone, restrict and or limit industrial uses conflict with the existing Comp Plan element CP-1.2, which requires that the City “**Prohibit uses that would negatively affect the availability of land for the primary port and port-related cargo and industrial function of the Core Area.** Encourage aggregation of industrial land for future development as cargo port terminals and supporting uses.
- The interim regulations which propose to interfere with existing buffers conflicts with the **City’s own Comprehensive Plan**, which conclusively determines that the existing buffers are “very effective” and that “no additional Industrial / Commercial Buffer area is necessary.”¹⁴

function and viability of this area (see Figure 41, Container Port Core Area).

⁹ GOAL CP–2 Establish an Industrial/Commercial Buffer Area around the Core Area that will protect the continued viability of the Core Area while providing for a compatible Industrial/Commercial Buffer to development in the larger surrounding area.

¹⁰GOAL CP–3 Promote the continued growth and vitality of port and port-related industrial activity.

¹¹ GOAL CP–4 Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers.

¹² GOAL CP–6 Identify, protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system.

¹³ GOAL CP–5 Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area

¹⁴ CP-4 Land Use Buffers of the City’s Comp Plan, Container Port element, identifies the existing buffers and has concluded that “*the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.*”

“To the west, the railroad tracks and steep bluff rising above Dock Street to the neighborhoods to the west provide a clear buffer to the industrial area. Similarly, to the east, the steep bluff rising above Marine View Drive provides a clear buffer from the industrial area to the residential development at the

- It is not just coincidental that **Tacoma City Code**¹⁵ conflates “interim regulations” and “Moratoria”, because interim regulations, as proposed, are just that. The Port challenges that the required criteria is in place to support this type of action.

C. Required Regional Planning Directives. The proposed interim regulations erode regional planning directives. The City’s Comprehensive Plan, Container Port Element as currently written is consistent with Regional Planning Framework, overseen by the Puget Sound Regional Council (PSRC)¹⁶ and implemented through its Vision 2040 Policy Report.

PSRC is the vehicle by which the Counties develop regional planning policies per GMA. The Growth Management Act states that “multicounty planning policies shall be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas and may be adopted by other counties.” (RCW 36.70A.210 (7)).¹⁷

GMA calls for coordination between local, regional, and state planning efforts.¹⁸

To advance this coordination, state law requires PSRC to certify that regional transit plans, countywide planning policies, and local comprehensive plans within the central Puget Sound region conform to: (1) established regional guidelines and principles, (2) the adopted long-range regional transportation plan, and (3) transportation planning requirements in the Growth Management Act. RCW 47.80.023.

Within the central Puget Sound region, the multicounty planning policies in VISION 2040 serve as the regional guidelines and principles under RCW 47.80.026.

Jurisdictions and agencies applying for PSRC funding or proceeding with any project submitted into the Regional Transportation Improvement Program, are required to

top of the bluff. In both these areas, the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.”

¹⁵ TMC 13.02.055

¹⁶ PSRC is the vehicle by which the Counties develop regional planning policies per GMA. The Growth Management Act states that “multicounty planning policies shall be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas and may be adopted by other counties.” (RCW 36.70A.210 (7)). The multicounty policies provide a mechanism for achieving consistency among cities and counties on regional planning matters. They also guide a number of regional processes, including the Regional Council’s policy and plan review process, the evaluation of transportation projects seeking regionally managed funding, and the development of criteria for Regional Council programs and projects.

¹⁷ The multicounty policies provide a mechanism for achieving consistency among cities and counties on regional planning matters. They also guide a number of regional processes, including the Regional Council’s policy and plan review process, the evaluation of transportation projects seeking regionally managed funding, and the development of criteria for Regional Council programs and projects.

¹⁸ RCW 36.70A.100 and 108.

have first obtained PSRC's "certification" of local comprehensive plans.¹⁹

Specific to Tacoma, PSRC last certified the City of Tacoma's comprehensive plan amendments in 2014.²⁰

More recently, PSRC reviewed the City of Tacoma's Comprehensive Plan's periodic update, adopted by the city on December 1, 2015, and issued a January 28, 2016 recommendation²¹ to the PSRC Growth Management Policy Board, Transportation Policy Board, and Executive Board that:

The Puget Sound Regional Council certifies that the transportation-related provisions in the City of Tacoma 2015 comprehensive plan update conform to the Growth Management Act and are consistent with multicounty planning policies and the regional transportation plan.

In addition, **the proposed interim regulations are directly counter to PSRC's regional designation and its goals.** PSRC has designated various "Centers".²² Port of Tacoma was designated a Regional Manufacturing/Industrial Center in 2002.²³

- Vision 2040 provides "**manufacturing/industrial centers are primarily locations of more intense employment and** are typically not appropriate for housing."
- VISION 2040 calls for the "**recognition and preservation of existing**

¹⁹ The certification requirement in the Growth Management Act is described in RCW 47.80. The specific requirements for transportation elements in local comprehensive plans are spelled out in RCW 36.70A.070. PSRC has developed an overall process (Adopted Policy and Plan Review Process, Revised September 2003) for reviewing and certifying local, countywide, regional, and transit agency policies and plans. PSRC's Interlocal Agreement, Section VII, also provides direction for the review of local comprehensive plans and countywide policies (Resolution A-91-01, amended March 1998). The Council's Executive Board last updated its process for Policy and Plan Review in September 2003. The process is also described in VISION 2040, Part IV: Implementation.

²⁰ See Page 1 here...

<http://www.psrc.org/assets/13075/Tacoma-CompPlan-2015-Certification.pdf>

²¹ ²¹ See Page 1 here...

<http://www.psrc.org/assets/13075/Tacoma-CompPlan-2015-Certification.pdf>

²² "VISION 2040 describes multiple types of centers, including regionally designated centers (regional growth centers and regional manufacturing industrial centers), other centers (centers in Larger Cities and centers in Small Cities/Town Centers), and other central places (such as neighborhood centers, activity nodes, and station areas)." *Vision 2040, Appendix E-4 Center Plans.*

²³ Regional Manufacturing/Industrial Centers. Unlike regional growth centers, manufacturing/industrial centers are primarily locations of more intense employment and are typically not appropriate for housing. VISION 2040 calls for the recognition and preservation of existing centers of intensive manufacturing and industrial activity and the provision of infrastructure and services necessary to support these areas. These centers are important employment locations that serve both current and long-term regional economic objectives. VISION 2040 discourages non-supportive land uses in manufacturing/industrial centers, such as retail or non-related offices. And see: <http://www.psrc.org/assets/281/mic-profile-PortofTacoma.pdf>

centers of intensive manufacturing and industrial activity and the provision of infrastructure and services necessary to support these areas. These centers are important employment locations that serve both current and long-term regional economic objectives”.

- Also, “VISION 2040 **discourages non-supportive land uses in manufacturing/industrial centers, such as retail or non-related offices.**” Vision 2040 at page 49.
- Vision 2040 provides the following goals for Regional Manufacturing/Industrial Centers²⁴:
 - The region will continue to **maintain and support viable regional manufacturing/industrial centers** to accommodate manufacturing, industrial, or advanced technology uses.
 - MPP-DP-8: Focus a **significant share of employment growth** in designated regional manufacturing/industrial centers.
 - MPP-DP-9: Provide a regional framework for designating and evaluating regional manufacturing/industrial centers.
 - MPP-DP-10: Give funding priority — both for transportation infrastructure and for economic development — to support designated regional manufacturing/industrial centers consistent with the regional vision. Regional funds are prioritized to regional manufacturing/industrial centers. County-level and local funding are also appropriate to prioritize to these regional centers²⁵.

The proposed interim regulations completely fail to address the resulting **regional planning impacts**. As just one example, your Staff Report acknowledges that the City relies heavily on the Port Tideflats to meet the job growth allocated by VISION2040. That job growth allocation is based on the existing Comp Plan and uses, as certified by PSRC, which would be negatively impacted by the interim regulation proposals.

2. The Subarea Plan Process is the Authorized and Better Process.

Tacoma is already undertaking the Tideflats sub area planning contemplated by GMA²⁶.

The Sub Area Planning process is consistent with state law’s mandate for cities to develop Port Container Elements collaboratively, Tacoma’s own Comprehensive Plan and land use codes, and the PSRC’s Vision 2040 Report and its designation of the Tacoma Tideflats as a significant Manufacturing and Industrial job growth Center.

The Port agrees with Tacoma Resolution #39723, adopted by the full City Council,

²⁴ Vision 2040 at p. 49, http://www.psrc.org/assets/1739/Development_Patterns.pdf

²⁵ Vision 2040 at page 49.

²⁶ (RCW 36.70A.080 2), “A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan”).

Planning Commission- Opposing Interim Regulations
Port Legal Counsel
June 21, 2016 - 9 -

where it concludes that “**a subarea planning process is the best course of action to comprehensively address land use issues** associated with the future of the tideflats/port area in Tacoma”.²⁷

The Planning Commission is urged to devote its finite energies and resources to the Sub Area Planning process. Thank you for your consideration.

Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake.

Carolyn A. Lake

cc: Port of Tacoma Commission
Chief Executive Officer John Wolfe
Tacoma City Council Mayor Marilyn Strickland
Deputy Mayor Robert Thoms
Tacoma City Council Council
Elizabeth Pauli, Tacoma City Manager
Peter Huffman, Tacoma, Director Planning and Development Services
Department
Lihuang Wung, Tacoma Senior Planner

²⁷ “WHEREAS the City and Port of Tacoma (“Port”) have agreed that a subarea planning process is the best course of action to comprehensively address land use issues associated with the future of the tideflats/port area in Tacoma (“Tideflats Area”), and WHEREAS the City has received multiple applications/requests for zoning and land use process changes in the Tideflats Area, including the Northeast Tacoma Buffer Zone application, the implementation of the Container Port Element of the City’s Comprehensive Plan, and the Director’s Rule relating to Expanded Notification for Large Industrial Projects, and WHEREAS consolidating these requests into a subarea plan will contribute to the Port and City and the community as a whole by facilitating a j well-defined, comprehensive community discussion about creating clear policy and a long-term vision for the Tideflats Area that addresses issues such as land I use and zoning, capital facilities including transportation and infrastructure, environmental protection and review, and economics,..” Tacoma Resolution #39723.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GUNNAR HOLMQUIST, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

NO. 2:17-CV-0046-TOR

ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS

BEFORE THE COURT is Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim (ECF No. 11). This matter was submitted for consideration with oral argument. The Court held a hearing on July 12, 2017. At the hearing, Lindsey Schromen-Wawrin represented Plaintiffs and Serena M. Orloff represented the United States. The Court has reviewed the record and files herein, and is fully informed. For the reasons discussed below, Defendant’s Motion to Dismiss (ECF No. 11) is **GRANTED**.

//

1 BACKGROUND

2 This case arises out of a failed initiative to ban the transportation of certain
3 fossil fuels by rail through the city of Spokane. Relevant to this case, Spokane
4 encourages residents to take part in the legislative process by allowing its citizens
5 to submit citizen’s initiatives. Spokane City Charter § 82. Citizens submit the
6 initiative by filing the proposed law with the City Clerk, who forwards the initiative
7 to the City Council for consideration. Spokane Municipal Code § 02.02.030.

8 The City Council “may pass the measure as proposed, reject [it] and
9 propose another one dealing with the same subject to be considered as council
10 legislation, or submit the initiative measure to the voters” *Id.* § 02.02.040.
11 If the City Council “does not pass the measure as proposed or submit [it] to the
12 voters,” the initiative is forwarded to the City Hearing Examiner who must “issue a
13 formal written opinion as to the legal validity and effect of the proposed measure .
14” *Id.* With the benefit of that analysis, the proponent can choose to revise the
15 measure by withdrawing it and submitting a new one. *Id.*

16 Alternatively, the proponent may seek to bypass the City Council by
17 collecting signatures from Spokane voters. *Id.* If the proponent is able to collect
18 the signatures of at least five percent of the electorate, “the council shall either pass
19 such ordinance without alteration or submit it to popular vote at the next available
20 general municipal election.” Spokane City Charter § 82.

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FACTS

Plaintiff Dr. Holmquist submitted two initiatives (Initiative Nos. 2016-2 and 2016-6) to amend the City Charter and City Code, respectively—the first on June 10, 2016, and the second on July 6, 2016. ECF Nos. 1 at ¶¶ 13, 17; 1-2; 1-3. The initiatives sought to ban the transportation of coal and oil by rail within the City of Spokane, citing concerns that such violated the “right of the people of Spokane to a healthy climate.” ECF No. 1 at ¶¶ 14, 18. The City Council took no action to place the first initiative on the ballot and declined to place the second initiative on the ballot, “citing concerns about federal preemption. ECF No. 1 at ¶¶ 16, 19.

Spokane City Councilmember Breean Beggs introduced Resolution No. 2016-0064 on July 18, 2016 proposing a similar prohibition of the transit of certain fossil fuels by rail within the City of Spokane. ECF No. 1 at ¶ 20. The Spokane City Council voted unanimously to adopt the resolution, and requested that the Spokane County Auditor hold a special election on November 8, 2017 for the ballot proposition. ECF No. 1 at ¶ 21.

On August 2, 2016, the Hearing Examiner for the City of Spokane issued a legal opinion regarding Initiative 2016-6 opining that federal law would preempt any attempt to restrict or prohibit the operations of a rail carrier and that a “ban on the transport of oil and coal by rail is therefore outside the scope of the initiative power.” ECF No. 1 at ¶¶ 22-23. On August 15, 2016 Council President Ben

1 Stuckart, citing preemption concerns, introduced Resolution No. 2016-0071 to
2 rescind Resolution No. 2016-0064 and thereby withdraw the Spokane City
3 Council’s request to the Spokane County Auditor for the placement of the
4 Resolution on the November 8, 2016, ballot. ECF No. 1 at ¶¶ 24-25. The City
5 Council adopted the resolution to rescind by a 5-2 vote. ECF No. 1 at ¶ 26. Later,
6 Councilmember Beggs filed a new initiative seeking – once again – to ban the
7 transit of coal and oil by rail through the City of Spokane, but the City Council
8 decided to take no action on the initiative. ECF No. 1 at ¶¶ 26-28.

9 INTRODUCTION

10 The parties do not dispute that the Interstate Commerce Commission
11 Termination Act of 1995 (ICCTA) preempts the proposed initiatives. The dispute
12 centers on whether – as Plaintiffs argue – the preemptive effect violates Plaintiff’s
13 purported constitutional right to a livable and healthy climate by prohibiting
14 Plaintiffs from passing legislation that would curb the purported deterioration of
15 the climate. Defendant has moved the Court to dismiss the action for failure to
16 state a claim and lack of standing. The Court finds Plaintiffs claim fails on
17 justiciability grounds because the issue is not ripe, fails for lack of standing, and
18 any relief requested would amount to an advisory opinion; the Court need not
19 address the remaining contentions.

20 //

LAW ON JUSTICIABILITY

1
2 The jurisdiction of federal courts is defined and limited by Article III of the
3 Constitution, which extends judicial Power to cases and controversies. *Flast v.*
4 *Cohen*, 392 U.S. 83, 94 (1968). This forms the basis for the judicial doctrine of
5 justiciability—“the term of art employed to give expression to this dual limitation
6 placed upon federal courts by the case-and-controversy doctrine.” *Flast*, 392 U.S.
7 at 95. “Justiciability is itself a concept of uncertain meaning and scope.” *Id.*
8 Courts have mixed judicial prudence¹ with this limitation² on judicial power and
9 crafted specific categories of justiciability, including: advisory opinions, feigned
10 and collusive cases, standing, ripeness, mootness, political questions, and
11 administrative questions. *See Flast*, 392 U.S. at 95; Justiciability, 13 Fed. Prac. &
12 Proc. Juris. § 3529 (3d ed.) (citing cases). Notably, these categories are not

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14 ¹ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 156
15 (1951) (concurring opinion) (“Whether ‘justiciability’ exists . . . has most often
16 turned on evaluating both the appropriateness of the issues for decision by courts
17 and the hardship of denying judicial relief.”).

18 ² *Hodgson v. Bowerbank*, 9 U.S. 303, 304 (1809) (“Turn to the article of the
19 constitution of the United States, for the statute cannot extend the jurisdiction
20 beyond the limits of the constitution.”).

1 mutually exclusive, and “the same concerns often can be reflected in the language
2 of two or more of these categories.” 13 Fed. Prac. & Proc. Juris. § 3529.

3 1. Standing

4 The party invoking a federal court’s jurisdiction must demonstrate it has
5 standing. *Wittman v. Personhuballah*, 136 S. Ct. 1732, 1736 (2016) (citing
6 *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997)). “A party has
7 standing only if he shows that he has suffered an ‘injury in fact,’ that the injury is
8 ‘fairly traceable’ to the conduct being challenged, and that the injury will likely be
9 ‘redressed’ by a favorable decision.” *Wittman*, 136 S. Ct. at 1736 (citing *Lujan v.*
10 *Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992)). “[T]he injury or threat of
11 injury must be ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’” *City of*
12 *Los Angeles v. Lyons*, 461 U.S. 95, 95 (1983).

13 2. Ripeness

14 “Ripeness is peculiarly a question of timing.” *Thomas v. Union Carbide*
15 *Agr. Prod. Co.*, 473 U.S. 568, 580 (1985) (brackets omitted) (quoting *Blanchette v.*
16 *Connecticut Gen. Ins. Corps.*, 419 U.S. 102, 140 (1974)). “A claim is not ripe for
17 adjudication if it rests upon ‘contingent future events that may not occur as
18 anticipated, or indeed may not occur at all.’” *Id.* at 580-581 (quoting 13A C.
19 Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532 (1984)).
20 “[I]f the contingent events do not occur, the plaintiff likely will not have suffered

1 an injury that is concrete and particularized enough to establish the first element of
2 standing . . . In this way, ripeness and standing are intertwined.” *Bova v. City of*
3 *Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009) (citing *Lujan*, 504 U.S. at 560).

4 3. Advisory Opinions

5 “[T]he oldest and most consistent thread in the federal law of justiciability is
6 that the federal courts will not give advisory opinions.” *Flast*, 392 U.S. at 96
7 (internal quotations and citation omitted). Under Article III, Federal courts are
8 confined to “real and substantial controversies admitting of specific relief through
9 a decree of a conclusive character, as distinguished from an opinion advising what
10 the law would be upon a hypothetical state of facts.” *Lewis v. Cont’l Bank Corp.*,
11 494 U.S. 472, 477 (1990) (citations and brackets omitted). “In any case the Court
12 will not pass upon the constitutionality of legislation in a suit which is not
13 adversary, or upon the complaint of one who fails to show that he is injured by its
14 operation, or until it is necessary to do so to preserve the rights of the parties.”
15 *Coffman v. Breeze Corp.*, 323 U.S. 316, 324-25 (1945) (citations omitted).

16 Relevant to this case, “[t]he declaratory judgment procedure is available in the
17 federal courts only in cases involving an actual case or controversy, where the
18 issue is actual and adversary, and it may not be made the medium for securing an
19 advisory opinion in a controversy which has not arisen.” *Coffman*, 323 U.S. at 324
20 (citations omitted).

1 DISCUSSION

2 At its base, Plaintiffs complaint alleges: ICCTA “prohibits local laws” – in
3 this case, laws prohibiting the transit of certain fossil fuels by rail – that would
4 secure Plaintiff’s right to live in a healthy and safe Spokane and this undermines –
5 and thus infringes on – Plaintiff’s purported constitutional right to a livable habitat.
6 See ECF Nos. 1; 15. In other words, (1) the federal law prohibits local laws (2)
7 that would secure (3) Plaintiff’s right to live in a healthy and safe Spokane.

8 First, of special import here, the federal law does not *prohibit* the passing of
9 local laws. Rather, it may only preempt certain law’s application. This distinction
10 highlights the impropriety of deciding the merits of this case—because there has
11 been no preemption, there has been no harm in fact traceable to ICCTA, the issue
12 is not ripe for review, and any relief would amount to an advisory opinion and fail
13 to redress Plaintiffs’ concern.

14 There has been no harm traceable to ICCTA and the issue is not ripe because
15 the challenged law has not been applied—*i.e* there has been no injury by its
16 operation. *Coffman*, 323 U.S. at 324-25. Accordingly, deciding the case now is
17 not necessary and would not cause any significant hardship on Plaintiffs. *Id.*; *Joint*
18 *Anti-Fascist Refugee Committee*, 341 U.S. at 156. While the City Council cited
19 preemption concerns in their ultimate decision not to place the initiatives on the
20 ballot, this was based on a legal opinion by a third party, not an actual application

1 of the statute.³ Notably, the opinion also cited concerns that the measure would
2 strip business entities of legal rights, an “outcome [that] cannot be squared with the
3 constitution or the associated case law.” ECF No. 1-2 at 10.

4 Further, Plaintiffs could have attempted to circumvent the City Council by
5 garnering support from five percent of the electorate, which would have placed the
6 measure on the ballot regardless of any legal opinion. This seriously undermines
7 any claim that that ICCTA is preventing the initiative from passing, as opposed to
8 the Plaintiffs’ lack of effort. Plaintiffs argue that pursuing the initiative through
9 support of the electorate would be futile because third parties can bring suit
10 challenging the legality of the initiative based on preemption. This potential does
11 not render this avenue of action futile—rather, it highlights why this action is
12 premature. If the initiative were placed on the ballot, any legal challenge would

15 ³ “[T]he ‘case or controversy’ limitation of Art. III requires that a federal
16 court act only to redress injury that fairly can be traced to the challenged action of
17 the defendant, and not injury that results from the independent action of some third
18 party not before the court.” *Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S.
19 26, 41-42 (1976); *see also Washington Env’tl. Council v. Bellon*, 732 F.3d 1131,
20 1141 (9th Cir. 2013).

1 bring the present issue front and center, as Plaintiffs would be able to defend the
2 initiative based on the arguments posed here.⁴

3
4 ⁴ Plaintiffs argue that their right to self-governance is being infringed because
5 federal law preempts state and local laws. For the reasons discussed above, this is
6 not the case. Moreover, Plaintiffs are not precluded from influencing state and
7 federal legislation, which are likely the best avenues where any concern for the
8 climate can be addressed on a state or national scale. Importantly, we have a
9 representative government at the federal level—even if Plaintiffs’ power to change
10 and create laws are diluted, this is the nature of our well-established system of laws
11 and self-governance by representation. It is noteworthy that Plaintiffs did not even
12 exercise the rights available to them. Plaintiffs could have tried to convince the
13 City Council that the law would not be preempted because such would be
14 unconstitutional; and Plaintiffs could have sought the requisite votes to get the
15 initiative on the ballot. Further, other avenues of redress exist. For example, “to
16 the extent that state and local agencies promulgate EPA-approved statewide plans
17 under federal environmental laws (such as ‘statewide implementation plans’ under
18 the Clean Air Act), ICCTA generally does not preempt those regulations because it
19 is possible to harmonize ICCTA with those federally recognized regulations.”

20 *Ass’n of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.*, 622 F.3d 1094, 1098

1 Similarly, the requested relief – *i.e.* declaring ICCTA’s preemptive effect
2 unconstitutional – would only amount to an advisory opinion and would not
3 redress Plaintiffs’ claimed injury. Without a concrete application of the statute at
4 issue, any opinion and corresponding order would have no immediate effect, but
5 would rather amount to an advisory opinion as to whether *future* legislation would
6 be preempted. Whether a similar initiative will be placed on the ballot in the future
7 and whether the proposed law would be passed is speculative, at best. As such,
8 Plaintiffs’ claim rests upon “contingent future events that may not occur as
9 anticipated, or indeed may not occur at all.” *Thomas*, 473 U.S. at 580-581 (1985)
10 (internal quotations and citation omitted). In the words of the Supreme Court,
11 “[w]e can only hypothesize that such an event will come to pass, and it is only on
12 this basis that the constitutional claim could be adjudicated at this time. An
13 opinion now would be patently advisory” *Babbitt v. United Farm Workers*
14 *Nat. Union*, 442 U.S. 289, 304 (1979).

15
16 _____
16 (9th Cir. 2010); *see also* *Quinault Indian Nation v. Imperium Terminal Servs.,*
17 *LLC*, 187 Wn.2d 460, 469 (2017) (the Washington Ocean Resources Management
18 Act is “a balancing tool intended to be used by local government to weigh the
19 commercial benefits of coastal development against the State’s interest in
20 protecting coastal habitats and conserving fossil fuels.”).

1 Second, Plaintiffs’ claim of harm is not fairly traceable to ICCTA and any
2 relief requested would not redress the purported harm. Plaintiffs’ argument is
3 premised on a causal link (1) from ICCTA to the failure of the initiative to pass
4 and (2) from the failed initiative to general global warming. The first link fails to
5 hold because ICCTA did not prevent the legislation from passing, as discussed
6 above. *Bellon*, 732 F.3d at 1142 (“where the causal chain involves numerous third
7 parties whose independent decisions collectively have a significant effect on
8 plaintiffs’ injuries, . . . the causal chain is too weak to support standing.”) (citation
9 omitted) .

10 The second link – the causal connection between the failed initiatives and
11 Spokane’s climate - is tenuous, at best. Plaintiffs do not argue that the mere transit
12 of fossil fuels through Spokane harms the environment. *See* ECF No. 1. Rather,
13 Plaintiffs rely on the purported fact that the *use* of fossil fuels is contributing to
14 global warming, which – as Plaintiffs argue – will eventually lead to mass
15 extinction. Plaintiffs’ position is premised on the idea that banning transportation
16 of certain fossil fuels through Spokane will create a choke point and effectively
17 throw a wrench in the cogs of the fossil fuel industry—thereby leading to less
18 extraction and combustion due to the inability to transport the fossil fuels. This
19 causal chain is too attenuated to establish standing—it is not the transit, but the
20 combustion, that purportedly causes climate change. Importantly, Plaintiffs cannot

1 rely on “vague, conclusory statements” that ICCTA preemptive effect “contributes
2 to greenhouse gas emissions, which in turn, contribute to climate-related changes
3 that result in their purported injuries.” *Bellon*, 732 F.3d at 1142. Although an
4 avalanche of similar legislation across the country may achieve Plaintiffs’ goal,
5 this possibility is highly questionable and purely speculative. Indeed, the proposed
6 legislation may even increase fossil fuel emissions if trains must travel around
7 Spokane or if the fossil fuel is delivered by truck. *Lewis*, 494 U.S. at 477 (“Article
8 III denies federal courts the power ‘to decide questions that cannot affect the rights
9 of litigants in the case before them’”) (quoting *North Carolina v. Rice*, 404
10 U.S. 244 (1971)).

11 AMENDMENT OF THE COMPLAINT

12 At oral argument, Plaintiffs’ counsel conceded that Plaintiffs have put their
13 best foot forward with respect to the complaint⁵; and when the Court asked
14 whether amendment of the complaint would be futile, Plaintiff’s counsel did not
15
16

17 ⁵ THE COURT: Okay. I understand your argument and I, from your
18 argument, I don’t see that you need leave to amend . . . I take it there isn’t any
19 other allegation you could make in response to the government’s motion to dismiss.

20 MR. SCHROMEN-WAWRIN: That’s right, Your Honor.

1 bring any additional argument or facts suggesting an amendment would be
2 anything other than futile.

3 **CONCLUSION**

4 Plaintiffs have brought this claim before the statute at issue has been enacted
5 and have failed to plausibly show that the relief they request will achieve their
6 concern for a healthy and safe Spokane. Amendment would be futile, so the Court
7 is **GRANTING** Defendant's Motion to Dismiss **without leave to amend**.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction
10 and Failure to State a Claim (ECF No. 11) is **GRANTED**.
- 11 2. The District Court Executive is directed to **ENTER** this Order and
12 Judgment accordingly, furnish copies to counsel, and **CLOSE** the file.
- 13 3. The deadlines, hearings and trial date are **VACATED**. Each party to
14 bear its own costs and expenses.

15 **DATED** July 14, 2017.



Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge

GOODSTEIN LAW GROUP

PLLC

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Carolyn A. Lake
Attorney at Law
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August 14, 2017

Hand Delivered & Email

Tacoma Planning
Commission Tacoma
Municipal Building 747
Market Street #345
Tacoma, WA 98402

Subject: Tidelands Interim Regulations

Dear Chair Beale & Commission,

We serve as Legal Counsel to the Port of Tacoma. We previously commented in opposition to the Staff's proposed Interim Regulations. Our previous comments described how:

- (1) The proposed interim regulations disrupt important state, city and regional planning processes & mandates,
- (2) Numerous state planning elements extend protections to the industrial and port uses within the tidelands, which the proposed interim regulations do not recognize or comply with,
- (3) The current proposed, interim regulations impermissibly conflict nearly every one of the City's existing, over-arching, adopted Comprehensive Plan policies, and
- (4) that the proposed interim regulations are directly counter to PSRC's regional designation and its goals.¹

Since then, two major rulings related to fossil fuels very recently issued, which you should be aware of. In summary:

- In Spokane: a Federal Court found Spokane's ban on transportation of fossil fuels in the City unconstitutional (7/14/17), and
- The City of Portland's 2016 ban on fossil fuel development within the City's industrial areas was also found unconstitutional by Oregon's Land Use Appeals Board (7/19/17).²

¹ We provide a copy of our previous comments for the benefit of the new Commission members.

² Links to related articles are provided below, and a copy of each decision is attached.

Both rulings are significant, directly relevant, and adverse to Tacoma's action on planned Interim Regulations. In the City of Portland case, the Oregon Land Use Appeals Board overturned Portland's legislative text amendments (FFT amendments) to the city's zoning ordinance which prohibit new bulk fossil fuel terminals (FFTs) and the expansion of existing FFTs. The Appeals Board found the city's ban unconstitutional,³ and found that the city zoning restrictions were impermissible in conflict with the Portland's Comprehensive Plan⁴, and therefore are invalid.

Ban on Fossil Fuel Terminals/ Expansion Violates US Constitution.

While some may attempt to discount the applicability of an Oregon ruling to actions of a Washington city, we point out that the Portland's ban was struck down based on United States Constitutional grounds, which apply to all states. The Portland fossil fuel restrictions were found to violate the dormant Commerce Clause of the US Constitution because the ordinance impermissibly discriminates against or unduly burdens interstate trade in fossil fuel.

The Commerce Clause protects Congress's latent ability to regulate interstate commerce by prohibiting states (including the municipal arms of a state) from adopting legislation that, by design or effect, regulates or burdens interstate commerce in certain impermissible ways.

When a state or local law directly regulates or facially discriminates against interstate commerce, courts have generally struck down the law without further inquiry, under an elevated level of scrutiny.

The Appeals Board found that "the Fossil Fuel Terminal amendments have the practical effect of precluding the siting of new fossil fuel export terminals within the city, and indeed it is clear that the city intended that result... it is clear that the city intended the amendments to preclude construction of new or expanded terminals that store and transload fossil fuels to serve interstate or international markets, such as the Pembina

[terminals.html](#)

<http://www.kgw.com/news/local/portlands-fossil-fuel-ban-ruled-unconstitutional/458019920>

<http://www.oregon.gov/LUBA/docs/Opinions/2017/07-17/17001.pdf>

<http://www.kxl.com/portland-ban-fossil-fuel-overturned/>

<http://www.spokesman.com/stories/2017/jul/17/federal-judge-tosses-suit-by-raging-grannies-seeki/>

³ Prior to adoption of the FFT amendments, the city's zoning code, Portland City Code (PCC) Title 33, regulated freight terminals of any description, including what the city now calls FFTs, under the general land use category of "Warehouse and Freight Movement." The use category "Warehouse and Freight Movement" is generally allowed in employment and industrial zones under standards that do not limit the size or number of such terminals. The challenged zoning code amendments establish FFTs as a new land use category, defined as sites that "rely on access by marine, railroad, or regional pipeline to transport fuels to or from the site, and either have transloading facilities for transferring a shipment between transport modes, or have storage capacity exceeding two million gallons for fossil fuels."

⁴ "Under these circumstances, we do not believe the city can adopt zoning amendments that restrict FFTs [Fossil Fuel Terminals] to their existing number and capacity, without at least considering the impact of the amendments on the flow of fossil fuel to the region and the state". *Oregon Land Use Ruling* at ___.

proposal (i.e., demand beyond that “necessary to serve the regional market.”).⁵ *Oregon Land Use Ruling* at 65 and 66. The Appeals Board found that the restrictions “represents a species of protectionism and burden- shifting that infringes on Congress’s latent authority under the Commerce Clause. *Oregon Land Use Ruling* at 71.

Similar to the justification offered in support of Tacoma’s Interim Regulations, Portland argued that the stated purposes of the fossil fuel restriction amendments included (1) addressing safety issues stemming from vulnerability of many existing FFTs to seismic events in the city’s northwest industrial area, and (2) reducing the city’s contributions to climate change. Portland argued that these are legitimate local interests that outweigh any incidental impact on interstate commerce. The Court disagreed, ruling instead that city restriction discriminated against interstate commerce in purpose and practical effect. *Oregon Land Use Ruling* at 74. “What is crucial is the attempt by one State to isolate itself from a problem common to many by erecting a barrier against the movement of interstate trade.” *Oregon Land Use Ruling* at 74.

“In sum, we conclude that the FFT amendments are discriminatory in practical effect, and that the city has failed to demonstrate that the amendments serve a legitimate local interest or purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. Accordingly, the FFT amendments violate the [US Constitution’s] dormant Commerce Clause”. *Oregon Land Use Ruling* at 86.

City’s Planned Restriction Also Impermissibly Conflicts with City’s Adopted Comprehensive Plan and State Law Mandates.

The Portland decision also includes thorough analysis that is precisely consistent with the legal issues the Port previously raised with the City of Tacoma Planning Commission. In addition to being unconstitutional, the Appeals Board held that that any such ban/restriction on fossil fuel terminals and transport would be directly inconstant with the City’s existing Comp Plan language which requires the City to protect and maximize industrial uses⁶.

The Board’s decision is so on point with the Tacoma Commission’s current actions – it’s worth quoting the following excerpts here:

Portland CCP Policy 5.1, Objective C, is to “[r]etain industrial sanctuary zone and maximize use of infrastructure and intermodal transportation linkages with land within these areas.” PCP 5-1; App-3.

Petitioners and WWC (Columbia Pacific Building Trades Council) argue that prohibiting new and expanded FFTs is clearly inconsistent with “maximiz[ing]” intermodal transportation linkages.

⁵ “...it is clear from the record that one of the purposes of the amendments, if not the primary motivating force, was to forestall the possibility that a particular vehicle of interstate and international commerce— fossil fuel export terminals—would be established within the city. The apparent impetus for the FFT amendments was a recent proposal to site a propane export terminal in a north Portland industrial area, the Pembina proposal.... The Pembina proposal in north Portland was ultimately abandoned in the face of significant local opposition” *Oregon Land Use Ruling* at 64.

⁶ (See *Oregon Land Use Ruling* at page 16-18).

The city's finding addressing consistency with PCP Policy 5.1, Objective 8 C does not address the objective to "maximize * * * intermodal transportation linkages." After paraphrasing the language of Policy 5.1 and Objective C, the city's findings state:

The zoning code amendments support this policy and objectives and will not affect the City's supply of land for economic development and employment growth because there are no changes proposed to the Comprehensive Plan or Zoning Map that will impact the overall size or intensity of development in the 16 industrial areas of Portland." Record 9.

The city appears to conclude that the FFT amendments are consistent with Objective C as long as the amendments do not affect the supply of land zoned for economic or industrial use. However, that finding is not responsive to the language of Objective C.

It is not clear to us what land supply has to do with the obligation to "maximize use of infrastructure and intermodal transportation linkages" with and within industrial sanctuaries.

On its face, prohibiting new and expanded intermodal fossil fuel transportation facilities appears to be inconsistent with the objective of "maximiz[ing] * * * intermodal transportation linkages" in "industrial sanctuaries." It is an apparent inconsistency that, in our view, requires some analysis and a direct explanation, both of which are missing from the city's decision, the record, and the 4 respondents' briefs on appeal.

Second, PCP Policy 5.4, Objective A is to

"Support multimodal freight transportation improvements to provide competitive regional access to global markets and facilitate the efficient movement of goods and services in and out of Portland's major industrial and commercial districts. Ensure access to intermodal terminals and related distribution facilities to facilitate the local, national, and international distribution of goods and services." PCP 5-2; App-4.

Petitioners and WWC argue that prohibiting new and expanded FFTs is inconsistent with the obligation to "[s]upport multimodal freight transportation improvements to provide competitive regional access to global markets and facilitate the efficient movement of goods and services in and out of Portland's major industrial" districts.

The city adopted no findings addressing Policy 5.4, Objective A. In its brief, the city argues that the record demonstrates that the amendments are consistent with Policy 5.4, Objective A because the amendments exempt multimodal terminals that handle the growing markets for aviation fuel and non-fossil fuels, and further because the amendments do not restrict existing FFTs from increasing throughput. However, the city's

explanations on appeal are insufficient to demonstrate that “required considerations were indeed considered.” *Citizens Against Irresponsible Growth*, 179 Or App at 16 n 6.

As explained elsewhere in this opinion, one of the city’s stated purposes of the FFT amendments is to effectively prohibit the siting of fossil fuel export terminals in the city. It is difficult to square that purpose with the policy objective of supporting “multimodal freight transportation improvements to provide competitive regional access to global markets and facilitate the efficient movement of goods and services in and out of Portland’s major industrial” districts.

The Appeals Board’s finding that the Portland city ban violates the city’s planning policies is exactly parallel to how the City of Tacoma’s proposed interim regulations also impermissibly conflict with Tacoma’s adopted Comp Plan policies (in addition to state law⁷), as follows:

✓ **City Comprehensive Plan and Codes.** The City of Tacoma adopted its Container Port Element of the City’s Comp Plan in 2009⁸. The announced theme of Tacoma’s current proposed, interim regulations impermissibly conflict with nearly every one of the City’s over-arching, adopted Comp Plan policies:

- Protect the long-term function and viability of this area, GOAL CP–1.⁹
- Protect the continued viability of the Core Area, GOAL CP–2.¹⁰

⁷ RCW 36.70A.085, - Findings—Intent—2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

⁸ “Within the City, the Tidelands area is regionally and locally designated as an important Manufacturing/Industrial Center (M/IC) - a location with unique characteristics that should serve as a long-term and growing employment center. As required by State law (RCW 36.70A.085), the City adopted a Container Port Element (CPE) in its Comprehensive Plan in 2014. Consistent with State requirements, this CPE provides policy guidance relative to protection of core areas of container port and port-related industrial areas within the City and to protection against potential land use conflicts, both within and along the edge of the core area.”

⁹ GOAL CP–1 Identify the core port and port-related container industrial area and protect the long-term function and viability of this area (see Figure 41, Container Port Core Area)

¹⁰ GOAL CP–2 Establish an Industrial/Commercial Buffer Area around the Core Area that will protect the continued viability of the Core Area while providing for a compatible Industrial/Commercial Buffer to development in the larger surrounding area.

- Promote the continued growth and vitality of port and port-related industrial activity. GOAL CP–3¹¹
- Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers. GOAL CP–4¹²
- Identify, protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system. GOAL CP–6¹³
- Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area. GOAL CP–5¹⁴

In addition:

- Tacoma’s interim regulations which propose to downzone, restrict and or limit industrial uses conflict with the existing Comp Plan element CP-1.2, which requires that the City “Prohibit uses that would negatively affect the availability of land for the primary port and port-related cargo and industrial function of the Core Area. Encourage aggregation of industrial land for future development as cargo port terminals and supporting uses”.
- Tacoma’s interim regulations which propose to interfere with existing buffers conflicts with the City’s own Comprehensive Plan, which conclusively determines that the existing buffers are “very effective” and that “no additional Industrial / Commercial Buffer area is necessary.”¹⁵

In sum, Tacoma should take careful note of the Portland and Spokane rulings, and how its current, proposed interim regulations so closely resemble those found unconstitutional.

¹¹ 10GOAL CP–3 Promote the continued growth and vitality of port and port-related industrial activity.

¹² 11 GOAL CP–4 Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers.

¹³ GOAL CP–6 Identify, protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system.

¹⁴ 13 GOAL CP–5 Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area

¹⁵ CP-4 Land Use Buffers of the City’s Comp Plan, Container Port element, identifies the existing buffers and has concluded that “the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.” “To the west, the railroad tracks and steep bluff rising above Dock Street to the neighborhoods to the west provide a clear buffer to the industrial area. Similarly, to the east, the steep bluff rising above Marine View Drive provides a clear buffer from the industrial area to the residential development at the top of the bluff. In both these areas, the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.”

Protections Are Not Limited to Container Port Uses

Although the City's Comprehensive Plan Port Element is entitled, "Port Container Element", the protections embedded within both state law (RCW 36.70A.085-Comprehensive plans—Port elements) and the City's Comp Plan are not limited in any way to solely Port container activity.

The driving purpose of the Port Element was the legislature's finding that ports depend on a vast array of supporting and necessary uses, including industrial, transportation, manufacturing and agricultural services: "Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region."¹⁶

The state mandate that cities and counties "protect the core areas of port and port-related industrial uses within the city" has no limiting language that restricts the mandate to only container port uses.¹⁷

The City's own Com Plan echoes this unrestricted protection: "GOAL CP-3 Promote the continued growth and vitality of port and port-related industrial activity."

Further, the state understood that not all port and economic development related uses cannot be currently identified or forecasted. For this reason, rather than limit and stifle growth, state law provides that the Port Element must "retain sufficient planning flexibility to secure emerging economic opportunities." Id.¹⁸

Conclusion

We again urge that instead of spending time, money and effort on legally risky interim regulations, Tacoma is urged to devote its finite energies and resources to the Sub Area Planning process, as contemplated by GMA.

The Sub Area Planning process is consistent with full hierarchy of state land use laws, including: the state law mandate for cities to develop a Port Element collaboratively, Tacoma's own Comprehensive Plan and land use codes, and the PSRC's Vision 2040 Report and its designation of the Tacoma Tideflats as a significant Manufacturing and Industrial job growth Center.

Thank you for your consideration.
Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake.

Carolyn A. Lake

¹⁶ ESHB 1959.SL- Findings—Intent—2009 c 514- Findings

¹⁷ RCW 36.70A.085 (3)(a)

¹⁸RCW 36.70A.085 (5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

cc: (E-mail only)

Tacoma Planning Commission: (via Lihuang Wung, Tacoma Senior Planner).

Council District 1 - Andrew Strobel

Council District 2 - Dorian Waller

Council District 3 - Brett Santhuff

Council District 4 - Stephen Wamback (Vice-Chair)

Development Community - Jeff McInnis

Environmental Community - Anna Petersen

Public Transportation - Carolyn Edmonds

Architecture, Historic Preservation and/or Urban Design - Jeremy Woolley

Port of Tacoma Commission

Chief Executive Officer John Wolfe

Tacoma City Council Mayor Marilyn Strickland Deputy

Mayor Robert Thoms

Tacoma City Council

Elizabeth Pauli, Tacoma City Manager

Peter Huffman, Tacoma, Director Planning & Development Services

Lihuang Wung, Tacoma Senior Planner

Steve Victor, Tacoma Attorney's Office

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Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

September 11, 2017

Hand Delivered & Email

Tacoma Planning Commission
Tacoma Municipal Building
747 Market Street #345
Tacoma, WA 98402

Subject: Tideflats Interim Regulations

Dear Chair Wamback & Commission,

We serve as Legal Counsel to the Port of Tacoma. We previously commented in opposition to the Staff's proposed Interim Regulations¹.

We write again, this time to express our disagreement with the City's conclusion that the State Environmental Policy Act (SEPA) does not apply to the proposed Tideflat Interim Regulations ("Interim Regulations").

Interim Regulations are Not Exempt from SEPA Review. Tacoma Planning staff decided that the Interim Regulations are exempt from environmental review pursuant to WAC 197-11-800(19)(b).² We disagree. That SEPA provision allows exemptions from environmental review only as follows:

(19) Procedural actions. The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

Given the breath of changes to uses in the Tideflats, we disagree that the proposed Interim Regulations do not "substantively" change the use or modification of the environment. The City's finding of exemption on this basis also is flatly contradicted by the other SEPA provision relied on by Tacoma Staff for exempting these Interim Regulations from environmental review:

WAC 197-11-880 Emergencies, which provision states:

Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent

¹ Our previous comments described how:

- (1) The proposed interim regulations disrupt important state, city and regional planning processes & mandates,
- (2) Numerous state planning elements extend protections to the industrial and port uses within the tideflats, which the proposed interim regulations do not recognize or comply with,
- (3) The current proposed, interim regulations impermissibly conflict nearly every one of the City's existing, over-arching, adopted Comprehensive Plan policies, and
- (4) that the proposed interim regulations are directly counter to PSRC's regional designation and its goals.

² See Email **Sent:** Tuesday, August 29, 2017 9:55 AM from Stephen Atkinson, Planning and Development Services Department, 747 Market Street, Room 345, Tacoma, WA 98402, Subject: *Tideflats Interim Regulations - Notification to SEPA Review Officials*.

an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.

The City cannot have it both ways, that the Interim Regulation adoption is required both to “to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation” and yet also results in “no substantive changes respecting use or modification of the environment”.

The City’s treatment of Interim Regulation adoption also is inconstant with similar, past City actions. We point out that Tacoma undertook SEPA review for previous Interim Regulations, including the very recent action:

- SEPA File Number: SEP2013-40000207255 - The Proposed Interim Regulations amending the Tacoma Municipal Code, Chapters 13.06 – Zoning, 13.06A – Downtown Tacoma, and 13.10 – Shoreline Management, regarding Recreational Marijuana.

Conclusion

We again urge that instead of spending time, money and effort on legally risky interim regulations, Tacoma is urged to devote its finite energies and resources to the Sub Area Planning process, as contemplated by GMA.

The Sub Area Planning process is consistent with full hierarchy of state land use laws, including: the state law mandate for cities to develop a Port Element collaboratively, Tacoma’s own Comprehensive Plan and land use codes, and the PSRC’s Vision 2040 Report and its designation of the Tacoma Tidelands as a significant Manufacturing and Industrial job growth Center.

Thank you for your consideration.
Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake

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Deputy Mayor Robert Thoms
Tacoma City Council
Elizabeth Pauli, Tacoma City Manager
Peter Huffman, Tacoma, Director Planning & Development Services
Lihuang Wung, Tacoma Senior Planner
Steve Victor, Tacoma Attorney’s Office

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3
4 COLUMBIA PACIFIC BUILDING TRADES
5 COUNCIL, PORTLAND BUSINESS ALLIANCE, and
6 WESTERN STATES PETROLEUM ASSOCIATION,
7 *Petitioners,*

8
9 and

10
11 WORKING WATERFRONT COALITION,
12 *Intervenor-Petitioner,*

13
14 vs.

15
16 CITY OF PORTLAND,
17 *Respondent,*

18
19 and

20
21 COLUMBIA RIVERKEEPER, OREGON
22 PHYSICIANS FOR SOCIAL RESPONSIBILITY,
23 PORTLAND AUDUBON SOCIETY, and CENTER
24 FOR SUSTAINABLE ECONOMY,
25 *Intervenors-Respondents.*

26
27 LUBA No. 2017-001

28
29 FINAL OPINION
30 AND ORDER

31
32 Appeal from City of Portland.

33
34 William L. Rasmussen, Portland, filed a petition for review. With him
35 on the brief was Miller Nash Graham & Dunn LLP. William L. Rasmussen and
36 Steven G. Liday argued on behalf of petitioners.

37
38 Phillip E. Grillo, Portland, filed a petition for review on behalf of

NATURE OF THE DECISION

Petitioners appeal Portland city Ordinance No. 188142, which adopts legislative text amendments (FFT amendments) to the city’s zoning ordinance to prohibit new bulk fossil fuel terminals (FFTs) and the expansion of existing FFTs.¹

REPLY BRIEFS

Petitioners and intervenor-petitioner Working Waterfront Coalition (WWC) move to file reply briefs to address alleged “new matters” raised in the response briefs. OAR 661-010-0039 (allowing a reply brief to address new matters raised in a response brief). Intervenors-respondents (collectively, Riverkeepers) oppose the reply briefs, arguing that they do not respond to “new matters” within the meaning of OAR 661-010-0039, but instead embellish arguments already made in the petitions for review, or simply offer rebuttal to responses to arguments made in the petition for review.

We agree with Riverkeepers. “New matters” within the meaning of OAR 661-010-0039 include (1) responses that an argument in the petition for review should fail regardless of its stated merits (*i.e.*, something in the nature of an affirmative defense), and (2) responses to assignments of error that otherwise could not reasonably have been anticipated. *Foland v. Jackson County*, 61 Or

¹ To assist the reader, an index of the many acronyms in this opinion is attached as an appendix.

1 LUBA 264, 266-67, *aff'd* 239 Or App 60, 243 P3d 830 (2010). Reply briefs
2 that simply embellish or elaborate arguments made in the petition for review,
3 rebut direct responses to the merits of arguments made in the petition for
4 review, offer new arguments in support of an assignment of error, or advance
5 new bases for reversal or remand are not authorized by OAR 661-010-0039.

6 With one exception, the two reply briefs consist entirely of one or more
7 of the latter type of arguments. Riverkeepers concede that WWC's reply brief
8 at page 4, lines 6-15 addresses a new matter raised in the response briefs.
9 Accordingly, that portion of WWC's reply brief is allowed. Otherwise, LUBA
10 will not consider the arguments in the two reply briefs.

11 **FACTS**

12 The city of Portland is one of the largest ports on the West Coast, located
13 at the confluence of the Columbia and Willamette Rivers, and at the western
14 end of a low gradient rail and barge passage through the Cascade Mountains, at
15 a strategic commercial position for regional, national and international trade.²

² The Portland Freight Master Plan (FMP) states:

“From its early days, Portland has been a center of trade and commerce in the Pacific Northwest. The city's growth has been driven by its role in the movement of commodities. At the turn of the 21st century, Portland has established strong international trade connections * * *. Today, Portland is a competitive gateway for international and domestic trade. It is a ‘trans-shipment’ center, where freight is handled on the way to somewhere else. In fact, more goods move through its transportation network to national and international destinations than are consumed here in the

1 Prior to adoption of the FFT amendments, the city’s zoning code, Portland City
2 Code (PCC) Title 33, regulated freight terminals of any description, including
3 what the city now calls FFTs, under the general land use category of
4 “Warehouse and Freight Movement.” The use category “Warehouse and
5 Freight Movement” is generally allowed in employment and industrial zones
6 under standards that do not limit the size or number of such terminals. The
7 challenged zoning code amendments establish FFTs as a new land use
8 category, defined as sites that

9 “rely on access by marine, railroad, or regional pipeline to
10 transport fuels to or from the site, and either have transloading
11 facilities for transferring a shipment between transport modes, or
12 have storage capacity exceeding 2 million gallons for fossil fuels.”

13 PCC 33.920.300(A). Examples include crude oil terminals, petroleum products
14 terminals, natural gas terminals, propane terminals and coal terminals. PCC
15 33.920.300(C). The amendments include a number of exceptions to the
16 definition of FFTs, listed in n 30. “Fossil fuel” is defined as “petroleum
17 products (such as crude oil and gasoline), coal, methanol, and gaseous fuels
18 (such as natural gas and propane) that are made from decayed plants and
19 animals that lived millions of years ago and are used as a source of energy.
20 Denatured ethanol and similar fuel additives, with less than 5 percent fossil fuel
21 content, biodiesel/renewable diesel with less than 5 percent fossil fuel content,

region.” Portland Freight Master Plan (FMP) 1; App-248. [All citations to appendix (App) are to Petitioner’s Appendix, unless otherwise noted.]

1 and petroleum-based products used primarily for non-fuel uses (such as
2 asphalt, plastics, lubricants, fertilizer, roofing and paints) are not fossil fuels.”
3 PCC 33.910.030.

4 At least 11 existing terminals within the city of Portland meet the newly-
5 adopted definition of FFT: 10 petroleum terminals and one natural gas
6 terminal. The 11 terminals are clustered in the city’s northwest industrial area,
7 at the terminus of the Olympic Pipeline, which delivers petroleum products to
8 Oregon and southwest Washington from four refineries in the Puget Sound
9 area. Record 44-45. At the terminals, petroleum and gas are stored in
10 approximately 300 tanks and transloaded into other modes of transportation
11 (marine, train, truck, and the in-state Kinder Morgan pipeline) to distribution
12 sites all over the state of Oregon.³ Record 316. The terminals range from 11.6
13 to 67 million gallons, with most facilities having more than 25 million gallons
14 of storage capacity. Record 55. Together, these 11 terminals handle
15 approximately 90 percent of fossil fuel for the State of Oregon. Record 316.
16 Much of the city’s northwest industrial area is located in a moderate to high-

³ The Oregon Freight Plan (OFP) defines “transloading” as “[t]ransferring bulk shipments from the vehicle/container of one mode to that of another at a terminal interchange point.” OFP E-3; App-1205. Relatedly, the Oregon Transportation Plan (OTP) defines “intermodal facilities” as “[f]acilities that allow passenger and/or freight connections between modes of transportation. Examples include airports, rail stations, marine terminals and truck-rail facilities.” OTP 122; App-813. The term “multimodal” is defined as “[t]he movement of goods or people by more than one transportation mode.” OTP 123; App-814.

1 risk earthquake liquefaction zone. Record 33, 1866. Many of Portland’s fossil
2 fuel storage tanks were built before seismic design requirements in building
3 codes were adopted. Record 2.

4 In 2015, in response to concerns regarding proposals to establish fossil
5 fuel export terminals in the region, the city began efforts to limit future
6 establishment or expansion of fossil fuel terminals within the city.⁴ According
7 to the city, that effort was intended to further two objectives: (1) reducing
8 potential for catastrophic damage in the event of an earthquake, and (2)
9 reducing the city’s contribution to greenhouse gas emissions and climate

⁴ The city’s findings state on this point:

“The energy distribution market in the Pacific Northwest is changing. Production of crude oil and natural gas, particularly from North Dakota, has substantially increased in the U.S. since 2009, as shown in Figure 1. In turn, several large new fuel distribution terminals have been proposed in the Pacific Northwest to access West Coast and export markets, as shown in Figure 2. Similar trends have occurred in Alberta and British Columbia.

“[The FFT amendments] propos[e] a prompt, focused response to these market changes. The recommended code amendments will restrict development of new fossil fuel terminals and limit the expansion of existing terminals, consistent with City and State objectives on climate change and public safety.” Record 316.

Figure 2 lists nine oil, gas and coal export terminals that have been proposed in recent years in the Pacific Northwest, including one (the Pembina propane terminal, discussed further below) proposed in an industrial area in north Portland.

1 change, and encouraging a transition within the city to cleaner, renewable
2 energy sources.

3 On November 12, 2015, the city council passed Resolution 37168, which
4 states that the city council “will actively oppose expansion of infrastructure
5 whose primary purpose is transportation or storing fossil fuels in or through
6 Portland or adjacent waterways.” Record 3761. The resolution directed the city
7 Bureau of Planning and Sustainability (BPS) to develop zoning code
8 amendments to implement the resolution. *Id.* Relatedly, in June 2016, the city
9 adopted a new comprehensive plan, the 2035 Comprehensive Plan (2035 PCP).
10 The 2035 PCP includes a new policy, Policy 6.48, which states that it is city
11 policy to “[l]imit fossil fuel distribution and storage facilities to those necessary
12 to serve the regional market.”⁵ Record 3317.

⁵ The 2035 PCP is not effective until January 1, 2018, although the city’s decision cites it as “guidance.” In this opinion, unless otherwise noted, we will use “PCP” to refer and cite to the version of the acknowledged comprehensive plan in effect when the city council adopted the zone amendments challenged in this appeal.

Policy 6.48 does not define “regional” market, and neither does the city’s decision. Because resolving the issues raised in this appeal requires terminology with some geographic precision, we will attempt to use the term “local” to describe the city of Portland and its larger urban area (essentially the Metro region or urban growth boundary), plus small areas of southwest Washington that rely on the city’s FFTs to meet local demand for fossil fuels. Record 339. We will use the term “regional” to describe the larger area currently served by transloading via the city’s FFTs and the in-state Kinder Morgan pipeline, which apparently includes 90 percent of the state of Oregon. We will use “state,” “statewide” or “intrastate” to refer to the market

1 Pursuant to Resolution 37168, BPS developed a draft of proposed zoning
2 code amendments (proposed draft). The proposed draft prohibited FFTs
3 citywide, and made existing FFTs nonconforming uses. The proposed draft
4 defined FFT in part to include facilities with a storage facility of five million
5 gallons. The city Planning and Sustainability Commission (PSC) held hearings
6 on the proposed draft, and approved modifications resulting in the
7 recommended draft. The PSC recommended draft also prohibited new FFTs
8 but allowed up to a 10 percent expansion of existing FFTs, if in conjunction
9 with tank replacement for seismic and safety upgrades. The recommended
10 draft also modified the proposed definition of FFT to include facilities with a
11 storage facility of only two million gallons, in order to capture FFT storage
12 facilities sized to handle a “unit train,” which is a uniform trainload of a single
13 commodity (*e.g.*, coal) designed to be transloaded to other shipping modes as a
14 single unit.⁶ Expanding the scope of the definition of FFT to include facilities
15 with as little as two million gallons of storage capacity captures an additional
16 24 smaller facilities in the Portland area, in addition to the 11 larger terminals
17 that were the subject of the proposed draft. Record 55.

represented by the entire state of Oregon. We will also refer to “interstate” and “international” markets, which have their obvious meanings.

⁶ The OFP defines a “rail unit train[.]” as a “train of a specified number of railcars handling a single commodity type which remain as a unit for a designated destination or until a change in routing is made.” OFP E-3; App-1205; *see* discussion under the ninth assignment of error, below.

1 The city council held hearings on the PSC recommended draft on
2 November 10 and 16, 2016. The city council voted to adopt the PSC
3 recommended draft, with seven changes. The changes included eliminating the
4 proposal to allow a 10 percent expansion of existing terminals. On December
5 14, 2016, the city council adopted the recommended draft, as amended, as
6 Ordinance No. 188142. This appeal followed.

7 **JURISDICTION**

8 Riverkeeper argues that if LUBA concludes that FFTs are
9 “transportation facilities” as petitioners contend, then the consequence is that
10 LUBA lacks jurisdiction over the appeal of the FFT amendments pursuant to
11 ORS 197.015(10)(b)(D), which excludes from the definition of “land use
12 decision” a decision that determines the “operation, maintenance, repair or
13 preservation of a transportation facility that is otherwise authorized by and
14 consistent with” the comprehensive plan and city code. We reject the
15 argument. The exclusion at ORS 197.015(10)(b)(D) encompasses technical
16 decisions regarding operation, maintenance etc., of transportation facilities that
17 are planned and authorized under the plan and zoning code. The exclusion
18 does not encompass decisions that adopt or modify plan or zoning code text
19 regarding transportation facilities.

20 **STANDARD OF REVIEW**

21 As all parties recognize, the challenged decision is a legislative decision
22 that amends the city’s land use regulations. Because it is a legislative decision,

1 principles of preservation that would govern a quasi-judicial decision, *e.g.*, the
2 “raise it or waive it” requirements of ORS 197.763(1), do not apply. In
3 addition, a local government is not necessarily required to adopt findings
4 supporting a legislative decision; nonetheless the record on appeal must be
5 sufficient to demonstrate that “required considerations were indeed
6 considered.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12,
7 16 n 6, 38 P3d 956 (2002).

8 PCC 33.835.040(A) provides that:

9 “Text amendments to the zoning code must be found to be
10 consistent with the Comprehensive Plan, Urban Growth
11 Management Functional Plan, and the Statewide Planning Goals.
12 In addition, the amendments must be consistent with the intent or
13 purpose statement for the base zone, overlay zone, plan district,
14 use and development, or land division regulation where the
15 amendment is proposed, and any plan associated with the
16 regulations * * *.”

17 LUBA’s standard of review of a decision that amends a local
18 government’s land use regulations is subject to ORS 197.835(7), which
19 provides:

20 “[LUBA] shall reverse or remand an amendment to a land use
21 regulation or the adoption of a new land use regulation if:

22 “(a) The regulation is not in compliance with the comprehensive
23 plan; or

24 “(b) The comprehensive plan does not contain specific policies
25 or other provisions which provide the basis for the
26 regulation, and the regulation is not in compliance with the
27 statewide planning goals.”

1 In addition, ORS 197.835(9) provides that LUBA shall reverse or remand a
2 land use decision if LUBA finds that the local government “[i]mproperly
3 construed the applicable law,” or “[m]ade an unconstitutional decision[.]”
4 ORS 197.835(9)(a)(D) and (E).

5 Finally, under ORS 197.829, LUBA must affirm a governing body’s
6 interpretation of its comprehensive plan or land use regulations, unless the
7 interpretation is inconsistent with the express language, purpose or policy
8 underlying the local legislation under interpretation, or the interpretation is
9 contrary to a statewide planning goal, statute, or administrative rule that the
10 local legislation implements.⁷

⁷ ORS 197.829 provides:

- “(1) [LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:
 - “(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
 - “(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
 - “(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
 - “(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

1 **ORGANIZATION OF THIS OPINION**

2 Petitioners and WWC advance a number of overlapping assignments of
3 error, arguing that the FFT amendments are inconsistent with city
4 comprehensive plan provisions, statewide planning goals, Metro regional plan
5 provisions, and statewide transportation plans. Petitioners and WWC also
6 argue that the FFT amendments violate the dormant Commerce Clause of the
7 United States Constitution.

8 As discussed below, we conclude under petitioners’ ninth assignment of
9 error that the FFT amendments violate the dormant Commerce Clause of the
10 United States Constitution. OAR 661-010-0071 provides that LUBA shall
11 reverse a land use decision when the Board finds that the decision is
12 unconstitutional. Accordingly, reversal is the appropriate disposition.
13 However, given the likelihood that LUBA’s opinion is not the last stop on the
14 appellate ladder, and to minimize potential for multiple trips up and down that
15 ladder, we deem it appropriate to also resolve challenges to the city’s decision
16 under local, regional and statewide standards. Additionally, in our view, those
17 challenges inform the analysis under the dormant Commerce Clause.

“(2) If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, [LUBA] may make its own determination of whether the local government decision is correct.”

1 We address the local, regional and statewide standards roughly in that
2 order. As discussed below, we sustain some of the challenges under local and
3 state standards. In ordinary circumstances, sustaining such challenges would
4 result in remand to the city for additional evidence or consideration. However,
5 in the present circumstances our resolution of those challenges is necessarily, if
6 unfortunately, somewhat advisory.

7 **SIXTH AND SEVENTH ASSIGNMENTS OF ERROR**
8 **SECOND ASSIGNMENT OF ERROR, Subsection (iii) (WWC)**

9 These assignments and sub-assignments of error concern whether the
10 FFT amendments are consistent with the Portland Comprehensive Plan (PCP)
11 and subordinate plans, including the city’s Transportation System Plan (TSP),
12 the city’s Freight Master Plan (FMP), and the Guild’s Lake Industrial
13 Sanctuary Plan (GLISP), an industrial area within the city of Portland that
14 includes most of the existing fossil fuel terminals affected by the FFT
15 amendments.

16 **A. PCP Policies**

17 Petitioners and WWC argue that the city’s decision is inconsistent with a
18 number of PCP goals and policies, which generally require the city to support
19 its industrial areas and its multimodal and intermodal freight system.⁸ The city

⁸ Petitioners and WWC cite PCP Goal 5 (Economic Development), Policy 5.1, Objective C; Policy 5.4; Policy 5.4, Objective A; Policy 5.12; PCP Goal 6 (Transportation), Policy 6.9, Objective A; Policy 6.18; Policy 6.29; and Policy 6.31.

1 adopted findings addressing consistency with the PCP goals and policies it
2 deemed relevant, which include almost all of the PCP goals and policies that
3 petitioners and WWC cite.

4 The city and Riverkeeper respond that petitioners and WWC fail to
5 demonstrate that the city erred in concluding that the FFT amendments are
6 consistent with the applicable PCP goals and policies. For most of the cited
7 PCP goals and policies, we agree with respondents. Most of the cited PCP
8 goals and policies are generally worded expressions of support for the city's
9 industrial areas and multimodal transportation facilities. The city council
10 adopted findings addressing most of the cited PCP goals and policies.
11 Petitioners and WWC disagree with the city council's findings of consistency,
12 and invite us to second guess those conclusions. However, given the generally-
13 worded language of most of the goals and policies at issue, and the leeway a
14 governing body has in balancing and weighing consistency of a zoning text
15 amendment with a variety of sometimes competing policy objectives,
16 petitioners and WWC must do more than simply disagree with the city's
17 conclusions. Petitioners and WWC must demonstrate that the city council
18 failed to meaningfully consider a reasonably specific and pertinent PCP goal or
19 policy.

20 We have considered petitioners' and WWC's challenges to the county's
21 findings regarding consistency with PCP goals and policies, and for the most

1 part reject them without further discussion. In our view, only two challenges
2 warrant further review.

3 PCP Policy 5.1, Objective C, is to “[r]etain industrial sanctuary zones
4 and maximize use of infrastructure and intermodal transportation linkages with
5 and within these areas.” PCP 5-1; App-3. Petitioners and WWC argue that
6 prohibiting new and expanded FFTs is clearly inconsistent with
7 “maximiz[ing]” intermodal transportation linkages.

8 The city’s finding addressing consistency with PCP Policy 5.1, Objective
9 C does not address the objective to “maximize * * * intermodal transportation
10 linkages.” After paraphrasing the language of Policy 5.1 and Objective C, the
11 city’s findings state:

12 “The zoning code amendments support this policy and objectives
13 and will not affect the City’s supply of land for economic
14 development and employment growth because there are no
15 changes proposed to the Comprehensive Plan or Zoning Map that
16 will impact the overall size or intensity of development in the
17 industrial areas of Portland.” Record 9.

18 The city appears to conclude that the FFT amendments are consistent with
19 Objective C as long as the amendments do not affect the *supply* of land zoned
20 for economic or industrial use. However, that finding is not responsive to the
21 language of Objective C. It is not clear to us what land supply has to do with
22 the obligation to “maximize use of infrastructure and intermodal transportation
23 linkages” with and within industrial sanctuaries. On its face, prohibiting new
24 and expanded intermodal fossil fuel transportation facilities appears to be

1 inconsistent with the objective of “maximiz[ing] * * * intermodal
2 transportation linkages” in “industrial sanctuaries.” It is an apparent
3 inconsistency that, in our view, requires some analysis and a direct explanation,
4 both of which are missing from the city’s decision, the record, and the
5 respondents’ briefs on appeal.

6 Second, PCP Policy 5.4, Objective A is to

7 “Support multimodal freight transportation improvements to
8 provide competitive regional access to global markets and
9 facilitate the efficient movement of goods and services in and out
10 of Portland’s major industrial and commercial districts. Ensure
11 access to intermodal terminals and related distribution facilities to
12 facilitate the local, national, and international distribution of goods
13 and services.” PCP 5-2; App-4.

14 Petitioners and WWC argue that prohibiting new and expanded FFTs is
15 inconsistent with the obligation to “[s]upport multimodal freight transportation
16 improvements to provide competitive regional access to global markets and
17 facilitate the efficient movement of goods and services in and out of Portland’s
18 major industrial” districts.

19 The city adopted no findings addressing Policy 5.4, Objective A. In its
20 brief, the city argues that the record demonstrates that the amendments are
21 consistent with Policy 5.4, Objective A because the amendments exempt
22 multimodal terminals that handle the growing markets for aviation fuel and
23 non-fossil fuels, and further because the amendments do not restrict existing
24 FFTs from increasing throughput. However, the city’s explanations on appeal
25 are insufficient to demonstrate that “required considerations were indeed

1 considered.” *Citizens Against Irresponsible Growth*, 179 Or App at 16 n 6. As
2 explained elsewhere in this opinion, one of the city’s stated purposes of the
3 FFT amendments is to effectively prohibit the siting of fossil fuel export
4 terminals in the city. It is difficult to square that purpose with the policy
5 objective of supporting “multimodal freight transportation improvements to
6 provide competitive regional access to global markets and facilitate the
7 efficient movement of goods and services in and out of Portland’s major
8 industrial” districts. Had the city adopted findings addressing Policy 5.4,
9 Objective A, it might be able to explain why the FFT amendments are
10 consistent with this objective. However, the city’s decision did not address
11 Objective A, there is no evidence that the city in fact considered that objective,
12 and the city’s attempt to demonstrate consistency on appeal falls short of
13 demonstrating consistency with the objective. That the city’s code as amended
14 continues to allow new or expanded terminals for aviation fuel or non-fossil
15 fuels does nothing to demonstrate that prohibiting new or expanded fossil fuel
16 terminals is consistent with Objective A. Further, the city cites no evidence
17 supporting its assertion that existing FFTs have the excess capacity or ability to
18 increase throughput to meet any increased demand for fossil fuels in local,
19 regional, statewide, interstate, or international markets.

20 **B. Guild’s Lake Industrial Sanctuary Plan (GLISP)**

21 Most of the city’s large FFTs are located within the Guild’s Lake
22 Industrial Sanctuary Plan (GLISP) area. The introduction to the GLISP notes

1 that the sanctuary is “equipped with intermodal transportation facilities that
2 enable it to serve the nation, the Pacific Rim and other worldwide markets.
3 The [sanctuary’s] businesses and facilities help make Portland the leading
4 exporter in the state, and Oregon one of the top ten exporting states in the
5 country.” GLISP 6; App-103. The GLISP is incorporated into the city’s
6 comprehensive plan, and the city does not dispute that PCC 33.835.040(A)
7 requires the city to demonstrate that the FFT amendments are consistent with
8 the GLISP. However, the city adopted no findings addressing consistency with
9 the GLISP.

10 As relevant here, the GLISP includes three policies, each of which is
11 refined by a number of objectives. Petitioners argue that the FFT amendments
12 are inconsistent with these three GLISP policies and objectives. We address
13 each in turn.

14 **1. Policy 1, Objective 2**

15 GLISP Policy 1 (Jobs and Economic Development), Objective 2 is to:

16 “Maintain and expand industrial business and employment
17 opportunities in the Guild’s Lake Industrial Sanctuary. Stimulate
18 investment in the area’s public and private infrastructure and
19 industrial facilities.

20 “Objective 2: Foster a business and policy environment that
21 promotes continued private and public sector investments in
22 infrastructure, facilities, equipment and jobs.” GLISP 34; App-
23 131.

24 Petitioners and WWC argue that the FFT amendments fail to foster a business
25 environment that promotes continued investment in infrastructure and facilities

1 within the sanctuary, because it discourages continued investments in the
2 sanctuary's FFTs, which are a significant component of the sanctuary,
3 occupying approximately 242 acres. Record 331.

4 The city responds that while the FFT amendments limit one type of
5 industrial use, the amendments do not affect the industrial land supply within
6 the sanctuary. Further, the impacts of the amendments are moderated by
7 exempting new and expanded terminals handling the growing market in non-
8 fossil fuels. The city argues that nothing in Policy 1, Objective 2 requires the
9 city to allow the unlimited expansion of any one particular land use.

10 While it is certainly true that Policy 1, Objective 2 does not require the
11 city to allow unlimited expansion of existing industrial land uses in the
12 sanctuary, Objective 2 does require the city to foster a policy environment that
13 promotes *continued* private investment in the sanctuary. Arguably, that
14 requires the city to protect the ability of existing industrial uses in the sanctuary
15 to expand, or at least consider that objective balanced against other policy
16 objectives. But we do not know how the city council views Objective 2, or
17 how it would balance it against other policy objectives, because the city
18 adopted no findings addressing Objective 2, and apparently gave no
19 consideration to whether the amendments are consistent with the GLISP. The
20 city's arguments on appeal are insufficient to establish that these required
21 considerations were indeed considered.

1 **2. Policy 2, Objective 1**

2 GLISP Policy 2 (Transportation), Objective 1 is to:

3 “Maintain, preserve and improve the intermodal and multimodal
4 transportation system to provide for the smooth movement of
5 goods and employees into and through the Guild’s Lake Industrial
6 Sanctuary.

7 “Objective 1: Maintain, protect, and enhance the public and
8 private transportation investments in the [sanctuary], including rail
9 and marine terminal facilities, to ensure its continued viability as a
10 major center for the import and export of industrial products in the
11 State of Oregon.” GLISP 38; App-135.

12 Petitioners and WWC argue that prohibiting new and expanded FFTs in the
13 sanctuary fails to protect and enhance rail and marine terminal facilities in the
14 sanctuary, and reduces the sanctuary’s viability as a major center for fuel
15 imports and exports.

16 The city responds that Policy 2, Objective 1 is not particularly concerned
17 with fuel terminals, and does not require the city to allow unlimited expansion
18 of existing fuel terminals. The city also argues that the FFT amendments do
19 not limit the ability of existing FFTs to increase throughput via efficiency or
20 other measures.

21 However, Policy 2, Objective 1 requires the city to maintain, protect and
22 *enhance* private transportation investments, with particular emphasis on rail
23 and marine terminals, and does not exclude fossil fuel terminals from the scope
24 of the objective. Further, Objective 1 states that the purpose of maintaining,
25 protecting and enhancing such investments is to ensure the sanctuary’s

1 “continued viability as a major center for the import and export of industrial
2 products in the State of Oregon.” As explained elsewhere in this opinion, one
3 purpose of the FFT amendments is to preclude new or expanded fossil fuel
4 export terminals within the city. That purpose seems difficult to square with
5 the language of Policy 2, Objective 1, and in its decision, the city council did
6 not even make the attempt.

7 The city’s attempt on appeal to articulate a demonstration of consistency
8 with Policy 2, Objective 1 falls far short. As noted, the city cites no evidence
9 that the existing terminals have the capacity or ability to increase throughput
10 without expansion of storage or transloading capacity.

11 **3. Policy 3, Objective 7**

12 GLISP Policy 3 (Land Use), Objective 7 is to:

13 “Preserve and protect land primarily for industrial uses, and
14 minimize land use conflicts in the Guild’s Lake Industrial
15 Sanctuary. Allow compatible nonindustrial uses within the
16 [sanctuary] that provide retail and business services primarily to
17 support industrial employees and business.

18 “Objective 7: Preserve the [sanctuary’s] Willamette River
19 waterfront as a location for river-dependent and river-related
20 uses.” GLISP 42; App-139.

21 WWC argues that approximately 242 acres of the industrial sanctuary are
22 occupied by waterfront FFT’s that depend in part on marine transportation.
23 Because those sites are already committed to use as fossil fuel terminals, and
24 the amendments prohibit any expansion of those FFTs, WWC argues that the

1 amendments effectively fail to preserve the GLISP's river waterfront as a
2 location for river-dependent and river-related uses.

3 The city responds that the focus of Policy 3 and its objectives is on
4 protecting industrial uses within the sanctuary from competition with non-
5 industrial uses. According to the city, restricting expansion of one type of
6 river-dependent and river-related industrial use is not inconsistent with Policy
7 3, Objective 7, because the waterfront will remain available for other types of
8 river-dependent and river-related industrial uses.

9 We understand WWC to argue that the city ignores practical reality if it
10 expects that potential expansion areas of existing waterfront FFTs, which are
11 massively committed to fossil fuel operations, will be developed or
12 redeveloped with other types of water-dependent industrial uses.

13 The city is correct that Policy 3 and Objective 7 are focused on
14 preserving industrial areas from non-industrial development, and preserving
15 waterfront for river-dependent and river-related uses, and are not expressly
16 concerned with preserving existing types of river-dependent industrial uses
17 against competition with other types of river-dependent industrial uses. WWC
18 is also probably correct that it is optimistic to expect that prohibiting expansion
19 of existing waterfront FFTs will simply result in displacing one type of river-
20 dependent industrial use with another. The practical result may well be that the
21 sanctuary's waterfront will be underutilized, compared to its potential.
22 However, while that result might be inconsistent with some other GLISP policy

1 or objective, we agree with the city that it does not appear to offend Policy 3,
2 Objective 7.

3 Petitioners' sixth and seventh assignments of error are sustained in part.
4 WWC's Second Assignment of Error, Subsection (iii), is sustained in part.

5 **FIFTH ASSIGNMENT OF ERROR**

6 **SECOND ASSIGNMENT OF ERROR, Subsection (ii) (WWC)**

7 These assignments and sub-assignments of error concern whether the
8 FFT amendments are consistent with the plans adopted by the Metro regional
9 government.

10 PCP Goal 1 requires that the city comprehensive plan shall "support
11 regional goals, objectives and plans adopted by" Metro. PCP 1-1; App-1. The
12 Metro Regional Framework Plan (Framework Plan) is Metro's overarching
13 plan for the region. It is implemented by several sub-plans, including the
14 Metro Regional Transportation Plan (Transportation Plan). The Transportation
15 Plan in turn is implemented by the Metro Regional Transportation Functional
16 Plan (Functional Plan). Petitioners and WWC argue that the city's decision is
17 inconsistent with several goals, objectives and vision statements in either the
18 Framework or Transportation Plan. At one point in the petition for review,
19 petitioners refer to the Functional Plan, but all cites to specific language are to
20 either the Metro Framework or Transportation Plans.

21 Initially, the city argues that the PCP Goal 1 obligation to "support"
22 Metro "plans" does not mean that the city must evaluate whether the FFT
23 amendments are consistent with either the Framework or Transportation Plan.

1 According to the city, Metro *functional* plans are the vehicles that Metro uses
2 to require changes in city and county comprehensive plans. See Framework
3 Plan Policy 7.5.2 (it is the policy of the Metro Council to “[u]se functional
4 plans as the identified vehicle for requiring changes in city and county
5 comprehensive plans in order to achieve consistence and compliance with this
6 Plan”). MRFP 3; R-App-39. The city argues that the city achieves consistency
7 with the Framework Plan by achieving consistency with applicable elements of
8 Metro’s functional plans. As noted, petitioners and WWC do not argue that the
9 FFT amendments are inconsistent with any provision of any Metro functional
10 plan, including the Transportation Functional Plan. Further, the city and
11 Riverkeeper argue that PCP Goal 1 requires only that the city *comprehensive*
12 *plan* support regional goals, objectives and plans; it does not require that city
13 land use regulations provide such support. Respondents note that PCC
14 33.835.040(A) governs zoning text amendments, and expressly requires only
15 that the city evaluate whether the text amendment is consistent with the Metro
16 Urban Growth Management Functional Plan, which the city did. We
17 understand respondents to argue that if the city intended to obligate itself to
18 consider whether a zoning text amendment is consistent with other Metro
19 plans, it knows how to do so, and the omission of that express obligation in
20 PCC 33.835.040(A) should be understood as a deliberate choice.

21 We agree with respondents. Petitioners and WWC have not
22 demonstrated that PCP Goal 1 or any other source of authority cited to us

1 obligates the city to evaluate whether a text amendment to its zoning code is
2 consistent with the Framework or Transportation Plans. Absent a more
3 developed argument, petitioners and WWC’s arguments do not provide a basis
4 to reverse or remand the challenged decision.

5 Petitioners’ fifth assignment of error, and WWC’s second assignment of
6 error, subsection (ii), are denied.

7 **SECOND, THIRD, FOURTH ASSIGNMENTS OF ERROR**
8 **SECOND ASSIGNMENT OF ERROR, Subsection (i) (WWC)**

9 These assignments and sub-assignments of error concern whether the
10 FFT amendments are consistent with state transportation plans and
11 requirements.

12 **A. Background**

13 Statewide Planning Goal 12 (Goal 12) (Transportation) is:

14 “To provide and encourage a safe, convenient and economic
15 transportation system.”

16 Goal 12 generally requires local governments to adopt transportation plans,
17 which among other things must “facilitate the flow of goods and services so as
18 to strengthen the local and regional economy[.]”⁹ Goal 12 is implemented by

⁹ Goal 12 continues:

“A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing

1 OAR 660, chapter 012, the Transportation Planning Rule (TPR), one purpose
2 of which is to “[f]acilitate the safe, efficient and economic flow of freight and
3 other goods and services within regions and throughout the state through a
4 variety of modes including road, air, rail and marine transportation[.]” OAR
5 660-012-0000(1)(d). The TPR requires the Oregon Department of
6 Transportation (ODOT), regional governments, and local governments to adopt
7 Transportation System Plans (TSPs), consistent with the standards and
8 requirements set out in the rule. Local TSPs must include an “air, rail, water
9 and pipeline transportation plan which identifies where public use airports,
10 mainline and branchline railroads and railroad facilities, port facilities, and
11 major regional pipelines and terminals are located or planned within the
12 planning area.” OAR 660-012-0020(2)(e).

13 **B. Transportation Facility**

14 Both Goal 12 and its implementing regulations at OAR 660-012-
15 0005(30) define “transportation facilit[y]” as “any physical facility that moves
16 or assist[s] in the movement of people or goods including facilities identified in

differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) *facilitate the flow of goods and services so as to strengthen the local and regional economy*; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.” (Emphasis added.)

1 OAR 660-012-0020 but excluding electricity, sewage and water.” Initially,
2 petitioners argue that under those definitions FFTs are clearly “transportation
3 facilities.” *See also* OAR 660-012-0045(1)(a)(A) (identifying “major regional
4 pipelines and terminals” as transportation facilities). Petitioners contend that in
5 its findings the city failed to recognize that FFTs are transportation facilities for
6 purposes of Goal 12 and the Goal 12 rule, and hence failed to address the
7 impacts of the amendments on the FFTs themselves.¹⁰

8 The city responds that a “transportation facility” as defined in Goal 12
9 and the Oregon Transportation Planning Rule (TPR) does not include a storage
10 facility, such as a warehouse. That may be the case, but we do not understand
11 the city to dispute that the scope of “transportation facility” includes intermodal
12 facilities that transfer persons or cargo from one transportation mode to

¹⁰ The city council did not adopt findings addressing Goal 12 itself, but adopted findings addressing a section of the TPR, OAR 660-012-0060 (discussed below) and PCP Goal 6, Transportation. The findings addressing OAR 660-012-0060 are quoted in n 14, below. The only finding that appears to address impacts on the existing terminals themselves is as follows:

“These amendments create a new land use category, but impose prohibitions and limits that restrict the level of development to less than what is allowed under the current standards. The zoning code currently allows Bulk Fossil Fuel Terminals as a Warehouse and Freight Movement use without any limits on the size of terminals. The amendments will prohibit new terminals and limit the expansion of existing terminals.” Record 20.

1 another.¹¹ As defined by PCC 33.920.300, the category of FFT includes
2 facilities that engages in both the transport *and* the bulk storage of fossil fuels.
3 Therefore, the FFTs subject to the amendments are “transportation facilities,”
4 because they move or assist in the movement of goods, notwithstanding that
5 they also involve storage of fossil fuels.

6 Petitioners are correct that the city’s findings do not appear to recognize
7 that the existing FFTs are “transportation facilities,” for purposes of evaluating
8 compliance with Goal 12 and the TPR. However, the city’s failure to adopt
9 findings directly addressing impacts on existing FFTs as transportation
10 facilities is not, in itself, reversible error. The question is whether the decision
11 and record demonstrate that the amendments comply with the substantive
12 requirements of the goal and rule. *See* n 7. We first turn to the parties’
13 arguments under the TPR, and then to Goal 12 and state-level plans such as the
14 Oregon Transportation Plan (OTP) and Oregon Freight Plan (OFP).

15 **C. Transportation Planning Rule (TPR)**

16 OAR 660-012-0060, part of the Oregon Transportation Planning Rule
17 (TPR) implementing Goal 12, requires that local governments determine

¹¹ The city may be correct that the natural gas facility located in the city’s northwest industrial district may not constitute a “transportation facility” as defined in Goal 12 and the TPR, if it merely functions as a peak storage facility for natural gas that arrives and leaves the site by same modality (pipeline). However, an intermodal facility, such as an airport or freight transloading terminal, *etc.*, is clearly a “transportation facility” within the meaning of Goal 12 and the TPR.

1 whether an amendment to a land use regulation would “significantly affect an
2 existing or planned transportation facility” in one of three ways and, if so,
3 adopt one or more measures to offset the significant effect.¹²

4 **1. Change the Functional Classification of a Transportation**
5 **Facility**

6 Two of the three ways in which a local government plan or zoning
7 amendment can “significantly affect” a transportation facility involves changes
8 to functional classification or the standards implementing a functional
9 classification system. If the amendment does significantly affect a
10 transportation facility, OAR 660-012-0060(2) requires the local government to
11 adopt one or more measures.¹³ Among the possible measures listed are to

¹² OAR 660-012-0060(1) provides, in relevant part:

“If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule * * *. A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

“(b) Change standards implementing a functional classification system[.]”

¹³ OAR 660-012-0060(2) provides, in part:

1 amend the local transportation system plan to modify the planned function of a
2 transportation facility. OAR 660-012-0060(2)(c).

3 The city council adopted findings concluding that the FFT amendments
4 do not significantly affect any transportation facility in any of the three ways
5 described in OAR 660-012-0060(1).¹⁴ The findings state, in so many words,

“If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, * * *.

“(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

“* * * * *

“(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.”

¹⁴ The city council’s findings state, in relevant part:

“a. These amendments do not change the functional classification of an existing or planned transportation facility, nor change standards that implement a functional classification system.

“b. These amendments create a new land use category, but impose prohibitions and limits that restrict the level of development to less than what is allowed under the current standards. The zoning code currently allows Bulk Fossil Fuel Terminals as a Warehouse and Freight Movement use without any limits on the size of terminals. The amendments

1 that the amendments do not change the functional classification of an existing
2 or planned transportation facility, or change standards that implement a
3 functional classification system.

4 As explained above, intermodal FFTs are a type of “transportation
5 facility” within the meaning of the TPR and OAR 660-012-0060. Petitioners
6 contend that the city’s findings of compliance with OAR 660-012-0060 focus
7 exclusively on impacts to roads and similar types of transportation facilities,
8 and do not evaluate the impacts of the amendments on existing and future FFTs
9 themselves.

will prohibit new terminals and limit the expansion of existing terminals.

- “c. Given the new prohibitions and limits on expansion, the amendments will not reduce or worsen the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan.
- “d. For the same reason, these changes will not have a significant effect on existing or planned transportation facilities because the proposed amendments are minor changes to the allowed uses in industrial uses, and will not increase development intensity in a manner that will be inconsistent with the function or classification of existing transportation facilities or increase automobile traffic.
- “e. There are not changes proposed to the Comprehensive Plan or Zoning Map that will impact the overall size or intensity of development in the industrial areas of Portland.” Record 20.

1 According to petitioners, the amendments “significantly affect” FFTs
2 within the meaning of the meaning of OAR 660-012-0060(1), because the
3 amendments effectively change (1) the functional classification of an existing
4 or planned transportation facility, or (2) the standards implementing a
5 functional classification system. Petitioners argue that PCP Transportation
6 Goal 6.9 and the city’s Freight Master Plan (FMP) provide a functional
7 classification system for freight infrastructure, which includes a system of
8 freight roads as well as “freight facilities,” a classification that includes marine
9 terminals, intermodal rail yards, airports and pipeline terminals.¹⁵ Petitioners

¹⁵ PCP Goal 6.9, entitled “Freight Classification Descriptions,” is to “[d]esignate a system of truck streets, railroad lines, and intermodal freight facilities that support local, national, and international distribution of goods and services.” PCP 6-11; App-19. PCP Goal 6.9(I) describes “Freight Facilities,” and states that “Freight Facilities include the major shipping and marine, air, rail and pipeline terminals that facilitate the local, national, and international movement of freight.” PCP 6-12; App-20.

The FMP states:

“Portland relies on a multimodal classification system to describe the design and function of a street or other transportation facility. There are seven classification categories: Traffic, Transit, Pedestrian, Bicycle, Freight, Emergency Response, and Street Design. When funding, designing, or operating a facility all model classifications are considered.

“Portland’s freight system is comprised of streets, rail lines, and freight facilities including marine terminals, intermodal rail yards, airports, and pipeline terminals. [PCP] Policy 6.9 describes each of the freight system classifications in the hierarchy. The

1 argue that in reclassifying FFTs from the general land use category of
2 “Warehouse and Freight Movement,” formerly allowed without any limit on
3 size or function, to a new land use category (FFT) subject to prohibitions on
4 new terminals and the expansion of existing terminals, the city’s decision
5 effectively changed the city’s freight functional classification system, and the
6 standards implementing the city’s freight functional classification system.

7 The city and Riverkeeper respond that a zoning code amendment that
8 merely adds a new land use category to distinguish one sub-type of freight
9 facility from others does not change the functional classification of that facility,
10 or the standards that determine the functional classification of any facility,
11 within the meaning of OAR 660-012-0060(1).

12 The TPR does not define the term “functional classification,” and as far
13 as we are informed, neither city nor state transportation plans define the term.
14 As applied to transportation facilities such as roads and streets, the term
15 “functional classification” appears to refer to a scheme that sorts the universe
16 of such facilities into a hierarchical classification scheme, *e.g.*, highway,
17 arterial, collector, local street, *etc.*, and assigns different function, capacity,
18 mobility, or access standards to each classification.

classifications correspond to land use activities. For classifying network features, freight movement is divided into two broad categories: industrial-serving and commercial delivery of goods and services.” FMP 21; App-268.

1 Portions of the city’s freight classification system described in PCP Goal
2 6.9 and FMP at pages 21-23 (App-268-70) are similar to the typical
3 hierarchical classification system used for roads and streets. FMP Table 3 lists
4 “Freight Classification by Activity Type,” and describes a hierarchical and
5 interrelated system of truck roads: regional truckway, priority truck street,
6 major truck street, truck access street, local truck street, and freight district.
7 FMP 22; App-269. Each of these classifications serves a distinct function
8 within the city’s freight transportation system, and appears to be subject to
9 different standards. It would be no stretch to describe the portion of the city’s
10 freight classification system that concerns truck roads as a functional
11 classification system, for purposes of OAR 660-012-0060.

12 FMP Table 3 also lists three other types of freight classifications, but
13 these classifications are isolated from the truck road classifications, and do not
14 possess the same hierarchical character as the truck road system described
15 above. FMP 22; App-269. One such stand-alone classification is for “Freight
16 Facilities,” which as noted lumps together the major marine terminals, airport,
17 railyards, and intermodal facilities that are located in Freight Districts. The rest
18 of the FMP includes almost no discussion of the Freight Facilities
19 classification, and there appear to be no standards or functional distinctions
20 among the various sub-types of freight facilities.

21 We understand petitioners to argue that the FFT amendments effectively
22 modify the functional classification of Freight Facilities, creating a new sub-

1 classification in order to distinguish the function of FFTs from other intermodal
2 terminals. According to petitioners, the amendments are intended to restrict
3 existing FFTs to serve only “regional” needs for fossil fuels, *see* n 5, consistent
4 with the intent of PCP Policy 6.48, and to preclude new or expanded terminals
5 that might serve an interstate or international market, for example, a coal or
6 propane export terminal. Freight transloading facilities that serve other bulk
7 commodities, including non-fossil fuels, are allowed to site new facilities or
8 expand existing ones, and the city has expressed no intent to restrict the
9 function of such non-FFT facilities to serve only regional needs. We
10 understand petitioners to argue that the creation of these distinctions among
11 freight facilities constitute a *de facto* “[c]hange [in] the functional classification
12 of an existing or planned transportation facility” for purposes of OAR 660-012-
13 0060(1). Accordingly, petitioners argue, the city must adopt one or more of the
14 measures listed in OAR 660-012-0060(2), such as amending its TSP and FMP
15 to expressly modify the planned function of FFTs, to reflect the change from
16 unrestricted to restricted fossil fuel transportation facilities.

17 We disagree with petitioners that the FFT amendments “change the
18 functional classification” of Freight Facilities or FFTs, within the meaning of
19 OAR 660-012-0060(1). Although the classification of Freight Facilities exists
20 within what appears to constitute a functional classification system, it is a
21 stand-alone classification, lacking the kind of hierarchical, relational
22 connections exhibited by the truck road classifications. Within the

1 classification of Freight Facilities, the various facilities are lumped together
2 indiscriminately, with no functional distinctions among them. No standards
3 appear to apply to distinguish one type of freight facility from another. While
4 the FFT amendments introduce some distinctions between FFTs and other
5 types of freight facilities, those distinctions serve normative purposes
6 extraneous to a functional classification system, and do not have the effect of
7 creating a functional classification system for freight facilities, as petitioners
8 argue. Accordingly, we agree with respondents that the city did not err in
9 concluding that the FFT amendments do not change the functional
10 classification system for any transportation facility, within the meaning of OAR
11 660-012-0060(1).

12 **2. Degrade the Performance of a Transportation Facility**

13 The third, and more common way, in which an amendment can
14 significantly affect a transportation facility is described in OAR 660-012-
15 0060(1)(c), which generally concerns impacts of increased traffic levels
16 generated by uses allowed under the amendment on the function or
17 performance of transportation facilities.¹⁶ Petitioners argue that by prohibiting

¹⁶ OAR 661-012-0060(1)(c) provides that an amendment significantly affects a transportation facility if it would:

“Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP * * *.

1 the expansion of existing FFTs and siting of new FFTs, increased regional
2 demand for fossil fuel transportation projected by city and state transportation
3 plans will have to be met by increased levels of truck traffic. According to
4 petitioners, increased levels of truck traffic on freight roads and streets could
5 significantly affect the function, capacity or performance of such facilities in
6 one of the ways described in OAR 660-012-0060(1)(c)(A)-(C). For example,
7 petitioners cite to testimony that the aviation fuel supply chain relies on FFTs,
8 and that demand for aviation fuel will increase by more than 50 percent by
9 2035, requiring new FFTs for aviation fuel. Record 487. Petitioners argue that
10 by prohibiting the expansion or siting of new FFTs, the amendments will force
11 aviation fuel trucks to drive from out of state and along surface roads,
12 including Airport Way, to deliver fuel directly to the Portland International
13 Airport, which may cause increased levels of truck traffic that would
14 significantly affect the function or performance of Airport Way. We do not

“(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

“(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.”

1 know, petitioners argue, because the city made no effort to evaluate the effects
2 of increased truck traffic on city roads and streets that may be indirectly caused
3 by restricting new and expanded FFTs.

4 The city and Riverkeeper respond that petitioners' arguments regarding
5 impacts of increased truck traffic on city freight roads are entirely speculative.
6 Riverkeeper also notes that in response to testimony regarding aviation fuel
7 supply, the city council exempted facilities storing or transloading aviation fuel
8 from any restrictions. Riverkeeper argues that that exemption eliminated the
9 only specific example of potential impacts on city roads that petitioners
10 identify.

11 We agree with respondents that petitioners' arguments do not provide a
12 basis for reversal or remand. OAR 660-012-0060(1)(c) generally concerns
13 circumstances where a proposed plan or zoning amendment has the effect of
14 increasing land development potential, causing increased traffic generation
15 compared to the unamended plan or zoning regulation. In that circumstance,
16 local governments are required to evaluate impacts of traffic generated under
17 the increased development potential on *affected* transportation facilities. In the
18 present case, the FFT amendments effectively freeze the development capacity
19 of FFTs at current levels. This is not the type of amendment that could directly
20 cause increased traffic compared to the unamended zoning regulations (which
21 allowed unrestricted expansion or siting of FFTs). Essentially the FFT
22 amendments downzone the development potential within the city's industrial

1 districts, as the city’s findings conclude. Petitioners argue, however, that by
2 effectively restricting one mode of fossil fuel transportation in the city, the
3 amendments will indirectly cause future fuel demand to be met entirely by
4 other modes, such as tanker trucks, which will cause increased levels of truck
5 traffic over that anticipated in the city’s transportation plans, which in turn
6 might be inconsistent with the planned function or performance of some city
7 freight routes.

8 However, we do not think that OAR 660-012-0060(1)(c) requires the
9 city to evaluate the possibility that downzoning the intensity of one particular
10 type of land use at one location in the city may indirectly cause compensatory
11 development and related traffic generation elsewhere in the city. For example,
12 an amendment that restricts potential for commercial development on one
13 property need not be supported by an evaluation of the possibility that other
14 commercially-zoned sites in the city will meet future commercial demand by
15 intensifying development, causing increased traffic impacts on city streets
16 elsewhere. Further, to meaningfully evaluate impacts on transportation
17 facilities under OAR 660-012-0060(1)(c), the local government must be able to
18 identify the transportation facilities affected by the amendment. Under
19 petitioners’ indirect impact approach, that task would be an impossible burden,
20 potentially requiring evaluation of every freight route in the city. Petitioners
21 identify only one specific transportation facility that might be impacted under
22 that indirect approach, but, as Riverkeeper argues, the city adopted exemptions

1 that appear to moot arguments based on that example. Accordingly, we reject
2 petitioners’ arguments that the city erred in concluding that the FFT
3 amendments do not significantly affect any facility within the meaning of OAR
4 660-012-0060(1)(c).

5 **D. Statewide Planning Goal 12**

6 As noted above, Goal 12 requires local governments to adopt
7 transportation system plans that “facilitate the flow of goods and services so as
8 to strengthen the local and regional economy[.]” Further, the TPR requires that
9 TSPs “[f]acilitate the safe, efficient and economic flow of freight and other
10 goods and services within regions and throughout the state through a variety of
11 modes including road, air, rail and marine transportation[.]” OAR 660-012-
12 0000(1)(d).

13 Petitioners argue that the FFT amendments violate Goal 12 and the intent
14 of the Goal 12 rule because rather than “[f]acilitate the safe, efficient and
15 economic flow of freight and other goods and services within regions and
16 throughout the state through a variety of modes including road, air, rail and
17 marine transportation,” the amendments instead will impede the flow of fossil
18 fuels within the region and throughout most of the state, by prohibiting the
19 expansion of existing terminals and the siting of new terminals. Similarly,
20 WWC argues that the unique cluster of intermodal transportation facilities
21 along Portland’s industrial waterfront is a critical component of the statewide
22 fossil fuel transportation system. According to WWC, the FFT amendments

1 create a less economic, less convenient, and less safe transportation system by
2 forcing any future expansion of fossil fuel storage and distribution needed to
3 address increased local, regional or statewide demand to be met through small
4 (two million gallon or less) terminals or terminals that use a single mode of
5 transport—trucks.

6 The city responds that because the city has a TSP that is acknowledged
7 to comply with Goal 12, re-examination of compliance with Goal 12 is
8 triggered only if the FFT amendments trigger evaluation under OAR 660-012-
9 0060(1), *i.e.*, the amendments have a significant effect on a transportation
10 facility. We disagree with the city. PCC 33.835.040(A), as well as state law,
11 require that a zoning code amendment be consistent with the Statewide
12 Planning Goals. While OAR 660-012-0060 provides specific and additional
13 standards for certain types of plan and zoning code amendments, nothing in
14 OAR 660-012-0060 or elsewhere cited to us suggests that an amendment is
15 required to comply only with the OAR 660-012-0060. OAR 660-012-0060 is
16 not particularly concerned, for example, with other Goal 12 and TPR
17 requirements intended to “[f]acilitate the safe, efficient and economic flow of
18 freight and other goods and services within regions and throughout the state
19 through a variety of modes including road, air, rail and marine transportation.”
20 The requirements of Goal 12 and other portions of the Goal 12 rule may well
21 apply to a plan or zoning amendment that does not “significantly affect” a

1 transportation facility in one of the three ways specified in OAR 660-012-
2 0060(1)(c). *See* n 16.

3 The city and Riverkeeper next argue that much of Goal 12 and the Goal
4 12 rule are concerned with the adoption of transportation system plans (TSP),
5 and nothing in the goal or rule is triggered by a plan or zoning amendment that
6 does not amend a TSP. However, that is too facile an answer. A local
7 transportation system plan does not exist in a vacuum, but is highly integrated
8 with local zoning and land use schemes. As discussed below, a local
9 transportation system plan is also integrated to some extent with regional and
10 state transportation system plans. A plan or zoning amendment that changes
11 the zoning classification for a specific type of transportation facility,
12 particularly one that has regional and statewide significance, could potentially
13 affect whether the local TSP remains in compliance with applicable Goal 12 or
14 rule requirements that are in addition to those imposed under OAR 660-012-
15 0060. If so, we believe that the local government is obliged to consider that
16 question in adopting the plan or zoning amendment.

17 On the merits, the city and Riverkeeper argue that the FFT amendments
18 are consistent with Goal 12. According to respondents, the amendments do not
19 limit the ability of the city, under its TSP, to facilitate the flow of goods and
20 services throughout the region and state. Respondents argue that the
21 amendments do not expressly limit the quantity of fuel that flows through
22 pipelines or terminals, or the ability of existing terminals to increase

1 throughput to other parts of the state, if that is required, by operating more
2 efficiently. Respondents also note that the amendments include a number of
3 exemptions, for aviation storage facilities, and for facilities handling non-fossil
4 fuels (ethanol, biodiesel, etc.), for which the city anticipates an increasing
5 demand. The amendments also allow new small terminals (less than two
6 million gallons) and fossil fuel terminals served by a single mode—trucking.
7 Given these considerations, respondents argue that the amendments will have
8 only a minimal effect on the flow of fossil fuel through the city’s terminals to
9 the rest of state.

10 The considerations cited by respondents in their briefs might be the kind
11 of considerations that would justify a conclusion that the FFT amendments do
12 not affect the city TSP’s continued compliance with the Goal 12 requirement to
13 facilitate the flow of goods. However, there is no indication in the city’s
14 decision or in the record that the city in fact evaluated such considerations. For
15 example, no findings or evidence are cited to us that the existing terminals have
16 the ability to increase throughput to the region or the rest of the state by
17 adopting more efficient operations. As noted, the city adopted no findings
18 addressing Goal 12 itself (as opposed to OAR 660-012-0060), and there are no
19 findings or analysis cited to us that evaluates the impact of the FFT
20 amendments on the flow of fossil fuel through the city’s terminals to the region
21 and to the rest of the state. As discussed, the city enjoys a commanding
22 geographic and logistical position with respect to the fossil fuel supply for the

1 state of Oregon: the city’s existing FFTs transload or handle 90 percent of the
2 state’s petroleum supply. Record 31. Under these circumstances, we do not
3 believe the city can adopt zoning amendments that restrict FFTs to their
4 existing number and capacity, without at least considering the impact of the
5 amendments on the flow of fossil fuel to the region and the state. Specifically,
6 the city must consider whether the city’s TSP and zoning regulations, post-
7 amendment, continue to comply with the Goal 12 requirement to facilitate the
8 flow of goods and services.

9 **E. Oregon Transportation Plan (OTP)**

10 Petitioners and WWC advance similar arguments based on the Oregon
11 Transportation Plan (OTP) and the Oregon Freight Plan (OFP), which is a
12 component of the OTP. OAR 660-012-0015(3)(a) requires local governments
13 to adopt local TSPs that are consistent with the Oregon TSP. In turn, OAR
14 660-012-0045(1) requires local governments to amend their land use
15 regulations to implement the local TSP. Petitioners argue that the FFT
16 amendments restrict transportation facilities in a manner that cause the city’s
17 zoning regulations to conflict with several OTP goals and policies.

18 Among other OTP goals and policies, petitioners cite to OTP Strategy
19 1.1.2, which is to “[p]romote the growth of intercity bus, truck, air, pipeline and
20 marine services to link all areas of the state with national and international
21 transportation facilities and services.” OTP 47; App-738. OTP Strategy 1.2.2
22 also requires that local governments “[c]oordinate and support the development

1 of intermodal connections between air, marine, pipeline, public transportation,
2 rail and road transportation.” OTP 48; App-739. Further, OTP Policy 3.1 states:
3 “[i]t is the Policy of the State of Oregon to promote an integrated, efficient and
4 reliable freight system involving air, barges, pipelines, rail, ships, and trucks to
5 provide Oregon a competitive advantage by moving goods faster and more
6 reliably to regional, national and international markets.” OTP 54; App-745.
7 Similarly, OTP Goal 7 requires that local governments “remove barriers and
8 bring innovative solutions so the transportation system functions as one
9 system.” OTP 74; App-765.

10 The city responds that because the challenged decision does not amend
11 the city’s TSP, the FFT amendments are not required to be consistent with the
12 OTP. The city notes that the OTP was adopted by the Oregon Transportation
13 Commission (OTC), which explains in a preface to the OTP that it lacks
14 statutory authority to impose OTP goals, policies and performance
15 recommendations on entities other than state agencies.¹⁷

¹⁷ The OTP quotes ORS 184.618(1), which authorizes the Oregon Transportation Commission to develop the OTP to provide a comprehensive, long-range plan for a safe, multimodal transportation system for the state, including aviation, highways, mass transit, pipelines, ports, rails, and waterways, to be used by state agencies and officers to guide and coordinate transportation activities. OTP 34; App-725. The OTP continues:

“ORS 184.618(1) requires state agencies to use the OTP to ‘guide and coordinate transportation activities,’ but it does not give the OTC authority to impose OTP goals, policies and performance recommendations on other than state agencies. However, the OTP

1 The city is correct that nothing cited to us requires that a city zoning
2 code amendment be consistent with the OTP, or applies OTP goals and policies
3 as direct review standards for the challenged FFT amendments. However, it
4 does not follow that OTP goals and policies are completely irrelevant to a
5 zoning code amendment that directly affects key multimodal transportation
6 facility of statewide significance. The FFT amendments do not occur in a
7 vacuum, or concern only local transportation infrastructure. As discussed
8 above, given the nature of the FFT amendments, the city is required to consider
9 whether, post-amendment, the city’s TSP continues to comply with the Goal 12
10 requirement to facilitate the flow of goods and services in the region and state.
11 As the quoted OTP excerpt at n 17 states, the OTP operates within a legal
12 context that includes Goal 12 and the Goal 12 rule. The OTP and the
13 incorporated OFP represent a state-level body of information and policy
14 guidance that speak directly to the state’s interest in maintaining and improving
15 the flow of goods and services throughout the state (and beyond). In essence,
16 the OTP represents the judgment of the highest transportation planning entity
17 in the state about what it means to “facilitate the flow of goods and services.”
18 In considering whether the FFT amendments are consistent with Goal 12, there

operates in the legal context of the State Agency Coordination Program and the Land Conservation and Development Commission’s Transportation Planning Rule which impose additional requirements and authority in the planning process for other jurisdictions. The OTP must also comply with federal legislation.” *Id.*

1 may be no authority that requires the city to apply relevant OTP goals and
2 policies as approval standards; nonetheless, such OTP goals and policies would
3 seem to be pertinent considerations to any such evaluation under Goal 12.

4 **F. Oregon Freight Plan (OFP)**

5 As noted, the Oregon Freight Plan (OFP), adopted in 2011, is an
6 incorporated part of the OTP. The OFP includes a number of projections and
7 estimates regarding demand for freight, including estimates that many areas of
8 the state will experience significant increases in demand for fossil fuels
9 through the year 2035. *See, e.g.*, OFP 47; App-1043 (estimating a compound
10 annual growth rate of 2.3 percent for truck freight of petroleum and natural gas-
11 based products in the state). WWC argues that the OFP estimates contradict
12 the city’s apparent presumption, in the findings supporting the FFT
13 amendments, that local and regional demand for fossil fuels will be relatively
14 flat or even decline in the foreseeable future.¹⁸

¹⁸ The city’s decision includes the following finding:

“The most recent cargo forecast for Portland Harbor in 2012 projected 1.0% AAG [average annual growth] in liquid bulk tonnage to 2040 as a high scenario and 0.5% AAG as a low scenario (BST Associates, 2012). Based on this forecast, EcoNorthwest (2012) estimated no additional land need for new liquid bulk terminals * * *.” Record 48.

The city also found:

“The potential impacts of the code amendments on constraining the fossil fuel supply to meet regional demand is uncertain. Fossil

1 The city and Riverkeeper respond that the OFP projections and estimates
2 cited by WWC are not in the record, and further are the kind of “adjudicative
3 facts” that cannot be judicially noticed, even if located within documents that
4 are subject to judicial notice. We agree with respondents. *Blatt v. City of*
5 *Portland*, 21 Or LUBA 337, *aff’d* 109 Or App 259, 819 P2d 309 (1991), *rev*
6 *den* 314 Or 727, 843 P2d 454 (1992) (“LUBA does not have authority to take
7 official notice of adjudicative facts, as set out in OEC 201.”). WWC offers no
8 theory we can understand that would allow LUBA to consider the data in the
9 OFP, which is not in the record, for purposes of undermining the city’s reliance
10 on evidence that is in the record. Accordingly, WWC’s arguments regarding
11 the OFP estimates of future demand for fossil fuels in the state do not provide a
12 basis for reversal or remand.¹⁹

13 Petitioners’ second and fourth assignments of error are sustained;
14 Petitioners’ third assignment of error, and WWC’s second assignment of error,
15 subsection (i), are denied.

fuel demand in this growing region has been relatively flat over the last 15 years. At best, the demand for fossil fuel may increase moderately, as indicated by trend-based forecasts, or may plateau and decline with a continued shift to other modes of transportation, more fuel-efficient vehicles, electric vehicles and other carbon reduction strategies.” Record 4.

¹⁹ That said, to the extent Goal 12 or the Goal 12 rule requires the city to evaluate the impacts of the FFT amendments on statewide fossil fuel supply and demand, the OFP appears to provide relevant data that could be used for that evaluation.

1 **FIRST ASSIGNMENT OF ERROR²⁰**

2 Statewide Planning Goal 2 (Goal 2) (Land Use Planning) requires in
3 relevant part that comprehensive plan and implementing measures be
4 “coordinated with the plans of affected governmental units,” and that land use
5 decisions be supported by an “adequate factual base.” Petitioners and WWC
6 argue that the city erred in failing to coordinate with the plans of affected
7 governmental units and in adopting a decision that is not supported by an
8 adequate factual base.

9 **A. Coordination with the Plans of Affected Governmental Units**

10 The Goal 2 requirement to coordinate comprehensive plan and
11 implementing measures with the plans of affected governmental units is
12 satisfied by (1) inviting an exchange of information between the planning
13 jurisdiction and affected governmental units, and (2) using the information
14 gained in that exchange to balance the needs of all affected government units
15 and the citizens they represent. *ODOT v. City of Klamath Falls*, 39 Or LUBA
16 641, 671, *aff’d* 177 Or App 1, 34 P3d 667 (2001); *Rajneesh v. Wasco County*,
17 13 Or LUBA 202, 210 (1985).

18 Petitioners argue that despite proposing to enact major legislation that
19 would have consequences throughout the metropolitan area and state, the city

²⁰ WWC incorporates petitioners’ first assignment of error as its first assignment of error.

1 made no concerted effort to involve Metro, ODOT, other cities, the Port of
2 Portland or other affected governmental units.

3 The city responds that it mailed notice of the proposed amendments to
4 Department of Land Conservation and Development (DLCD) pursuant to ORS
5 197.610, and many multiple notices of the PSC hearings and the city council
6 hearings to Metro (34 notices), ODOT (94 notices) and the Port of Portland
7 (369 notices). Record 1247-81 (city council hearing), Record 3456-3674 (PSC
8 hearings). According to the city, only the Port of Portland submitted
9 comments, expressing concern that the amendments should not impact aviation
10 and marine fuel supplies. In response, the city modified the proposal to
11 exclude aviation and marine fuel storage facilities. The city argues, and we
12 agree, that Goal 2 does not require more from the city.

13 PCP Goal 1 provides that the comprehensive plan shall be coordinated
14 with federal and state law and support regional goals, objections and plans
15 adopted by Metro, to promote regional planning framework. The city council
16 adopted findings concluding that PCP Goal 1 is met basically for the same
17 reasons why the Statewide Planning Goal 2 coordination requirement is met.²¹

²¹ The city council findings state, in relevant part:

“Goal 1, Metropolitan Coordination, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendments are consistent with this goal because notification of the proposals, and an opportunity to provide comment at a public hearing before the [PSC], was provided to [DLCD] consistent with ORS 197.610,

1 Petitioners contend that a local coordination requirement such as PCP Goal 1
2 requires more than Statewide Planning Goal 2. Petitioners cite *Twin Rocks*
3 *Water District v. City of Rockaway*, 2 Or LUBA 36 (1980), and *Textronix, Inc.*
4 *v. City of Beaverton*, 18 Or LUBA 473, 479 (1989), for the proposition that
5 local coordination requirements cannot be met by simply providing affected
6 governmental entities with notice and soliciting comments.

7 However, both of the cited cases predate ORS 197.829(1) and caselaw
8 requiring that LUBA defer to a governing body’s interpretation of local land
9 use legislation. *See* n 7. Petitioners do not acknowledge or challenge the city
10 council’s findings of consistency with PCP Goal 1. Under those findings, it is
11 clear that the city council does not interpret PCP Goal 1 to impose more
12 onerous coordination obligations on the city than does Statewide Planning Goal
13 2. Petitioners have not demonstrated that that understanding of PCP Goal 1 is
14 inconsistent with its express language, or otherwise reversible under ORS
15 197.829(1). Petitioners’ arguments regarding PCP Goal 1 do not provide a
16 basis for reversal or remand.

17 **B. Goal 2 Adequate Factual Base**

18 Statewide Planning Goal 2 is:

19 “To establish a land use planning process and policy framework as
20 a basis for all decision and actions related to use of land and to
21 assure an adequate factual base for such decisions and actions.”

and to Metro, Tri-Met, the Port of Portland, and [ODOT]
consistent with [PCC] 33.740.020 * * *.” Record 8.

1 LUBA has interpreted the Goal 2 requirement to “assure an adequate factual
2 base” to mean that legislative decisions must be supported by substantial
3 evidence, *i.e.*, findings of fact supported by evidence in the record which,
4 viewing the record as a whole, would permit a reasonable person to make that
5 finding. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372,
6 377-78, *aff’d* 130 Or App 406, 882 P2d 1130 (1994).

7 The PSC recommended draft includes findings addressing future
8 regional demand for fossil fuels, noting studies showing a trend toward
9 increased local or regional demand,²² but noting the possibility that increases in

²² The recommended draft includes the following:

“Analysis to date is limited on the energy consumption forecasts and how the recommended code changes would impact the demand for additional fossil fuel storage capacity. Fossil fuel demand in this growing region may increase moderately, as indicated by trend-based forecasts, or may plateau and decline with implementation of climate resilience goals and strategies. National forecasts of energy consumption by the U.S. Energy Information Administration show varying growth trajectories by energy type, including a relatively flat outlook for petroleum fuels, decline for coal, and moderate growth for natural gas and renewables * * *.

“Liquid bulk cargo in Portland Harbor is projected to expand at a range of 0.5% to 1.0% average annual growth (AAG) to 2040 (BST Associates, 2012), providing an estimate of potential market expansion needs for petroleum fuels, which could mean a need for an additional 10-20% increase in storage capacity. However, based on this forecast, ECONorthwest (2012) estimated that there was no additional land needed for new liquid bulk terminals in Portland. The 1.9% average annual growth to 2034 (NW Natural

1 demand for fossil fuel may plateau and decline “with implementation of climate
2 resilience goals and strategies.” Record 330. In part to account for the need to
3 accommodate possible increased future demand, the PSC recommended draft
4 proposed allowing existing terminals to expand by 10 percent. Record 363.

5 The city council adopted a similar finding, noting that the impact of the
6 FFT amendments on constraining the growing regional demand for fossil fuel
7 is “uncertain,” but expressing the hope that such demand may decline “with a
8 continued shift to other modes of transportation, more fuel-efficient vehicles,
9 electric vehicles and other carbon reduction strategies.”²³ However, as noted,

2014 Integrated Resource Plan) provides an estimate of market expansion needs for natural gas distribution facilities.

“Even if regional fossil fuel demand follows trend-based local forecasts, there is a wide margin between the size of recently proposed crude oil, coal, and [liquefied natural gas (LNG)] terminals in the Pacific Northwest and the scale of expected growth of existing Portland fuel terminals that generally serve the regional market area * * *.” Record 330.

²³ The city council findings state, in relevant part:

“The potential impacts of the code amendments on constraining the fossil fuel supply to meet regional demand is uncertain. Fossil fuel demand in this growing region has been relatively flat over the last 15 years. At best, the demand for fossil fuel may increase moderately, as indicated by trend-based forecasts, or may plateau and decline with a continued shift to other modes of transportation, more fuel-efficient vehicles, electric vehicles and other carbon reduction strategies.” Record 17.

1 the city council eliminated the provision for a 10 percent expansion. Record
2 50.

3 Petitioners argue that findings to the effect that regional demand for
4 fossil fuels will plateau or decline are not supported by substantial evidence in
5 the record. According to petitioners, that unsupported finding is the apparent
6 basis for rejecting the PSC recommendation to allow a 10 percent increase in
7 the size of existing terminals, and instead completely prohibiting the expansion
8 of existing terminals. Petitioners argue that the uncontradicted evidence in the
9 record, cited in the city's own decision, is that growing regional demand for
10 fossil fuels will likely require a 10-20% percent increase in storage capacity.²⁴

11 The city responds that the record includes evidence from which a
12 reasonable decision maker could conclude that future fossil fuel demand, while
13 uncertain, may be relatively flat. Record 245 (graph showing relatively flat
14 actual consumption of fossil fuels in Oregon between 2005 and 2014, a period
15 of time that included the recent national recession); Record 330 (staff finding
16 citing a 2016 federal forecast of national energy consumption indicating a

²⁴ In addition, petitioners argue that the city's findings are contradicted by projections in the Oregon Freight Plan (OFP), to the effect that statewide demand for fossil fuels is projected to increase over the next 15 to 25 years. However, as explained, the OFP is not in the evidentiary record, and data contained in the OFP cannot be considered by LUBA to support or controvert evidence in the record to resolve an evidentiary dispute. That said, if the city is again called upon to evaluate evidence regarding future demand for fossil fuels in the region or statewide, we note that the projections in the OFP would seem to be highly probative to that inquiry.

1 relatively flat outlook for petroleum fuels, decline for coal, and moderate
2 growth for natural gas and renewables); Record 247 (2015 graph from the
3 federal Energy Information Administration projecting a relatively lower profile
4 of future increases in national oil consumption, compared to a much higher
5 2003 projection); Record 2127 (state clean fuels program is expected to reduce
6 the consumption of petroleum fuels).

7 However, none of the cited evidence supports the finding that future
8 fossil fuel demand in the region may plateau or decline “with implementation
9 of climate resilience goals and strategies,” or “with a continued shift to other
10 modes of transportation, more fuel-efficient vehicles, electric vehicles and
11 other carbon reduction strategies.” While the cited evidence suggests that
12 future demand for fossil fuel over the region or state may be lower than earlier
13 projections or historical increases, there is nothing cited to us suggesting that
14 the demand may plateau or decline. Based on the portions of the record cited
15 to us, that finding appears to represent pure speculation on the city’s part.

16 Projecting future demand for fossil fuels is an uncertain enterprise, and if
17 the question were merely a matter of estimating local demand for fossil fuels,
18 the city might have wider leeway for applying speculation and assumptions,
19 given the inherent uncertainty of forecasts, in a normative effort to bend the
20 trajectory of the local economy toward a desired policy objective, *i.e.*, reduced
21 local reliance on fossil fuels. However, as explained elsewhere in this opinion,
22 the city is in a unique geographic and logistical position with respect to

1 regional, statewide, interstate and international markets in fossil fuels. We held,
2 above, that the city has obligations under Goal 12 and the Goal 12 rule to
3 ensure that its plan and zoning regulations comply with the obligation to
4 facilitate the flow of goods within the region and statewide. Further, as
5 explained below, the federal dormant Commerce Clause constrains the city’s
6 ability to limit interstate or international trade in fossil fuels. Under these
7 circumstances, we do not believe the city can limit the scope of its evidentiary
8 inquiry to evaluating only the local or even regional demand for fossil fuels.
9 The above-quoted findings acknowledge the “wide margin between the size of
10 recently proposed crude oil, coal, and LNG terminals in the Pacific Northwest
11 and the scale of expected growth of existing Portland fuel terminals that
12 generally serve the regional market area,” Record 45, but purport to evaluate
13 and address only the latter. However, even focused exclusively on the local or
14 regional demand, the findings essentially ignore uncontradicted projections of
15 moderate growth in demand for fossil fuels, and instead rely on what are no
16 more than unsupported speculations that demand will actually plateau or
17 decline. The city’s findings on that point, which appear to be key support for
18 the prohibition on any expansion of existing terminals to meet even local or
19 regional needs, are not supported by substantial evidence, and hence not
20 supported by an adequate factual base.

21 The first assignment of error is sustained.

1 **EIGHTH ASSIGNMENT OF ERROR**²⁵

2 Petitioners argue that the city’s new restrictions on FFTs are inconsistent
3 with Statewide Planning Goal 9 (Goal 9) (Industrial Land).

4 Goal 9 is:

5 “To provide adequate opportunities throughout the state for a
6 variety of economic activities vital to the health, welfare, and
7 prosperity of Oregon's citizens.”

8 Goal 9 also provides:

9 “Comprehensive plans and policies shall contribute to a stable and
10 healthy economy in all regions of the state. Such plans shall be
11 based on inventories of areas suitable for increased economic
12 growth and activity after taking into consideration the health of the
13 current economic base; materials and *energy availability and cost*
14 * * * [.]” (Emphasis added.)

15 Goal 9 is implemented by administrative rules at OAR 660, chapter 009. OAR
16 660-009-0005(3) defines “industrial use” to include facilities that provide
17 storage, importation, distribution and transshipment, and states that industrial
18 uses “may have unique land, infrastructure, energy, and transportation
19 requirements.”

20 Petitioners and WWC contend that the restrictions on FFTs violate the
21 Goal 9 requirement to adopt plans and policies that consider “energy
22 availability and cost[.]” Further, petitioners and WWC argue that the FFT
23 amendments violate the Goal 9 requirement to provide “adequate opportunities

²⁵ WWC incorporates petitioners’ eighth assignment of error as its third assignment of error.

1 for a variety of economic activities” by effectively creating a bottleneck for the
2 multimodal movement and storage of fossil fuels. As noted, 90 percent of the
3 petroleum consumed in the state of Oregon arrives via the Olympic pipeline,
4 and is then transloaded and distributed to the rest of the state by the FFT
5 terminals at the end of the pipeline. By prohibiting expansion of existing FFTs
6 and siting of new FFTs, petitioners argue that the amendments not only restrict
7 a key industrial activity in the city, but also effectively impose economic and
8 energy supply restrictions on the rest of the state, as well as interstate and
9 international market interests.

10 The city responds that Goal 9 does not require local governments to
11 provide for every and any specific kind of economic use, or protect every
12 economic interest from harm, but only to provide an adequate inventory of land
13 zoned for industrial use, and adequate opportunities for a variety of economic
14 activities. *Home Depot USA, Inc. v. City of Portland*, 37 Or LUBA 870, *aff’d*
15 169 Or App 599, 10 P3d 316 (2000), *rev den* 331 Or 583, 19 P3d 355 (2001);
16 *Setniker v. Oregon Department of Transportation*, 66 Or LUBA 54, 68 (2012).
17 The city argues that the FFT amendments do not reduce the supply of
18 inventoried industrial lands, nor threaten the city’s ability to provide an
19 adequate opportunity for a variety of economic activities. With respect to the
20 alleged bottleneck, the city argues that nothing in the amendments prohibit the
21 existing terminals from increasing throughput to the rest of the state.

1 Goal 9 and the Goal 9 rule are largely focused on comprehensive
2 planning, and rather light on specific obligations. The most rigorous and
3 specific obligation is to adopt and maintain an adequate inventory of lands
4 zoned for industrial use. However, the FFT amendments do not reduce at all
5 the city's inventory of industrials lands. The city is correct that Goal 9 does not
6 require a local government to accommodate any and all economic activities, or
7 prevent local governments from restricting some economic activity, based on a
8 balancing of competing economic interests or other policy objectives.

9 It is less clear whether it is consistent with Goal 9 to balance competing
10 policy objectives in a manner that arguably would cause the city to become a
11 bottleneck for the intermodal transportation and storage of fossil fuel supply
12 that 90 percent of the state depends upon, as well as the impact on interstate
13 and international market interests. Because of its unique geographic situation,
14 any restrictions the city places on FFTs has the potential to affect a much
15 greater sphere beyond the city's own infrastructure and industrial capability. If
16 future demand for fossil fuel increases statewide, and no source is available
17 other than the Olympic Pipeline, serious economic consequences could follow
18 for the state. The city's decision does not address the possibility that the FFT
19 amendments could inadvertently cause the city to act as a fossil fuel chokepoint
20 for the entire state.²⁶ On appeal, the city's response that nothing in the FFT

²⁶ The city's only finding regarding Goal 9 states:

1 amendments prevents terminals from increasing throughput assumes, without
2 any evidence, that the existing terminals have extra capacity or can otherwise
3 significantly increase throughput using the existing storage capacity and
4 infrastructure.

5 However, petitioners identify no specific obligation under Goal 9 or the
6 Goal 9 rule compelling the city to consider whether and how amendments to its
7 zoning ordinance may indirectly impact the state’s economy (much less
8 interstate and international fossil fuel markets). Absent such an obligation,
9 petitioners have not demonstrated that the city erred in concluding that the FFT
10 amendments are consistent with Goal 9.

11 The eighth assignment of error is denied.

12 **NINTH ASSIGNMENT OF ERROR²⁷**

13 In the ninth assignment of error, petitioners argue that the FFT
14 amendments violate the dormant Commerce Clause of the United States

“Goal 9, Economic Development, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The amendments are consistent with this goal because these changes and restrictions only apply to a new land use category, Bulk Fossil Fuel Terminals, and do not have a significant effect on the other allowed uses in industrial and employment zones. There are no changes proposed to the [PCP] or Zoning Map that will impact the overall size or intensity of development in the industrial areas of Portland.” Record 19.

²⁷ WWC incorporates petitioners’ ninth assignment of error as its fourth assignment of error.

1 Constitution because the ordinance impermissibly discriminates against or
2 unduly burdens interstate trade in fossil fuel. For the following reasons, we
3 agree with petitioners.

4 The Commerce Clause of the United States Constitution provides that
5 “Congress shall have Power * * * [t]o regulate Commerce * * * among the
6 several states.” US Const Art I, § 8, cl 3. Where Congress has explicitly
7 exercised that grant of power, states are of course bound to conform to federal
8 law. The “dormant” aspect of the Commerce Clause protects Congress’s latent
9 ability to regulate interstate commerce, even in areas where Congress has not
10 spoken, by prohibiting states (including the municipal arms of a state) from
11 adopting legislation that, by design or effect, regulates or burdens interstate
12 commerce in certain impermissible ways. *Or. Waste Sys. v. Dep’t of Env’tl.*
13 *Quality*, 511 US 93, 114 S Ct 1345 (1994); *Fort Gratiot Sanitary Landfill v.*
14 *Michigan Dep’t of Natural Resources*, 504 US 353, 361, 112 S Ct 2019 (1992)
15 (“[A] State (or one of its political subdivisions) may not avoid the Commerce
16 Clause’s strictures by curtailing the movement of articles of commerce through
17 subdivisions of the State, rather than through the State itself.”)

18 The courts have generally adopted a two-tiered approach to Commerce
19 Clause challenges: When a state or local law directly regulates or facially
20 discriminates against interstate commerce, or when its purpose or practical
21 effect is to favor in-state economic interests over out-of-state interests, courts
22 have generally struck down the law without further inquiry, under an elevated

1 level of scrutiny. *Rocky Mt. Farmers Union v. Corey*, 730 F3d 1070, 1087 (9th
2 Cir 2013) (a law may violate the dormant Commerce Clause if it “discriminates
3 against out-of-state entities on its face, in its purpose, or in its practical
4 effect[.]” (citing *Maine v. Taylor*, 477 US 131, 138, 106 S Ct 2440 (1986))).
5 Discrimination “means differential treatment of in-state and out-of-state
6 economic interests that benefits the former and burdens the latter.” *Id.* (quoting
7 *Or. Waste Sys., Inc.*, 511 US at 99). Where a law is discriminatory in practical
8 effect, the government must demonstrate that the law is supported by a
9 legitimate local purpose that cannot be adequately served by reasonable
10 nondiscriminatory alternatives. *Hunt v. Wash. State Apple Adver. Comm’n*, 432
11 US 333, 353, 97 S Ct 2434 (1977) (“When discrimination against commerce of
12 the type we have found is demonstrated, the burden falls on the State to
13 justify it both in terms of the local benefits flowing from the statute and the
14 unavailability of nondiscriminatory alternatives adequate to preserve the local
15 interests at stake.” (Internal citations omitted.)).

16 On the other hand, where the law is facially non-discriminatory, and does
17 not discriminate against out-of-state economic interests in its purpose or
18 practical effect, the courts engage in a balancing test, subject to a lesser level of
19 scrutiny, that weighs the state’s interest against the indirect burden on interstate
20 commerce. Such a law will only be struck down when the burden on interstate
21 commerce is “clearly excessive” in relation to the local benefits. *Pike v. Bruce*
22 *Church*, 397 US 137, 142, 90 S Ct 844 (1970).

1 Petitioners argue, and we agree, that the city’s FFT amendments fail the
2 Commerce Clause analysis under either test.

3 **A. Discriminatory Purpose or Practical Effect**

4 In the present case, no party argues that the FFT amendments facially
5 discriminate against interstate commerce. The FFT amendments are silent
6 regarding the origin or final destination of fossil fuels stored or transloaded in
7 the affected FFTs. Petitioners argue, however, that it is clear from the record
8 that one of the purposes of the amendments, if not the primary motivating
9 force, was to forestall the possibility that a particular vehicle of interstate and
10 international commerce—fossil fuel *export* terminals—would be established
11 within the city. The apparent impetus for the FFT amendments was a recent
12 proposal to site a propane export terminal in a north Portland industrial area,
13 the Pembina proposal. As the city mayor explained in the proceedings leading
14 to adoption of the FFT amendments:

15 “The rapid development of fossil fuel resources in the western part
16 of our country and Canada has put a lot of pressure on Portland
17 and other cities and has sought to transport and move huge
18 quantities of fossil fuels through and into our communities. As we
19 all experienced with the [P]embina proposal last year, the zoning
20 code actually allows fossil fuel terminals as a warehouse and
21 freight movement use in our zoning code today without any limit
22 on the size of these terminals. We, of course, passed [Resolution
23 37168] saying we’re going in a different direction and today is the
24 proposal to put that into city law, into our code.” Record 206.

25 The Pembina proposal in north Portland was ultimately abandoned in the face
26 of significant local opposition. However, as the mayor notes, one consequence

1 of the Pembina proposal was adoption of Resolution 37168, which resolved
2 that the city council would actively oppose expansion of infrastructure whose
3 primary purpose is the transporting or storing of fossil fuels in Portland or
4 adjacent waterways. The city council later adopted a new comprehensive plan
5 policy, Policy 6.48, which states that the city’s policy is to “[l]imit fossil fuel
6 distribution and storage facilities to those necessary to serve the regional
7 market.” Record 3317.

8 Even though Policy 6.48 is not yet in effect, the city’s findings state that
9 the FFT amendments “specifically implement[]” Policy 6.48. Record 324. As
10 adopted, the FFT amendments have the practical effect of precluding the siting
11 of new fossil fuel export terminals within the city, and indeed it is clear that the
12 city intended that result.²⁸ Notwithstanding the facial neutrality of the

²⁸ As noted earlier, the city’s findings explain:

“The energy distribution market in the Pacific Northwest is changing. Production of crude oil and natural gas, particularly from North Dakota, has substantially increased in the U.S. since 2009, as shown in Figure 1. In turn, several large new fuel distribution terminals have been proposed in the Pacific Northwest to access West Coast and export markets, as shown in Figure 2. Similar trends have occurred in Alberta and British Columbia.

“[The FFT amendments] propos[e] a prompt, focused response to these market changes. The recommended code amendments will restrict development of new fossil fuel terminals and limit the expansion of existing terminals, consistent with City and State objectives on climate change and public safety.” Record 316 (emphasis added).

1 amendments regarding the origin or destination of fossil fuels, it is clear that
2 the city intended the amendments to preclude construction of new or expanded
3 terminals that store and transload fossil fuels to serve interstate or international
4 markets, such as the Pembina proposal (*i.e.*, demand beyond that “necessary to
5 serve the regional market.”). As the commentary to the definition of “Bulk
6 Fossil Fuel Terminal” explains, terminals subject to the FFT amendments
7 function as “regional gateway facilities, where fossil fuels enter and exit the
8 region.” Record 370. Further evidence of the intent to preclude fossil fuel
9 export terminals is the fact that the size of terminals subject to the amendments
10 was deliberately set to capture facilities large enough to handle “unit trains,”
11 *i.e.*, trains with a single load of a bulk fossil fuel that is transported as a unit
12 and not intended for local distribution, but for transloading for more distant
13 markets. *See* n 6. In the amendments, the city implements Policy 6.48 and
14 attempts to freeze the status quo, in which the city’s existing FFTs serve only
15 local, regional and intrastate markets for fossil fuels.²⁹

²⁹ It is true, as the city argues, that nothing in the FFT amendments expressly prohibits changing the 11 existing large FFTs into export terminals, *i.e.*, using existing facilities to store and transship fossil fuels to interstate or international markets, rather than store and transship fossil fuels for local or regional markets, as is the current state of affairs. However, the city cites no evidence that such redevelopment would be a practical or economic reality. Such changes would likely require new facilities and changes in modality, *e.g.*, shifting from a train to truck modality to a train to ship modality, and perhaps different fuels (*e.g.*, petroleum to coal) with different storage and handling characteristics. It seems unlikely that it would be economically feasible to

1 The question before us is whether legislation with that intent and that
2 practical effect is consistent with the dormant Commerce Clause. The parties
3 cite a number of dormant Commerce Clause cases, discussed below, to support
4 their respective positions. Before turning to that discussion, we first note that
5 the city emphasizes that the stated purposes of the FFT amendments include (1)
6 addressing safety issues stemming from vulnerability of many existing FFTs to
7 seismic events in the city’s northwest industrial area, and (2) reducing the
8 city’s contributions to climate change. The city argues that these are legitimate
9 local interests that outweigh any incidental impact on interstate commerce. We
10 address the cited purposes below, both under the discriminatory practical effect
11 analysis, and under the *Pike* balancing test. However, in evaluating
12 discriminatory purpose or practical effect, we note that the Ninth Circuit states
13 that it will “assume that the objectives articulated by the legislature are the
14 actual purposes of the statute, unless an examination of the circumstances
15 forces us to conclude that they could not have been a goal of the legislation.
16 But we will not be bound by the stated purpose when determining the practical
17 effect of the law.” *Rocky Mt. Farmers*, 730 F3d at 1097-98 (citing *Minnesota v.*
18 *Clover Leaf Creamery*, 449 US 456, 463 n 7, 101 S Ct 715 (1981); *Hughes v.*
19 *Oklahoma*, 441 US 332, 336, 99 S Ct 1727 (1979) (internal citations and
20 quotation marks omitted)). Similarly, in the present case, even if the two

abandon long-standing investments in existing facilities serving local and regional markets in order to redevelop those facilities to handle different modalities or types of fossil fuels.

1 purposes stated above are among the actual purposes of the FFT amendments,
2 it does not follow that they are the exclusive purposes, or that those two stated
3 purposes limit the analysis of the practical effect of the FFT amendments.

4 We make one other preliminary observation. Most of the dormant
5 Commerce Clause cases cited to us involve claims of economic protectionism
6 in one guise or another. The present case does not involve economic
7 protectionism in the classic sense of a state or municipality trying to favor local
8 economic interests by restricting or burdening *competition* from out-of-state
9 actors. *See, e.g., Hunt v. Wash. State Apple Adver. Comm'n*, 432 US 333, 351
10 (regulations that burdened out-of-state apple growers, to the indirect economic
11 benefit of in-state growers). The city, and Oregon, have no local refineries or
12 sources of fossil fuel to promote or protect against competitors. Nonetheless,
13 we believe that the FFT amendments embody elements of economic protection
14 for local interests—protections from the burdens that the city is willing to
15 impose on interstate commerce—and the city’s attempt to shield local interests
16 from the burden of obstacles it places in the path of interstate commerce is one
17 of the fatal flaws of the FFT amendments. *Raymond Motor Transportation,*
18 *Inc. v. Rice*, 434 US 429, 445-47, 98 S Ct 787 (1978) (exceptions in favor of
19 local interests “weaken the presumption in favor of the validity of [a
20 regulation], because they undermine the assumption that the State’s own
21 political processes will act as a check on local regulations that unduly burden
22 interstate commerce.”)

1 In the FFT amendments, the city attempts to limit its participation in the
2 traffic of fossil fuels, which the city clearly deems to be an undesirable
3 commodity. The city is indifferent to the *sources* of that commodity (none of
4 which are local), but is concerned with the ultimate *destinations* for fossil fuels
5 that enter the city for storage or transloading. As Policy 6.48 indicates, the
6 city’s policy goal is to limit fossil fuel storage and transloading to the
7 quantities needed to meet local and regional demands. The concomitant (and
8 expressly-stated) goal is to preclude establishment or expansion of FFTs that
9 would store or transload fossil fuel for destinations outside the state. Because
10 the status quo at present is that the city’s FFTs adequately serve current local
11 and regional demands, the city chose to advance both these policy goals
12 together by simply prohibiting new and expanded FFTs. To shield local users
13 from the consequences of a more comprehensive ban on new or expanded
14 FFTs, the city adopted a number of exceptions and exclusions, listed in the
15 margin.³⁰ The net effect is that the city has done all it can, short of an express

³⁰ PCC 33.920.300.D. lists exceptions to the definition of “bulk fossil fuel terminal,” (FFTs) many of which appear calculated to shield local fossil fuel storage facilities and end users from harm that could otherwise be inflicted by the FFT amendments. The exceptions include:

- “2. Truck or marine freight terminals that do not have transloading facilities and have storage capacity of 2 million gallons or less are classified as Warehouse and Freight Movement uses. However, multiple fossil fuel facilities, each with 2 million gallons of fossil fuel storage capacity or

- 1 prohibition on export terminals, to effectively restrict interstate or international
- 2 commerce in fossil fuels, while at the same time shielding its citizens and local

less but cumulatively having a fossil fuel storage capacity in excess of 2 million gallons, located on separate parcels or land will be classified as a Bulk Fossil Fuel Terminal when two or more of the following factors are present:

- “a. The facilities are located or will be located on one or more adjacent parcels of land. Adjacent includes separated by a shared right-of-way;
 - “b. The facilities share or will share operating facilities such as driveways, parking, piping, or storage facilities; or
 - “c. The facilities are owned or operated by a single parent partnership or corporation.
- “3. Gasoline stations and other retail sales of fossil fuels are not Bulk Fossil Fuel Terminals.
 - “4. Distributors and wholesalers that receive and deliver fossil fuels exclusively by truck are not Bulk Fossil Fuel Terminals.
 - “5. Industrial, commercial, institutional, and agricultural firms that exclusively store fossil fuel for use as an input are not Bulk Fossil Fuel Terminals.

“* * * * *

- “7. The storage of fossil fuels for exclusive use at an airport, surface passenger terminal, marine, truck or air freight terminal, drydock, ship or barge servicing facility, rail yard, or as part of a fleet vehicle servicing facility are not Bulk Fossil Fuel Terminals.
- “8. Uses that recover or reprocess used petroleum products are not Bulk Fossil Fuel Terminals.”

1 end-users to some extent from the adverse consequences of the restrictions on
2 new or expanded terminals.³¹ While not a classic form of economic
3 protectionism vis-a-vis out-of-state competitors, in our view a law that
4 embodies the above goals represents a species of protectionism and burden-
5 shifting that infringes on Congress’s latent authority under the Commerce
6 Clause. *Pac. Merch. Shipping v. Goldstene*, 639 F3d 1154, 1177 (9th Cir 2011)
7 (“[T]he whole objective of the dormant Commerce Clause doctrine is to protect
8 Congress’s latent authority from state encroachment.”)

9 With those observations, we turn to the cases cited by the parties.
10 Dormant Commerce Clause jurisprudence is highly fact-specific, and the
11 analysis often turns on identifying the most analogous fact patterns. In general,
12 the cases cited by the city are distinguishable. The city relies heavily on
13 *Chinatown Neighborhood Ass’n v. Harris*, 794 F3d 1136 (9th Cir 2015), in
14 which the United States Court of Appeals for the Ninth Circuit upheld the State
15 of California’s “Shark Fin Law,” which made it unlawful for any person to

³¹ The city’s ability to significantly impact interstate and international commerce in fossil fuels is, of course, limited. Export terminals can still be located in other cities throughout the region. Indeed, as the findings note, at least eight export terminals have been proposed in the region in places other than Portland. Record 317. Nonetheless, as Ordinance No. 188142 recognizes, the city enjoys several geographical and logistical advantages, including a location at the western end of a low-gradient railroad and barge route for heavy cargo through the Cascades, a corridor that is an economical conduit for fossil fuels from interior states for transshipment to overseas destinations. Record 48. Few other cities in the region are as well-placed as Portland to disturb the flow of fossil fuels in interstate commerce.

1 possess, sell, trade, or otherwise distribute shark fins anywhere in the state.
2 The plaintiffs argued that the law violated the dormant Commerce Clause by
3 curbing commerce in the flow of shark fins through the state to out-of-state
4 markets. *Id.* at 1145. The Ninth Circuit rejected that argument, concluding that
5 the law simply regulates conduct within the state, and any extraterritorial
6 impacts of the law are incidental. *Id.* at 1146. The city argues for the same
7 conclusion here: the FFT amendments simply regulate conduct within the
8 state, and any extraterritorial impacts are incidental.

9 However, a critical difference between the present case and *Chinatown*
10 *Neighborhood Ass’n*, is that in the latter case the state law did not purport to
11 shield state residents from the impacts of an otherwise comprehensive
12 prohibition. We believe it doubtful that the Ninth Circuit would have affirmed
13 a statute that allowed state residents to possess, sell, or trade shark fins, and
14 thus protected the existing domestic market in shark fins, but had the intent and
15 effect of restricting the storage or transport of shark fins for interstate or
16 international markets.³² Similarly, in the present case, we think the Ninth

³² Another significant difference is that in *Chinatown Neighborhood Ass’n*, the Ninth Circuit noted that Congress had adopted legislation prohibiting “finning” or the taking of shark fins in all U.S. waters. *Id.* at 1140. Thus, the state law prohibiting the possession, etc., of shark fins of any origin within the state was entirely consistent with federal legislation. *Id.* at 1144. Indeed, the Ninth Circuit first had to determine whether congressional legislation had already preempted or occupied the field of shark finning. *Id.* In the present case, as far as we are informed Congress has passed no law restricting interstate or international commerce in fossil fuels. If anything, it is more probable that

1 Circuit would not affirm regulations that are intended and have the practical
2 effect of prohibiting the storage or transloading of fossil fuel for interstate and
3 international markets, but which largely protect the local fossil fuel economy
4 and local end-users from the impacts of those regulations.

5 Another Ninth Circuit case cited by the city, *Rocky Mt. Farmers Union v.*
6 *Corey*, 730 F3d 1070, is also distinguishable. In *Rocky Mt. Farmers Union*, the
7 California Air Resources Board adopted a low carbon fuel standard regulation
8 for ethanol, an additive in fossil fuel. *Id.* at 1079-83. To comply with the fuel
9 standard, a fuel blender had to keep the average carbon intensity of its total
10 volume of fuel below the fuel standard’s annual limit, taking into account
11 various credits available under a cap-and-trade scheme. *Id.* Out-of-state
12 suppliers filed suit, arguing that the fuel standard violated the dormant
13 Commerce Clause. *Id.* at 1086. The district court concluded that the fuel
14 standard facially discriminated against out-of-state energy firms, because it

federal statutes foster the free flow of fossil fuels in interstate (and international) commerce. *See Raymond Motor Transp., Inc.*, 434 US at 440 (“[I]t never has been doubted that much state legislation, designed to serve legitimate state interests and applied without discrimination against interstate commerce, does not violate the Commerce Clause even though it affects commerce. In areas where activities of legitimate local concern overlap with the national interests expressed by the Commerce Clause—where local and national powers are concurrent—the Court in the absence of congressional guidance is called upon to make delicate adjustment of the conflicting state and federal claims.” (Internal citations and quotation marks omitted.)); *see also Pac. Merch. Shipping Ass’n*, 639 F 3d at 1178 (“The foreign commerce context places further constraints on state power because of ‘the special need for federal uniformity.’”).

1 took into account the origin of the fuel and the distance fuel travels to reach
2 California. *Id.*

3 The Ninth Circuit disagreed, concluding that the fuel standard did not
4 facially discriminate against interstate commerce, because the state based its
5 standards on the carbon intensity of fuel sold in the state, not on the fuel's
6 origin. 730 F3d at 1078. The Ninth Circuit remanded to the district court for a
7 determination of whether the regulation's ethanol provisions discriminated in
8 purpose or practical effect. *Id.* If not, it was to apply the *Pike* balancing test.
9 *Id.*

10 The city argues that, like the state fuel standard at issue in *Rocky Mt.*
11 *Farmers Union*, the FFT amendments are facially neutral regarding the origin
12 of fossil fuels, with no motive to protect local economic actors from out-of-
13 state competition. However, we have already concluded that the FFT
14 amendments are not facially discriminatory, or designed to protect in-state
15 economic actors from direct out-of-state competition. The question is whether
16 the FFT amendments discriminate against interstate commerce in purpose or
17 practical effect. We fail to see how the holding or facts in *Rocky Mt. Farmers*
18 *Union* assists the city. The facts in *Rocky Mt. Farmers Union* would be closer
19 to all fours with the present case if the fuel standard had limited fuel terminals
20 in the state in a manner that effectively prohibited storage or transloading of
21 high-carbon fuels intended for other states or to international markets, but
22 allowed high-carbon fuels to continue to be stored, transloaded and sold at

1 current levels to California residents, with numerous exemptions to protect
2 local economic actors from the impacts of the restriction on commerce in high-
3 carbon fuels effectively imposed on fuel that passes through to other states.³³
4 One of the signal characteristics of a law that discriminates in purpose or
5 practical effect in violation of the dormant Commerce Clause, and is thus
6 subject to elevated scrutiny, is unequal treatment between in-state and out-of-
7 state economic actors or markets. *Or. Waste Sys.*, 511 US at 99 (discrimination
8 “means differential treatment of in-state and out-of-state economic interests
9 that benefits the former and burdens the latter); *see also Philadelphia v. New*
10 *Jersey*, 437 US 617, 628, 98 S Ct 2531 (1978) (“It does not matter that the
11 State has shut the article of commerce inside the State in one case and outside
12 the State in the other. What is crucial is the attempt by one State to isolate itself
13 from a problem common to many by erecting a barrier against the movement of
14 interstate trade.”). Despite the facial neutrality of the FFT amendments, the
15 city has done all it can to effectively eliminate any city role in the export of
16 fossil fuels, while continuing to provide for existing and projected local
17 consumption of fossil fuels. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 US

³³ In addition, the Ninth Circuit recognized that the federal Clean Air Act expressly authorizes California to adopt its own fuel standards. 730 F 3d at 1078. Again, in the present case, no party cites us to any act of Congress authorizing a city or state to regulate the size or number of fossil fuel transportation facilities in a manner that has the practical effect of prohibiting export terminals.

1 333, 350, (referring to “the Commerce Clause’s overriding requirement of a
2 national ‘common market’” (internal citations omitted)). Nothing cited to us in
3 *Rocky Mt. Farmers Union*, or any other case, suggests that a law with that
4 purpose and that practical effect can avoid elevated levels of scrutiny under the
5 dormant Commerce Clause analysis.

6 Among the dormant Commerce Clause cases cited to us are two cases
7 involving zoning or land use regulations. The city relies on *Wal-Mart Stores,*
8 *Inc. v. City of Turlock*, 483 F Supp 2d 987, 991-92 (E D Cal 2006), which
9 involved a city zoning text amendment that created three new categories of
10 commercial retail land uses: discount stores, discount clubs, and discount
11 superstores. Under the amendments, the first two categories were allowed as
12 conditional uses in commercial zones, but the last category, discount
13 superstore, was not allowed in any city zone. *Id.* Wal-Mart, which operated a
14 discount store in the city but sought to establish a discount superstore, argued
15 that the prohibition on establishing a discount superstore in any zone
16 discriminates against interstate commerce in practical effect, because it
17 prevents Wal-Mart, an out-of-state retailer, from operating within the city in
18 Wal-Mart’s preferred superstore format. *Id.* at 1009-14. However, the district
19 court rejected those arguments, concluding that the facially neutral ordinance
20 did not discriminate against interstate commerce because any retailer, in-state
21 or out-of-state, can locate retail operations in the city, and offer any products,
22 except in the discount superstore format. *Id.* The court held that the Commerce

1 Clause does not protect the preferred structure or methods of a retail operation,
2 or the right to conduct business in the most efficient manner. *Id.* In the present
3 case, the city argues likewise that FFT owners are not entitled to establish
4 terminals in any preferred format or conduct terminal operations in the most
5 efficient manner.

6 Like the present case, *Wal-Mart Stores, Inc.*, involved creation of a new
7 land use category, which the ordinance then prohibits within the city.
8 However, the resemblance mostly ends there. In the present case, the city
9 deems a particular commodity in interstate commerce (fossil fuels) to be
10 undesirable and therefore adopts steps to freeze the number and size of
11 facilities that meet local demands for that undesirable commodity, and to
12 preclude facilities that would store and transload the undesirable commodity
13 for further shipment to interstate and international markets. In *Wal-Mart*
14 *Stores, Inc.*, the commodities at issue were desirable, it was only the size and
15 format of the building in which the goods would be sold to which the city
16 objected. 483 F Supp 2d at 1012. Before and after the zoning amendments in
17 *Wal-Mart Stores, Inc.*, the same type and quantity of goods flowed from the
18 stream of interstate commerce to enter the city and be sold. *Id.* The only
19 difference was that after the amendments those goods would have to be sold in
20 smaller retail outlets, not in the larger superstore format that Wal-Mart
21 preferred. *Id.* at 1016. By contrast, in the present case, if the FFT amendments
22 achieve the city's several goals, the amendments strongly affect the type and

1 quantity of fossil fuels that could potentially flow into and out of the city from
2 the stream of interstate commerce. Prior to the FFT amendments, a new
3 propane or coal export terminal could be sited within the city, to transload
4 those types of fossil fuels from North Dakota or Montana for shipment to
5 overseas markets. Under the FFT amendments, such facilities are effectively
6 prohibited, and the types and quantities of fossil fuels that are stored and
7 transloaded in the city are, as a practical matter, limited to those needed to
8 satisfy the current and projected future local or regional demand.³⁴

³⁴ The city’s findings recognize that the establishment of fossil fuel terminals in the region would significantly increase the quantity of fossil fuels flowing into, and out of, the state. As the findings note:

“[T]here is a wide margin between the size of recently proposed crude oil, coal, and (LNG) terminals in the Pacific Northwest and the scale of expected growth of existing Portland fuel terminals that generally serve the regional market area * * *.” Record 330.

In other words, due to the large volumes of fossil fuel that could be transported via fossil fuel export terminals (like the Pembina project), if established in the city or elsewhere in the region or state, these export terminals would significantly increase the amount of fossil fuel that enters the state, compared to any increase attributed to local or regional consumption. Record 46 (Figure 7). Conversely, if the city succeeds in discouraging the establishment of fossil fuel export terminals in the city, that could effectively reduce the quantity of fossil fuels that would otherwise cross state lines, and which is intended to again cross state lines on its way to interstate or international markets. Generally, a law with the intent and the effect of reducing the free flow of commerce across state lines is viewed with suspicion under the dormant Commerce Clause. *See Hughes v. Oklahoma*, 441 US 322, 337-38, 99 S Ct 1727 (1979) (statute prohibiting the transport of minnows out of the state violates the dormant Commerce Clause, because it “overtly blocks”

1 To put the circumstances in *Wal-Mart Stores, Inc.* on a closer footing
2 with the present case, imagine that the City of Turlock objects to the import of
3 goods manufactured overseas, and adopts amendments that prohibit new
4 distribution centers that receive and transfer foreign-made goods to stores
5 across the United States, but nonetheless the amendments allow local retailers
6 to continue to sell foreign-made goods in city stores to meet the local demand.
7 While a comprehensive and even-handed embargo on importation of foreign
8 goods to local markets *might* survive scrutiny under a dormant Commerce
9 Clause analysis, if the ban did not unduly impact interstate commerce, the
10 above-described selective approach would not, because it does not
11 evenhandedly distribute benefits and burdens, but instead concentrates the bulk
12 of its impacts on interstate commerce, while attempting to shield local interests
13 from those impacts.³⁵ The FFT amendments suffer the same flaw.

14 Petitioners argue, and we agree, that the circumstances in *Island Silver*
15 *Spice, Inc. v. Islamadora*, 542 F3d 844 (11th Cir 2008), bear a closer

the flow of interstate commerce at the state’s borders); *but see Maine v. Taylor*, 477 US 131 (state law prohibiting import of baitfish in order to protect health of unique and fragile state fisheries survives Commerce Clause challenge because the prohibition serves a legitimate local purpose that cannot be adequately served by available nondiscriminatory alternatives).

³⁵ Indeed, the Eastern District of California rejected a similar argument made by Wal-Mart. As the court stated: “[The ordinance] leaves the market open to all local or foreign retailers of all local or foreign products, except in the discount superstore format. The Commerce Clause does not protect the particular structure or methods of operation of a retail market.”) *Wal-Mart Stores Inc.*, 483 F Supp 2d at 1012.

1 resemblance to the present circumstances. In *Island Silver Spice, Inc.*, a
2 municipality adopted zoning amendments that effectively prohibited
3 establishment of new “formula” restaurants and retail establishments, defined
4 as a retail sale establishment required by contract to provide a standardized
5 array of services or merchandise, décor, architecture, layout or similar
6 standardized features, by limiting street level frontage and total square footage
7 only for “formula” establishments, but not for similar retail uses. *Id.* at 845.
8 The apparent target of the zoning prohibition was nationally and regionally
9 branded formula retail stores, such as chain pharmacies. *Id.* The zoning
10 amendment did not facially discriminate against out-of-state stores;
11 nonetheless, the Eleventh Circuit concluded that by limiting the square footage
12 and street frontage for “formula” establishments, the amendment had the
13 practical effect of discriminating against interstate commerce, because it
14 effectively eliminated the establishment of new regionally and nationally
15 branded retailers, a quintessential type of interstate commerce. The Eleventh
16 Circuit therefore applied the elevated scrutiny test and ultimately concluded
17 that the amendment failed that test. *Id.* at 847.³⁶

18 The present circumstances are similar to those in *Island Silver Spice,*
19 *Inc.*, in that in both cases the city objects to a particular article or aspect of
20 commerce that is intrinsically interstate in nature (nationally branded retail

³⁶ The Eleventh Circuit also affirmed findings that the zoning amendment failed under the *Pike* balancing test. *Id.* at 847 n 2.

1 stores on the one hand, fossil fuels on the other hand), and adopts a zoning
2 amendment that prohibits establishment of such uses, or the expansion of
3 existing uses above a certain size, but allows existing undesirable uses to
4 continue in the city essentially as nonconforming uses. 542 F3d at 846-47
5 (noting the municipality’s existing zoning allowed the use of the subject
6 property as a retail use comprising over 12,000 square feet of floor area, greatly
7 exceeding the ordinance’s dimensional limitations for “formula retail”
8 businesses). In *Island Silver Spice, Inc.*, the Eleventh Circuit had no trouble
9 concluding that a municipality’s efforts to prohibit new and expanded
10 nationally branded formula retail uses (by limiting square footage and street
11 frontage) had a discriminatory practical effect on interstate commerce. *Id.*

12 The Eleventh Circuit then considered whether the zoning amendment
13 was supported by a legitimate local purpose that could not be adequately served
14 by reasonable nondiscriminatory alternatives. 542 F3d at 847. In *Island Silver*
15 *Spice, Inc.*, the stated purposes of the zoning ordinance prohibiting “formula”
16 retail included the protection of the municipality’s small town character. *Id.*
17 The Eleventh Circuit concluded that while preserving small town character is a
18 legitimate purpose, the municipality had no small town character to preserve,
19 because the town already included a number of pre-existing formula retail
20 businesses, and had no historic district or affected historic buildings. *Id.*
21 Further, the Eleventh Circuit noted that the zoning ordinance included
22 exceptions that would allow smaller formula retail stores, as well as large non-

1 formula retail establishments, none of which furthered preservation of a small
2 town character. *Id.* at 847-48. Because the municipality failed to identify a
3 legitimate local purpose to justify the amendment’s discriminatory practical
4 effects, the Eleventh Circuit invalidated the amendments without considering
5 whether the municipality could show that adequate, nondiscriminatory methods
6 were available to achieve the legitimate local purpose. *Id.*

7 In the present case, the city argues that its stated interests in reducing
8 vulnerability to seismic damage and reducing the city’s contribution to climate
9 change caused by fossil fuel consumption are both legitimate local interests,
10 and we agree. However, as explained below, the FFT amendments do not, in
11 fact, appear to further those interests. Moreover, the city makes no effort to
12 demonstrate that adequate, nondiscriminatory methods are unavailable to meet
13 those interests.

14 With respect to vulnerability of *existing* FFTs to seismic events, the FFT
15 amendments appear to do nothing to reduce that vulnerability.³⁷ With respect to
16 new or expanded FFTs, such facilities would presumably comply with modern
17 seismic codes, and it is not clear how a blanket ban on new or expanded FFTs
18 serves the purpose of reducing vulnerability of FFTs to seismic events. It is
19 also not clear why the city could not continue to allow new or expanded FFTs

³⁷ The PSC recommended draft offered existing FFTs an incentive to upgrade to current seismic standards, in exchange for a 10 percent expansion. However, the city council eliminated that incentive.

1 in industrial areas of the city that are not located on soils subject to
2 liquefaction, instead of broadly prohibiting new and expanded FFTs
3 everywhere in the city. Further, the FFT amendments allow without restriction
4 (1) small fossil fuel terminals below two million gallons in size, (2) unlimited
5 size mono-modal fossil fuel terminals served only by trucks, as well as (3)
6 terminals of any size that handle non-fossil fuels such as bio-diesel and ethanol,
7 in the same industrial areas that are vulnerable to seismic shocks. We are cited
8 to no evidence that seismic damage to a bio-diesel tank farm would be any less
9 catastrophic than seismic damage to a tank farm of petro-diesel, or that an
10 intermodal petroleum terminal is any more susceptible than a similarly sized
11 mono-modal petroleum terminal served only by trucks. There is no evidence
12 presented to us that the express target of the FFT amendments, intermodal
13 terminals, is uniquely vulnerable to seismic damage compared to mono-modal
14 facilities.

15 In short, although reducing vulnerability to seismic damage is a
16 legitimate local interest, the FFTs amendments appear to do very little, if
17 anything, to reduce that vulnerability, and are riddled with exceptions that
18 appear to undermine any steps toward reducing vulnerability to seismic damage
19 that the amendments might achieve. Further, and most importantly for our
20 analysis here, the amendments appear to favor local interests, to the detriment
21 of interstate and international market interests. Finally, as noted, the city
22 makes no attempt to demonstrate that there are no adequate, nondiscriminatory

1 alternatives to serve the local interest in reducing vulnerability to seismic
2 damage to FFTs. Based upon the record before us, it is not clear that such a
3 showing can be made.

4 The city's other stated goal—reducing the city's contribution to global
5 warming and climate change—is an entirely laudable goal. However, the city
6 identifies nothing in the FFT amendments directed at actually accomplishing
7 that goal. The FFT amendments include no provisions designed to reduce the
8 *local* consumption of fossil fuels, and thus the *local* emission of greenhouse
9 gasses. In implementing Policy 6.48, the city attempted to limit local FFTs to
10 serve only the regional demand for fossil fuels, but the amendments do not
11 propose anything to *reduce* local or regional demand. As discussed with regard
12 to Goal 12, the city's working assumption is that local demand for fossil fuels
13 will plateau and even decline in the foreseeable future, making new or
14 expanded FFTs unnecessary. But the city does not identify anything in the FFT
15 amendments that would cause or contribute to any plateau or decline in local
16 fossil fuel demand and therefore reduce local greenhouse gas emissions. In
17 other words, although the amendments prohibit new or expanded FFTs, under
18 the city's assumptions—that local demand will plateau or decline—there is no
19 basis to assume that new or expanded FFTs would ever be necessary to meet
20 increased local demand. The prohibition on new or expanded FFTs appears to
21 do little or nothing to further the city's interest in reducing local consumption
22 or the carbon content of locally consumed fossil fuels.

1 The only scenario we can understand that could causally connect the
2 prohibition on new or expanded FFTs with a reduction in local demand for
3 fossil fuel (and a resulting reduction in local greenhouse gas emissions) would
4 require that the city’s working assumptions be incorrect, and in fact local
5 demand for fossil fuel will increase in coming years beyond the capacity of the
6 existing FFTs and of new small or mono-modal FFTs to accommodate. In that
7 circumstance, the shortage of FFT capacity might cause a local shortage of
8 fossil fuel that could raise prices, thus discouraging consumption and
9 encouraging a transition to non-fossil fuel sources. However, that speculative
10 chain of causation, contrary to the city’s working assumptions, is a thin basis
11 for meeting the city’s burden of demonstrating the existence of a legitimate
12 local purpose that cannot be adequately served by reasonable
13 nondiscriminatory alternatives.

14 In any case, the most important impact of the FFT amendments for
15 purposes of the dormant Commerce Clause analysis is the fact that the
16 amendments are intended to and have the practical effect of precluding the
17 establishment of new fossil fuel *export* terminals. We question whether the
18 city’s desire to preclude establishment of fossil fuel export terminals reflects a
19 legitimate *local* interest. As noted, the city may well take responsibility for *its*
20 *own* greenhouse gas emissions from local consumption of fossil fuels without
21 running afoul of the dormant Commerce Clause (if those efforts create only
22 incidental impacts on interstate commerce). However, we do not believe the

1 city can, consistent with the dormant Commerce Clause, deliberately attempt to
2 slow or obstruct the flow of fossil fuels from other states to consumers in other
3 states or countries with the apparent goal of reducing generation of greenhouse
4 gases elsewhere in the world, and justify that attempt as a legitimate *local*
5 interest.

6 Finally, even if reducing fossil fuel consumption and emissions
7 elsewhere in the world can be viewed as a legitimate local interest for purposes
8 of the discriminatory practical effect analysis, as noted the city makes no effort
9 to demonstrate that that purpose cannot be adequately served by reasonable
10 nondiscriminatory alternatives.

11 In sum, we conclude that the FFT amendments are discriminatory in
12 practical effect, and that the city has failed to demonstrate that the amendments
13 serve a legitimate local interest or purpose that cannot be adequately served by
14 reasonable nondiscriminatory alternatives. Accordingly, the FFT amendments
15 violate the dormant Commerce Clause.

16 **B. *Pike* Balancing Test**

17 In the event that the FFT amendments are deemed to be
18 nondiscriminatory and to have only indirect impacts on interstate commerce,
19 we consider whether the FFTs amendments survive under the so-called “*Pike*
20 balancing test.” Under *Pike*, “nondiscriminatory regulations that have only
21 incidental effects on interstate commerce are valid unless ‘the burden imposed

1 on interstate commerce is clearly excessive in relation to the putative local
2 benefits.’” *Or. Waste Sys.*, 511 US 93, 99 (quoting *Pike*, 397 US 137, 142).

3 As explained above, the FFT amendments appear to provide little if any
4 local benefits with respect to reducing seismic vulnerability and reducing the
5 city’s local contributions to global warming. The city’s other express goal of
6 precluding export terminals is arguably the FFT amendments’ most potentially
7 significant burden on interstate commerce. It is difficult to evaluate how much
8 of a burden the city’s prohibition on new or expanded FFTs would have on the
9 establishment of new export terminals, or on the flow of fossil fuels into and
10 through any future export terminals in the city or region, because the record
11 includes no attempt to conduct that evaluation. Nonetheless, it is clearly the
12 city’s intent that the impact on the interstate and international market in fossil
13 fuels will be significant, and that few or no fossil fuel export terminals will
14 become established in the city or perhaps even in the region. *See* Record 206
15 (“As we all experienced with the [P]embina proposal last year, the [city’s]
16 zoning code actually allows fossil fuel terminals as a warehouse and freight
17 movement use in our zoning code today without any limit on the size of these
18 terminals. We, of course, passed [Resolution 37168] saying we’re going in a
19 different direction and today is the proposal to put that into city law, into our
20 code.”)

21 Weighed against that burden are the putative local benefits. We
22 understand the city and Riverkeeper to argue that precluding fossil fuel export

1 terminals will provide local benefits in the form of reducing harm to its citizens
2 caused by fossil fuel consumption in other countries, which are the final
3 destination for fossil fuels that would be transloaded onto ships at the export
4 terminals that the amendments effectively prohibit. The city argues that simply
5 because “climate-change risks are ‘widely-shared’ does not minimize” a
6 government’s interest in reducing contributions to global warming.
7 *Massachusetts v. EPA*, 549 US 497, 522, 127 S Ct 1438 (2007) (concluding
8 that Massachusetts has standing to file suit challenging denial of a petition for
9 EPA rulemaking to adopt rules to reduce U.S. emissions that contribute to
10 global warming and climate change). The city cites *Rocky Mt. Farmers Union*,
11 730 F3d at 1103, to argue that a state is free to regulate in-state commerce with
12 the goal of influencing out of-state choices of market participants. The city also
13 cites *Pac. Merch. Shipping Ass’n*, 639 F 3d 1154, for the proposition that a
14 state’s interest in protecting the health of its residents from air pollution far
15 outweighs the federal interest in the free flow of commerce.

16 However, none of the cited cases support the proposition that a city or
17 state can take steps to slow or block the flow of commerce to other states or
18 countries, in an effort to prevent the blocked commodities from being
19 consumed in those countries, causing air pollution in those countries that
20 contribute to global warming, which in turn will adversely impact the citizens
21 of the city or state (along with everyone else in the world). We do not believe
22 that such attenuated benefits, which would literally apply to every person on

1 the planet, can be reasonably described as “local” benefits, for purposes of the
2 *Pike* balancing test.

3 The *Massachusetts* case held that the impacts of global warming on the
4 state (*e.g.*, increased erosion to coastlines) gave the state standing to challenge
5 denial of a petition for the EPA to issue rulemaking directed at reducing
6 national carbon emissions, given the United States’ role as one of the world’s
7 biggest contributors to carbon emissions. 549 US 497, 521-526. However,
8 nothing in the case suggests that the state has a uniquely “local” interest or
9 benefit in preventing the flow of fossil fuels across the state to other countries,
10 in order to reduce the consumption of fossil fuels in those other countries, for
11 purposes of the *Pike* balancing test.

12 As noted, *Rocky Mt. Farmers Union* involved state rules imposing low
13 carbon fuel standards on fuel sold in the state. 730 F3d 1070. The standards
14 took into account the full carbon costs of producing and transporting ethanol
15 intended for the California market, and in so doing, also considered the origin
16 of the ethanol. 730 F3d at 1088-93. As Riverkeeper argues, the Ninth Circuit
17 observed that carbon emitted in manufacturing ethanol in Iowa or Brazil
18 impacts Californians as much as carbon emitted in Sacramento, given the
19 widespread impacts of global warming. *Id.* at 1081.³⁸ The Ninth Circuit

³⁸ However, the Ninth Circuit also found that California is “uniquely vulnerable to the perils of global warming,” due to its long coastline, and dry fragile forests and deserts. 730 F3d 1070, 1106.

1 concluded that the fuel standards did not facially discriminate or discriminate
2 in practical effect, but remanded to the District Court to determine if the
3 impacts on interstate commerce clearly exceeded the putative local benefits
4 under the *Pike* balancing test. *Id.* at 1100. The Ninth Circuit did not, of course,
5 reach the remanded issue, but there is certainly language in the opinion
6 suggesting that the “local benefits” to be balanced under *Pike* could include
7 reducing the state’s unique vulnerability to the impacts of global warming,
8 achieved in part using the state’s economic leverage to persuade out-of-state
9 ethanol producers to reduce the carbon used to produce and transport fuel for
10 the California market. *Id.*

11 However, the salient difference between *Rocky Mt. Farmers Union*, and
12 the facts presented to us here is that California’s regulatory efforts were
13 entirely directed at fuel intended for consumption *in California*. 730 F3d at
14 1079-80. In the present case, the city’s effective prohibition on fossil fuel
15 export terminals (like the proposed Pembina project) is intended to slow or
16 obstruct the flow of fossil fuel from other states to international markets,
17 presumably to discourage the consumption of fossil fuels in other countries. At
18 best, that effort, if successful, might slightly reduce consumption of fossil fuels
19 in other countries, but there is no evidence or argument that the city would
20 receive any *particular local* benefit in doing so. The city does not argue that it
21 is “uniquely vulnerable” to global warming, or that it stands to gain or lose

1 more than any other city in the world from infinitesimal reductions or increases
2 in global warming.

3 Finally, *Pac. Merch. Shipping Ass'n*, 639 F 3d 1154, also does not assist
4 the city. In *Pac. Merch. Shipping Ass'n*, the Ninth Circuit upheld under the
5 *Pike* balancing test state rules requiring vessel operators calling at a California
6 port to use low-sulfur marine fuels within the state's territorial waters—rules
7 intended to reduce coastal air pollution caused by burning high-sulfur marine
8 bunker fuel that the record showed directly affected the health of the state's
9 citizens. *Id.* at 1159. Notably, the rules included an express exemption for
10 vessels traveling through territorial waters toward non-state ports or markets
11 (known as the “innocent passage” provision). *Id.* at 1158. The Ninth Circuit
12 held that the impacts on interstate or international commerce did not clearly
13 exceed the well-documented local benefits of preserving the health of the
14 state's citizens against coastal air pollution. *Id.* at 1180-1182. The present case
15 differs, again, in that the FFT amendments do little or nothing to reduce or
16 change local consumption of fossil fuels or local contributions to global
17 warming, and the effective ban on fossil fuel export terminals would have, at
18 best, only the most attenuated connection to reduced global warming and
19 concomitant effects on the health of the city's citizens.

20 Reduced to essentials, the FFT amendments represent the city's attempt
21 to isolate itself to some extent from the national and international economy in
22 fossil fuels. See *Chemical Waste Management v. Hunt*, 503 US 334, 341-42,

1 112 S Ct 2009 (1992) (“The Court has consistently found parochial legislation
2 of this kind to be constitutionally invalid, whether the ultimate aim of the
3 legislation was to assure a steady supply of milk by erecting barriers to
4 allegedly ruinous outside competition,” or a tax discriminating against
5 interstate commerce even when such tax was “designed to encourage the use of
6 ethanol and thereby reduce harmful emissions,” for “in all of these cases, a
7 presumably legitimate goal was sought to be achieved by the illegitimate means
8 of isolating the State from the national economy.” (Internal citations omitted.)).
9 Given the city’s geographic and strategic position astride a major trade route,
10 its attempts to isolate itself from the national and international market in fossil
11 fuels have far greater potential impact on those markets than would the same
12 efforts by a more geographically isolated city. Weighed against those
13 potentially significant burdens on interstate commerce are local benefits from
14 the legislation that, based on this record, appear to be attenuated at best. We
15 conclude therefore that the burdens on interstate commerce are “clearly
16 excessive” in relation to the putative local benefits, and the FFT amendments
17 also fail under the *Pike* balancing test.

18 The ninth assignment of error is affirmed.

19 **DISPOSITION**

20 OAR 661-010-0071 provides that LUBA shall reverse a land use
21 decision when the Board finds that the decision is unconstitutional. We
22 concluded under the ninth assignment of error that the FFT amendments are

1 inconsistent with the dormant Commerce Clause. Accordingly, reversal is the
2 appropriate disposition.

3 The city's decision is reversed.

4

Index – Glossary

1		
2	BPS	Portland city Bureau of Planning and Sustainability
3	FFT	Fossil Fuel Terminal
4	FMP	City of Portland Freight Master Plan
5	GLISP	Guild’s Lake Industrial Sanctuary Plan
6	DLCD	Department of Land Conservation and Development
7	Metro	Metro Regional Government
8	ODOT	Oregon Department of Transportation
9	OFP	Oregon Freight Plan
10	OTC	Oregon Transportation Commission
11	OTP	Oregon Transportation Plan
12	PCC	Portland City Code
13	PCP	Portland 1980 Comprehensive Plan, as amended (2011)
14	2035 PCP	Portland 2035 Comprehensive Plan
15	PSC	City of Portland Planning and Sustainability Commission
16	TPR	Oregon Transportation Planning Rule
17	TSP	City of Portland Transportation System Plan
18	WWC	Intervenor-petitioner Working Waterfront Coalition

Atkinson, Stephen

From: David Lambert <lambertdavid39@gmail.com>
Sent: Monday, September 11, 2017 2:52 PM
To: Planning
Subject: Comments

Dear Planning Staff:

I appreciate your willingness to accept comments on the idea of a "Pause" on fossil fuels on the Tacoma Tide Flats. I strongly and fully support such a pause and think the time has come for the Tacoma to invest entirely on alternative energies including sun, wind, geothermal, and the like. I now live in Fircrest but spend my work days in downtown Tacoma so continue to have a strong investment in the city and quality of life there.

Thank you,

David Lambert

--

Joanna Macy: "Gratitude is the antidote to greed." "The necessary new version of the American dream is not to get rich, but to realize that we are already rich (Rick Hanson)."

Atkinson, Stephen

From: mike Lindenmeyer <bigart@dogboneart.com>
Sent: Tuesday, August 15, 2017 4:04 PM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

mike Lindenmeyer
1711 Central St.
Olympia, WA 98506

August 15, 2017

Dear Stephen Atkinson,

Dear members of the Tacoma Planning Commission,

Protecting the Tacoma Tideflats against fossil fuels is important to me. Thank you taking up this issue and working to put in place interim regulations.

In the long run, the subarea plan will provide an opportunity to review any number of issues within the Tideflats to create a comprehensive, long-term solution. In contrast, it is the job of interim regulations to quickly and meaningfully address the critical, urgent threats that cannot wait for the subarea plan. There can be no doubt that new fossil fuel proposals are the urgent industrial threat. Interim regulations should focus on fossil fuels to remain as efficient and effective as possible.

These fossil fuel proposals could take many different forms. It is critical that the interim regulation covers all new and expanded industrial fossil fuel facilities and infrastructure. Please ensure that this "pause" is as broadly encompassing as possible.

Finally, the urgent threat of fossil fuels warrants as rapid a response as possible. Interim regulations need to pause proposals before any new ones can be made and grandfathered in. While I understand the sensitive nature of this issue, Tacoma cannot wait to take action. Please implement interim regulations to pause new fossil fuel proposals as quickly as possible. With this protection in place, we can then take the time necessary to address other issues and long-term solutions.

Please forward this message to the following individuals:

Planning Commission Chair Chris Beale
Planning Commission Vice-Chair Stephen Wambach
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McClinnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Mike Lindenmeyer

Atkinson, Stephen

From: Ann Locsin <locsinann@gmail.com>
Sent: Wednesday, August 30, 2017 9:54 AM
To: Atkinson, Stephen
Cc: Thoms, Robert
Subject: Schnitzer Steel

Steve-
Could you please share this with the planning commission?

Dear Planning Commission-

I am writing to ask you to please reconsider your removal of scrap metal yards from your list of prohibited uses. This industry represents a huge human health and safety risk to the residents of NE Tacoma living nearby. Scrap Metal yards represent a new source of air pollution that was previously unknown. As a result, they are not regulated as they should be. Schnitzer emissions are raining down on us with metal spheres, some of which contain chromium according to our lab test results. I am sharing with you an article about the city of Houston and what they found when they dug deeper into this issue. If you could please take the time to read it I would really appreciate it. This issue is real and urgent for the residents in NE.

Regards,
Ann Locsin
NE Tacoma Resident

“Subsequent testing outside five Houston metal recycling operations found dangerous levels of hexavalent chromium. Chrome VI, as it's also called, is a high priority for air experts. When inhaled, hexavalent chromium is deposited in the lungs, can penetrate cells and cause free radicals, which damage DNA, ultimately causing lung cancer. When California gained the authority to regulate air pollution hazards in the 1980s, hexavalent chromium shared top priority, along with benzene. The state considers Chrome VI one of the most potent carcinogens known.

Forty years after the passage of the Clean Air Act, it's rare to find a new source of air pollution. But new sources can appear as the economy changes. The materials economy is evolving. What once was a sideline industry - recycling - is becoming central to manufacturing.”

<http://www.chron.com/news/houston-texas/houston/article/Danger-in-air-near-metal-recyclers-4154951.php?t=1181ab585b>

Atkinson, Stephen

From: locsinann@gmail.com
Sent: Thursday, August 17, 2017 9:17 AM
To: Atkinson, Stephen
Cc: McCarty Yvonne; Mello, Ryan; Thoms, Robert
Subject: NE Tacoma Buffer Zone
Attachments: Application - NE Tacoma Buffer Zone (3-31-17).pdf; ATT00001.txt

Steve-

Can you please forward to the Planning Commission?

Dear Planning Commission-

I was very disappointed to hear about what transpired at your meeting yesterday. The people of NE Tacoma were once again set aside and marginalized for the sake of politics.

I am attaching a copy of the NE Tacoma Buffer Zone Proposal to remind you that the City Council directed you to consider interim regulations regarding 3 different proposed amendments, one of which was this. Please read the packet thoroughly which outlines what we are asking for and more importantly why. Please read all the letters from residents. Please read all the documented noise and odor complaints. Please review the lab test results regarding the cancer causing emissions that are being rained down upon us. You are losing site of our urgent need as you navigate political waters. Politics don't protect us from Cancer.

I would also like to address comments made by Chris Beale. Did you really say that we are rich white people on the hill who don't matter? Cancer does not know income, gender, or color. It indiscriminately affects us all. I also resent the stereotype of NE Tacoma. We are a diverse community with a broad range of ethnicities and incomes. Did you know that public housing for the Puyallup Tribe is located 1000 feet from Schnitzer Steel? They too are being subjected to these harmful emissions from Metal particulates. Do their lives matter? I am a huge proponent of environmental justice and what is affecting my affluent neighborhood is also affecting others. Environmental justice aside, does my life matter? I am white and upper income. I pay my taxes and volunteer my time and money to many causes. If you are telling me I don't matter to Tacoma then it's time to move to UP or Gig Harbor where the property taxes are lower and the air is clean. I am pretty sure Tacoma needs a diverse mix of high and low in order to strike balance. In short, we matter.

We came to you because we have a big problem. A problem that was created by you and the City of Tacoma. Poor planning means homes are located next door to PMI. As planners you know that buffers are needed. You need to start finding a way to right this wrong. We never asked for any one industry to be banned. We asked for a buffer on one little road (Marine View Drive). Why can't you propose interim regulations for this area that go beyond fossil fuel? Sorry, but an animal fat rendering plant is not appropriate 600 feet from homes!

Interim regulations are supposed to be for situations that are urgent. Our situation is happening as we speak! A surface mine is going to be permitted next door to our neighborhood tomorrow. We are literally desperate for relief from this onslaught. Help us sleep at night. Stop this madness in the interim while we navigate what will surely be a long and complicated Subarea process.

We are not a "coalition". We are not political. We are just taxpayers and voters who have a serious problem. Who is going to help us?

Ann Locsin
NE Tacoma

[http://cms.cityoftacoma.org/Planning/2017-2018%20Amendment/Application%20-%20NE%20Tacoma%20Buffer%20Zone%20\(3-31-17\).pdf](http://cms.cityoftacoma.org/Planning/2017-2018%20Amendment/Application%20-%20NE%20Tacoma%20Buffer%20Zone%20(3-31-17).pdf)

From: [Ann Locsin](#)
To: [Planning](#)
Cc: [Yvonne McCarty](#); [Thoms, Robert](#); [Mello, Ryan](#); [Sara Wood](#); [PTWoodworth](#)
Subject: What About NE Tacoma?
Date: Wednesday, September 13, 2017 10:58:18 AM

Ann Locsin

1843 Pointe Woodworth Dr NE

Tacoma, WA 98422

City of Tacoma Planning Commission

747 Market Street, Room 345

Tacoma, WA 98402

planning@cityoftacoma.org

Dear Planning Commission-

My name is Ann Locsin and I am a 25 year resident of NE Tacoma and member of the NE Tacoma Neighborhood Council Board. The NETNC submitted to you a proposed amendment to the comp plan to rezone Marine View Drive from Taylor Way to the 11th Street bridge to lighter industrial in an effort to create a buffer zone between residential neighborhoods and very heavy/dangerous industrial uses. It is important to note that this situation was created by bad planning on the part of the City of Tacoma. Make no mistake, the City of Tacoma got us into this mess and we will hold you accountable to rectify it. By order of the City Council, our amendment was folded into the upcoming subarea planning process and you were ordered to consider interim regulations as it related to our proposal, along with 2 others.

The purpose of interim regulations has been completely lost in the politicizing of this situation. Between members of the planning commission running for public office and businesses providing financial support to candidates, the issue at hand is not being addressed.

The original proposal created by Staff addressed the issues as it was supposed to. Then, thanks to back door dealings, we are being presented a water sandwich for your consideration. Our concerns are two fold.....no limitations on current industries and a gap on prohibited uses.

Lack of Limitations on Allowed Uses:

NE Tacoma came to you because we have a huge problem RIGHT NOW that needs to be addressed. Particulate Matter is raining on our neighborhoods and we are inhaling it into our

lungs. This includes metal shards from the grinding process at Schnitzer Steel. We have had dust samples tested and discovered that the samples contained Chromium Hexavalent, a known carcinogen. Remember, the movie Erin Brokovich? Same cancer causing poison is right here in NE Tacoma! We asked you for rezoning because PMI allows for industries that should not be located next door to residential neighborhoods. We never asked for an outright ban in the entire Tide Flats, just Marine View Drive. **We are requesting the list of prohibited uses be expanded beyond fossil fuels for the proposed buffer zone area only on Marine View Drive. These uses should include metal recycling facilities, pulp mills, grain terminals, and animal slaughter facilities. These types of facilities have no place next door to homes.**

Lack of Limitations of Current Businesses

Allowing unbridled growth of existing businesses completely defeats the purpose of interim regulations. The threat is now. The industries that would be prohibited in the future should not be able to use this time of planning to grow. Targa sits a few feet from our homes. We can barely breathe from the heavy petrochemical fumes. Allowing continued growth is irresponsible and puts the health and safety of residents in NE Tacoma at risk. **We are asking you to limit growth of existing Fossil Fuels businesses to no more than 10% during the subarea planning process. This is the only way to ensure our peace of mind while this process unfolds.**

The Planning Commission is not supposed to be a political body. You were asked to develop interim regulations for NE Tacoma and your recommendation does not address our issues. NE Tacoma is home to 20,000 residents who need your support. Our health depends on it. Don't politicize that.

Thanks for your consideration,

Ann Locsin

Atkinson, Stephen

From: Bev Losey <Blosey@bbtacoma.com>
Sent: Wednesday, September 13, 2017 6:37 AM
To: Planning; Strickland, Marilyn; City Manager; Blocker, Keith; Campbell, Marty; Ibsen, Anders; Lonergan, Joe; McCarthy, Conor; Mello, Ryan; Thoms, Robert; lauren.walker@cityoftacoma.org; Walker Lee, Lauren; Boudet, Brian; Wung, Lihuang
Subject: input for the Planning Commission interim reg
Attachments: Planning Commission interim regs.docx

Hi there – please see my attached letter representing input for your consideration on this important matter. My organization has roots in the Tacoma downtown dating back over 100 years; I have been a part of the business and civic community for over 30 years. Thank you all, Bev

Bev Losey, CLU
Senior Vice President
Employee Benefits Practice Leader
Brown & Brown of WA
253-396-5508

Please remember that insurance coverage cannot be bound altered, or canceled by leaving an electronic message or voice mail message.

Coverage confirmation must be communicated through a licensed Brown & Brown representative.

Thank you.

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Atkinson, Stephen

From: Lorie Lucky <lorie916@gmail.com>
Sent: Monday, September 11, 2017 9:27 AM
To: Planning
Cc: rcruz@healthbay.org
Subject: Tideflats Interim Regulations.

I am writing in solidarity with the Saltwater Climate Action Coalition, Tacoma's Tideflats Coalition, and Redline Tacoma.

I believe that the planning and agreements between Puget Sound Energy and the Port of Tacoma have moved forward without the benefit of **any** broad public notification, nor opportunities for public input and testimony regarding any agreement that would position a fossil fuel facility like the proposed LNG depot so close to a major population zone.

Even the remote possibility of leaks, spills, or any kind of pollution of the surrounding air or water poses potent threats to the health and well-being of residents who may be either up-wind or down-wind from the storage facility.

And I believe that Puget Sound Energy's interest in a refueling facility, as expressed in its press releases, is only a first step towards pressuring Tacoma to accept gas tankers into Commencement Bay to be filled with fracked gas which will be exported to Asia.

Since PSE has modified its corporate entity and is now a limited liability company (an LLC), the surrounding public in Tacoma and its suburbs will be absorbing all of the risks, *but little or no compensation* should emissions occur or the groundwater become contaminated through pipe leaks. And what reassurance does the public have that such storage sites could ride out a major earthquake?

As a person living 12 miles north of the proposed storage tanks and some of the pipelines to those tanks (Redondo Beach), I am concerned for the health of both myself and all my neighbors and friends in this area. But on a more

pragmatic level, I'm also concerned about the possibly lowering of property values in the Fife/Federal Way/Des Moines areas because of the proximity to the storage bunkers.

I would refer anyone who is not aware of the possible consequences to their property and their health to articles on-line about the Aliso Canyon leak in California starting in 2015.

https://en.wikipedia.org/wiki/Aliso_Canyon_gas_leak .

Because of the foregoing comments and questions, I oppose any further permitting or authorizations to proceed with this facility by the Port of Tacoma or the City of Tacoma.

Yours truly,

Lorie Lucky
28313 Redondo Way S., Unit 101
Des Moines, WA 98198
Email: lorie916@gmail.com

From: [Tiffany Aldrich MacBain](#)
To: [Planning](#)
Subject: Public Comment: Sub-area Plan Interim Regulations
Date: Wednesday, September 13, 2017 3:28:59 PM

Dear Members of the Planning Commission:

I write to register my opinion on the matter of interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma.

I strongly urge the committee to prohibit the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to prevent the expansion of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am aware that the latest amendment to interim regulations includes a loophole that permits the expansion of existing terminals, and I urge the committee to close the loophole. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to allow non-polluting businesses to expand if needed in order to encourage non-polluting industry over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business--as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally--and foundationally--the committee must respect the wishes of the Puyallup Tribe when formulating and monitoring interim regulations.

If you are interested in securing the health and well-being of all Tacoma residents you must put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide together how to move forward. Since the City of Tacoma and the Port affiliates often raise "jobs" as a reason to promote dirty industry, I assure you that clean industry provides job opportunities too. Take a look at the world around you and see many, many examples of successful shifts of this sort. Institute a moratorium on all petrochemical growth in our beloved city of Tacoma NOW.

Thank you for your serious and thoughtful consideration. Moral and ethical action is required of you now.

Tiffany MacBain
4024 N 36th St.
Tacoma WA 98407

May 21, 2017

Dear members of the Tacoma Planning Commission,

Fossil fuel industries have significant negative impacts on the community – from the congestion caused by mile-long oil trains that stopped other flow of commerce to the air pollution to the threat of oil spills, derailments, and other types of disasters. We believe that the future of the Tideflats should be transitioning away from fossil fuel industries and towards clean energy industries that provide family-wage paying salaries without the health and safety risks.

While the City and Port of Tacoma as well as the Puyallup Tribe undergo a multi-year sub-area planning process for the Tideflats, our community will be left vulnerable. An interim regulation is needed immediately to preserve the ability of the City and broader community to put in place the policies and vision for the future of the Tideflats without being tied to projects that are 'grandfathered in' during this uncertain time when the fossil fuel industry is looking to increase its extraction and increase the amount of products being transported through the Pacific Northwest.

I support passage of an interim regulation to put a pause on any new fossil fuel proposals in the Tideflats.

Key items include:

- Pass an interim regulation, or moratorium, effective for not longer than 180 days following its effective date, but may be renewed as necessary until the sub-area planning process is complete and the recommended policy changes are made,
- Cover fossil fuels, including but not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats; and condensate.
- Apply to bulk fossil fuel facilities that provide access to marine, rail, or pipeline transport; or that provide storage capacity.

This will not impact:

- Non-fossil fuel industrial activity in the Tideflats. For example, the temporary regulation would have no impact on WestRock, Schnitzer Steel, etc.
- Approved fossil fuel facilities, such as Targa Sound Terminal or the PSE LNG plant.
- Improvements to existing facilities to upgrade for the safety, efficiency, seismic resilience, or operations of existing energy infrastructure.
- Jobs or job creation in the Port of Tacoma.

Sincerely,



Melissa Malott
Executive Director
Citizens for a Healthy Bay



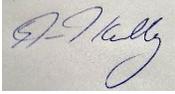
Becky Kelley
President
Washington Environmental Council



Alex Ramel
Field Director
Stand.earth



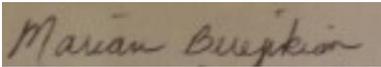
Aaron Ostrom
Executive Director
Fuse Washington



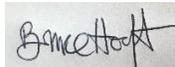
Steven J Kelly
Senior Organizer
Pierce County Activist Council



Chris Wilke
Executive Director
Puget Soundkeeper Alliance



Marian Berejikian
Executive Director
Friends of Pierce County



Bruce Hoeft
Conservation Committee Chair
Tahoma Audubon



Laura Skelton, MS
Executive Director
Washington Physicians for Social Responsibility



Alexandra Brewer
Chair
Sustainable Tacoma Commission



Emily Johnston
Board President
350 Seattle



Taylor Wanhoff
Chairperson
Surfrider Foundation, South Sound Chapter

North End Neighborhood Council

Atkinson, Stephen

From: Roger Martin <fbrogert@yahoo.com>
Sent: Thursday, September 07, 2017 4:58 PM
To: Planning
Subject: Errata : Comment on Tacoma Tideflats

Hi. I found some typos in my earlier email of this comment. I am hoping, if you can find it, you will replace the earlier one with this one, wherein I have corrected some of my earlier errors.

Thanks a lot,

Roger Martin

----- Forwarded Message -----

From: Roger Martin
To: "planning@cityoftacoma.org"
Sent: Thursday, September 7, 2017 2:38 PM
Subject: Comment on Tacoma Tideflats

I am a graduate of biology and oceanography (bachelors') and Systems Management (masters'). I was accepted to pursue a PhD with the US Naval Postgraduate School, but could not attend due to operational commitments in my Air Force unit. I was certified as a scuba Assistant Instructor, and I was a volunteer diver at the Long Beach Aquarium of the Pacific, the National Aquarium in Baltimore, and a scientific diver with the Santa Monica Baykeeper. It has been a long time since school, but I still remember a lot, especially about the oceanography and about systems.

There is hardly a better example of the significance of intertidal geography than what we witnessed with Katrina in New Orleans, Harvey in Texas and Louisiana, and now what I expect we'll see with Irma, especially if hits Florida the way I suspect it will.

The intertidal zone is extraordinary as to its importance to all life on the planet. "Doc" Ed Ricketts wrote a book used in many college oceanography classrooms, *Between Pacific Tides*. It was the core subject matter in John Steinbeck's *Cannery Row*, which is right next to where I first learned to scuba dive. The intertidal zone is getting further and further inland each year, due to sea-level rise. In Louisiana, the destruction of the tidal grasses and tidal plains drastically added to the damage New Orleans suffered with Katrina. People there are now talking about the enormous cost of trying to recover what they should never have lost. By constructing dangerous chemical and petroleum plants all along the Houston area and along the bayous there, the damage caused by winds and flooding are still yet to be known, but what we do know is alarming. People will soon learn the vulnerability of the limestone foundation upon which Miami, Miami Beach, and for that matter, all of Florida has under it, largely due to the unprotected rise of sea level attributable to global warming and the increased acidification of the seawater that flows through the porous calcium-carbonate substrate that makes up Florida's "land"scape. The limestone has been weakening over the years, and the amount of it covered by the now-more-acidic water makes collapse of the substrate more likely.

In addition, we know that a predicted, huge earthquake hitting San Francisco will cause the manmade landfill around the Marina and just south of the Airport at Foster City to likely liquify by the shaking,

and all structures there can be expected to collapse as if on quicksand. This is all because developers and profiteers thought they were smarter than the scientists who were warning them to not do what they did. Building on the Tidelands--especially building industries that contribute to the very global warming that is increasing the damage to the people, structures, and landscape around those same facilities--is insane. I just listed several examples that demonstrate the point.

I can add the San Onofre nuclear powerplant, which has finally closed, but still has a lot of radioactive stuff there. How about Fukushima? Any pattern here? You bet. Learn! Don't build anything that has hazardous materials at all in an area susceptible to earthquakes, tsunamis, and rising sea levels (and yes, tsunamis of up to 35 feet are possible even inside Puget Sound). And certainly don't build anything in our beautiful area that will contribute a single gram of additional carbon to the atmosphere, including "natural" gas, Diesel, coal, or refined petroleum products.

How about putting a huge solar farm there instead? Contrary to silly forecasts, the area's population will continue to grow, power demands will grow, but hydro power will NOT grow to keep up; it will decline as our annual precipitation will fall, as we have seen and is predicted (with the notable exception of **ONE** year, which is surely an anomaly in the statistical trend). How about a wind farm AND a solar farm? Better yet, how about a solar farm over a hydroponic garden? All these things are a lot smarter, and if an earthquake hits, nothing will blow up or contaminate the water and air.

As I was taught during my USAF pilot training class, the primary rule to follow when you are in control of something that can kill you or somebody else is, "Don't be stupid." The idea of putting chemical plants, petroleum docks, or anything along that line of thinking is indeed stupid.

Thanks,

Roger T Martin, Lt Col, USAF (Ret)
Steilacoom WA



P.O. BOX 43 • 110 COMMERCE STREET • ABERDEEN, WA 98520-0040 • 360-537-9744 • 877-537-9744 • FAX 360-538-1559
www.mascopepetroleum.com

September 13, 2017

Mr. Stephen Atkinson
Senior Planner, City of Tacoma
747 Market Street, Rm 345
Tacoma, WA 98402

RE: Proposed Tideflats Interim Regulation

Mr. Atkinson:

Masco Petroleum would like to comment in response to the planning Commission's proposal to implement interim land use regulations for the Tacoma tide flats.

Masco Petroleum purchases millions of gallons of fuel from U.S. Oil & Refining CO and are extremely worried about the interim impacts and costs to consumers if a poorly thought out set of regulations is rolled out. We believe that the imposing regulations could restrict our primary supply source and cause unneeded disruptions in an ever-changing supply and demand environment for fuels to our customers.

The fuel industry is one of the most heavily regulated industry from the well to the gas station. We are required to implement BMP's or face steep and harsh fines to our business. Please do not allow the implementation for additional complicated regulations that in the end will affect both supply of fuel in Tacoma and potentially the price the public will pay at the pump. Putting an infrastructure freeze on the Tacoma Tidelflats would negatively impact all consumers and businesses.

Thank you for considering the above comments and please feel free to contact me should you have any other questions.

Regards,

Sean J. Mason

VP MASCO Petroleum

September 14, 2017

Dear Members of the City of Tacoma Planning Commission:

Thank you for allowing public comment on the proposed Port of Tacoma Tideflat Interim Regulations. As a proud citizen of Tacoma concerned for the future environmental health of our city, I appreciate the opportunity to voice my feedback on this extremely important matter.

The City of Tacoma is at a crossroads, transitioning between its industrial past and a more sustainable future. While we have come a long way from our polluted past, in which our waterways and air were dangerously contaminated, the City's industrial permitting codes still leave the door open for dangerous future development in our Port. For this reason, it is critically important for the Planning Commission & the City Council to take action to impose interim regulations and prevent Tacoma from moving backward on environmental issues.

I applaud the Commission on its Tideflat proposal and its recommendation to limit new heavy industrial and fossil fuel development within the Port. I also support the decision to promote public engagement and expand the required notification zone to 2500', as public involvement is key to a healthy civic process. However, as you consider the proposed regulations, I would ask you to consider some important changes to the final Plan.

First, I would strongly encourage an expansion of the moratorium on new heavy industrial and fossil fuel development within the Port to existing businesses. As aforementioned, Tacoma must keep moving forward and promote a greener future. To exclude existing fossil fuel businesses within the interim regulations puts this future at risk and leaves our City vulnerable to the threat of harmful development within the Tideflats.

Additionally, this is a project that is too important to delay implementation, so I ask you to take swift and decisive action as soon as possible. Tacoma has been burned before by waiting to put interim regulations into place, and it could certainly happen again. In order to prevent polluters from skirting the new regulations, please take any action possible to expedite their implementation.

Lastly, once these interim regulations are in place, I would ask you to consider taking proactive steps to promote renewable energy development within the Port. The development of a renewable energy sector would provide a unique opportunity for economic expansion and sustainable growth within Tacoma. The City could greatly benefit from such an investment, and I ask you to consider ways to make this a reality.

Thank you for taking the time to read my comments, and thank you again for allowing the public to comment on this critical proposal. I appreciate your hard work on this issue.

Best,

Colin McCann

Atkinson, Stephen

From: Andy McDonald <AMcDonald@columbiabank.com>
Sent: Friday, August 18, 2017 10:52 AM
To: Atkinson, Stephen
Subject: Don't Kill Economic Development. Please!

Members of the Tacoma City Council and Planning Commission:

Please respect the subarea planning process for the Tideflats and reject attempts to impose interim regulation on industrial businesses across Tacoma. The Planning Commission's staff recommendation to create a category called "high risk/high impact industrial uses" and lump a variety of existing and potential businesses in that category is unjustified and counterproductive. It not only threatens thousands of jobs in Tacoma it also sends a message to all businesses that Tacoma is willing to arbitrarily ban or inhibit the growth of businesses that have operated with safety and integrity for years, and in some cases generations.

Sincerely,
Andrew McDonald

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Atkinson, Stephen

From: David McInturff <mcntrff@gmail.com>
Sent: Thursday, September 07, 2017 6:20 PM
To: Planning
Subject: Comment on interim regulations
Attachments: Tacoma Planning commission.docx

Members of the Tacoma Planning commission,

My name is David McInturff and I am a local resident and an activist with FUSE and WCV. I am here to urge you to recommend interim regulations for the Tide Flats but with a focus on Fossil Fuel development only.

A few weeks ago I attended the planning commission meeting at which Tacoma City Staff made their recommendations on the issue of interim regulations. I was impressed with the work of the staff in preparing their recommendations. It was detailed, comprehensive and coherent. To summarize, the staff recommended that any interim regulations be comprehensive, that is focus on multiple types of land development, and that the regulations be presented in such a way as to reassure potential high risk/high impact industries that the interim regulations are simply a pause in development of the Tacoma Tide flats to allow the city to do some coherent long range planning for this and other strategic areas of the city.

As much as I appreciated the presentation, I found it to be less than assertive on the question of fossil fuel projects in the Tideflats. I therefore recommend two departures from the staff presentation. First, the interim regulations should not be comprehensive and should only be focused on fossil fuel development. To make these regulations broader and include issues like real estate development etc, will increase the number of stakeholders weighing in on the regulations, make it difficult for the public to follow the ball on what the real issue is and make any decision for regulating fossil fuels development in the Tide Flats more difficult to put in place.

Second, Tacoma should absolutely be up front with potential fossil fuel developers through these regulations that they are not welcome here. In being clear about this starting now, we will be joining other NW communities including Portland, Coos Bay, Warrenton, Seattle, and many more in saying that we intend to resist the perpetuation of a damaging and dirty fossil fuel industry, that we intend to move toward more progressive forms of resource management and that we intend to make good on our "I'm still in" proclamations with respect to the Paris climate accords.

I commend this commission for undertaking the task of drafting interim regulations. I support such regulation but with a focus specifically on limiting existing fossil fuel projects and excluding new fossil fuel development. Other important development issues can be handled separately and at a later date. Even now the presence of fossil fuel industry in Houston is compounding the immense damage done by Hurricane Harvey. We have similar vulnerabilities. Let's keep that in mind as we deal with this issue right here in our own back yard.

Thank you for your time and attention.

David T. McInturff

THREE BRANCHES LAW, PLLC

September 13, 2017

VIA E-Mail: svictor@ci.tacoma.wa.us

Planning Commission
c/o Assistant City Attorney
Steve Victor
City of Tacoma
Tacoma Municipal Building N. Room 16
733 Market Street
Tacoma, WA 98402

RE: Tidflats Interim Regulations

Public Hearing: Wednesday, September 13, 2017, 6:00 p.m.

Dear Chair Wamback, Vice Chair Peterson, and Members of the Commission:

The GEO Group, Inc. ("GEO") opposes the Tidflats Interim Regulations - Category 2 that propose to limit new non-industrial uses within the Port of Tacoma M/IC and that further prohibit expansion of existing non-industrial uses like the Northwest Detention Center. GEO urges the Planning Commission to vote against adoption of these sections of the proposed interim regulations.

On May 9, 2017, the City Council adopted Ordinance 28429, a measure that purports to do the following:

- Revise the Correctional Facilities interim regulations so they regulate public and private correctional facilities in the same manner
- Revise the permit modification standards to indicate that any modifications that would increase the inmate capacity of an existing facility shall be processed as a major modification
- Modify the Conditional Use Permit process standards to ensure significant community engagement as part of any permit for significant modification of an existing correctional facility; and
- Extend the duration of the Interim Regulations from six months to one year

The Planning Commission has one year to consider interim regulations specific to correctional facilities. Tidflat subarea plan and interim regulations have taken priority; however the tidflat subarea plan and interim regulations may not conflict with City Ordinance or state law. As proposed, the interim tidflat regulations conflict with both City Ordinance and state law. The recent local ordinance was amended because the Council recognized that state law

prohibits local land use limitations on essential public facilities. Of the prohibited non-industrial uses, the only use that could be considered an essential public facility is a correctional facility. At the federal level, the desire to limit expansion of ICE detention raises federal pre-emption or zoning immunity arguments that may make any local regulations entirely moot as to the development of the Northwest Detention Center.

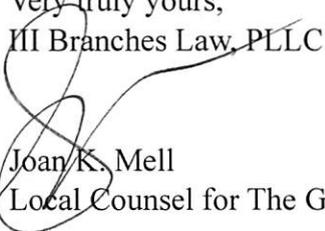
For purposes of clarity on these legal issues, I enclose materials that have been before the City Council:

- April 24, 2017 Letter from Thomas Homan, Acting Director US Immigration and Customs Enforcement
- April 18, 2017 Memo from the City Attorney's Office to the Planning Commission
- March 31, 2009 Pauli Memo to Anderson regarding Northwest Detention Center as an "essential public facility."
- July 22, 2008 Pauli E-mail to Anderson regarding the Northwest Detention Center's status as an "essential public facility."

Additionally, Matt Driscoll from The News Tribune published his opinion and corresponding rationale in June of 2017, explaining why blocking any expansion of the NWDC would be a bad policy choice with severe unintended consequences to those immigrants who otherwise have access to one of the best facilities in the nation, within the most favorable jurisdiction, where the best advocates and other community resources are accessible. **A copy of his article is enclosed.** Also enclosed are the statistics that show an exceptionally high **Removal Prevention Rate** at the NWDC. Limiting expansion does nothing to undermine immigration policies. Limiting expansion for certain curtails upgrades to the facility or other physical plan improvements actually favored by interest groups and stakeholders.

Your attention to these matters is appreciated.

Very truly yours,
III Branches Law, PLLC


Joan K. Mell
Local Counsel for The GEO Group, Inc.

cc: Client
ICE
Ian Munce, imunce@ci.tacoma.wa.us
Lihuang Wung, LWUNG@ci.tacoma.wa.us
Stephen Atkinson, satkinson@ci.tacoma.wa.us
Bill Fosbre, bill.fosbre@ci.tacoma.wa.us

Office of the Director

U.S. Department of Homeland Security
500 12th Street, SW
Washington, D.C. 20536



U.S. Immigration and Customs Enforcement

April 24, 2017

Mayor Marilyn Strickland
Tacoma Municipal Building
747 Market Street
Tacoma, WA 98402

Dear Mayor Strickland:

I write to express the significant concerns of U.S. Immigration and Customs Enforcement (ICE) regarding Ordinance 28417, which amends Chapter 13.06 of the Tacoma Municipal Code (TMC) to ban the use of privately owned detention facilities. This action is clearly intended to prevent the operation of ICE's Northwest Detention Center (NWDC), a federal civil immigration detention facility continuously operated in Tacoma by the GEO Group, Inc. (GEO) since 2005.

At the outset, it appears that some misperceptions are animating Tacoma's changes to its zoning laws. In a February 24, 2017 letter you sent to GEO, you express "concern[] about the possible detention of individuals in violation of due process rights, the violation of the status of Deferred Action for Childhood Arrivals recipients and other established and relied upon Federal Immigration enforcement priorities." ICE wishes to go on record with the Tacoma City Council to make clear that neither GEO nor ICE violate the due process rights of immigration detainees housed at NWDC.

ICE manages a nationwide immigration detention system that makes use of a range of different facility types, including some which are owned by the Federal Government, some which are owned by state or local governments that have entered into Intergovernmental Service Agreements with ICE, and some which are privately owned and operated but under ICE's oversight and legal authority. Regardless of detention facility type, the detention authority at issue arises under federal immigration law, including 8 U.S.C. §§ 1225(b), 1226, and 1231. Sworn ICE officers make all arrest and custody decisions, and these decisions are subject to review by federal courts and immigration judges. Moreover, U.S. immigration law affords aliens subject to detention a substantial amount of process, including multiple avenues of relief from removal, the right to counsel in immigration court (at no expense to the government), the right to an interpreter in removal proceedings before an independent immigration judge, and the opportunity to appeal removal orders from an immigration court to the Board of Immigration Appeals and a federal circuit court of appeals. ICE detention facilities are closely regulated and monitored. The NWDC is subject to ICE's 2011 Performance-Based Detention Standards, which provide conditions tailored to the civil purpose of immigration detention while maintaining a safe and secure detention environment for staff and detainees. These facilities, which are

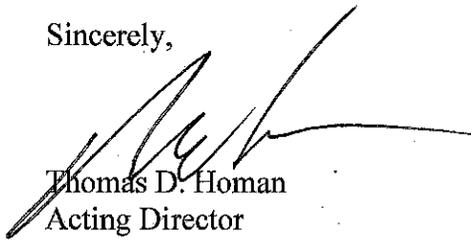
regularly inspected for compliance, provide medical and mental health screening and services, access to legal services and religious opportunities, recreation and visitation opportunities, a process for reporting complaints, and procedures to ensure access for detainees with limited English proficiency.

It is also important to underscore that immigration enforcement and the establishment of immigration enforcement priorities is within the purview of the Federal Government. Your February 24, 2017 letter to GEO demonstrates that Ordinance 28417 is rooted in the belief that the City of Tacoma has a role to play in assessing whether detention at NWDC somehow violates aliens' legal rights. While ICE certainly respects the City of Tacoma's role in our federated system of government, Tacoma's efforts to alter immigration detention decisions under the guise of a change in zoning policy manifests a lack of appreciation – or understanding – for ICE's role.

Additionally, Ordinance 28417 does not recognize the advantages of the NWDC and the benefits that can be gained from its expansion. The existence of the NWDC is in many ways beneficial to the detainees. The availability of a local detention facility means many detainees will be located near their families, counsel, and support networks. Likewise, expansion of the facility can benefit the detainees, as it can allow for additional space for enhanced medical and dental service areas, dining and dormitory spaces, attorney-client meeting rooms, immigration courtrooms and judges' chambers.

ICE would appreciate the opportunity to meet with you in advance of next week's Tacoma City Council meeting on April 25, to engage with city planning officials, and to speak before the Tacoma City Council, in an effort to answer questions and provide accurate information regarding ICE's mission and NWDC operations. We would also be pleased to host a visit by you and your fellow councilmembers to NWDC, so that we can demonstrate first-hand the superb work done by our personnel and contractors to ensure fair and humane treatment of aliens who are subject to detention under federal immigration law. If your office could contact Timothy S. Robbins, ICE's Acting Chief of Staff, at Timothy.S.Robbins@ice.dhs.gov, we can work with you on making the necessary arrangements. I would also be grateful if you could circulate this letter to the members of the Tacoma City Council, for their awareness. Thank you for your attention to this matter, and ICE looks forward to working with you to advance our shared goals of promoting public safety and the rule of law.

Sincerely,



Thomas D. Homan
Acting Director



TO: Tacoma Planning Commission

FROM: The Office of the City Attorney

SUBJECT: **Siting of Essential Public Facilities & City Ordinance 28417**

DATE: April 18, 2017

The Tacoma City Council recently passed emergency, interim development regulations (City Ordinance No. 28417) regarding the “siting [of] public correctional facilities.” TMC 13.02.055 requires that the Planning Commission make findings of fact and recommendations for the City Council’s consideration before any emergency, interim development regulations can be finalized. By this Memo, the City Attorney’s Office is providing the Planning Commission with the following information and guidance:

1. After additional review, the City does not see challenging any designation of the immigration detention facility in the tideflats as an “essential public facility” under RCW 36.70A.200 and WAC 365-196-550 as a viable course going forward;
2. The City understands that essential public facilities must be accounted for in the City’s Comprehensive Plan, and cannot be prohibited by the Comprehensive Plan and/or the City development regulations (WAC 365-196-550 (3) and (6));
3. The siting and permitting of essential public facilities can, however, be regulated and conditioned in order to mitigate potential impacts of the essential public facility (WAC 365-196-550 (6)); and
4. WAC 365-196-550 provides the best guidance, particularly at subsection (6), for the mitigation of potential impacts.



City of Tacoma
City Manager

To: Eric Anderson, City Manager

From: Matt Peelen, Management Assistant

Subject: PSHSED Committee's Interest in the NW Detention Center

Date: March 31, 2009

During their March 26th meeting, the Public Safety, Human Services and Education Committee expressed interest in additional information on the Northwest Detention Center. During this discussion the committee identified several issues that they would like to explore:

-
- The jurisdiction of the city in regards to oversight of the Northwest Detention Center.
 - Questions related to the siting and permitting of the Detention Center
 - Any impacts on City departments and services resulting from the Detention Center
 - Questions related to demographics of the Detention Center population

Over time the City has collected various reports and e-mails on the NW Detention Center, many of which address the concerns raised by the Committee. This packet of information was provided to me by Celia Holderman and is attached to this memorandum. I have attempted to classify this information in such a way that it can quickly and efficiently answer the Committee's questions.

What is the City's jurisdiction in oversight of the NW Detention Center?

According to Elizabeth Pauli, this facility is considered by the state Growth Management Act to be an "essential public facility." The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. For more information please see Attachment A.

What are the impacts on City departments and services from the NW Detention Center?

In a May 27th memorandum (Attachment D) to Nicole Persaud with MACTEC Engineering regarding impacts on City Service due to NW Detention Center expansion, the Police Department identifies concerns with protests as their only issue with the NW Detention Center to date. The police department goes on to express concerns at the potentiality of the Washington State Department of Corrections and other parties using

space within the Detention Center, which could result in an impact to human service funding.

Sigrun Freeman of the Northwest Leadership Foundation, a group which provides social services to the detainees, identifies in Attachment E a need for service to the population granted a release from the facility as they make their way into the general population. She provides no quantitative data. No other impacts are identified.

How was the NW Detention Center sited and what is the City's role in permitting a facility of this nature?

The NW Detention Center opened in Tacoma in the spring of 2004. A memorandum provided by A. Neil Clark, the Field Office Director of the Seattle Detention and Removal to the Public Safety, Human Services, and Education Committee in September of 2007 is included as Attachment B. The memorandum provides an overview of both the federal program run by the Office of Detention and Removal and the GEO Group, whom own and operate the facility.

Are there any permitting concerns?

As described above and in Attachment A, the City can not prohibit the siting of essential public facilities such as the NW Detention Center. However, the Growth Management Act does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements.

What consideration has the City made in regards to their recent proposal to expand the NW Detention Center?

In Attachment C, Charlie Solverson describes the permitting process for the expansion of the NW Detention Center. The expansion project is identified as 104,800 square feet of new construction including 26,000 square feet of a general population housing unit and a 40 bed segregation unit. Permit requirements are identified as a Building Permit, a Grading Permit, and a SEPA addendum.

What are the demographics of the NW Detention Center?

In Attachment B, the countries of origin are identified as being primarily from Central American and East Asian Countries. There is no information on gender or age provided. The average duration of stay for detainees at the Northwest Detention Center is identified as 27 days. In Attachment E, provided by Sigrun Freeman of the Northwest Leadership Foundation, she identifies 9,441 detainees booked into the facility, and 9,258 as booked out in 2007.

Holderman, Celia

Attachment A

From: Holderman, Celia
Sent: Thursday, May 22, 2008 11:09 AM
To: Anderson, Julie; Baarsma, Bill; Fey, Jake; Ladenburg, Connie; Lonergan, Mike; Manthou, Spiro; Strickland, Marilyn; Talbert, Rick; Walker, Lauren
Cc: Anderson, Eric; Pauli, Elizabeth
Subject: Response to CM Anderson's request regarding the Immigration Customs Enforcement Detention Center and Council's authority limitations

Council Members:

Since we don't have a Weekly Report going out today, please see the response below from City Attorney Elizabeth Pauli regarding Council Member Anderson's request for a reminder on the limitations of the Council's authority in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

Celia

~~PS: Although we won't have Council notebooks going out today, we will still be sending your mail packets home close to 5:00 today.~~

From: Pauli, Elizabeth
Sent: Thursday, May 22, 2008 10:32 AM
To: Anderson, Eric
Cc: Holderman, Celia
Subject: I.C.E. Facility

At the City Council Meeting of May 6th, Councilmember Anderson asked that the Council be provided with a reminder of the limitations on the authority of the Council in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

This facility is considered by the state Growth Management Act, to be an "essential public facility." Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities. RCW 36.70A.200(1).

The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. RCW 36.70A.200(5). This prohibition also applies to the expansion or improvement of an essential public facility, but does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements. City of Des Moines v. Puget Sound Reg'l. Council, 108 Wn. App. 836 (1999).

Please feel free to contact me if there are any additional questions.

Elizabeth A. Pauli
 City Attorney

E.

5/22/2008

DeGrosse, Cindy

From: Anderson, Julie
Sent: Monday, July 28, 2008 9:05 PM
To: DeGrosse, Cindy
Subject: Fw: ICE Facility

Please include this in you PUBLIC RECORDS REQUEST.

Julie

From: Pauli, Elizabeth
To: Anderson, Julie
Sent: Tue Jul 22 15:37:20 2008
Subject: ICE Facility
Council Member Anderson,

You have asked about the City of Tacoma's jurisdiction over the Northwest Detention Center which is located within Tacoma City limits, at 1623 East J Street. This facility is considered an essential public facility, and therefore, while citing can be limited, City zoning code and land use regulations cannot prevent such as facility from being cited within the City. The center is operated by Correction Services Corporation, dba NW Detention Center (the parent corporation is the GEO Group). They have a business license with the City and are subject to City regulation relating to business licensees. The facility is subject to an annual company inspection by the Fire Department as well as technical inspections that would occur at least annually.

Please let me know if you have additional questions.

Elizabeth A. Pauli
City Attorney

Matt Driscoll: Closing the Northwest Detention Center now is not realistic. Or right.

BY MATT DRISCOLL

mdriscoll@thenewstribune.com

Shut it down.

That was the sentiment expressed by many who attended an April public hearing to discuss Tacoma's interim regulations for correctional facilities, which was a not-so-subtle attempt to block any expansion of the privately owned and operated Northwest Detention Center.

They and others think the giant immigration facility on the Tideflats is inhumane and has become a symbol of President Trump's draconian immigration policy.

They're not wrong.

But while shuttering the facility — a pipe dream at this point — or limiting its expansion might sooth the city's burdened psyche, it's not a realistic answer. Or the right one.

Why?

Because such a move alone would have unfortunate, unintended consequences for immigrants entangled in the system, according to a local coalition that includes prominent immigration scholars and immigration-justice advocates.

In weighing what steps the city should take in handling the detention center, one of the main questions that must be answered before getting to the larger issues is a straightforward one, said Robin Jacobson, an associate professor of politics and government at the University of Puget Sound.

“

DO WE REALLY CARE ABOUT THE REAL LIVES OF THE PEOPLE WE'RE IMPACTING?

Robin Jacobson, University of Puget Sound associate professor of politics and government

“Do we really care about the *real* lives of the people we’re impacting?” said Jacobson, an expert on immigration politics and policy.

Closing the detention center, or even limiting its expansion, would hurt immigrants more than it would help them, she argued.

She pointed to a network of advocates and service providers that have stepped up or blossomed in Tacoma in the decade-plus since the facility opened.

All, in one way or another, work to protect the rights and fair treatment of immigrants. They also provide what amounts to informal oversight through civic engagement and vigilance. Such a network simply doesn’t exist everywhere.

Jacobson rightly points out that unless the federal policies that make facilities like the the Northwest Detention Center possible are simultaneously dismantled, Tacoma ridding itself of the facility would have little impact.

At best, it would only serve to insulate us from the problem.

Because without that change in federal policy, immigrants not housed at the Tacoma facility would be housed elsewhere.

That might be in city and county jails, as the Trump administration works to ramp up the number of people being detained and deported. Or, it could be places like Lumpkin, Georgia, sometimes referred to as the “black hole of the immigration system,” where the number of people detained exceeds the population of the town itself.

“It would be a lot better to not attempt to close down this facility, unless we’re moving toward closing all detention facilities,” Jacobson said.

Jacobson acknowledges that closing or restricting the Northwest Detention Center might make us “feel better, like we’re not complicit.”

“To chant ‘Shut it down!’ feels good, but then people get to go back to their lives afterward and think they’ve chalked up a victory,” she said. “But it isn’t really a victory.”

Instead, Jacobson says, we must “keep our eye on the prize.” She means we all have a stake in an unjust federal immigration system and our efforts to fix it should have an impact on that level.

That reality continues to be true, even as the city council recently settled on less-restrictive interim regulations for private and public prisons than the ones that were discussed (and favored by many citizens) back during that optimistic April public hearing.

“

OUR COMPLICITY DOESN'T COME FROM (THE NWDC) BEING CLOSE TO US.

Robin Jacobson, University of Puget Sound associate professor of politics and government

So if closing or limiting the detention center's expansion isn't the answer for Tacoma's conflict of conscience, what might be?

Jacobson offered two concrete and realistic local steps we could take to push back.

First, find a way to ensure people locked up at the detention center have adequate access to legal representation, something many of them now lack.

In New York, the city has launched an effort to provide lawyers to poor immigrants facing deportation. A similar effort here could have a big impact, she said.

If they had greater access to legal help, immigrants locked up on the Tideflats could “get out quicker” and would be less likely to “get lost in the system,” Jacobson said.

She acknowledged that Tacoma isn't as big as New York and certainly doesn't have the same resources, but she said partnering with cities like Seattle or even the state could work.

Jacobson also argues that while Tacoma has settled for its designation as a “Welcoming City,” leaders should have the political will to go farther. She describes Tacoma's “Welcoming City” status as one largely concerned with “PR and economic growth,” and not much more.

Instead, declaring Tacoma a full-blown sanctuary city — meaning Tacoma would formally put on the books policies that would help “shut off the valve that brings people into the detention regime in the first place,” in Jacobson's words — would be more than just talk.

Doing both would be immigration victories for which Tacoma actually could be proud.

Matt Driscoll: 253-597-8657, mdriscoll@thenewstribune.com, @mattsdriscoll



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NWIRP + J + 9 = 35%

NW Immigration Rights Project + NW Detention Center + 9th Circuit = Protection
(1623 E. "J" Street)

Right Lawyers + Right Location + Right Court = Right Decision

Removal Prevention Rate NWDC: 35%

Removal Prevention Rates Other Circuits (5th TX, 10th CO, 11th FL)

Oakdale, LA - 17.5%
Houston, TX - 21%
Miami, FL - 31.8%
Lumpkin, TX - 13.1%

Removal Prevention Rates Other Facility Locations In 9th Circuit

Adelanto, CA 26.2%
Eloy, AZ 19.4%
Florence, AZ 28.9%

Asylum Grant Rate NWDC: 28%

Asylum Grant Rates Other Circuits (5th TX, 10th CO, 11th FL)

Oakdale, LA - 4.4%
El Paso, TX - 2.2%
Houston, TX - 7.9%
Miami, FL - 22%
Aurora, CO - 13.7%

Asylum Grant Rates Other Facility Locations In 9th Circuit

Adelanto, CA 13.3%
Eloy, AZ 6.8%
Florence, AZ 8.8%

Atkinson, Stephen

From: Mark <markm@tlcu23.com>
Sent: Tuesday, September 05, 2017 1:56 PM
To: Planning
Subject: Tideflats Interim Regulations

To whom it may concern,

I received the Tideflats Interim Regulations Public Notice today and found that our business, the Tacoma Longshoremen Credit Union, a state-chartered non-profit financial institution, is inside the Industrial/Commercial Buffer of the Manufacturing/Industrial Center. Our Credit Union is located on Alexander Avenue between HWY 509 and HWY 99. The portions of the regulation that are troubling to us are described in the letter as "Category 2: Non-industrial Uses in the Port of Tacoma M/IC". This section states that "Existing non-industrial uses would be prohibited from expansion." We designed our building back in 2002 to allow for expansion of the back of the building to make the office larger when needed. This letter seems to indicate expansion would be prohibited. I see that "Category 4: Heavy Industrial Special Use Restrictions." states "Existing uses would be considered allowed and not subject to limitation on expansion."

I respectfully submit that existing uses should not be subject to limitation on expansion for Category 2, as is proposed for Category 4.

I understand that these are interim rules, but interim very often becomes permanent. These limitations would have an adverse effect on our non-profit financial services business and we urge you to make changes to the regulation to remove the limitation on expansion for Category 2.

Sincerely,

Mark Merriman, CCE
CEO
NMLS #1076584
Tacoma Longshoremen Credit Union
NMLS #1076944
Phone: 253 272 2161
Fax: 253 572 2887

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Atkinson, Stephen

From: Tim Miller <mmiller1@nventure.com>
Sent: Monday, September 11, 2017 8:41 AM
To: Planning
Cc: Strickland, Marilyn; Sean Horner; Todd Hay
Subject: Fossil Fuel Storage and Generation

Members of the Planning Commission:

The following article says what I have thought now for some time about the nature of fossil fuel storage and use for our community. I realize that a movement away from the use, storage and generation of fossil fuels will take time....probably decades. But where do we start? How about with the realization that fossil fuel use is a detriment to our city, state, nation and of course our planet.

At your next meeting, this Wed., please listen and take under consideration the comments from those in the audience who will speak to actions you may take that will compromise the quality of life for our city. You are intelligent people and with that please look beyond how the infrastructure of fossil fuels impact our climate and quality of life. Let Tacoma stand with Portland and other cities that are taking steps to turn the tide toward clean and renewable energy generation.

As a member of this city for the past 76 years I know our city council and planning commission are highly capable of doing the right thing.

Sincerely,

M.H. Tim Miller

<http://www.sightline.org/2017/01/12/how-northwest-communities-are-stopping-fossil-fuel-projects-before-they-start/>

Atkinson, Stephen

From: Greg M <gman67@hotmail.com>
Sent: Tuesday, September 05, 2017 6:09 PM
To: Thoms, Robert
Cc: geraci2542@aol.com; Vic Geraci; Atkinson, Stephen; Planning
Subject: Tideflats Interim Regulation notice for residential map #2

Dear Deputy Mayor Thom's,

I am writing to you for Mrs. Vernice Geraci as she is unable to type, write or travel without assistance. She lives at 2542 53rd Ave. N.E. and I live @ 2732 53rd Ave. N.E. (Gregory Munford) Mrs. Geraci is 88 years young and she will be drastically affected by this proposed building moratorium that I understand could possibly take affect as soon as October or November.

Mrs. Geraci has been a lifelong resident of Northeast Tacoma, her and her now deceased husband Joseph, having one of the first homes in the area above the now Pointe Woodworth. They were able to purchase numerous acres on top of the hill over 60 years ago and build their home along with their 3 children.

The current property Mrs. Geraci owns is planned to go to her children when she passes unless selling it becomes necessary to sustain her lifestyle into her later years. Being on a limited income, it is vital that she is able to sell the property to help sustain her, but if this property remains in the moratorium area, the property becomes worthless.

The proposed regulations that affect the residential area identified on Map #2 are not realistic for the properties in question which are located at 2542 53rd Ave. N.E. (parcel #0321261011) approx. 5 acres that Mrs. Geraci currently resides on and 2744 53rd Ave N.E, an identified building lot 65' x 310' (parcel # 0321265005 of short plat #201103235003).

Both of these properties are located above Marine View Drive in an already developed area and the nearest point of the properties to Marine View Drive is approx. 1750' or one third of a mile away, as the crow flies, from the SW corner of the property at 2542 53rd Ave. N.E.

The individual lot, 2744 53rd Ave N.E, is located at the corner of 29th St. N.E. and 53rd Ave. N.E. and the 5 ac. parcel is located at 2542 53rd Ave. N.E, the corner of 27th St. N.E. and 53rd Ave. N.E, for reference.

The 5 ac. Parcel has a preliminary short plat design that resides in the trust of Vernice J. Geraci, Trustee and Victoria Ann Geraci, Co-Trustee. This was done to get an idea of how the property could be divided for future potential sale.

The 5 ac. parcel would be divided into 5 proposed residential lots, 4 for new single family dwellings and 1 lot that the existing house currently resides on. The 4 individual lots that would be created do have a severe slope that abuts to the City of Tacoma property and that any structure footprints identified will be a minimum of 30' feet back from the top of that slope to prevent any potential hazards. Due to that slope, the design was created with only 4 building lots to capture the most available land use on the level area on the top of the slope of the property.

Unfortunately, Mrs. Geraci does not have the finances to proceed with a full fledged short plat. The cost is far too much.

The 5 ac. parcel currently has side sewer stubs into all lots, water available, storm sewer existing, along with power, gas and phone/cable existing. This was all done when Mr. Geraci was alive in conjunction with Holland Builders for the 3 houses located across the street from the 5 ac. parcel that are identified as Lots 34 & 35, 36 & 37, 38 & 39 plat of Northeast Tacoma, records of Pierce County. (2507, 2511 & 2513 53rd Ave. N.E.)

The individual lot at 2744 53rd Ave. N.E. also has all utilities to the lot and has all required restrictions to obtain a building permit, attached to it per the short plat.

These lots are NOT located any nearer to Marine View Drive than other existing homes immediately in the area; in fact they are further away than newly constructed Lennar homes off of 25th St. N.E. above Point Woodworth development.

These parcels are valued and taxed as if they were available to be built on and I'm curious if the City/Port is going to compensate individuals for the loss of use of these properties.

Mrs. Geraci, her daughter Victoria and myself want to see the lines be re-drawn to accommodate these properties for building single family residential homes, as they are currently inside at the edge of the proposed boundary of the moratorium.

Thank you for your time.

Sincerely,

Greg Munford, on behalf of Vernice and Victoria Geraci.

I have been asked to respond and help with this situation and would like to be included in any future mailings about this moratorium.

P.O. Box 1008

Gig Harbor, WA. 98335

My street address is 2732 53rd Ave. N.E.

Tacoma, WA. 98422

253-686-2449

From: [Joan Nelson](#)
To: [Planning](#)
Cc: [Joan H Nelson](#)
Subject: Hearing on fossil fuels in Tideflats
Date: Wednesday, September 13, 2017 3:05:21 PM

Thank you for recognizing that allowing development of facilities to accommodate fossil fuel transport out of the Port of Tacoma would have serious risks for Tacoma and surrounding communities as well as increasing climate change impacts that are already very serious.

Please do not allow such development. You are the key to protecting our environment and limiting human destruction of our planet.

Sent from my iPhone

September 13, 2017

Tacoma City Planning Committee

My name is Ron Oline and together with my sister Judy Johnson own approximately 20 plus acres of M-1 Heavy Industrial zoned property between 1850 & 2100 Marine View Dr. Tacoma.

We are very much opposed to any interim or permanent zoning changes to our properties or any others within the port tide flat area. This area has been zoned and used in this manner since the very beginning of the City of Tacoma. In fact that is what it was intended to be used for. This so called buffer zone nonsense will do absolutely nothing, to quiet the people of Point Woodworth. In fact they already have a big hillside and elevation buffer, much more so than exists in some areas where industry and housing are only separated by a fence. A few hundred more feet will not stop pollution or the noise from the tide flats which has been going on for decades.

The city of Tacoma should never have allowed the change of zoning from industrial gravel pit (Woodworth and Company) to residential zoning in the first place. We will not stand by idle while you try to devalue our property by down zoning and restricting its uses. If you want that kind of power you will need to buy it from us at full industrial value. Otherwise face an endless legal fight for our property owner's rights

Sincerely X *Ron Oline*

Ron Oline

From: [Mary Paynter](#)
To: [Planning](#)
Subject: Interim regulations for Tideflats
Date: Thursday, September 14, 2017 4:15:59 PM

Dear Planning Commission:

Thank you for your volunteer service, and thank you for providing opportunities for citizens to voice their concerns about the Interim Regulations for the Tideflats. I am a resident of Des Moines, and live about 14 miles from the Tacoma Tideflats.

The proposed interim regulations should focus on fossil fuels only. This is the immediate threat. The regulations should include a moratorium on building new fossil fuel infrastructure, but equally importantly, the regulations must include a pause in the expansion of existing fossil fuel facilities.

If Tacoma allows the building of this huge LNG facility, there will be some benefits:

- Substituting LNG for diesel fuel in marine vessels probably provides some reduction in GHG emissions and Diesel Particulate Matter, although an extremely fine-grained and yet wide-ranging analysis is necessary to reach this conclusion.
- Some good union jobs will result--250 jobs over two years and 18 permanent jobs
- PSE, a foreign-owned corporation, will be able to extract a lot of fracked gas, transport it through pipelines, and potentially export it to lucrative markets in Asia. It's not clear that PSE will use very much of the capacity of this plant to ensure that peak demands of PSE customers will be met, but to the extent that that happens, I guess we can count it as a benefit to the region.

But in my view the benefits are far outweighed by the costs:

- This LNG plant will be supplied with fracked gas, which is largely methane. Methane burns cleanly, but when methane escapes into the atmosphere unburned, it is an extremely potent GHG, about 86 times more potent over 20 years than carbon dioxide. Methane leaks happen during fracking, during transportation by pipelines, and during processing at natural gas facilities. These leaks mean that fracked gas is far from an innocuous "bridge fuel" to a clean energy future—it is arguably worse than coal as a contributor to climate change.
- The safety issues of this plant's location are not adequately addressed. Transferring LNG from the storage tank to vessels is a dangerous process. It should not be undertaken in a busy port. PSE is not experienced at this sort of thing. Does Tacoma want to be the guinea pig while PSE experiments to find the best way to get LNG to a truck and from there to a vessel?
- Other environmental issues are raised by the Puyallup Tribe and by recreational and fisheries interests, all of whom stand to be impacted by leaks, spills, and increased marine traffic.
- We know that if we are to avoid catastrophic climate change, about two-thirds of known reserves of fossil fuels need to stay in the ground. If known reserves cannot get to markets, they will stay in the ground. Unfortunately, an LNG plant of this size will act like a gigantic siphon, sucking fracked gas from upstream sources for a long time to come, whether the PSE rate payers need it or not. And if they don't need it, because of transitioning to renewables, conserving energy, and finding ways to increase efficiency of buildings and industries, that LNG will find a market elsewhere, likely in Asia, to the benefit of the Australian stockholders who own PSE and to the detriment of the planet.

We should not be building ANY new fossil fuel infrastructure, nor should we expand existing facilities. We must direct all of our efforts toward the transition to solar and wind power, energy efficiency, and conservation if we are to avoid catastrophic climate change.

Mary Paynter
27220 10th Avenue South
Des Moines WA 98198

U.S. OIL & REFINING CO.

U.S Oil & Refining Co.
3001 Marshall Avenue
Tacoma WA, 98421
253-383-1651

September 11, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98402

Re: Proposed Tideflats Interim Regulations

Dear Mr. Atkinson:

I would like to offer some comments in response to the Planning Commission's proposal to implement interim land use regulations for the Tacoma Tideflats. As we understand the situation, the intent of these interim regulations would limit certain new industrial uses, and if implemented, would remain in effect until such time as the Tideflats Sub-Area Plan is put in place. In this regard, please see the following:

U.S. Oil & Refining Co (U.S. Oil), located in the Tideflats, is Washington State's only independent and truly domestic petroleum refinery. The Company has been in operation for over 60 years. During this time we have been both a reliable and low cost supplier of petroleum products to the residents of Tacoma and the South Sound. Products manufactured and marketed by the Company include: All grades of gasoline, diesel, jet fuel, intermediates, residual fuels and asphalt. The refinery and corporate offices are located on 139 acres of privately owned land which includes 15 acres and 1350 feet of waterfront on the Blair Waterway. The Blair property is our marine terminal and provides access to critical feedstock supplies and markets which are served by ocean going equipment.

As a company we have maintained a long term standing commitment to "Best Practice" along with being early adopters of change with respect to safety, technology and regulatory compliance. U.S. Oil was one of the first companies in the region to bring to market the Ultra-Low Sulfur Fuels (ULSD) mandated by the EPA. ULSD was brought to market more than a year ahead of the implementation deadline and we are currently producing some of the lowest sulfur gasoline in the Industry. U.S. Oil was the first Refinery to co-process synthetic crude oil derived from recycled plastic waste. More recently, U.S. Oil invested in the safest railcars available in the market well ahead of their mandated use. In 2015 we made a substantial proactive investment in our fuel gas recovery system of approximately \$15 Million. In addition to providing improvements in operating efficiency and safety, these projects created a net reduction of 25% in our greenhouse gas emissions.

U.S. Oil understands and recognizes the importance of efficient and timely planning and, with this in mind, support the sub area plan concept. However, we are deeply concerned with the prospect of the promulgation of an overly complicated and poorly thought out set of regulations being imposed on an interim basis. Our concerns are based on years of experience in navigating our way in a complicated and highly regulated industry. We feel that in the absence of a demonstrated emergency dictating the need

for an interim set of regulations, there is no rationale for further regulation of otherwise compliant existing business in the Tideflats today. We further believe that imposing regulations that restrict the ability of a business to respond to changes in their operating environment is fraught for the potential for unintended consequences. Not only could it stifle innovation, but interim regulations might well impede a business from complying with the change necessary to meet current and future environmental and/or safety requirements.

Our business is unique in that our production capacity is somewhat fixed while our demand is highly variable, constantly changing and subject to the needs of the market. Given the variable nature of supply and demand in the overall market, attempting to define what is our ordinary course of business, and therefore regulated, is both complicated and problematic. We do not operate commercially in a static environment. Our inflows and output are the result of an ever changing equation, wherein we attempt to balance supply and demand while optimizing economics. The imposition of any regulation that might impede our ability to respond quickly to changing conditions has the potential to do irreparable damage to the economic viability of our enterprise.

Today's energy equation is very complicated but one thing is clear; the United States still is and represents the pinnacle of innovation and competition in the marketplace. As we transition away from the tried and true traditional/conventional fuel sources in the search for improved sources of energy to power our lives and industry, it is important that we are not impeded by unnecessary regulation. As our company's history has shown, U.S. Oil plans to be on the forefront of this transition without mandate or rule. Please don't allow the implementation of additional overly complicated regulations to deter innovation and investment in our community and thus choke off the timely transition onto cleaner fuels. Today U.S. Oil operates under a myriad of regulations as a matter of our course of business. An index identifying many of these regulations is attached for your convenient reference.

Thank you in advance for your time and consideration to my comments. Should you have any questions or require additional information, please do not hesitate to contact me.

Best Regards,



Cameron Proudfoot
President & CEO

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Planning Staff

Oil Spill Regulations Impacting USOR

Agency	Name of Regulation	Code
Ecology	Facility Oil Handling Standards	WAC 173-180
Ecology	Oil Spill Contingency Plan	WAC 173-182
Ecology	Oil Spill Natural Resource Damage Assessment	WAC 173-183
Ecology	Oil Movement by Rail and Pipeline Notification	WAC 173-185
EPA	Oil Pollution Prevention	40 CFR Part 112
U.S. Coast Guard	Maritime Security: Facilities	33 CFR Part 105
U.S. Coast Guard	Facilities Transferring Oil or Hazardous Materials in Bulk	33 CFR Part 154
U.S. Coast Guard	Oil and Hazardous Material Transfer Operations	33 CFR Part 156
U.S. Coast Guard	RECEPTION FACILITIES FOR OIL, NOXIOUS LIQUID SUBSTANCES, AND GARBAGE	33 CFR Part 158
U.S. Coast Guard	Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials	46 CFR Part 153
Pipeline and Hazardous Material Safety Administration	RESPONSE PLANS FOR ONSHORE OIL PIPELINES	49 CFR Part 194
Pipeline and Hazardous Material Safety Administration	Drug and Alcohol Testing	49 CFR Part 199

Safety Regulations Impacting USOR

Agency	Name of Regulation	Code
Washington Utilities and Transportation Commission	Hazardous Liquids Pipeline – Safety	WAC 480-75
WA Labor & Industries	Process Safety Management of Highly Hazardous Chemicals	WAC 296-67
WA Labor & Industries	Boilers and Unfired Pressure Vessel Rules	WAC 296-104
WA Labor & Industries	Hazardous waste operations and emergency response	WAC 296-843
WA Labor & Industries	General Safety and Health Standards	WAC 296-24
WA Labor & Industries	Rolling railroad cars	WAC 296-24 21511
WA Labor & Industries	Open area guarding	WAC 296-24 21513
WA Labor & Industries	Overhead and gantry cranes	WAC 296-24 235
WA Labor & Industries	Hoists	WAC 296-24 237
WA Labor & Industries	Rigging	WAC 296-24 294
WA Labor & Industries	Compressed gases	WAC 296-24 295

WA Labor & Industries	Flammables and combustibles	WAC 296-24 330
WA Labor & Industries	Liquefied Petroleum Gases (LPG)	WAC 296-24 475
WA Labor & Industries	Automatic sprinkler systems	WAC 296-24 56525
WA Labor & Industries	Fire alarm signaling systems	WAC 296-24 56527
WA Labor & Industries	Employee emergency plans and fire prevention plans	WAC 296-24 567
WA Labor & Industries	Fire suppression & detection	WAC 296-24 592 635
WA Labor & Industries	Welding, Cutting and Brazing	WAC 296-24 680 722
WA Labor & Industries	Walking and Working Surfaces	WAC 296-24 73501
WA Labor & Industries	Steam Piping	WAC 296-24 73511
WA Labor & Industries	Guardrails	WAC 296-24 75011
WA Labor & Industries	Stairs, Fixed Stairs	WAC 296-24 765
WA Labor & Industries	Compressed gas cylinders	WAC 296-24 920 940
WA Labor & Industries	Electrical	WAC 296-24 956 985
WA Labor & Industries	Recordkeeping and Reporting	WAC 296-27
WA Labor & Industries	Compressed air work, Safety standards	WAC 296-36
WA Labor & Industries	General Occupational Health Standards	WAC 296-62
WA Labor & Industries	Carcinogens (General)	WAC 296-62 073 07316
WA Labor & Industries	Lead	WAC 296-62 07521
WA Labor & Industries	Asbestos, tremolite, anthophyllite, and actinolite	WAC 296-62 077
WA Labor & Industries	Hexavalent Chromium	WAC 296-62 08003-29
WA Labor & Industries	Non-Ionizing Radiation Hazards	WAC 296-62 09005
WA Labor & Industries	Outdoor Heat Exposure (Heat Stress)	WAC 296-62 095
WA Labor & Industries	Process safety management of highly hazardous chemicals	WAC 296-67
WA Labor & Industries	Construction, Safety Standards for	WAC 296-155
WA Labor & Industries	Fall Restraint and Fall Arrest	WAC 296-155 24601-624
WA Labor & Industries	Core Safety Rules	WAC 296-800
WA Labor & Industries	Safety committees/meeting	WAC 296-800 130
WA Labor & Industries	Accident Prevention	WAC 296-800 140
WA Labor & Industries	First aid	WAC 296-800 150
WA Labor & Industries	Emergency Washing	WAC 296-800 15030-40
WA Labor & Industries	Personal protective equipment (PPE)	WAC 296-800 160
WA Labor & Industries	Hazard Communication (Pre-GHS)	WAC 296-800 170
WA Labor & Industries	Safety Bulletin Board	WAC 296-800 190
WA Labor & Industries	Electrical, Basic Requirements (Core Rules)	WAC 296-800 280
WA Labor & Industries	Fire extinguishers	WAC 296-800 300
WA Labor & Industries	Exit Routes and Employee Alarm Systems	WAC 296-800 310

WA Labor & Industries	Accident reporting and investigation	WAC 296-800 320
WA Labor & Industries	Releasing accident investigation reports	WAC 296-800 330
WA Labor & Industries	Protecting sources	WAC 296-800 340
WA Labor & Industries	Employee Medical and Exposure Records	WAC 296-802
WA Labor & Industries	Lockout/Tagout	WAC 296-803
WA Labor & Industries	Confined Spaces	WAC 296-809
WA Labor & Industries	Hearing Loss Prevention (Noise)	WAC 296-817
WA Labor & Industries	Abrasive Blasting	WAC 296-818
WA Labor & Industries	Bloodborne Pathogens	WAC 296-823
WA Labor & Industries	Emergency Response	WAC 296-824
WA Labor & Industries	Anhydrous Ammonia	WAC 296-826
WA Labor & Industries	Labs	WAC 296-828
WA Labor & Industries	Material Safety Data Sheets and Label Preparation	WAC 296-839
WA Labor & Industries	Airborne Contaminants	WAC 296-841
WA Labor & Industries	Respirators	WAC 296-842
WA Labor & Industries	Hazardous Waste	WAC 296-843
WA Labor & Industries	Elevating Work Platforms	WAC 296-869
WA Labor & Industries	Scaffolds	WAC 296-874
WA Labor & Industries	Ladders, Portable and Fixed	WAC 296-876
WA Labor & Industries	Administrative Rules	WAC 296-900
WA Labor & Industries	Hazard Communication, Globally Harmonized System (GHS)	WAC 296-901

Municipal Permitting Requirements Impacting USOR

Agency	Name of Regulation	Code
City of Tacoma	Shoreline Use Permit	Tacoma Municipal Code
City of Tacoma	Building Permit	Tacoma Municipal Code
City of Tacoma	Site Development Permit	Tacoma Municipal Code
City of Tacoma	Land Use Permit	Tacoma Municipal Code
City of Tacoma	Right of Way Occupancy Permit	Tacoma Municipal Code
City of Tacoma	Electrical Permit	Tacoma Public Utilities
City of Tacoma	City and Firewater Permits	Tacoma Public Utilities

Water & Wastewater Regulations Impacting USOR

Agency	Name of Regulation	Code
Ecology	Accreditation of Environmental Laboratories	WAC 173-50
Ecology	Water Quality Standards for Groundwater	WAC 173-200
Ecology	Water Quality Standards for Surface Waters	WAC 173-201A
Ecology	Sediment Management Standards	WAC 173-204
Ecology	Whole Effluent Toxicity Testing and Limits	WAC 173-205
Ecology	NPDES Permit Program	WAC 173-220
Ecology	Wastewater Discharge Permit Fees	WAC 173-224
Ecology	Submission of Plans and Reports for Construction of Wastewater Facilities	WAC 173-240
EPA	Water Quality Standards	40 CFR Part 131
EPA	EPA Administered Permit Programs: The National Pollutant Discharge Elimination System	40 CFR Part 122
EPA	Petroleum Refining Point Source Category	40 CFR Part 419
City of Tacoma	Wastewater and Surface Water Management – Regulation and Rates	TMC 12.08

Multimedia Regulations Impacting USOR

Agency	Name of Regulation	Code
Ecology	Shoreline Management Permit and Enforcement Procedures	WAC 173-27
Ecology	Federal Water Pollution Control Act – Establishment of Implementation Procedures of Application for Certification	WAC 173-225
Ecology	Model Toxics Control Act	WAC 173-340
Ecology	Underground Storage Tank Regulations	WAC 173-360
Ecology	SEPA Rules	WAC 197-11
Washington Dept of Fish and Wildlife	Hydraulic Code Rules	WAC 220-660
City of Tacoma	Land Use Regulatory Code	TMC Title 13
Tacoma-Pierce County Health Department	Underground Storage Tanks	Environmental Health Code, Chapter 4, Board of Health Resolution No. 2015-4443

EPA	Underground Storage Tank Regulations	40 CFR Part 280
EPA	Designation, Reportable Quantities and Notification	40 CFR Part 302
Army Corps of Engineers	Process of Department of the Army Permits	40 CFR Part 325
EPA	Emergency Planning and Notification	40 CFR Part 355
EPA	Hazardous Chemical Reporting: Community Right to Know	40 CFR Part 370
EPA	TSCA Chemical Data Reporting	40 CFR Part 711
EPA	Toxic Chemical Release Reporting: Community Right-to-Know	40 CFR Part 372
Pipeline and Hazardous Materials Safety Administration, Department of Transportation	Hazardous Materials Regulations	49 CFR Parts 105 through 109 and 49 CFR Parts 171 through 180
National Oceanic & Atmospheric Administration	Listing Endangered and Threatened Species and Designating Critical Habitat	50 CFR Part 424

Dangerous and Solid Waste Regulations Impacting USOR

Agency	Name of Regulation	Code
Ecology	Dangerous Waste Regulations	WAC 173-303
Ecology	Minimum Functional Standards for Solid Waste Handling	WAC 173-304
Ecology	Hazardous Waste Fee Regulation	WAC 173-305
Ecology	Pollution Prevention Plans	WAC 173-307
Tacoma-Pierce County Health Department	Solid Waste Handling Standards	Environmental Health Code, Chapter 12, Board of Health Resolution 2014-4411
City of Tacoma	Solid Waste, Recycling and Hazardous Waste	TMC 12.09
EPA	Hazardous Waste Management System: General	40 CFR Part 260
EPA	Identification and Listing of Hazardous Waste	40 CFR Part 261
EPA	Standards Applicable to Generators of Hazardous Waste	40 CFR Part 262
EPA	Land Disposal Restrictions	40 CFR Part 268
EPA	Standards for Universal Waste Management	40 CFR Part 273
EPA	Standards for the Management of Used Oil	40 CFR Part 279

Air Regulations Impacting USOR

Agency	Name of Regulation	Code
Ecology	General Regulations for Air Pollution Sources	WAC 173-400
Ecology	Operating Permit Regulation	WAC 173-401
Ecology	Reporting of Emissions of Greenhouse Gases	WAC 173-441
Ecology	Outdoor Burning	WAC 173-425
Ecology	Clean Air Rule	WAC 173-442
Ecology	Controls for New Sources of Toxic Air Pollutants	WAC 173-460
Ecology	Ambient Air Quality Standards	WAC 173-476
Ecology	Petroleum Refinery Greenhouse Gas Emission Requirements	WAC 173-485
Ecology	Emission Standards and Controls for Sources Emitting Volatile Organic Compounds (VOC)	WAC 173-490
Ecology	Emission Standards and Controls for Sources Emitting Gasoline Vapors	WAC 173-491
Puget Sound Clean Air Agency	Clean Air Agency Regulations	PSCAA Regulation I, PSCAA Regulation II, PSCAA Regulation III
EPA	Standards of Performance for New Stationary Sources – General Provisions	40 CFR Part 60 Subpart A
EPA	Standards of Performance for Petroleum Refineries	40 CFR Part 60 Subpart J
EPA	Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007	40 CFR Part 60 Subpart Ja
EPA	Standards of Performance for Volatile Organic Liquid Storage Vessels for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984	40 CFR Part 60 Subpart Kb
EPA	Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture	40 CFR Part 60 Subpart UU
EPA	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction or Modification Commenced after January 5, 1981 and or before November 7, 2006	40 CFR Part 60 Subpart VV
EPA	Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which	40 CFR Part 60 Subpart VVa

	Construction, Reconstruction or Modification Commenced After November 7, 2006	
EPA	Standards of Performance for Bulk Gasoline Terminals	40 CFR Part 60 Subpart XX
EPA	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction Reconstruction or Modification Commenced After January 4, 1983 and on or before November 7, 2006	40 CFR Part 60 Subpart GGG
EPA	Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction or Modification Commenced After November 7, 2006	40 CFR Part 60 Subpart GGGa
EPA	Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems	40 CFR Part 60 Subpart QQQ
EPA	Standards of Performance for Stationary Compression Ignition Internal Combustion Engines	40 CFR Part 60 Subpart IIII
EPA	National Emission Standards for Hazardous Air Pollutants – General Provisions	40 CFR Part 61 Subpart A
EPA	National Emission Standard for Asbestos	40 CFR Part 61 Subpart M
EPA	National Emission Standard for Equipment Leaks (Fugitive Emission Sources)	40 CFR Part 61 Subpart V
EPA	National Emission Standards for Benzene Waste Operations	40 CFR Part 61 Subpart FF
EPA	National Emission Standards for Hazardous Air Pollutants for Source Categories	40 CFR 63 Subpart A
EPA	National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process vents, Storage Vessels, Transfer Operations and Wastewater	40 CFR 63 Subpart G
EPA	National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)	40 CFR 63 Subpart R
EPA	National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries	40 CFR 63 Subpart CC
EPA	National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Units	40 CFR 63 Subpart UUU

EPA	National Emissions Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines	40 CFR 63 Subpart ZZZZ
EPA	National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters.	40 CFR 63 Subpart DDDDD
EPA	National Emission Standards for Hazardous Air Pollutants: Site Remediation	40 CFR 63 Subpart GGGGG
EPA	Risk Management Program	40 CFR Part 68
EPA	Regulation of Fuels and Fuel Additives	40 CFR Part 80
EPA	Protection of Stratospheric Ozone	40 CFR Part 82
EPA	Control of Emissions from New and In-Use Non-Road Compression Ignition Engines	40 CFR Part 89
EPA	Mandatory Greenhouse Gas Reporting	40 CFR Part 98

Atkinson, Stephen

From: Regan, Michelle
Sent: Tuesday, September 12, 2017 2:38 PM
To: Wung, Lihuang
Cc: Griffith, John
Subject: FW: NO LNG

To go into the record.

From: Sally Radford [<mailto:sallyradd@yahoo.com>]
Sent: Tuesday, September 12, 2017 2:36 PM
To: Regan, Michelle
Subject: NO LNG

My name is sally Radford and I support a comprehensive sub-area planning process for the Port of Tacoma tide flats properties, which is the city's front door and can be viewed by I-5. I am opposed to the LNG plant, it would be a disaster for our city and not the kind of place that I want to live near or raise a family in. The population and standard of living in Tacoma would stagnate further behind the rest of the surrounding Puget Sound area communities. Any fossil fuel projects/plants do not belong in the city of Tacoma. I saw on the news that Tacoma is trying to attract Amazon. This is a joke considering the proposed LNG plant location. This type of development must be stopped so that Tacoma can successfully attract businesses of the future and leave their past behind.

Sally Radford
6438 South Warner
Tacoma WA 98409

BENNETT INDUSTRIES INC.

*"IT IS OUR MISSION TO PROVIDE GENERAL MANUFACTURING SERVICES AND
DEFENSE PRODUCTS IN SUPPORT OF THE CITIZENS AND ENTERPRISES OF THE
UNITED STATES OF AMERICA"*

To Whom It May Concern:

We are writing with regards to the memo from Stephen Atkinson dated July 27, 2017 to the members of the Planning Commission, subject: Tideflats Interim Regulations. Specifically I would like to address Attachment 1: Tideflats Interim Regulations: Summary of Staff Recommendations.

The staff recommendations would have the City of Tacoma arbitrarily create a category called "high risk/high impact industrial uses" and lump a variety of existing and potential businesses into that category. This is beyond the pale.

There is neither scientific research nor quantifiable method to the proposed categorization of the industrial uses in the Tideflats. In addition, the recommendation to limit existing companies' growth potential by 10-20% creates chilling effect across the Tacoma economy.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for eco-friendly. Legal and appropriate business activities operate within these strict parameters. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is for their employees, customers and the bottom-line.

The Tideflats area is designed by the City of Tacoma and the Puget Sound Regional Council as a Manufacturing/Industrial Center. That very designation was, by design, created to encourage the very kind of industrial uses that the proposed interim regulations now seek to block. The family-wage industrial jobs in the Tideflats pay among the highest in Tacoma and well above the City and County average. Randomly slapping prohibitions or limitations on creation of these jobs will have detrimental effects for the quality of life of hundreds of families as well as the city's tax base.

The staff recommendations for interim regulations are unnecessary, arbitrary, and unsupported by scientific evidence. We respectfully urge the Planning Commission to reject these recommendations to ensure that Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

The Employees of Bennett Industries

David Riddle



General Manager

9-14-17

Paul Floyd

Cindy Warren

Bob J. [unclear]

AKH

Dillon Hansen

Alley [unclear]

[unclear]

Don Winn

Erin Willenbitt

Jim Paul

Joe Williams

Bob [unclear]

Bill A Mohr

Erin C. [unclear]

1160 THORNE ROAD, TACOMA, WA 98421. PHONE (253)627-7775, FAX (253)383-7644

David E. Rietmann
725 N Stadium Way
Tacoma, Washington 98403
david68e@comcast.net
253-844-8395

Electronically delivered to: planning@cityoftacoma.org

September 15, 2017

Planning Commission
City of Tacoma
747 Market Street, Room 345
Tacoma, Washington 98402

Re: Tideflats Interim Regulations

My last communication with the Planning Commission was a letter dated June 10, 2011. Attachment A to this letter provides the relevant paragraph and related map. In short, my recommendation at that time was, "... to let commerce flourish on the Port side of the Foss Waterway and let public access flourish on the City side".

I am very pleased to see that the Commission is working to establish clear guidance that the Port of Tacoma (the "Port") is for commerce and industry, but that adjoining City of Tacoma (the "City") property owners need to be notified and participate in Port property owner permitting (essentially Category 1). Both groups benefit from adequate buffer protections (essentially Categories 2 & 3).

It is easy for me to understand why Categories 1, 2, & 3 are essential. Port property owners do not need City of Tacoma staff permitting a condominium project between two oil terminals on the Port side of the Foss Waterway. City residential property owners do not need industrial businesses in their neighborhoods and both need buffer zones to help keep the peace.

However, Category 4 must be eliminated. The City has an extensive (some say burdensome) permitting process and industrial companies are today subject to a vast array of regulatory requirements from federal and state governments that provide significant protection to City residential property owners while allowing businesses to operate and when markets require to be expanded.

As background, when I graduated from The California Maritime Academy in May 1968 The Propeller Club of the United States inducted me as a member of their *Pi Sigma Phi* society. The purpose of this society was to recognize and “. . . reward scholastic achievement in the field of shipping, marine transportation, economics and foreign trade.”

In 1972 I arrived in Seattle at Todd Shipyards as Second Assistant Engineer on the S.S. President Polk. The Polk was converted from a break bulk freighter to a containership and I returned nine months later for sea trials and the vessels return to commercial service. I now had my First Assistant Engineer’s license and an MBA. For the next two decades I worked as a banker financing ship owners and energy companies. My family moved to Tacoma in 1992 when I became the Chief Financial Officer of U.S. Oil & Refining Co. In short, I have been a knowledgeable player in and observer of the maritime and energy industries for the past five decades.

In 2015, I retired from U.S. Oil, and how the world has changed! The American Merchant Marine is a shadow of its former self. Medium speed diesel engines have replaced boilers and steam turbines for large vessel propulsion; bunker-C is no longer the fuel of choice. Shore side, lead is no longer in gasoline, MTBE was the great break through; soon it was gone and ethanol was in. There is now WiFi and the World Wide Web; cell phones have the processing powers of the first spacecraft to land on the moon, not to mention containing my favorite music, a few thousand photos and a movie or two.

The basis for my recommendation to eliminate Category 4 is quite simple. I have witnessed massive changes in both the maritime and energy industries. Both are critical to our region and the world. It will be governance at its worst to presume that City staff, or anyone else for that matter, can possibly know what industries the region will need in the future to support its rapidly growing population. No one can possibly know how technology will change “bad” business purposes into “acceptable” or “essential” business purposes or for that matter vice versa.

Respectfully Submitted,



Department of Natural Resources (Attachment 4) asking that the aquatic lease of state land not be renewed. There have been multiple episodes during the past twenty years and this is well known to informed, senior city leadership who have struggled with these facts and the completely inadequate buffer between the Sperry property and adjacent property owners. Again, staff has properly looked to the states guidance (see 36.70A.085(6)(c)) and their recommendation recognizes that there is inadequate buffer between the Sperry property and tenants and the adjoining upland property owners.

With respect to the issues of the core port area and the businesses on the port side of the Foss Waterway, I believe that the S-10 should extend to all businesses on the port side of the Foss waterway. Further, the city should not take any actions that would encourage the general public to congregate anywhere in the core area of the port as illustrated in the Study Area map contained in the July 29, 010 Community Workshop presentation (Attachment 5). In short, let commerce flourish on the port side of the Foss Waterway and let public access flourish on the city side.

The hillside trail has often been talked about. In fact the city sent a work crew there a few months ago to restore it. It remains a wetland in certain areas and Mother Nature has taken back the rest of the trail. I encourage you to try and find it today. Such a trail is completely unrealistic for a number of reasons (Attachment 6). The concept that is a realistic plan is to build an elevated promenade below the bluff. This is an expensive project, but one that should be done with the additional goal of stabilizing the face of the bluff to protect the upland properties including the Stadium High School location and the roadway below. The non-indigenous maple trees should be immediately removed because their height puts too much weight on the face of the bluff and this contributes to sloughing and slides.

In closing, I appreciate the countless hours that the staff has invested in sorting out how to properly balance the many arguments surrounding the anomaly that is the Sperry Dock property and again commend them on their well founded conclusion.

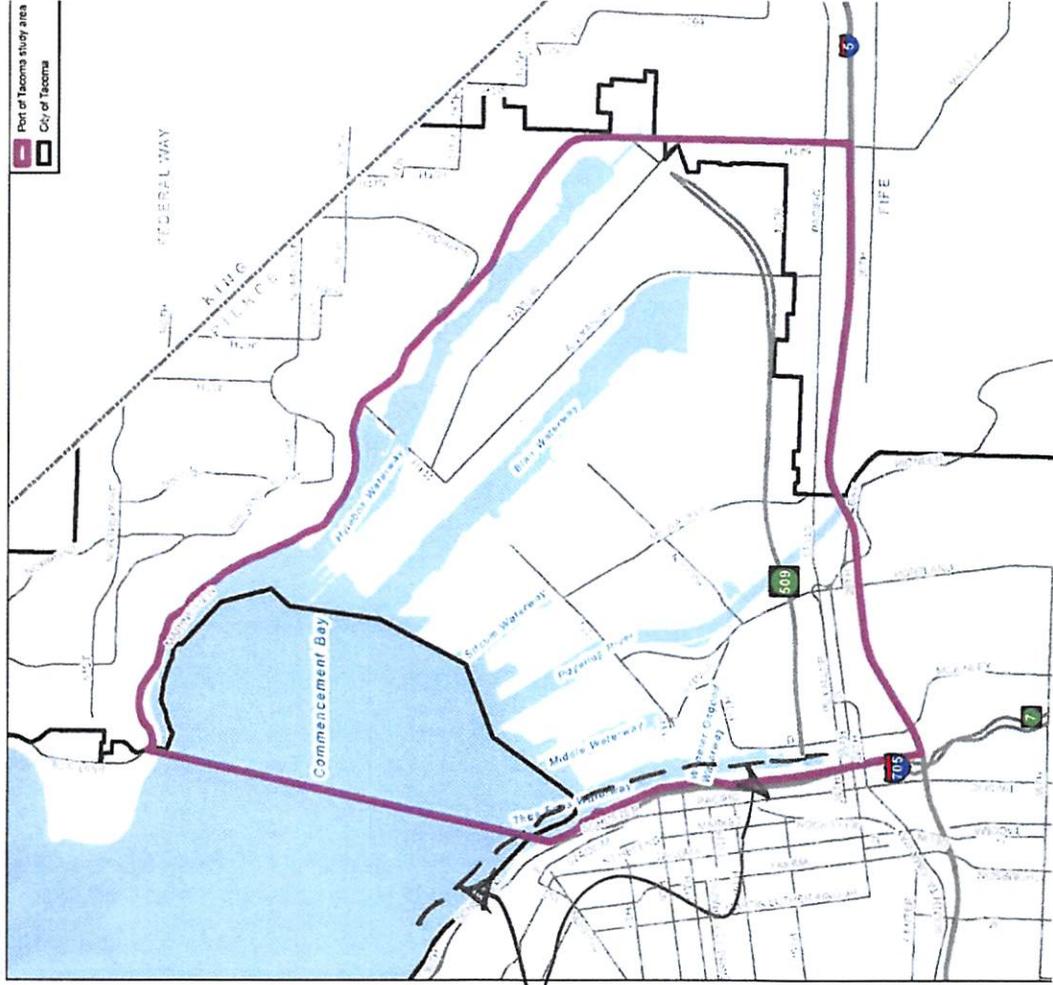
Sincerely,



cc: Mayor Strickland
City Manager Anderson
Councilman Fey



Study Area



See text of letter



Atkinson, Stephen

From: Liza Higbee <higbee.robinsonl@gmail.com>
Sent: Wednesday, September 13, 2017 9:26 AM
To: Planning
Subject: Tacoma should make NO space for future fossil fuel industry

Dear Planning Commission,

I appreciate the work you do for the City of Tacoma, which has been my home for nearly my entire life, since age 2 to 28. I encourage you to please consider long-term effects of continuing to allow our port to play host to fossil-fuel inspired industry, which I and countless others recognize to be unsustainable, unhealthy and extremely dangerous. Such industry threatens the Puget Sound and all the life that relies upon it; it also endangers the people that live here. It is crazy that the life that lives here and relies upon this space is not prioritized over ANY type of industrial growth. Allowing for such plans to go on demonstrates a lack of care for residents, and a failure to look toward the future and the consequences of our actions. Do we want to render this area, which has hosted humans for thousands of years, uninhabitable? Rather than dig ourselves into a hole we can't well climb out of, let's move in a greener direction that will actually propel us into a future we can sustain ourselves in. The longer our kind continues to put blinders up to the realities of climate change, the more damage we create for future generations to contend with. I believe that it is totally immoral to continue to ignore reality and we must collectively SHIFT. In order for this to occur, we really need city officials to become the voice of the change that must occur.

My hope is that green industry takes flight here, that parts of the port may be restored to its more natural function, and that locals are given opportunities to work over outsiders.

Thanks for considering my point of view.

-Liza Robinson

From: [Tom Rogers](#)
To: [Planning](#)
Subject: Tideflats Interim Regulations
Date: Thursday, September 14, 2017 3:56:56 PM

09/14/17

Tideflats Interim Regulations

Thank you for the meeting last night. Good discussions and comments.

I have been told "To be careful what you wish for, you may get it".

Economics teaches us about the "Law of Supply and Demand"

We have a classic example of Supply and Demand called the current housing market. Limited supply and excessive prices. This is fueled by a tremendous influx of people immigrating into the area. The demand for housing also translates to the need to fuel transportation and homes. This demand is not within our powers to control.

I watch fuel barges arrive in Tacoma full and leave empty and wonder where the idea of exporting fuel comes from.

It seems the processing of fuel in Tacoma is feeding the local needs. If this is correct then artificially restricting supply without a corresponding reduction in demand would have an immediate and devastating impact on our economy.

Like housing, fuel cost would rise rapidly. Those with fixed incomes and limited ability to generate living wages would immediately be impacted. Wage inflation would further exacerbate cost of living in our area.

The housing market is a classic example of what we do not want to happen to fuel prices

Please be careful of what we wish for.

Thank you

Tom Rogers

Commencement Bay Marine Sevices

tomrogers@cbmsi.com

253-572-2666

Tideflat Interim Regulations
Sarah Rumbaugh
4564 Heron Ridge Drive NE
Tacoma, WA 98422

Dear City of Tacoma Planning Commission:

I attended your public meeting on Wednesday, September 13th and I am submitting my letter of support for your interim Tideflat Regulations. Thank you for all of your hard work on this, as I know this is a contentious issue.

My husband Stan and I are residents of NE Tacoma, and my husband has lived here for over 30 years. We live in Northeast Tacoma because we love the open spaces, views, and proximity to downtown Tacoma without having to live right in town. There is a sense of community out here and people get involved when they feel the need to come together over a cause.

I have been a planner and understand land use and know that one of the largest concerns with the tideflat businesses is that there is no buffer between the businesses and residential uses. I appreciate that we will have to limit residential development along Marine View Drive. As you know, this is a critical area with steep slopes. Limiting residential development will mean less impact from the existing tideflat businesses on our citizens. My hope is that by instigating the interim Tideflat Regulations, the City of Tacoma will have time to gather necessary data on air pollution, which is my biggest concern with these businesses. While I understand air-monitoring devices are located at certain businesses, no one is collecting this information. There are days that I can smell the asphalt plant located down 11th Street at my house. As you drive towards 11th Street the smell is so strong you think you might faint. Allowing time to stop and collect data will give us some information that will help us decide if we are enforcing the present environmental regulations, or do we need to strengthen them.

The argument that limiting petroleum businesses costs us jobs is a statement with no data. States like Louisiana use this argument continuously for growing their petroleum businesses, but on closer examination, there is little growth from these jobs. A diversification of business types will do more to grow jobs in Tacoma. If we continue to stay behind current job growth trends, we will miss new and growing trends in other areas of the economy. Tacoma needs to diversify its businesses so that people can stay and work here in Pierce County rather than traveling to Seattle and Olympia for jobs.

Hopefully we will find a way to limit the amount of petroleum-based businesses in our tideflats. People are still more likely to have a car that uses gas and we do use natural gas to heat our houses, so we are still reliant on this as a source of energy. But limiting petroleum businesses sends a message that Tacoma is interested in renewable resources and other types of energy.

Sincerely,

Sarah Rumbaugh
253.886.666

Atkinson, Stephen

From: kari.scott@wellsfargo.com
Sent: Tuesday, September 12, 2017 11:14 AM
To: Planning
Cc: Strickland, Marilyn; City Manager; Blocker, Keith; Campbell, Marty; Ibsen, Anders; Lonergan, Joe; McCarthy, Conor; Mello, Ryan; Thoms, Robert; Walker Lee, Lauren; Boudet, Brian; Wung, Lihuang
Subject: Comments for Tideflats Interim Regulations
Attachments: Tideflats hearing comments from Kari Scott.pdf

Thank you for taking the time to review my comments.

Sincerely,

Kari Scott
Regional Vice President, SVP
Tacoma Regional Commercial Banking Office
Tel 253-593-5611
Cell 253-318-0983



Kari R. Scott
Regional Vice President
Commercial Banking Office
1201 Pacific Avenue
Suite 1150
Tacoma WA 98402
Tel 253/593-5611

Kari.Scott@wellsfargo.com

September 12, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Request to set aside Tideflats Interim Regulations

Dear Mr. Beale and members of the Planning Commission:

As a member and board Chair of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region's economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. As a commercial banker in this region I see the companies I work with in the Tacoma area embrace a strong environmental ethic not just because they are required to by law, but because they know it is good for their employees, customers, and their business.

I am requesting that you do not move forward with the proposed interim regulations that among other things would have the City of Tacoma lump existing and potential businesses into a category called "high risk/high impact industrial uses." I believe passing interim requirements such as these outside of the sub-area planning process will create a chilling effect on not only the manufacturing sector, but on other industries that are wondering which among them is next to be targeted by our City's increasingly volatile business climate.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country and legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.

Sincerely,

Kari Scott

Kari Scott
Senior Vice President, Regional Manager
Wells Fargo Bank, N.A.

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, & Planning Commission members

Together we'll go far



Atkinson, Stephen

From: Travis Sharp <TSharp@MADSENELECTRIC.COM>
Sent: Monday, September 11, 2017 12:45 PM
To: Planning; Strickland, Marilyn; City Manager; Blocker, Keith; Campbell, Marty; Ibsen, Anders; Lonergan, Joe; McCarthy, Conor; Mello, Ryan; Thoms, Robert; Walker Lee, Lauren; Boudet, Brian; Wung, Lihuang
Cc: Rocky Sharp
Subject: Written Comments for For Proposed Tideflats Interim Regulations
Attachments: Written Comments for Tideflats Interim Regulations.pdf

To all,

Thank you for taking the time out of your days to read this letter. I trust that you will exhaust every option when addressing the Port of Tacoma/Tideflats future.

Best Regards,

Travis Sharp | Division Manager

Madsen Electric

3939 South Orchard Street

Tacoma, Washington 98466 (253) 383-4546

FAX (253) 591-7079

A Division of Carl T. Madsen Inc.

*License # MADSEE*140P8*

Atkinson, Stephen

From: Dshau1 <dshau1@aol.com>
Sent: Monday, September 11, 2017 2:22 PM
To: Planning
Subject: Protect Tacoma's Tideflats

To the Planning Commission:

Intern regulations need to focus on pausing new and existing fossil fuels. To move Tacoma to a prosperous, livable community we need to focus on clean industries and renewable energy industries such as solar and wind.

Thank you for your attention to this important matter.

Diane Shaughnessy
Tacoma, WA 98406

From: [David Sherman](#)
To: [Planning](#)
Subject: Industrial port use
Date: Thursday, September 14, 2017 8:18:35 AM

I am writing to you to support industry in the port area. These are living wage jobs that support thousands of families in Tacoma. If we get rid of all industry, Tacoma will not prosper! My family and thousands like mine depend on these living wage jobs. This is nothing more than an attack on families, the middle class and unions. Please do not regulate industry out of Tacoma.

From: [Lynette Shureb](#)
To: [Planning](#)
Subject: Interim Regulations: Hearing a Success, More Steps to Come
Date: Thursday, September 14, 2017 12:42:32 PM

Dear Tacoma Planning Commission Interim Regulations.

I could not attend the Convention center meeting but I am seriously committed and advocate for not going forward on the LNG facility just as I was not for the Chinese Methanol facility. I consider myself an earth steward for our planet earth and have come to that awareness long before the current LNG OR METHANOL. I thought back during the GULF OIL EMBARGO when gas sky rocketed and long lines formed to get gasoline that we needed to move toward this brand new thing called SOLAR ENERGY. FAST FORWARD TO NOW OVER 40 YEARS INTO THE FUTURE AND WE ARE GOING BACK WARDS HERE IN THE PIERCE COUNTY TACOMA SALISH SEA REGION.

I will work diligently to support only public servants that support moving forward into sustainable jobs and industry that does not involve highly toxic cancer causing and another disease. If you are only concerned with the unions endorsement and that is all you care about is getting elected then you are in the wrong vocation. Let me be clear. I am a union member AFSCME. MY GRANDFATHER WAS IN THE SIT DOWN STRIKE AT DODGE MAIN IN HAMTRAMCK, MICHIGAN (Detroit) in 1937. My grandfather John Ciaramella along with other immigrant workers locked themselves in the plant for 3 weeks and formed the UNITED AUTO WORKERS. MY FATHER HENRY ZEPPA WORKED IN PRODUCTION CONTROL FOR DODGE MAIN, CHRYSLER AND WAS A UNION STEWARD. DO YOU GET MY DRIFT? A human being can encompass unions, jobs and environmental stewardship NOW! THE LOUSY 17 JOBS ! ARE YOU KIDDING ME? IN EXCHANGE FOR RATE PAYERS GIVING PSE CORPORATE WELFARE? NO WAY! PSE SHOULD BE PAYING THE WHOLE THING! IT IS STUPID TO BE SPENDING MILLIONS ON INFRASTRUCTURE THAT IS ALREADY OBSOLETE! YOU ARE MAKING A HUGE MISTAKE AND IT WILL HAVE DEVASTATING AND LASTING RAMIFICATIONS! START PHASING OUT ALL THE TOXIC INDUSTRIES! START HONORING THE PUYALLUPS TREATY RIGHTS AND START LOOKING FOR ALL THE AVAILABLE SUSTAINABLE OPPORTUNITIES THAT ARE SPRINGING UP ALL OVER PLANET EARTH. I SEE THEM SO YOU CAN TO IF YOU DO YOUR JOB AND LOVE YOUR JOB. NEED HELP I

WILL HELP POINT YOU IN THE RIGHT DIRECTION!

--

With every good wish, I thank you kindly

Lynette

D'Achille Shureb

Nature bats last

Next time I send a damn fool, I go" myself."



Puyallup Tribe of Indians



August 14, 2017

Director Peter Huffman
Planning and Development Services Department
747 Market Street, Room 345
Tacoma, Washington 98402

Dear Director Huffman:

Thank you for your letter, dated July 26, 2017, inviting the Tribe's consultation on the tideflats interim regulations. At this time the Tribe would like to reserve the opportunity for consulting on the interim regulations as they reach a more final form. Currently, the Tribe is supportive of the direction the City of Tacoma staff have in recognizing the need for interim regulations to pause high risk/high impact developments that can threaten our shared natural resources in the tideflats.

The Tribe believes interim regulations are warranted as an immediate threat of fossil fuel oriented developments exist on the Puyallup Reservation today. We believe that in order for the environmental impact statement (EIS) of the Tideflats Subarea Plan to be properly developed, it should have a clear environmental baseline and not compete against the changing development landscape it seeks to evaluate. Thus it is a prudent course of action to momentarily limit certain industrial and non-industrial uses in the tideflats while the subarea plan is being developed. To this end, we support the decision to pause certain high risk/high impact industrial uses and non-industrial uses currently presented, including, but not limited to, a prohibition on coal and other fossil fuels terminals, bulk storage, manufacturing, production, processing, or refining. We believe this is a precautionary step to avoiding unnecessary risks and unintended consequences to public health, safety and the environment.

As you know, the safety of the Tribal Membership, our fishery, and our resources are of utmost importance to us and we have, and will continue to, take the necessary steps to safeguard these interests. Almost three-fourths of the 5,000 Tribal Members live on or near the 1873

Survey Area of the Puyallup Reservation, which includes the tideflats. Thus, the membership bear a disproportionate risk associated with the hazards of siting heavy industrial uses there.

We will be closely monitoring the development of these regulations. We look forward to working with you on this matter and appreciate the timely request for consultation.

Sincerely,



Bill Sterud

Chairman

Puyallup Tribe of Indians



975 Carpenter Rd NE, Suite 301
Lacey, WA 98516

City of Tacoma
Planning Commission

August 28, 2017

RE: Tidelands Interim Regulations

Dear Commissioners,

I am writing on behalf of the more than 47,000 member families of the Washington Farm Bureau, to share our concern about the draft Tidelands Interim Regulations currently under consideration by the Planning Commission.

This issue is important to our members because we represent 12 percent of Washington's economy and employ 164,400 workers annually. Each year 15 billion dollars in food and agricultural products are exported through Washington ports. We rely on an efficient farm to market network to move our food products to market in a timely fashion. Washington ports are an integral part of the delivery chain. As such, we need to maintain a world class transportation system and continually seek to upgrade and enhance the system now in use.

The draft Tidelands Interim Regulations are troubling for a number of reasons, but chief among our concern is the prohibition on new bulk grain terminals. It would be short sighted to preclude such facilities from potential development. All options need to be on the table to ensure Washington products can be shipped in a timely fashion from Washington ports. The regulatory process already considers the suitability and safety of potential projects, so we would ask that you give thoughtful consideration to any regulation that might needlessly impact commerce.

It is essential that maritime terminals make adequate investments to compete on a level playing field. That's why we urge you to carefully consider these draft regulations and not take action that would tie the hands of the port and in turn harm the economic viability of our farms, rural economy, and the general economic health of the state.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Stuhlmiller', with a long horizontal stroke extending to the right.

John Stuhlmiller
Chief Executive Officer
Washington Farm Bureau

Atkinson, Stephen

From: david sweeting <sweetingdavid@yahoo.com>
Sent: Monday, September 11, 2017 3:06 PM
To: Planning
Cc: Matt Sweeting; Mary Rusk; Melissa Johnson; Chrys Sweeting
Subject: Planning meeting letter sep 13

To:

Stephen Atkinson

planning@cityoftacoma.org

From:

David Sweeting, 9/11/2017

Dear Stephen,

I am a property co-owner on Marine View drive. I am not in favor of restricting residential growth on our property of approximately 26 acres. I am in favor of restricting tide flat industrial expansion if it brings environmental concerns. Proximity to our property is a concern except the nearest heavy industrial operation is more than a half mile away. There are also residences in front of our property between Marine View Drive and the shoreline of Commencement Bay.

Marine view drive properties have the capacity to provide considerable residential development. Most of these properties would only enhance environmental concerns in a positive way. For example: surface runoff and slides have been an annual event that Tacoma has dealt with for years. Properly engineered, runoff would not be a problem and the likelihood of slides would be reduced significantly. Because runoff hasn't been dealt with, during heavy continuous rain, there are patterns of runoff that appear as creeks – thus wetlands. There is no wildlife that visits the property because of wetlands. There are several species of plants that also grow in true wetlands. Concerns about slope have led to studies of the topography. There are several flatter or plateau areas that would allow the safe building of residences. Two story residences would not block any views of current residences above the property.

We have had an appraiser suggest that there are possibly up to 18 large building sites on our property. Developers would engineer access roads either from above the slopes or from Marine View drive. These homes would have direct views of Commencement Bay, Tacoma waterfront and the Olympic Mountains. Traffic on the property would be very minimal. Adjacent property values would increase.

With the shared desire to make Tacoma a more liveable area, please give full consideration to allowing residential construction in this buffer zone. There is no other property of this size in the Tacoma area of Commencement bay. Anything short of that would highly discount the value of our property and many other property owners on Marine View Drive. The need for housing is clear. Developing this property would provide great benefit to Tacoma.

Sincerely,

David Sweeting

354 797 7697

sweetingdavid@yahoo.com

Atkinson, Stephen

From: Ryan Talen <ry.talen@gmail.com>
Sent: Monday, September 11, 2017 6:31 PM
To: Planning
Subject: Tideflats Interim Regulations

Dear Planning Commission,

It is of my opinion that fossil fuel and other heavy industries should be banned from the Port of Tacoma. Environmentally sustainable industries that produce large numbers of middle class level income jobs should be sought.

As the planet faces human produced climate change, the Port of Tacoma must do its part to help protect the planet and the communities impacted by the changes being unleashed by human industry and capitalism.

Sincerely,

Ryan Talen



Heritage
BANK

Brian Vance
Heritage Bank
201 5th Ave SW
Olympia, WA 98501
360-570-7341, Brian.Vance@HeritageBankNW.com

September 13, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Tideflats Interim Regulations – No need for a “pause”

Dear Mr. Beale and members of the Planning Commission:

As a member of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. Heritage Bank embraces a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

The proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses,” will undermine the balanced approach to the creation and retention of jobs in Tacoma. They will create a chilling effect on not only the manufacturing sector, but on other industries that are already wondering which among them is next to be targeted by the City’s increasingly volatile regulatory climate.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.



Heritage
BANK

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interests in our economic, social, and environmental wellbeing.

The proposed interim regulations are unnecessary, arbitrary, and unsupported by facts. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

Brian Vance
Chief Executive Officer

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, and Planning Commission members

Comments re. Interim Tideflats Regulations - Planning Commission Meeting, Sept. 13, 2017

Thank you for the opportunity to comment on the proposed Interim Regulations.

My name is Dorothy Walker. I am the chair of the Pierce County group of the Sierra Club. There are approximately 2000 Sierra Club members in Pierce County who are very concerned with the effects of fossil fuels on our climate and the threats they pose to our future. These are becoming more apparent every day and it is becoming more apparent every day that we need to act locally and regionally to stop expansion of the fossil fuel industry.

Expansion is being driven by the availability of natural gas made cheap by environmentally irresponsible extraction methods (i.e. fracking). It is widely known that the methane (which is natural gas) is 86 times as contributory to global warming as is CO2. There are other energy alternatives. Renewable energy sources, wind and solar, are becoming more viable every year. Increase in the use and export of petroleum products in Tacoma is not only not good for our health and safety but drives increased demand with serious upstream consequences and climate implications.

I support the subarea planning process for the tideflats as a step in defining what Tacoma residents want their city to be. Since this is a multi-year effort, I support Interim Regulations to maintain the status quo during this process. Without regulations the process would be an open invitation for a rush by the industry to expand before a plan is implemented.

The regulations must **prohibit new** coal, oil, gas, and other liquefied fossil fuel facilities including terminals, storage and manufacturing facilities and the processing or refining of petrochemicals and **prohibit the expansion** of such existing facilities.

More cities are banning development of fossil fuel industries and export facilities. Tacoma has become a target for expansion with its wide open welcoming attitude. We do not need to be the pollution pit of the west coast. Tacoma deserves better.

Sincerely,

Dorothy Walker
3608 Forest Beach Dr.
Gig Harbor, WA
253.265.6059

Atkinson, Stephen

From: Wallace, Alan <awallace@williamskastner.com>
Sent: Monday, September 11, 2017 5:52 PM
To: Atkinson, Stephen
Cc: Schultz, Shirley
Subject: Tideflats Interim Regulations - Request for clarification
Attachments: Industrial special use restrictions.pdf

Hi Stephen,

I spoke to Shirley Schultz late last week about clarifying the presently proposed interim tideflats regulations. Specifically, I discussed the attached annotations with Shirley over the phone to clarify that the prohibition on new uses is for those uses specified in new Section 13.06.580.B, not all new uses in the geographic area of the interim regulations. Shirley indicated that she thinks this is a good idea.

Williams Kastner's client Prologis is currently building a large logistics warehouse in what is proposed to be designated as the tideflats buffer area, located between SR 509 and the City of Fife. We do not want this broad language to serve as any problem for our tenant to obtain a City of Tacoma business license when establishing their use within the new building in 2018.

Second, use of the term "bulk storage" could also be problematic if viewed in isolation from "fossil fuel terminals." The construct of proposed regulation Section 13.06.580.B at the second bullet point certainly implies that we are only talking about *accessory* bulk storage, not a standalone indoor bulk storage warehouse. Again, as with our first point requesting clarity of regulatory effect, we request that the words "and accessory" be inserted as indicated on the attached annotation of the draft regulation to forestall problems with administration of the regulation down the road.

We believe that both annotations fully respect what we have read in the newspaper and in the amendment package posted on-line about the purpose and effect of the interim tideflats regulations. We have no other objections to the proposed interim regulations at this time. You can appreciate our concern that the blanket bar to all new uses, absent the cross reference that we suggest, could be misconstrued to mean all uses, not just those in the foregoing section.

I will try calling you Tuesday.

Kind regards,

Alan

Alan L. Wallace

Williams Kastner | Attorney at Law
601 Union Street, Suite 4100
Seattle, WA 98101-2380
P: 206-628-6771 | M: 206-920-6771
www.williamskastner.com | [Bio](#) | [V-Card](#)

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(253) 779-8400
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WWW.NEILWALTER.COM

September 13, 2017

Chris Beale, Chair
Stephen Wamback, Vice-Chair
Members of the Planning Commission
Tacoma Municipal Building
747 Market Street, Room 345
Tacoma WA 98402

RE: Tideflats Interim Regulations – No need for a “pause”

Dear Mr. Beale and members of the Planning Commission:

As a member of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. Local companies like Neil Walter Company embrace a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

The proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses,” will undermine the balanced approach to the creation and retention of jobs in Tacoma. They will create a chilling effect on not only the manufacturing sector, but on other industries that are already wondering which among them is next to be targeted by the City’s increasingly volatile regulatory climate.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to

allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interests in our economic, social, and environmental wellbeing.

The proposed interim regulations are unnecessary, arbitrary, and unsupported by facts. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Hickey". The signature is fluid and cursive, with the first name "Mike" being more prominent than the last name "Hickey".

Mike Hickey
Designated Broker

Cc: Mayor Marilyn Strickland and City Councilmembers
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division, and Planning Commission members

From: [Steve Way](#)
To: [Planning](#)
Subject: Tideflats interim regulations
Date: Thursday, September 14, 2017 10:33:58 AM

Thoughts re jobs, the silent majority and white elephants. . . .

The idea that fossil fuel jobs are a reason to grow that industry on the Tideflats is ludicrous. The LNG plant would provide less than 20 positions. Job growth in Tacoma has been great as our "aroma" and ASARCO and associated stereotypes faded and hotels, conventions, restaurants and night life arrived. Conventioneers, diners, etc. have lots of options. Would they rather patronize a city noted for its fossil fuel industry or the one that we have now?

The "silent majority" of Tacomans are against expansion of the fossil fuel industry. Most are totally or only vaguely aware of the issue. When filled in re what is proposed they are almost universally against such plans.

As far as white elephants go, new fossil fuel construction is a prime candidate. A PSE spokesperson (Jim Hagan in a 7/2/16 TNT interview) said that approximately 45% of the LNG product would go to TOTE, roughly 6% to PSE customers and the other half "projected" to non TOTE ships and cars and trucks. The shipping industry has a variety of ways to meet the 2020 standards. LNG is not popular. (Maersk, the largest shipping line in the world, is not going with LNG.) Hagan also stated that non TOTE ships would have to be fueled from barges. The proposed LNG facility does not include infrastructure to meet that need and Hagan said construction of that infrastructure would take two years. Re vehicles, the industry is going electric. The world's largest auto market, China, is committed to electricity. Volvo has committed to all electric vehicle production. Growth of fossil fuel related projects on the Tideflats has a white elephant look.

So. . . the ask is for the sub area plan to forbid the expansion of existing fossil fuel industries on the Tideflats and to forbid the granting of permits for proposed projects. (Also, the city should accept no permit applications until a sub area plan is in place, as acceptance of such applications puts the applicant in the "existing" category.)

Tacoma has done a lot of things right in the last 30 years. It makes no sense to jeopardize those gains for the sake of a few jobs.

From: weberln@nventure.com
To: [Planning](#)
Subject: Port of Tacoma Interim Rules
Date: Wednesday, September 13, 2017 1:34:01 PM

Good day,

My name is Lee Weber and I was born and raised here in Tacoma and am proud to have called it my home for over 67 years now. I am taking this moment to voice my opinion on the interim rules being considered for what operations/businesses will be allowed to operate in the Port of Tacoma general area.

I am very apposed to these new rules. For many of those years I have been blessed to have found employment at a few different business in this area and without that I don't know where my family and I would be today. I have witnessed in the past the bad attitudes of people who move into the NE Tacoma area. They fully know who their "neighbors" are and then want to change the entire culture to meet their particular wants and desires. Please do not let these attitudes gain strength.

Additionally there are those who want to insist the all fossil fuel operations be ridden out of town on a stick. Please take the time to inquire of these groups, what are their solutions? Where will our energy come from? They will be very silent because, while their desire in the long term may make some sense, in the here and now it makes none. There are no substitutes.

Do not make it harder and harder for our hard working citizens to find good, livable wages locally. Instead, please applaud the port and the businesses for what they have brought and continue to bring to our great city.

As a public servant and a representative please reject the rules.

Respectfully,
Lee Weber
2618 So. 13th St.
Tacoma 98405

From: [Regan, Michelle](#)
To: [Wung, Lihuang](#)
Cc: [Griffith, John](#)
Subject: FW: Email the Director's Office
Date: Wednesday, September 13, 2017 4:41:09 PM

FYI

From: Barbara Wesley [mailto:brbws1@gmail.com]

Sent: Wednesday, September 13, 2017 4:35 PM

To: Regan, Michelle

Subject: Email the Director's Office

Please no LNG PLANT ON THE TIDE FLATS IN TACOMA. Our Wildlife is more
Important to Save. Dangerous to Our Community.

Atkinson, Stephen

From: Chuck Whitt <chuck.whitt@westrock.com>
Sent: Wednesday, September 13, 2017 9:41 AM
To: Planning
Cc: Bruce Martin; Jeffrey Nichols
Subject: Tide Flats regulation/zoning
Attachments: planning commission meeting - 9-13-2017.docx

To whom it may concern,

Please find attached my testimony to the Tacoma Planning Committee in regards to consideration of new regulations for the Tacoma Tide Flats. I would have loved to attend tonight's meeting and give this testimony in person, but I am working on the Tacoma Tide Flats this evening and am unable to attend.

Best regards,

Chuck Whitt

Waste Treatment Operator

WestRock Tacoma Mill

801 Portland Ave. | Tacoma WA 98421

T 253.596.0187 | M 253.312.1101

chuck.whitt@westrock.com | www.westrock.com

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August 28, 2017

City of Tacoma Planning Commission
Tacoma Municipal Building North
747 Market Street, #345
Tacoma, Washington 98402

Sent via post mail and e-mail

Subject: Draft Tideflats Interim Regulations

Dear Acting Chair Wamback and Commissioners,

I am writing on behalf of the Port of Tacoma about the proposed Tideflats Interim Regulations. Our position remains unchanged, interim regulations are unnecessary and may result in the negative unforeseen consequences of decisions made in haste. Additionally, as our attorney has pointed out, the process for adoption and content of the interim regulations for the Port Container Element of the City's Comprehensive Plan may be unlawful.

The Port believes that decisions on Tideflats land use deserves a more thoughtful and comprehensive approach; a Subarea Plan. With that said, we appreciate your situation and wish to offer the following comments/questions on the draft proposal for the September 13, 2017 Hearing before the Planning Commission, as voted on by the Planning Commission on August 16, 2017:

Non-Industrial Uses

1. Does the proposed language protect on-terminal aircraft activities and maneuvers. On occasion, military aircraft arrive and depart from our terminals by air.

New High Risk/High Impact Industrial Uses

2. Does the proposed language for coal avoid the unintended consequence of prohibiting movement of coal that might serve as a component of another product? Coal or coal by-products can be found in: soap, aspirins, solvents, dyes, plastics and fibers, such as rayon and nylon.
3. Does the proposed language for oil or other liquefied or gaseous fossil fuel avoid the unintended consequence of prohibiting movement of these fuels that might serve as a component of another product across container or breakbulk terminals? Examples include: fuel in a vehicle shipped both internationally and domestically, barbecue propane tanks, motor oil or lubricants for retail sale in Alaska.

Unlisted Uses

4. Suggest deleting reference to unlisted uses as 'prohibited'.
For consistency, please instead just refer to TCC 13.05.033 Director Decision Making Authority, C. Permitted Uses – Uses Not Specifically Classified. In addition to the authorized permitted uses for the districts as set forth in this title, any other use not elsewhere specifically classified may be permitted upon a finding by the Director that such use will be in conformity with the authorized permitted uses of the district in which the use is requested.

Expanded Notification for Heavy Industrial Uses

5. Request the City consider matching the Port notification, as follows: 2,000' from project site for projects with DNS or MDNS, or 4,000' for EIS. This expanded notification was adopted by the Port of Tacoma Commissioners in October 2016.

6. Suggest that the City require Title Notification for all new non-industrial uses within the adopted notification distance. The notification could read something like this:

NOTICE: This parcel lies within XXX feet of land designated as a Manufacturing Industrial Center (MIC) by the Puget Sound Regional Council. A variety of industrial activities occur in the MIC that may be inconvenient or cause discomfort to people on nearby properties. This may arise from manufacturing, recycling, fabrication, processing, washing, diluting, cooling, storing, or transporting a product by rail, truck, or ship, which may generate dust, smoke, noise, and odor. Our region has established a priority for industrial uses within the MIC. Occupants of nearby property should be prepared to accept inconveniences or discomfort from industrial operations.

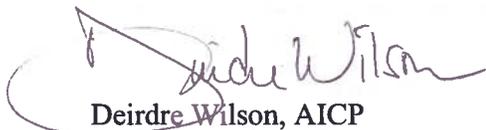
To give a bit of context, the Port of Tacoma, a countywide organization, was formed and continues to operate with the purpose of job creation and driving economic vitality.¹ We endeavor to meet this purpose while balancing the protection of natural resources and spreading economic impact and opportunity throughout Pierce County. To continue this endeavor it is imperative that our industrial lands are protected from encroachment, and that a broad spectrum of industrial uses are allowed in the Tideflats.

As stewards, the Port has spent nearly \$250 million to purchase, clean up, and put contaminated property back into productive use. We have also deployed innovative, award-winning solutions to ensure our environmental impact is as minimal as possible. This will continue to be a vital element of how we manage the Port.

The Port of Tacoma's top priority is to protect and grow the maritime cargo activities in and around the Tacoma Tideflats. Changes that impact cargo-related maritime operations are our primary concern. Thank you for protecting these uses.

We look forward to continued cooperation on land use planning. Thank you for your consideration of this information and our comments on the draft Interim Regulations. Should you or your staff have any questions, please feel free to contact me at 253-209-9154, or by email at dwilson@nwseaportalliance.com.

Sincerely,



Deirdre Wilson, AICP
Senior Planning Manager, Northwest Seaport Alliance

Courtesy Copy via e-mail:

Jason Jordan, Northwest Seaport Alliance Environmental and Planning Director
Nick Demerice, Port of Tacoma Public Affairs Director
Evette Mason, Port of Tacoma Government Affairs Manager
Carolyn Lake, Port of Tacoma Legal Counsel
Elizabeth Pauli, Tacoma City Manager
Peter Huffman, City of Tacoma Planning and Development Services Director
Lihuang Wung, City of Tacoma Senior Planner

¹ The Port supports over 29,110 jobs through industrial lease tenants and the movement of marine cargo. Port-related economic activity also generates an estimated \$96 million in local tax revenue each year.

From: [David Winfrey](#)
To: [Planning](#)
Subject: Interim Regulations
Date: Thursday, September 14, 2017 3:45:24 PM

Dear City of Tacoma Planning Commission,

I am writing you to voice my support for interim regulations to limit fossil fuel industry expansion in the Port of Tacoma.

I am a resident of Tacoma and I work directly adjacent to the Port. I am worried about having to breath petroleum product laced air for 9 hours a day/ five days a week while I'm working. I am also concerned for my family, especially my 12 year old son.

I feel like we would be taking backward steps if we allow additional polluting petroleum operations to exist in the Port. I am not convinced that the economic benefits outweigh the negative effects of the petroleum industry.

Thank you for considering my opinion.

Best.....

David Winfrey
8403 S. 18th St.
Tacoma, WA
98465

From: [Sara Wood](#)
To: [Planning; Thoms, Robert](#)
Cc: [Ann Locsin; Yvonne McCarty; John](#)
Subject: Interim Regulations
Date: Thursday, September 14, 2017 11:39:50 AM

Dear Planning Commission,

My name is Sara Wood and I live in NE Tacoma. As a resident, it has always been my hope that the city officials would protect my health and safety.

When we moved to our Tacoma home in 2001, we had clean air and a noise free environment in which to raise our 3 young children. We could sleep with our windows open and breath fresh air. Tacoma was a great place to live, work and raise a family. Within a few years we were shocked when Schnitzer reopened their doors for business. (They had stopped business for a few years due to rising energy costs) The noise was horrible and when they were working at night we could no longer sleep with our windows open. Even with them closed we were/are woken up with loud bangs and crashes.

Then the smells started coming. A strong petro chemical smell so strong that it permeates everything, gives us headaches and makes my dog sneeze. There are times it is so bad I have to shut my windows or run home while on a walk and try to protect myself in doors.

We have had our air filters tested by an independent lab and found they are full of asphalt (Emerald, Garner and Fields, US Oil) and metal spheres (from Schnitzer). We are breathing this stuff in and it permeates our home. Our window cleaner said they have to scrape windows of homes that are around the Port of Tacoma. They have to scrub to get the black stuff off our windows and around the window frames. Nowhere else do they see this!

I have been told by teachers at NE Tacoma Elementary that they have to bring the children inside in the middle of recess because the smells are so bad some days.

The businesses and the port claim to have safe practices but this is disproven by what is happening in our neighborhoods in NE Tacoma.

We need you now, more than ever to do the right thing for us!!! PLEASE (I am begging you) not only support the Interim regulations but re-add the wording that limits growth to 10% for existing fossil fuel businesses along with expanding prohibited industries to include recycling plants, pulp mills, grain elevators and animal fat rendering plants. We are desperate for help and pray that you will do the right thing.

Thank you for your consideration,

**Sara Wood
saraewood@hotmail.com
Tacoma Resident, Voter and Taxpayer**



WOODWORTH CAPITAL, Inc.

September 12, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma, WA, 98402

Mr. Atkinson:

I am writing this letter to formalize concerns I have over the pending interim regulations. Much has been discussed and debated through all local media sources over the past many months on the status of these interim regulations in advance of the ultimate subarea plan review. As a long term current Tacoma business and property owner and past business operator within the area I am concerned over the sense of urgency by city council and the planning commission that would limit or erode existing and new business within the Tideflats.

The Tideflats area impacts more than just Tacoma, and is a significant component of trade and economic development for the south Puget Sound. The Tideflats is one our few centers located strategically in the Pacific NW and is recognized as a manufacturing industrial center under the Washington State Growth Management Act. The businesses and how they integrate within our society are crucial to our region.

Interim regulations will impair and limit any possible future investment by inside or outside businesses to the area and send a negative message that Tacoma is not open for business, or hostile towards businesses. Prohibiting certain industrial use(s) during the subarea planning that could otherwise be planned alongside the subarea plan is inefficient. There is a well-documented and understood process of evaluating projects and meeting all the local and state and federal requirements. Any future industrial proposal would go through the extensive SEPA, EIS, public comment etc review, and projects should be allowed to succeed and flourish on its own merits. If it can't go through the process, how can we determine if it is or could be a great viable option for Tacoma and its residents? One example would be the Methanol project which was simply not allowed to go through the full process to see if it was an efficient or viable project. The system was usurped and mothballed by public rhetoric. We will never know if it was a good or bad project as it

Page 2

September 12, 2017

never had the chance to prove itself. Another hot bed topic in the general domain of Tacoma is the LNG facility. If we didn't have this option, vessels that call the port of Tacoma would otherwise be required to consume lesser quality fuels as a result? How is denying a viable innovative project that is and continues to be adopted in Europe and Asia vilified here in Tacoma? From the best I can ascertain it had to go through the process and was determined to be a good project our region, and will meet all the regulatory requirements.

I do support the process of the subarea plan, but by my estimation there is no emergency for these interim regulations, and we must be sure not to impugn and or limit any lawful and existing business operating within the Tideflats that bring economic enrichment to our community. There is a balance between the needs of industrial businesses and the surrounding community.

Sincerely,



Jeff Woodworth
President
Woodworth Capital

From: [Chris Wooten](#)
To: [Planning](#)
Subject: Interim regulations for Tacoma Tideflats
Date: Thursday, September 14, 2017 11:32:35 AM

To the Planning Commission

I was not able to attend the comment meeting yesterday but still would like my voice to be heard on the interim regulations that are being determined and recommended to the City Council.

My family and I have been residents of Browns Point for 37 years. As boaters, fishers and workers in the tideflats, over the years we have seen so much industrial pollution and disregard for the natural resources and the spoiling of this unique environment. It has been very distressing.

Now however, we are finally seeing more efforts to change that trend, albeit very slowly. It is gratifying to notice that the water is getting cleaner, the industries are less polluting and it's making this area a place to be proud of, rather than always apologizing about "Tacoma's industrial wasteland."

I am however highly concerned about the fossil fuel industry's current emphasis on expanding current facilities (Targa, US Oil, etc) and developing new fossil fuel projects. This will take us backwards in the City's development and be a blow to the environment that many people have worked hard to improve.

It's great that the City will be developing a new sub area plan for the Port area, but that will take a very long time and we need protections NOW!!

Please move interim regulations to the City Council very quickly. Please insist that a "stop" be put on all fossil fuel expansions and new fossil fuel projects, including rail and shipping, so that all parties can be included in the sub area discussions and well-thought-out, quality decisions can be made going forward.

Thank you for working towards an approach that balances all interests to protect the tideflats.

Best Regards,

Chris Wooten

Chris Wooten, SPHR, SHRM-SCP

CWC Consulting

253-905-2176

chriswooten@earthlink.net

Atkinson, Stephen

From: Bob Zeigler <ZeiglerBob@msn.com>
Sent: Thursday, September 14, 2017 3:28 PM
To: Planning; Atkinson, Stephen
Subject: Tacoma Tideflats Interim Regulations
Attachments: Tacoma Power Point Impacts of Continued Fossil Fuels.pptx

Stephen Atkinson
Senior Planner
City of Tacoma

RE: Tacoma Tideflats Interim Regulations Comment

Dear Mr. Atkinson,

I encourage the City of Tacoma to halt all proposed fossil fuel developments in the Tacoma Tideflats until a long term plan for the Tideflats are developed. See attached short power point on cumulative impacts from fossil fuel projects and reason why citizens are protesting.

With the Federal Administration moving to undo environmental protections and expanding development of fossil fuel for energy sources, it falls upon cities and states to expand efforts to protect the publics' health, safety and welfare. Climate Change Impacts are real and affecting us now with weather extremes from drought and fire to floods and hurricane. See Final Draft Climate Change Science from Federal Agencies and 18 Universities. The link to it is: <http://www.nytimes.com/packages/pdf/climate/2017/climate-report-final-draft-clean.pdf>

Thank you very much for the opportunity to comment,

Bob Zeigler

1102A Creekwood Ct. SE

Olympia, WA 98501

(360) 570-0848

zeiglerbob@msn.com

<https://climatealliancemap.org/>

Español

Climate Alliance Mapping Project

About

Map

Resources

News



INTERACTIVE MAP

The Climate Alliance Mapping Project

The Climate Alliance Mapping Project (CAMP) is a collaborative effort between academics, environmental NGOs, and indigenous organizations working for a socially just response to climate change. CAMP responds to climate change with research, resources and interactive story maps that support organizations working to keep fossil fuels in the ground. Through participatory action research and digital story mapping, CAMP aims to engage the public, build

Carbon Budget

The window for action is rapidly closing

65% of our carbon budget compatible with a 2° C goal already used



AR5 WGI SPM

Unburnable Carbon

The Carbon Bubble

Unburnable fossil fuels

Known, extractable coal, oil and gas reserves that must not be burnt in order to prevent dangerous climate change of more than 2C

Global reserves

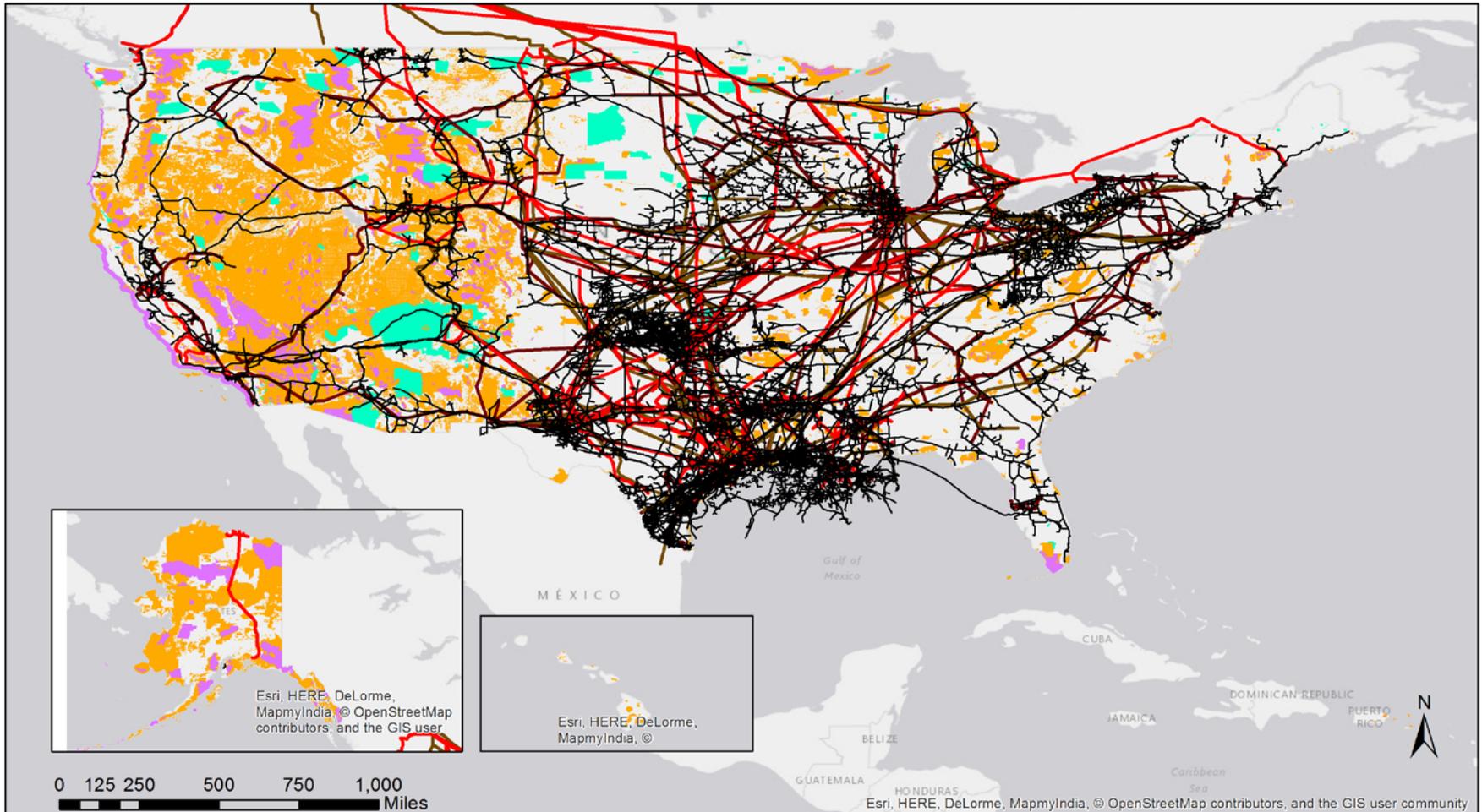
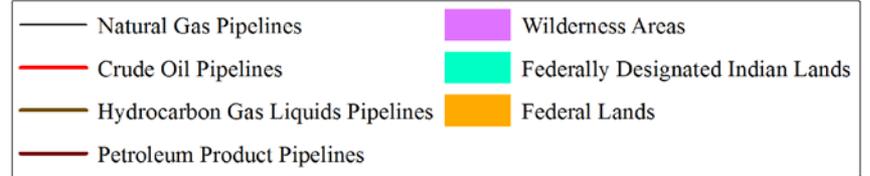
Per cent that cannot be burned



- University of College London study finds the following must stay underground:
 - 82%: Coal
 - 49%: Natural gas
 - 33%: Oil
- Fossil fuel development in the Arctic, any exploitation of unconventional oil, and any further investment in new fossil fuel resources are inconsistent with CC mitigation efforts.

US Federal Land Designations and Existing Pipelines

Map: Remy Franklin (2017)
Data: USGS, EIA, PHMSA

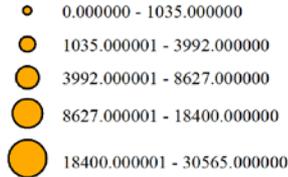


US Federal Land Designations and Oil and Gas Spills since 2010

Map: Remy Franklin (2017)
 Data: USGS, EIA, PHMSA

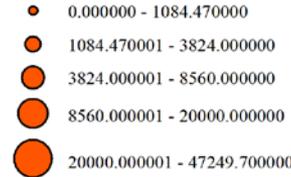
Hazardous Liquids

Net Loss



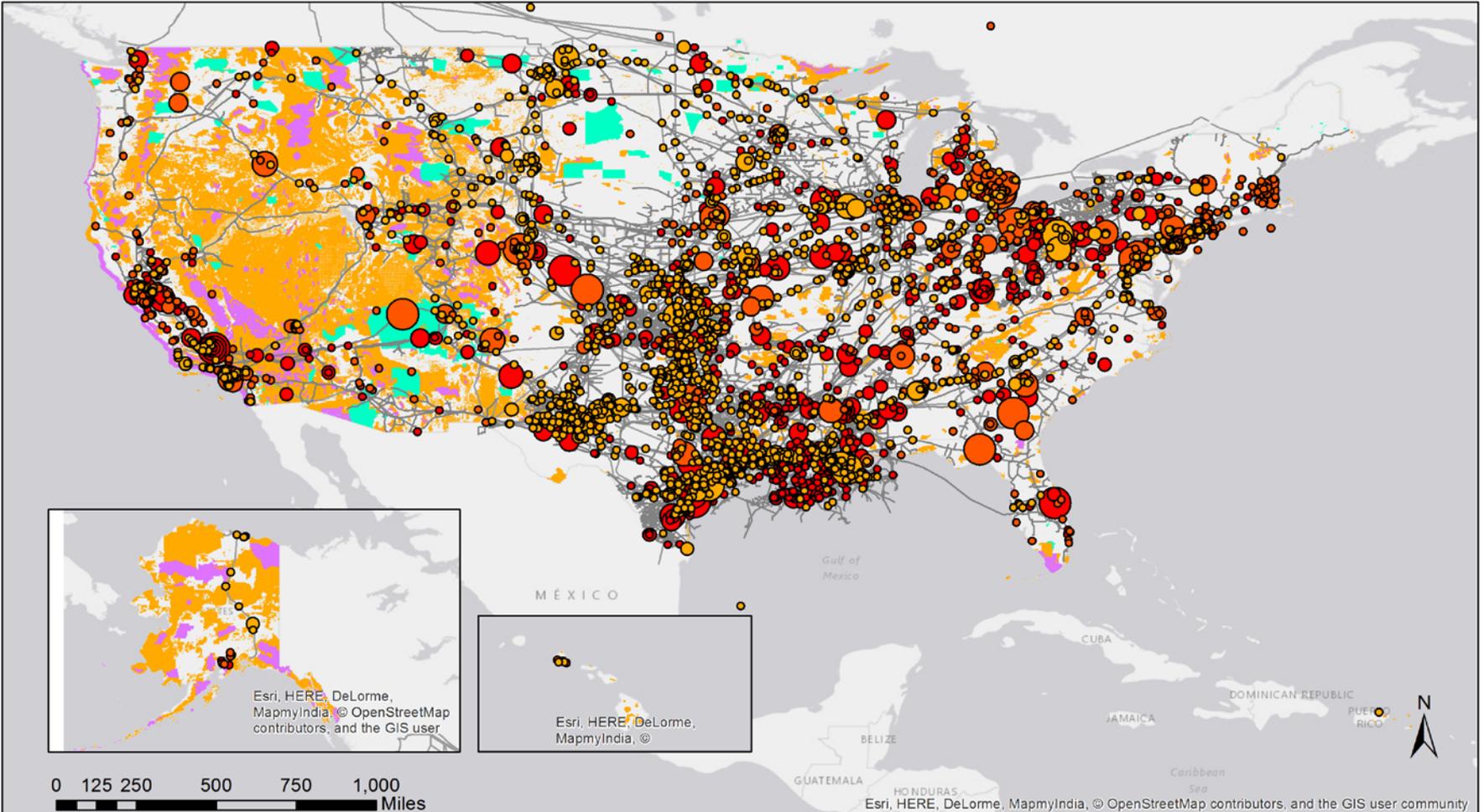
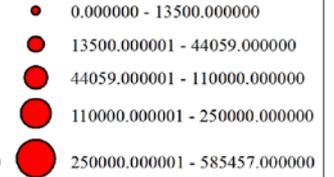
Natural Gas Distribution

Amount Released



Natural Gas Transmission

Unintentional Loss





Port of Olympia

OIL

PROTECT
Mother
EARTH

STOP the MONSTER!!

SUPPORT
STANDING
ROCK
ONLY SUSTAINABLE
ENERGY NOW

BEWARE MONSTER
IN OUR PORT!!

DIVEST
FROM
OIL

WATER



WATER is Life

STAND WITH THE PUYALLUP TRIBE

NO LIQUEFIED FRACKED GAS

LNG

NO LNG 253
STAND WITH THE PUYALLUP TRIBE

WATER is Life



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: Carrie Little
Email: motherearthfarm@gmail.com
Address: 21415 Orville Road E.
Orting, WA 98360

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

No! No. more heavy industrial projects!
Focus on renewable energy!
Work with and encourage the Puyallup Tribe to be at the table and be a part of the decision making!
Hello - HARVEY - IRMA -
Earthquake & volcano eruption is overdue -
Wake up 😊

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

This is completely ridiculous! We need to encourage businesses especially focused on efforts that are sustainable - life-friendly, ~~new~~ job expanding, pro-community!

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Actually - this makes sense - there is already too much development in this area which is a sensitive area due to erosion, landslides, and too much degradation to the shoreline.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I am in favor of restrictions to anything related to fossil fuels; i.e., storage, transport, manufacturing, refining, etc. We need to focus on industries, renewable that want to work on sustainable, climate-friendly efforts. Climate change is real - we must act now!



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Emma Didier

Email: edidier@pugetsound.edu

Address: University of Puget Sound
4439 Student Wheelock Ctr
Tacoma, WA 98416

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I support this because it will foster a more democratic and well-informed process for heavy industrial projects. These have a big impact not only on Tacoma but worldwide.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Blank lined area for handwritten comments on topic 2.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

→ Also prohibit expansion of existing fossil fuels.

I STRONGLY support this. We -all people on Earth- must be more wary of the very serious threats and ongoing damage to our society and the environment on which we depend. That means cutting back on fossil fuels as quickly as possible! The industry of Tacoma must focus on renewable energy and social + environmental responsibility!! Please, use your position of power to think big picture, long term. It is simply highly rational to move away from fossil fuels. If we continue to support fossil fuels (a corrupt + greedy industry) or do not oppose them vehemently enough, global warming + an increase of water in the water cycle are likely to shut down the Atlantic Current ("AMOC"), leading to devastating, global scale climate changes + instability.

PLEASE ACT FAST to protect us from harm and make Tacoma a city to be proud of.

There is no point to protecting jobs now, when extreme weather will kill many a few years down the road!



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Cary Bridgeford
 Email: benappy@aol.com
 Address: 4040 E K St, Tac 98404

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I'm asking you to please include me in these heavy industrial projects. I'm surprised I even have to make this request. Its reminds of situation that are hidden or not public knowledge because the officials involved dont want the public to know.

~~Change AND EXPAND~~
Notification

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: HOLLY POWERS
Email: holly.e.powers@gmail.com
Address: 915 N. Junett
Tacoma WA 98406

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Please see section 9

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Please see section 9

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Please see section 4

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I am commenting in solidarity with the Protect Tacoma Tideflats Coalition. Interim regulations should focus on pausing new and existing fossil fuel facilities. The imminent threat is around the expansion of existing fossil fuel facilities in the Tideflats. The draft regulations do not address existing fossil fuel infrastructure. The definition of "terminal" should include rail. Please move the interim regulations as quickly as possible. It is important to do this expediently to avoid fossil fuel proposals that interfere with a strong sub-area planning process.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Karina Cherniske

Email: kcherniske@puget sound.edu

Address: 4646 Foxgail Dr. NE
98516 Olympia, WA

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

The public must be informed of industrial projects and incorporate the public people into decisions that affect their health and safety.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Port lands should ~~be~~ serve the residents that live on their shores, not international exportation interests.

Parks, public services, and public spaces should be permitted to occupy port spaces ~~be~~

Tideflats = port



3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

It is imperative that we, as a city, uphold socially & environmentally responsible values that ~~serve~~ ~~to~~ serve the health & happiness of ~~the~~ people, not corporate interests. As a new resident of Tacoma at university, I now have a new ~~new~~ perspective on this city and my place in it. We must stop any expansion of harmful fossil fuel industries. ~~and~~ We must listen to indigenous peoples of the region, and their wishes regarding their lands. We must ~~not~~ value clean air + water over money. THERE IS NO MORE TIME TO WAIT. Not if, but when.



Comments

Please provide comments on the following topics:

Janet Hasee-Robinson

Please Print Clearly

Name: *[Signature]*

Email: *forliz@harboret.com*

Address: *1527 N. Narrows Dr. TACOMA*

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Work on making Port beautiful and green, a place for people and Salmon and OLLAs.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Prevent
erosion.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

Do limit expansion
of polluters! Stop LNG & TARGA.

Create local jobs. Do
not support foreign
mega petro groups
reliant on citizen
rate payers!



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: Sally Perkins
Email: sally@practicalsolutions_tacoma.com
Address: 1419 S. Sheridan Ave 98405
Hilltop

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

This is inadequate. I live in the Hilltop and I have a weather station. For 20 of the 30 days in a typical month, the wind is from the East, NE, or North at least part of the day. This means that both the Hilltop and East Side are vulnerable to pollutants and toxins generated by heavy industrial uses in the Tideflats. [Not just NE Tacoma.]

I request and recommend that the notification requirement be further expanded to a minimum of 3 miles downwind of the project whether the winds are from the W, N, NE or E. The City residents who could be directly affected by airborne pollutants and toxins should be notified of each proposed heavy industrial project.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Further, because residents in the Hilltop and E Side are less likely to have internet access, said notice should be provided hard copy US Mail. Copies of the notice should be provided in bulk to neighborhood and grass roots organizations to distribute door to door. Notices should be in multiple languages.

The goal of notification should be to create a level of knowledge among potentially affected residents so that ~~as~~ everyone can participate fully in the discussion and process. Special efforts should be made to engage typically excluded people, including low income folks, people for whom English is not their most proficient language, etc.

Equity considerations should play a prominent role in the design and implementation of the notification process.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name:

Email:

Address:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

No - Tacoma does not need more heavy industries.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Is it healthy for community use currently on the Port/Tideflats?

How much of this lands impedes on Puyallup tribal lands? How would this proposal respect treaty rights?

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

No new development!

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

No, No, No

We must invest in renewable resources
and be a leader in sustainable development
that will not put our community and
environment in further harm.

We should not export because that promotes
fossil fuel use that will eventually impact
all of us.

We are also in a tsunami and high risk earthquake
No FRACKING IN TACOMA. fault line.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly —
Name: *Ron Lawson*
Email: *ron.lawson@tacoma.gov*
Address: *415 E. Harbor Ave
2105 N. Jefferson St
Tacoma WA 98406*

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Agree. Must include more in depth descriptive info.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Agree!

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

but, air pollution and hazards to existing homes & schools must be limited and port industry must include adequate sufficient liability insurance to indemnify Tacoma residents.
Consider buying out all existing homes.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

All existing operations must have sufficient pollution control monitoring equipment on premises.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: Billie Blattler
Email: billieaw14@gmail.com
Address: PO Box 8874, Steilacoom 98388

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

The regulations for heavy industrial projects must be strengthened and enforced. The safety of residents and workers must be ensured. It seems that human life and health are expendable.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Why would we prohibit non-industrial uses of the Port? That is ludicrous. The city should move away from heavy industry NOW. Don't accept any more applications for heavy industry. Do accept applications for sustainable energy businesses. The Port belongs to the people of Pierce County.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

This would please the heavy industry advocates. But what do the people of Puise County want? What if citizens could vote about

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

More than 200 cities around the country have made this decision to change to sustainable energy projects on their port. These ports are thriving, successful. They provide more jobs.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: *Adela*
Adelaide Beeman-White

Email:
~~abeeman@uw~~
abeemanwhite@pugetsound.edu

Address:
*3750 Whetzel Student Center, University
 of Puget Sound, 98326*

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Yes! Every citizen should be well informed about what is happening in town.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

(This section contains multiple blank lines for handwritten comments.)

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Residential building must also be restricted. Although residences may not be as harmful as industry, it is still very harmful.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I agree that new facilities should be most highly restricted, but I also feel that restrictions should be placed on the expansion of existing fossil fuel facilities. If new facilities are regulated, but not old, it will simply make it easier for the old to expand. Regulate them both, and do so with great haste! Time is of the essence, so move quickly in the name of God!



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: Erin Rasmussen
Email: eerasmussen@pugetsound.edu
Address: 3196 Wheelock Student Center
University of Puget Sound
98816

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Yes! Every citizen should be aware of what is happening in their area.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I urge the Commission to support this proposal, but with the following change. We need to not only focus on new fossil fuel facilities, but also on current and expanding fossil fuel facilities. I love Tacoma; I love being able to ^{run} ~~ride~~ along Ruston way and jump in the sound without the fear of being poisoned by the pollution of the ~~industrial~~ fossil fuel facilities. I am 19 years old and I only hope my children will have the same access to a healthy lifestyle that I have been blessed to have. We can only ensure this vision for a healthy future if we regulate all new and existing fossil fuel facilities. We are all guests on this land, we are privileged to use the land. It is our job and our responsibility to protect this land we love.

Thank you.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly
Name: *Zoe Johnson*
Email: *ZoeJohnson1313@gmail.com*
Address:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

The Tacoma Tide Flats, have already been extremely impacted by existing and past industrial uses. The city is still cleaning up toxic materials and waste in the tide flats and surrounding areas and has already put an extensive amount of time and money into cleaning up this waste. It would not be economically or environmentally sustainable to build more industrial infrastructures, therefore going back on the work already done, I support regulations that would prohibit ~~the~~ establishment of new coal, oil, gas, and other fossil fuel uses. On top of this I strongly encourage putting ~~interim regulations~~ on a pause to all coal, oil, and gas infrastructures.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Susan Ryan

Email: susanryan.nenc@gmail.com

Address: 3017 N. 13th St 98406

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Of course we should expand the notification and an independent body should also conduct a SEPA or discretionary permit review.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

I strongly oppose this approach of prohibition. The Port & COT need to be looking to a future vision away from ^{new} dirty fossil fuels & the expansion of existing.

We need to look at opportunities that transition us to allow for citizens to enjoy our waterfront.

We need an immediate pause while citizens can have an opportunity to catch up with what has been occurring and reflect upon it.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

While it is important to not place more citizens in potential harms way I see this restriction as a way to expand the dangerous petro chemicals that are currently at the Port.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

As we listen to the Rep. from Lakewood we can take him more seriously when Lakewood takes in heavy industrial themselves.

JBLM can overrule any zoning regardless.

While the ^(or a few) many Port workers are here tonight to support their jobs we are and continue to be evolving. Jobs & professions come & go we get told this often by corporations at higher levels yet when it comes to certain industries it seems like a double standard. These guys may not have an illness now, but my father got throat cancer ^{from working around petro!}



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Zephania Cortesi

Email: zcortesi@pugetsound.edu

Address: 1618 N Adams
Tacoma, WA 98406

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I ~~agree~~ support expanding notification of projects. In our day to day lives it is difficult to investigate new projects so making them^{as} accessible as possible is important.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

no comment

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

no comment

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I support the prohibition of ^{new} heavy industrial uses for multiple reasons:

- health impacts of new fossil fuel industry, as well as the rest listed above will be negative and harmful to both the humans living here, and the environment
- environmental impacts will be extensive and harmful as well. the tideflats are an especially vulnerable ecosystem, effecting both marine life and life on land.
- the unsustainability of these sources of income are not worth the harm to us, the people of Tacoma, and ^{to} the environment that we depend on.



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Billie Blatter

Email: billienw14@gmail.com

Address: PO Box 88214
Steilacoom WA 98388

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I agree with this proposal.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

From the beginning, I have asserted that new non-industrial uses should be promoted, along with light, clean industry using sustainable energy. Polluting industries should be phased out and replaced by businesses using sustainable energy. Over 200 ports around the U.S. have gone to sustainable energy. The Port decision makers need to wise up.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

I absolutely disagree. Don't let the abusers win! Commencement Bay should be as beautiful as it can be. Then it will attract businesses that bring as much or more products and jobs.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I agree 100% with this proposal.

All around the world, these decisions are being made toward clean energy.

These nasty polluters are coming to the Port of Tacoma because they are being rejected everywhere else.

Commencement Bay is surrounded by business and residential areas. We cannot allow polluting industries to send our children to the hospital.

Billie Blatter



Tideflats Interim Regulations Public Hearing

Please provide comments on the following topics:

Please Print Clearly

Name: Ron MORRISON
 Email: ron.morrison406@hotmail.com
 Address: 2405 N. Stevens St.
 Tacoma WA 98406

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I support expanded notification and an opportunity for citizens to participate in the decision-making regarding heavy industrial projects city-wide.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

I support light industries, but do not support mixing light industry and non-industrial uses for the port.

3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

I support these restrictions, and would add that the city should consider buying out all the affected homeowners that are affected by the poisonous pollution of the Port.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I would support special use restrictions on the industries listed and would also prohibit expansion of the industries listed. Also, I would stop construction of the PSE LNG plant because this plant will increase the hazard of the industries of the Port of Tacoma to the people of Tacoma and the surrounding area.

Ronald G. Morrison
PH: 253-759-7148
2405 No. Stevens St, Tacoma WA
98406

NEW SECTION TMC 13.06.580

13.06.580 Interim Industrial Use Restrictions

A. Purpose: Per Ordinance No. XXXXX, on an interim basis, the purpose of this section is to prohibit the establishment of new industrial uses that may pose a high probability of significant off-site impacts or high risks to public health, safety, or welfare, on an interim basis until such time as the Tideflats Subarea Plan is complete.

B. Applicability. These special use restrictions apply to the following uses in all zoning districts:

- Coal terminals and coal bulk storage facilities
- Oil, or other liquefied or gaseous fossil fuel terminals, bulk storage, manufacturing, production, processing or refining *and accessory*
- Bulk chemical storage, production or processing, including acid manufacture
- Smelting
- Mining and quarrying

C. Use Restrictions.

1. New uses. The establishment of a new use is prohibited.

2. Existing uses. Legally permitted uses at the time of adoption of this code are allowed and may continue existing operations and expand storage and production capacity without limitation.

4. Definitions. For the purpose of applying these special use restrictions, the applicable North American Industrial Classification System (NAICS) codes and descriptions are identified as follows.

a. Coal terminals and bulk storage facilities

The storage and wholesale distribution of coal and coal products and transfer of coal products via shipping terminal.

b. Oil or other liquefied fossil fuel terminals, bulk storage, manufacturing, production, processing or refining.

(1) Petroleum Bulk Stations and Terminals. This industry comprises establishments with bulk liquid storage facilities primarily engaged in the merchant wholesale distribution of crude petroleum and petroleum products. NAICS Code 424710.

(2) Petroleum Refineries. This industry comprises establishments primarily engaged in refining crude petroleum into refined petroleum. Petroleum refining involves one or more of the following activities: (1) fractionation; (2) straight distillation of crude oil; and (3) cracking. NAICS Code 324110.

(3) Natural Gas Liquid Extraction. This industry comprises establishments primarily engaged in the recovery of liquid hydrocarbons from oil and gas field gases. Establishments primarily engaged in sulfur recovery from natural gas are included in this industry. NAICS Code 211112. For the purposes of these special use restrictions, this use category also includes bulk storage of liquefied petroleum gas, liquefied natural gas, and natural gas liquids.

c. Bulk chemical storage, production or processing. The Chemical Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process and the formulation of products. This subsector distinguishes the production of basic chemicals that comprise the first industry group from the production of intermediate and end products produced by further processing of basic chemicals that make up the remaining industry groups. For the purposes of these special use restrictions, this definition will apply to all industries classified as subcategories of NAICS Code 325 Chemical Manufacturing.

d. Smelter

(1) Primary Smelting and Refining of Copper. This industry comprises establishments primarily engaged in (1) smelting copper ore and/or (2) the primary refining of copper by electrolytic methods or other processes. Establishments in this industry make primary copper and copper-based alloys, such as brass and bronze, from ore or concentrates. NAICS Code 331411.

(2) Alumina Refining and Primary Aluminum Production. This industry comprises establishments primarily engaged in one or more of the following: (1) refining alumina (i.e., aluminum oxide) generally from bauxite; (2)



City of Tacoma
Planning and Development Services

**Agenda Item
D-3**

To: Planning Commission
From: Lihuang Wung, Planning Services Division
Subject: **Marijuana Use Buffers Code Amendment**
Date of Meeting: September 20, 2017
Date of Memo: September 15, 2017

The Planning Commission conducted a public hearing on September 6, 2017, to receive public comments on the proposed code amendment concerning Marijuana Use Buffers, and kept the record open through September 11 to accept written comments. The Commission received one oral testimony at the hearing and three pieces of written comments. Of the four commenters, three were in support of the proposal and one provided additional information but did not suggest the Commission change its position.

Staff recommends that, at the next meeting on September 20, 2017, the Commission consider making a recommendation to the City Council. Attached are a draft letter of recommendation and a draft findings of fact and recommendations report for the Commission's review and approval at the meeting. Public comments received are included in the report as an attachment.

If you have any questions, please contact me at 591-5682 or lwung@cityoftacoma.org.

Attachments

c: Peter Huffman, Director



City of Tacoma
Planning Commission

Stephen Wamback, Chair
Anna Petersen, Vice-Chair
Carolyn Edmonds
Jeff McInnis
Brett Santhuff
Andrew Strobel
Dorian Waller
Jeremy Woolley
(vacant)

September 20, 2017

The Honorable Mayor and City Council
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402

Honorable Mayor Strickland and Members of the City Council,

On behalf of the Tacoma Planning Commission, I am forwarding our recommendations on the Proposed Code Amendment concerning Marijuana Use Buffers.

The City Council adopted Resolution No. 39742 on June 9, 2017, requesting the Commission to consider adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, in order to protect these types of facilities owned by Metro Parks Tacoma to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code.

By adopting the resolution, the City Council has initiated a process for enacting interim regulations (as per TMC 13.02.055), with the intent to adopt the proposed local definitions on an interim basis, until such time as the state modifies its definitions. The Commission, however, believes that this important and relatively straightforward matter should and can be accomplished in an equally effective yet more streamlined manner through the standard process for code amendment (as per TMC 13.02.045), instead of the interim zoning process.

The Commission conducted a public hearing on September 6, 2017 and received no opposing comments on the proposed code amendment. The Commission believes the proposal can effectively alleviate the problems in permitting marijuana uses resulted from the gap between the state's intent and definitions and prevent further conflicts from occurring. Enclosed is the "*Planning Commission's Findings and Recommendations Report, September 20, 2017*" that summarizes the proposed amendment, the public review process, and the Commission's deliberations. We respectfully request the City Council adopt the recommendations of the Planning Commission.

Sincerely,

STEPHEN WAMBACK, Chair
Tacoma Planning Commission

Enclosure



The City of Tacoma does not discriminate on the basis of disability in any of its programs, activities, or services. To request this information in an alternative format or to request a reasonable accommodation, please contact the Planning and Development Services Department at (253) 591-5056 (voice) or (253) 591-5820 (TTY).

747 Market Street, Room 345 ■ Tacoma, WA 98402 ■ (253) 591-5682 ■ FAX (253) 591-5433 ■ <http://www.cityoftacoma.org/planning>



Marijuana Use Buffers

Proposed Amendment to the Tacoma Municipal Code

Planning Commission Findings of Fact and Recommendations Report

(Draft for the Planning Commission's Consideration on September 20, 2017)

Staff Notes: This draft report is a revised version of the draft Findings of Fact and Recommendations Report that was released on July 19, 2017 for public review, in preparation for the public hearing on September 6, 2017. Revisions are highlighted in yellow.

A. Subject:

Proposed code amendment concerning marijuana use buffers.

B. Summary of the Proposal:

The proposal would amend the Tacoma Municipal Code ("TMC"), Section 13.06.565 Marijuana Uses, Subsection B.3, as follows (deletions shown in ~~red strikethroughs~~ and additions in blue underlines):

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally~~ apply ~~unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.

By adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, the proposal would protect said facilities owned by Metro Parks Tacoma ("MPT") to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code ("WAC") 314-55-010(24)-(27).

The proposal was initiated by the City Council via Resolution No. 39742 (see Attachment "1"), adopted on June 6, 2017, whereby the Planning Commission was requested to consider recommending said code amendment to the City Council for adoption on an interim basis, i.e., as interim regulations, until such time as the state corrects its own definitions.

C. Findings of Fact:

1. Legislative Background:

- a. State Initiative 502 ("I-502") was approved by Washington voters in November 2012, providing a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana.

- b. The Cannabis Patient Protection Act (“CPPA”) was enacted by the State Legislature in April 2015, establishing regulations for the formerly unregulated aspects of the marijuana system and aligning it with the recreational system.
- c. The Washington State Liquor and Cannabis Board (“LCB”) is the agency responsible for licensing and regulating marijuana. The LCB established the first set of marijuana related administrative procedures and standards in December 2013, began to issue marijuana licenses in March 2014, and has since been carrying out its rulemaking process on a periodic basis.
- d. In response to I-502, the CPPA, and applicable rules of the LCB, the City Council has taken the following legislative actions relating to marijuana uses:
 - Enacting interim regulations on November 5, 2013, effective for one year from November 17, 2013 to November 16, 2014, pending the results of the LCB’s first rulemaking (Substitute Ordinance No. 28182); and extending the interim regulations on September 30, 2014, for six months, through May 16, 2015 (Ordinance No. 28250);
 - Enacting permanent marijuana regulations on February 17, 2015, superseding the interim regulations (Amended Ordinance No. 28281);
 - Imposing a moratorium on permitting marijuana retail uses on January 12, 2016, for six months, through March 10, 2016, in response to the LCB’s expansion of the cap on retail marijuana stores in Tacoma (Substitute Ordinance No. 28343); and
 - Amending the Public Nuisances Code and the Land Use Regulatory Code concerning marijuana uses on May 24, 2016, and terminating the moratorium (Amended Ordinance No. 28361).

2. Initiation of the Proposed Code Amendment:

- a. The consideration for the proposed code amendment was initiated by the City Council on June 6, 2017, via Resolution No. 39742 (see Attachment “1”), which was prompted by an LCB-denied variance application for a marijuana production facility within 1,000 feet of an MPT-owned playground, as articulated in a memorandum from the City Attorney’s Office to the City Manager, dated May 1, 2017, that called out the issue and suggested the need for said code amendment (see Attachment “2”).
- b. The adoption of Resolution No. 39742 was also in response to the Council Consideration Request submitted by Deputy Mayor Robert Thoms on May 4, 2017, that urged the City Council “to amend the City of Tacoma’s marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses” (see Attachment “3”).
- c. Resolution No. 39742 indicates that City staff has discovered a gap between the state’s intent to require greater setback buffers for public playgrounds and recreational centers and facilities and the state’s definitions for these sites. This gap arises from the state’s unintended omission of “metropolitan parks districts” from the ownership paradigm in the WAC definitions of “Playground” and “Recreation center or facility.” The City understands that the state intends to correct this omission in its definitions, but it may take some time to do so.
- d. Resolution No. 39742 suggests that the City can alleviate the problems that have arisen in permitting marijuana uses and prevent further conflicts from occurring, by adding these two definitions in the TMC on an interim basis, until such time as the state corrects its own definitions.

- e. Resolution No. 39742 also stipulates the text of the proposed code amendment, which is also mentioned above in the section of “Summary of the Proposal.” The text exemplifies the legislative intent of the City Council, does not deviate from the existing definitions of the WAC, and can be reasonably expected to be in compliance with the state’s definitions when corrected.
- f. Resolution No. 39742 does not declare an emergency for the matter, nor does it specify when the Planning Commission must provide its findings of fact and recommendations concerning the need for the interim regulations. Nevertheless, it is understood that the City Council intends to move forward with the proposed code amendment in a fairly swift manner.

3. Impacts of the Proposal:

- a. The proposed code amendment would not have any impact to existing marijuana businesses, including retailers, producers and processors. In staff’s original analysis of the buffer zones as set forth in Amended Ordinance No. 28361 (adopted on May 24, 2016), playgrounds, for mapping purposes, were included and assumed to be in all parks, including those owned by MPT. As illustrated in an up-to-date map of the locations of current marijuana businesses (see Attachment “4”), all MPT-owned parks that contain playground equipment are already located within the mapped buffer zones. Adding definitions of “Playground” and “Recreation center or facility” to the code would not result in any additional facility being identified outside of existing buffered zones that could impact existing businesses; on the contrary, said code amendment should help ensure that all public playgrounds are buffered, as was intended.
- b. The proposed code amendment is not expected to have much, if any, impact to future marijuana businesses. As articulated in the memorandum from the City Attorney’s Office (see Attachment “2”), it is highly unlikely that the LCB will grant licenses for prospective variance applications, if any, similar to the one that had prompted the consideration for the proposed code amendment, regardless of how the City handles those applications.
- c. Concerning the need for review of environmental impacts, the City Attorney’s Office advised that the proposal entails text amendments to existing regulations resulting in no substantive changes respecting use or modification of the environment, and as such, environmental review for the proposal is exempt, per WAC 197-11-800(19)(b).
- d. The City Attorney’s Office has reviewed the proposed code amendment pursuant to RCW 36.70A.370, and following the State Attorney General’s recommended checklist, to determine if the City Council’s adoption of the proposal might result in an unconstitutional taking of private property. Legal counsel has advised that the proposed regulations do not appear to do so.

4. Interim Regulations Process vs. Code Amendment Process:

- a. The interim regulations process initiated by Resolution No. 39742 will be carried out through the following general steps, in accordance with TMC 13.02.055 and based on the situations associated with this particular issue :
 - The Planning Commission develops findings of fact and recommendations to help the City Council justify the imposition of the interim regulations. The Council subsequently enacts the interim regulations, with a public hearing.
 - The interim regulations can be effective for 6 months, or 12 months with a work plan for the development of permanent regulations. Since it is unknown when this matter will be included in the LCB’s rulemaking schedule, it will be appropriate to set the interim regulations effective for 12 months.

- Upon the expiration of the interim regulations, if the state has not corrected its definitions, the Council will need to extend the interim regulations for 6 months, with a public hearing. Further extensions of the interim regulations may be needed and shall be done in 6-month intervals, each with a public hearing held by the Council and supportive findings of fact.
 - Upon the state’s correction of its definitions, the Commission will develop draft permanent regulations accordingly, conduct a public hearing, and make a recommendation to the Council. The Council will conduct a public hearing and adopt the permanent regulations, superseding the interim regulations.
- b. Alternatively, the proposal could be handled through the normal code amendment process in accordance with TMC 13.02.045, whereby the Planning Commission develops draft permanent regulations, conducts a public hearing, and makes a recommendation to the City Council, and the Council conducts a public hearing and adopts the permanent regulations. This process will be repeated when the state’s definitions are corrected, and if it is determined that the permanent regulations need to be amended accordingly.
 - c. The normal code amendment process is more streamlined than the interim regulations process, but will achieve the same effects, primarily due to the fact that the proposed code amendment is relatively straightforward, uncontroversial, and of no impact to existing or future marijuana businesses. It is also a process less dependent on the uncertain rulemaking schedule of the LCB.
 - d. Concerning the project timeline, initially, the imposition of the interim regulations can be was expected to occur in September 2017, while the code amendment process may not be completed until October 2017. However, more time will be needed for following up on the interim regulations process, i.e., developing permanent regulations or extending the interim regulations, depending on the progress of the state. The code amendment process, on the other hand, needs to be revisited only if necessary, which can be accomplished within a relatively short time frame.

5. Public Hearing and Public Comments:

- a. At the meeting on July 19, 2017, the Planning Commission decided to proceed with the “Code Amendment Process” as articulated above. The Commission also compiled and released a draft Findings of Fact and Recommendations Report for public review, and set September 6, 2017 as the date for a public hearing on the proposed code amendment as depicted in “Section B. Summary of the Proposal.” The City Council was subsequently informed of such decision of the Commission.
- b. Notice of the public hearing was widely disseminated to Neighborhood Councils, business district associations, various civic and community organizations, adjacent jurisdictions, City departments, State agencies, the Puyallup Tribal Nation, The News Tribune, the Tacoma Public Library, Joint Base Lewis-McChord, as well as marijuana stakeholders (i.e., owners of existing marijuana businesses and applicants of prospective marijuana businesses).
- c. The Commission received one oral testimony at the public hearing on September 6, 2017 and received three pieces of written comments before the public hearing record closed on September 11, 2017 (see Attachment “5”). Three of the four commenters were in support of the proposed code amendment. The fourth individual, Mr. Tim Gosselin, is the applicant of the “Gosselin App” as referenced in the above-mentioned memorandum from the City Attorney’s Office to the City Manager that had suggested the need for the proposed code amendment (see Attachment “2”). Mr. Gosselin provided background information about, and his arguments for,

the “Gosselin App” (Planning and Development Service Department File No. LU16-0195), with the intent to assist the Commission in making a better informed decision, but did not suggest the Commission change its position.

- d. The Commission understands that LU16-0195 was submitted in August 2016, first denied by the Planning Director in December 2016 for lack of authority to grant variance, then reversed by the Hearing Examiner in February 2017, thereafter granted the variance by the Planning Director in March 2017, only to be denied for licensing by the State. The State’s denial stated that the City has no authority to grant the variance as requested. The Commission also understands that there was a similar variance application submitted by another applicant in March 2017 (File No. LU17-0052) that was subsequently denied by the Planning Director in July 2017, based on the understanding that it would be unlikely that the State will grant a license for the requested location given the result on the “Gosselin App”, regardless of how the City handles the variance application. The legal opinion of the City Attorney’s Office is that it is fairly apparent that the State does not believe a variance to be an appropriate vehicle for reducing buffers, as opposed to having an across-the-board reduction written into the local code.

D. Conclusions and Recommendations:

The City Council adopted Resolution No. 39742 on June 9, 2017 (see Attachment “1”), requesting the Planning Commission to consider adding local definitions of “Playground” and “Recreation center or facility” to the City’s zoning of marijuana uses and including “metropolitan parks district” in the ownership paradigm, in order to protect ~~said these types of~~ facilities owned by Metro Parks Tacoma to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code. By adopting the resolution, the City Council has initiated an interim zoning process, ~~whereby the Planning Commission is requested to consider recommending said code amendment to the City Council for adoption~~ with the intent to adopt these local definitions on an interim basis, until such time as the state modifies its definitions.

The Commission understands there is a gap between the state’s intent to require greater setback buffers for public playgrounds and recreational centers and facilities and the state’s definitions for these sites. The Commission also acknowledges the legal onion as articulated in the memorandum from the City Attorney’s Office to the City Manager (see Attachment “2”) and in view of that, believes the proposed code amendment can effectively alleviate the problems that have arisen in permitting marijuana uses and prevent further conflicts from occurring.

The Commission concurs with the City Council concerning the need for the proposed code amendment, but believes that this important and relatively straightforward matter should and can be accomplished in ~~an equally effective yet~~ more streamlined manner through the standard process for code amendments (as per TMC 13.02.045), instead of the interim zoning process (as per TMC 13.02.055). ~~whereby the Planning Commission would develop the final draft code amendment, conduct a public hearing, and forward it to the City Council for consideration for adoption. With this approach being recommended, the Planning Commission will proceed with scheduling a public hearing, tentatively for September 2017, to receive public comment on the proposed code amendment as depicted in “Section B. Summary of the Proposal,” and subsequently formulate a recommendation to the City Council for its consideration.~~

The Commission conducted a public hearing on September 6, 2017 and received no opposing comments on the proposed code amendment. The Commission recommends that the City Council adopt the proposed code amendment as depicted in "Section B. Summary of the Proposal".

E. Attachments:

1. Resolution No. 39742 Initiating the Consideration for Interim Regulations (June 6, 2017)
2. Memorandum from the City Attorney's Office to the City Manager (May 1, 2017)
3. Council Consideration Request from Deputy Mayor Robert Thoms (May 4, 2017)
4. Location Map of Current Marijuana Businesses (May 24, 2017)
5. Public Comments Received through the Public Hearing Process (September 12, 2017)

DRAFT



RESOLUTION NO. 39742

1 BY REQUEST OF DEPUTY MAYOR THOMS

2 A RESOLUTION relating to interim zoning; requesting that the Planning
3 Commission consider amending Chapter 13.06 of the Tacoma Municipal
4 Code, relating to the zoning of marijuana uses, on an interim basis, by
5 adding local definitions of "Playground" and "Recreation center or facility,"
6 in order to protect Metro Parks Tacoma-owned playgrounds and
recreation centers and facilities to the level intended by the state, but
currently not covered by state definitions.

7 WHEREAS the City's marijuana land use regulations, as set forth in
8 Amended Ordinance No. 28361, adopted on May 24, 2016, and found at
9 Section 13.06.565 of the Tacoma Municipal Code, are barely a year old, and

10 WHEREAS Washington State's regulatory framework for licensing and
11 regulating the production, processing and retail sale of marijuana is also relatively
12 new, and

13 WHEREAS City staff has discovered a gap between the state's intent to
14 require greater setback buffers for public playgrounds and recreational centers and
15 facilities and the state's definitions for these sites, found at Washington
16 Administrative Code ("WAC") 314-55-010(24)-(27), and

17 WHEREAS this gap arises from the state's unintended omission of
18 "metropolitan parks districts" from the ownership paradigm in the WAC definitions
19 of "Playground" and "Recreation center or facility," and

20 WHEREAS the City understands that the state intends to correct this
21 omission in its definitions, but it may take some time to do so; in the meantime, the
22 City can prevent conflicts from arising in local permitting, as has already happened,
23 by adding these two definitions in the TMC on an interim basis, and
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WHEREAS adding local definitions into the City's marijuana regulations for
“Playground” and “Recreation center or facility” that include ownership by a
metropolitan parks district will alleviate the problems that have arisen in permitting
marijuana uses that appear to conform with the state definitions, but not with the
state’s intent, until such time as the state corrects its own definitions; Now,
Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the City Council hereby requests that the Planning Commission
consider amending Chapter 13.06 of the Tacoma Municipal Code, relating to
Zoning, on an interim basis, by adding local definitions of “Playground” and
“Recreation center or facility” as shown in Exhibit “A” hereto, in order to protect
Metro Parks Tacoma-owned playgrounds and recreation centers and facilities to
the level intended by the state, but currently not covered by state definitions.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

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13.06.565 Marijuana Uses.

A. Intent. In November 2012, Washington voters passed Initiative 502, which establishes precedent for the production, processing and retail sale of marijuana for recreational purposes. In April 2015, the state Legislature enacted two laws, 2SSB 5052 and 2E2SHB 2136. The new laws establish regulations for the formerly unregulated aspects of the marijuana system, establish a "medical marijuana endorsement" that allows licensed marijuana retailers to sell medicinal marijuana to qualifying patients and designated providers, and attempt to align these changes with the existing recreational system.

Pursuant to RCW 69.50, the State has adopted rules establishing a state-wide regulatory and licensing program for marijuana uses (WAC 314-55). It is therefore necessary for the City to establish local regulations to address such uses.

It is the intent of these regulations to ensure that such state-licensed uses are located and developed in a manner that is consistent with the desired character and standards of this community and its neighborhoods, minimizes potential incompatibilities and impacts, and protects the public health, safety and general welfare of the citizens of Tacoma.

Recognizing the voter-approved right to establish certain types of marijuana businesses, it is also the intent of these regulations to provide reasonable access to mitigate the illicit marijuana market and the legal and personal risks and community impacts associated with it.

B. Applicability. The provisions of this Section shall apply city-wide. The specific development standards provided in this Section shall be in addition to the zoning and development standards generally applicable to the proposed use and the relevant zoning district. All licensed marijuana uses are required to fully comply with the provisions of this Section.

1. No Marijuana use as regulated herein and in WAC 314-55, that existed prior to the enactment of Ordinance No. 28182 on November 5, 2013, shall be deemed to have been a legally established use or entitled to claim legal non-conforming status.

2. As of July 1, 2016, in accordance with state law, collective gardens are prohibited.

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally~~ apply ~~unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.



TO: Interim City Manager, Elizabeth A. Pauli
PDS Director, Peter Huffman

FROM: Jeff Capell, Deputy City Attorney *JAC*
Bill Fosbre, Acting City Attorney *BF*

SUBJECT: Marijuana Regulation; "Playground" Definition

DATE: May 1, 2017

Given the relative newness of the State's marijuana regulations, there was bound to be some glitches and gaps in their implementation. The City has become well acquainted with one of these in the form of the Washington Administrative Code ("WAC") definition of "playground." By way of background, it is clear from applicable statutes and regulations¹ that the State Legislature and the Washington State Liquor and Cannabis Board (the "Board") intended public playgrounds to be in a class of uses having the highest level of buffer protection from marijuana uses. By comparison, the buffer for other uses, such as a public transit center or library, can be reduced by local ordinance anywhere from 999 feet down to a minimum of 100 feet potentially. It should also be noted that the State has very clear preemptive authority when it comes to marijuana regulation.²

The gap presently at issue arises from the State's failure to include playgrounds owned by a metropolitan park district in its definition of "playground" at WAC 314-55-010 (25). In contrast, the State's definition of "park" does account for ownership by a metropolitan park district ("MPD").³ The State does not consider parks and playgrounds to be mutually exclusive. In other words, a given facility could be both a park and a playground depending on whether facilities indicative of both are present.

In discussions with the Board and its legal counsel, the Board represented that its omission of MPDs from ownership in the "playground" definition was unintentional and that the Board will most likely correct that omission in its next round of rulemaking. This correction will likely not happen until sometime after the current legislative session is complete. In the meantime, by letter dated February 22, 2017, the Board has suggested that the City may want to submit a petition for amendment of the playground definition

¹ e.g. RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11).

² RCW 69.50.608, titled "State preemption."

³ WAC 314-55-010(24).

more formally under RCW 34.05.330 titled "Petition for adoption, amendment, repeal—Agency action—Appeal."

On a more immediate stage, the City has had one variance application for a marijuana production facility within 1,000 feet of a MDS owned playground that was (1) first denied by the PDS Director for lack of authority, (2) then reversed by the Hearing Examiner, (3) thereafter granted by the PDS Director, only to (4) be denied for licensing by the State (all referred to as the "Gosselin App"). According to the variance applicant, Tim Gosselin, the State's denial stated that the City has no authority to grant a variance for the subject location for marijuana production,⁴ which brought the Gosselin App full circle.⁵ The City now has another, similar variance application pending for a location within 1,000 feet of a MPD playground/park combo. It is unlikely that the State will grant a license for this location given the result in the Gosselin App, regardless of how the City handles the variance application.

In the Hearing Examiner decision on the Gosselin App, the Hearing Examiner recognized the Board's admission that it inadvertently omitted MPDs from the playground definition, and the incongruity that omission created with the stated intent to provide greater protection to playgrounds. That notwithstanding, she concluded that she had to follow the language of the "playground" definition as written and reversed the PDS Director's denial of the variance. She did suggest in her decision that the City could amend its own ordinance to include MPD playgrounds in the 1,000 foot buffer zone in advance of any amendment by the State. Given that the State has refused to license the marijuana use at Gosselin's property, it would make sense to amend the TMC in this manner in order to not perpetuate the disconnect between the City and the Board's approach that exists at present.

At the suggestion of the Board, the City has, by letter, already requested that the Board fix the definition of playground to include expressly those owned by Metro Parks Tacoma, our local MPD. Unless there is a valid reason to differentiate, the same fix should be requested for the definition of "Recreation center or facilities," which also does not account for ownership by a MPD. Examples of "Recreation center or facilities" in Tacoma owned by Metro Parks Tacoma would include the Star Center, the Center at Norpoint, and the Portland Ave. Community Center.

Please feel free to call me with any questions or concerns.

⁴ The subject location is within 1,000 feet of MPD owned Irving Park, which according to the State, is both a park and a playground.

⁵ It is fairly apparent that the State does not believe a variance to be an appropriate vehicle for reducing buffers, as opposed to having an across-the-board reduction written into the local code.



**CITY OF TACOMA, WASHINGTON
OFFICE OF THE CITY COUNCIL
COUNCIL CONSIDERATION REQUEST (CCR)**

TO: Mayor & City Council
FROM: Deputy Mayor Thoms and Council Assistant Brad Forbes
COPIES TO: Elizabeth Pauli, Acting City Manager; Mark Lauzier, Assistant City Manager;
Bill Fosbre, Acting City Attorney; Executive Leadership Team; File
SUBJECT: Marijuana uses buffer
DATE: May 4, 2017

ITEM/ISSUE PROPOSED FOR COUNCIL CONSIDERATION:

I ask for your support for the inclusion of the following item on the agenda at the earliest available meeting of the Study Session:

I respectfully ask the City Council to amend the City of Tacoma's marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses.

BRIEF BACKGROUND:

It is clear from the relevant statutes and regulations (RCW 69.50.331(8) (a) and (b) and WAC 314-55-050(10)-(11)) that the State Legislature and the Washington State Liquor and Cannabis Board intended public playgrounds to be in a class of uses having the highest level buffer from marijuana uses. The buffer for parks, recreation centers, and facilities can be reduced, but the City's ordinance is presently unclear about any such reduction. The gap for playgrounds arises from the State's failure to include playgrounds (and recreation centers and facilities) owned by a metropolitan parks district in its definitions.

FUNDING REQUESTED:

This action does not require any funding.

If you have any questions related to the Council Consideration Request, please contact Brad Forbes at 253-591-5166 or bforbes@cityoftacoma.org.

SUBMITTED FOR COUNCIL CONSIDERATION BY: _____
Deputy Mayor Thoms

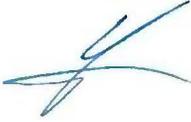
SUPPORTING COUNCILMEMBERS SIGNATURES (2 SIGNATURES ONLY)

(Signatures demonstrate support to initiate discussion and consideration of the subject matter by City Council for potential policy development and staff guidance/direction.)



1. _____

Mayor

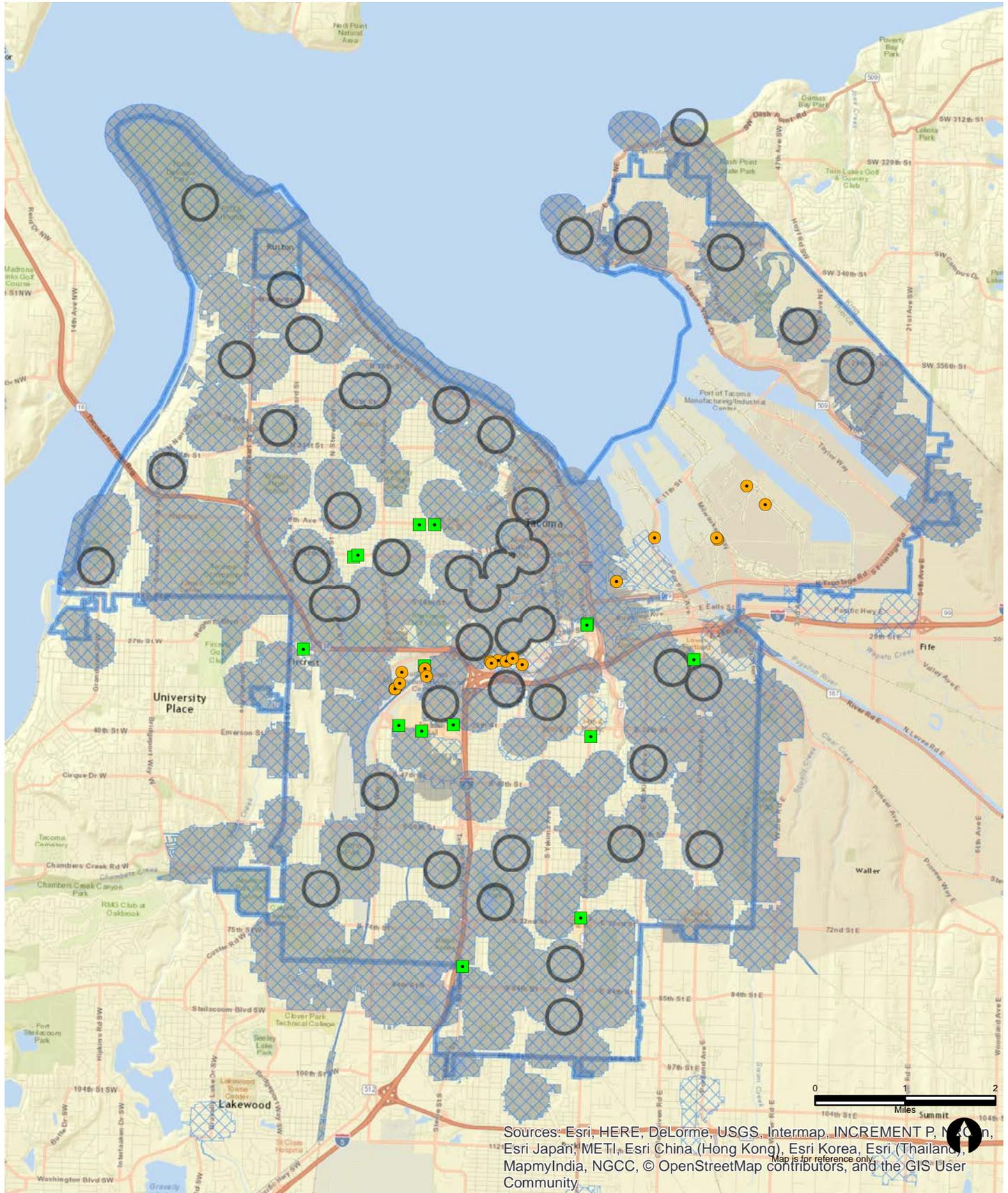


2. _____

POS# 7

Sensitive Use Buffers (As of May 24, 2017)

Locations of Current Marijuana Businesses



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NOAA, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

- Green square: Retailer
- Orange circle: Producers and/or Processors
- Blue hatched area: City Boundary
- White hatched area: No Retail Buffer
- Grey hatched area: No Production, Processing, or Research Buffer
- Black circle: Metro Park Playground Buffer (approximate location)

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Community & Economic Development Department
GIS Analysis & Data Service
5/30/2017

Attachment 5
Public Comments Received
through the Public Hearing Process
September 12, 2017

* * * * *

From: Heidi [<mailto:batlmaidn3@aol.com>]
Sent: Sunday, September 10, 2017 1:23 PM
To: Wung, Lihuang; vadergan@yahoo.com; penzfrmhvn@comcast.net
Subject: Re: Marijuana Use Buffers Code Amendment

Lihuang Wung, Planning Services Division:

I totally support the change of TMC 13.06.565 by including Metropolitan Parks District. Venus Dergan and I discovered the loop hole while getting notices from the planning department about two marijuana processing plants wanting to have their facilities located within 1000 feet of a playground or Tot Lot. I sent an email to the Metro Parks board informing them of this loop hole along with the Mayor and all the City Council and thanks to Mr. Thoms he looked into the matter and got the ball rolling. Metro Parks should have been included in the WAC from the beginning, but for some reason was not.

Please send me an email that my support letter was received

Thank you,

Heidi White, S Tacoma Resident and concerned citizen

Staff Note:

Ms. Venus Dergan testified at the Planning Commission's public hearing on September 6, 2017, providing the same comment as shown here from Ms. Heidi White.

Lihuang Wung
September 11, 2017

From: Andrew Austin [mailto:andrewa@tacomaparks.com]
Sent: Wednesday, August 30, 2017 3:05 PM
To: Wung, Lihuang
Subject: Metro Parks Tacoma Comment on Marijuana Use Buffers Code Amendment

Mr. Wung,

Metro Parks Tacoma fully supports the proposed changes to the marijuana use buffers TMC amendment. Thank you for taking the time and effort to add Metropolitan Parks Districts into the ownership definitions of playgrounds and recreation centers. The updates to the code will be crucial to protecting many of our key assets for kids and youth from being adjacent/close marijuana retail outlets.

Please do not hesitate to contact me if staff, the planning commission, or council has questions about our position and support of these proposed code amendments.

Andrew Austin

Andrew Austin
Government Affairs Manager
Office: 253-305-1021
Cell: 253-732-9434
AndrewA@TacomaParks.com



CREATING HEALTHY OPPORTUNITIES TO PLAY, LEARN AND GROW

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To: Members of the Planning Commission
From: Tim Gosselin
3511 No. Union Ave.
Tacoma, WA 98407
253-905-5403
RE: Marijuana Use Buffers Code Amendment
Agenda Item D-2, Regular Meeting, July 19, 2017

Dear Commission Members:

I spoke on this topic at your meeting last night. I am not writing to suggest that any of you change your positions regarding the proposed amendment. I am writing on the belief that the better informed your decision is, the more credible it becomes. As the representative from Planning and Development (P&D) indicated, I, unfortunately, am the cause of the proposed amendment.

What motivated this memo was the question asked by Commissioner Wamback last night wondering how the hearing examiner could have ordered a variance when just last year the Planning Commission made it clear it did not want marijuana operations within 1000 feet of a park. The question raised two issues: What did the hearing examiner actually order and why (I'm counting that as one); and, what has the Planning Commission's prior position been.

On the first question, it will help to understand the process that brought the case to the hearing examiner. The recount of facts given at the meeting last night was not entirely accurate. I mean no disrespect by that statement.

I own a small building in Nalley Valley that is 525 feet (nearest point to nearest point) from Irving Park. I applied for a variance citing state law, RCW 69.50.331 (8)(b) – the so-called “local option” – that allows cities to reduce the 1000 foot buffer from parks to as little as 100 feet. Planning and Development denied the application on the basis that Irving Park was a playground, not a park, and the local option did not allow variance from the 1000 foot set back for playgrounds. Stated another way, P&D determined that it lacked authority to grant my variance request.

P&D's position was both correct and incorrect. It was correct that the local option did not allow cities to reduce the 1000 foot required setback from playgrounds. It allows reductions from parks, but not playgrounds. It was incorrect that Irving Park was a playground.

At this point it helps to understand the difference in the definitions of park and playground. Tacoma adopted the definitions set forth in regulations adopted by the WSLCB. The definitions of “playground” and “park” are set forth in WAC 314-55-010. “Playground” is defined as:

. . . a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

WAC 314-55-010(24). “Park” is defined as

“Public park” means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

WAC 314-555-010(25)(emphasis added). I did not dispute that Irving Park is a public outdoor recreation area for children, equipped with swings, slides, and other playground equipment. To that extent, it is a playground. But the legislature/WSLCB did not limit the requirements to those physical characteristics. Not every playground triggers the setback. The legislature/WSLCB also imposed an ownership requirement. The facility must be “owned and/or managed by a city, county, state, or federal government.” Thus, playgrounds owned by a tribe, a church, a private entity or some other level of government like a public utility district do not satisfy the definition. Here, Irving Park is owned by a metropolitan park district. Regardless of similarities, metro park districts are not “city, county, state, or federal” governments. Moreover, the definition of “park” showed that when the legislature/WSLCB wanted to include facilities owned by metropolitan park districts, it (a) knew how to and (b) did. Omitting park districts from the definition of playgrounds was not a mistake.

Based on this analysis, I argued that the local option did apply to my application for variance and P&D did have authority to grant my request. I argued that P&D could not just ignore the clear wording of the regulations based on its view of the intent of the regulations. P&D disagreed and denied my application. Again, the basis of the denial was that P&D did not have authority to grant the request because it could not vary the setback from a playground.

I appealed to the hearing examiner. The issue the hearing examiner addressed was whether P&D had authority to grant my application. This necessarily required the hearing examiner to decide whether Irving Park was a park or a playground. If it was a park, P&D had authority. If it was a playground, it did not. P&D argued it was a playground. I argued it was a park.

The hearing examiner agreed with me. Though I understand you may have no interest in reading the decision, I have attached it in case you do. The hearing examiner decided that P&D had to follow the words of the definitions, not its interpretation of unexpressed intent. That is the nature of the rule of law. The words of the law guide the populace. Individual government officials don’t get to apply what they think the words should have said or wanted them to say. So, the hearing examiner decided that Irving Park was a park and not a playground. Therefore, P&D had authority to issue the variance if it wanted.

The primary point I want to make is this: You were told last night that the hearing examiner ordered P&D to issue the variance. That is not accurate. The hearing examiner simply told P&D it had authority to grant the variance. After the hearing examiner’s decision, my application returned to P&D for a decision on the merits. Director Huffman could have denied my application for any of the reasons set out in the variance ordinances. He could have found it to be inconsistent

with the Comprehensive Plan, not in the public interest, harmful to the public, or otherwise not warranted. Importantly, he could have denied it because of its proximity to an area where children play, whether or not the area met the definition of playground. Or, he could grant the application if he felt I had met all the conditions for doing so.

This is where my comments last night come in. Director Huffman did not deny my application, he granted it. In doing so he found that allowing my facility to be used for marijuana production and processing was consistent with the comprehensive plan and the public interest. In his decision he said:

Therefore, the Director concludes that the reduction in separation distance between the proposed marijuana production and processing use and Irving Park will not be contrary to the Comprehensive Plan or adversely affect the character of the neighborhood or rights of neighboring property owners.

The proposal is consistent with the Comprehensive Plan and will not have a detrimental effect on neighboring properties. Therefore, it will not cause a substantial detrimental effect on public interest.

Again, though I understand you may have no interest in reading the decision, I have attached it in case you do.

At last night's meeting, the representative of P&D said the proposed amendment would not change existing uses. He is only partially correct. While it does not remove any properties previously zoned for marijuana uses, it does eliminate the opportunity for properties like mine to receive a variance. And, as importantly, it takes away P&D's ability to make individualized choices about using properties for marijuana production and processing. At a time when so many industrial properties in Tacoma are sitting vacant and deteriorating, that seems significant to me.

The point of my comments last night was to suggest that the City would be taking away this opportunity without good reason. As my application shows, P&D has concluded that not every facility less than 1000 feet from a park is bad. The state itself doesn't see a problem with the way its definitions are worded, so it is not acting. It does not sound like the Commission has been shown that any other city has this concern. By setting Tacoma apart from other cities who have embraced the "local option" it is restricting its own economic development.

This seems contrary to the Comprehensive Plan, which the Commission's findings of fact do not address. Among the goals of the Comprehensive Plan are: Ensure continued growth and vitality of Tacoma's employment centers (Goal UF-8); establish designated corridors as thriving places that support and connect Tacoma's centers (Goal UF-10); support environmental health (Goal EN-4); promote housing that provides convenient access to jobs (Goal H-3); diversify and expand Tacoma's economic base (Goal EC-1); increase access to employment opportunities (Goal EC-2); cultivate a business culture that allows existing businesses to grow, draws new firms, and encourages homegrown enterprises (Goal EC-3); "Foster a positive business environment . . ." (Goal

EC-4); create “robust, thriving employment centers and strengthen and protect Tacoma’s role as a regional center for industry and commerce.” (Goal EC-6). We heard last night that a factor in homelessness is the absence of jobs. Why, at a time it is facing a homelessness crisis, and a deteriorating industrial core would the City want to restrict economic development?

There is clearly economic opportunity to be had. I had a tenant for my property within a month of receiving the variance. While the WSLCB has refused to license the tenant to use the building, that’s another fight. I believe the State is wrong in the same way the City was wrong, and will try to prove that as well.

Moreover, contrary to the comments made last night, it seems to me that neither the Planning Commission’s nor the City Council’s intent has been to keep marijuana production and processing 1000 feet from parks. In 2016, the Planning Commission presented a proposed ordinance that would have adopted reduced buffers from parks overall. In May, 2016, the City Council enacted Ordinance 28361 to allow only a 500 foot setback from “public parks, recreation centers or facilities, libraries, child care centers, and game arcades” for retail operations within the downtown district. These were possible because the City had not restricted its ability rely on the local option more than State law required. The proposed amendment will limit that ability.

In May of last year, the News Tribune quoted Mayor Strickland as saying about legalized marijuana: “We have rules from the state. We have a framework from the city. It’s legal now. Voters have said yes to it repeatedly. Let’s do the right thing and implement it.” The P&D representative candidly pointed out last night that the proposed amendment will impose a restriction on the City’s ability to act that State law does not require. To me, that’s not implementing what the people said yes to.

I do not have a personal stake in the outcome. My variance has been granted. But, I’m a lifelong resident of Tacoma. I spoke against the amendment because I believe the City is harming its own interests by adopting it, and I played a role in bringing it about. I also have an interest because I personally believe a receptive environment for marijuana production and processing could allow Tacoma to be a leader and center for innovation in the industry. Because I hold no personal animosity toward legalized marijuana, I view that as a great opportunity for the City. While I don’t expect my thoughts to change your mind, I do hope they will inform your decision a little bit.

Sincerely,
Tim Gosselin



City of Tacoma
Hearing Examiner

February 22, 2017

Timothy R. Gosselin
3511 N. Union Ave
Tacoma, WA 98407
(First Class & Electronic Mail Delivery)

Jeff H. Capell, Deputy City Attorney
City of Tacoma
Office of the City Attorney
747 Market Street Room 1120
Tacoma, WA 98402
(Interoffice & Electronic Mail Delivery)

Re: *Timothy R. Gosselin v. City of Tacoma*
HEX 2016-041 (LU16-0195)

Dear Parties,

In reference to the above entitled matter, please find enclosed a copy of the Tacoma Hearing Examiner's Summary Judgment Order entered on February 22, 2017.

Sincerely,

Louisa Legg
Office Administrator

Enclosure (1) – SJ Order

cc: Peter Huffman, Director, Planning & Development Services Department, City of Tacoma
Lisa Spadoni, Principal Planner, Planning & Development Services Department, City of Tacoma

1 **OFFICE OF THE HEARING EXAMINER**

2 **CITY OF TACOMA**

3 **TIMOTHY R. GOSSELIN,**

4 **Appellant,**

5 **v.**

6 **CITY OF TACOMA,**

7 **Respondent.**

**HEX 2016-041
(LU16-0195)**

**SUMMARY JUDGMENT
ORDER**

8

9 Timothy R. Gosselin is challenging the decision of the City of Tacoma Director of
10 Planning and Development Services (Director) denying his variance application for a marijuana
11 production or processing business located within 1,000 feet of Irving Park. Mr. Gosselin filed a
12 motion seeking summary judgment on the issue of whether a variance can be granted for such a
13 business when it is located near a park and playground. In response to the Gosselin motion, the
14 City made a cross-motion for summary judgment seeking a ruling upholding its position that a
15 variance is not available based on the subject building's proximity to a playground. In
16 considering the motions, the Hearing Examiner reviewed the following submissions:

- 17
- 18 1. Notice of Appeal by Applicant with Attachments and Exhibits 1-15.
 - 19 2. Appellant's Motion for Summary Judgment.
 - 20 3. Stipulation of the Parties.
 - 21 4. Declaration of Appellant Timothy Gosselin with Ex. 1, Attachments 2-15 and Ex. 2.¹

¹ The materials submitted do not include a full copy of Ex. 1 or Attachment 1.

1 heavily wooded steep bluff.

2 The site is zoned M-1 STGPD-ST-M/IC, Light Industrial. The zoning allows
3 warehousing, storage, vehicle service and repair, and other light industrial uses. *Tacoma*
4 *Municipal Code (TMC) 13.06.400.B.1; TMC 13.06.400.B.4.* Marijuana production and
5 processing is allowed within this zone, if applicable criteria are met. *TMC 13.06.400.B.5.*

6 Irving Park is located at 2502 S. Hosmer Street, in Tacoma at the intersection of South
7 25th Street and South Hosmer Street. Irving Park was established in 1946 when property owned
8 by the Tacoma School District was effectively transferred to the Metropolitan Park District of
9 Tacoma (Metro Parks). Irving Park is approximately 2.7 level acres. It is bounded on the east
10 by South Hosmer Street, on the north by South 25th Street, to the west by South Sprague
11 Avenue and the Sprague Avenue off-ramp from westbound Highway 16. To the south, the park
12 is bounded by vacant land that is a steep, heavily vegetated and wooded bluff that runs
13 downhill to Nalley Valley.

14 Irving Park has a basketball court, children’s playground equipment that includes slides,
15 swings, and climbing apparatus, picnic tables, other bench-type seating, and an open grassy
16 area where sports such as soccer and softball can be played. Irving Park is northwest of the
17 subject property. The nearest point of Irving Park is approximately 500 to 525 feet from the
18 nearest point of the subject property.

19 Tax rolls maintained by the Pierce County Assessor show that Irving Park consists of
20 parcel numbers 28950001280 and 28950001290.³ Metropolitan Park District of Tacoma is
21 identified as the taxpayer for both parcels. Irving Park is owned and managed by the

³ The Stipulation contains a typographical error on the parcel numbers. The correct numbers are referenced in the text above.

1 Metro Parks. *Stipulation of the Parties.*

2 The City of Tacoma submitted two declarations in support of their Response to
3 Appellant’s Motion for Summary Judgment and Cross-Motion for Summary Judgment.⁴
4 Rebecca Smith, Director of Licensing and Regulation for the Washington State Liquor and
5 Cannabis Board (Board) indicates that she was the Marijuana Unit Manager for the Board in
6 2013. She states that in the Board’s regulations, playgrounds were intended to have more
7 protection, in general, from marijuana businesses than parks. She further declares that not
8 adding metropolitan park districts to the ownership paradigm in the definition of “playgrounds”
9 was an oversight and not an intentional omission. Ms. Smith did acknowledge that the Board
10 specifically included ownership by a metropolitan park district to the definition of a “park”
11 because it had been brought to the Board’s attention that, without this addition, parks might
12 have no protection in a jurisdiction like Tacoma where the metropolitan park district essentially
13 owns all public parks. She further asserts that the Board sees the metropolitan park district as
14 the functional equivalent of the city when it comes to ownership of a playground. *Smith*
15 *Declaration.*

16 Mark Lauzier signed a declaration as acting City Manager for the City of Tacoma. He
17 indicates that because the City of Tacoma has no parks department, Metro Parks fills that
18 function for the City. Metro Parks owns and operates public parks and provides recreational
19 services and opportunities to the public that would typically be provided by a city’s parks
20 department. The City sees Metro Parks as the functional equivalent of the City’s parks
21

⁴ The Appellant objects to the City’s cross-motion for summary judgment and the associated declarations. The material submitted is helpful in understanding the City’s position and will be considered on that basis. The facts contained in the declarations do not raise disputed issues of material fact necessary for resolution of the legal issue in controversy. Therefore, no further discovery or rebuttal is warranted.

1 department. To the extent the language of the Board's regulations fails to provide protection to
2 playgrounds owned by a metropolitan park district, similar to the protection provided to
3 playgrounds owned by a city, Tacoma will be seeking amendment of the Board's regulations.

4 *Lauzier Declaration.*

5 **Analysis**

6 Summary judgment is a procedure available to avoid unnecessary trials or hearings on
7 formal issues that cannot be factually supported and could not lead to, or result in, a favorable
8 outcome to the opposing party. *LaPlante v. State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975).

9 The summary judgment process is intended to eliminate a trial or hearing if only questions of
10 law remain for resolution and neither party contests facts necessary to reach a legal

11 determination. *Marincovich v. Tarabochia*, 114 Wn.2d 271, 274, 787 P.2d 562 (1990);

12 *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982). In this case, the material facts
13 pertinent to the City's decision on the requested variance are not in dispute and the matter is
14 appropriate for summary judgment.

15 The parties have stated the legal issue on summary judgment in slightly different terms,
16 but the ultimate inquiry is whether Irving Park falls within the protection afforded playgrounds
17 under RCW 69.50.331(8)(a) and (8)(b), WAC 314-55-050(10), and TMC 13.06.565. The
18 Appellant contends Irving Park is not a playground within the governing definitions because it
19 is not owned by a city. The City argues that Irving Park should be considered a playground
20 under the definitions contained in WAC 314-55-010(24) because Metro Parks is the functional
21 equivalent of the City. In addition, the City insists excluding Irving Park's facilities from the

1 definition of a protected playground would be inconsistent with the intent of the Legislature and
2 the Washington State Liquor and Cannabis Board.

3 The Revised Code of Washington contains a statement regarding the scope of a local
4 government's ability to enact laws and ordinances relating to controlled substances, including
5 cannabis:

6 Cities, towns, and counties or other municipalities may enact only
7 those laws and ordinances relating to controlled substances that are
8 consistent with this chapter... Local laws and ordinances that are
9 inconsistent with the requirements of state law shall not be enacted
and are preempted and repealed, regardless of the nature of the code,
charter, or home rule status of the city, town, county or municipality.

10 *RCW 69.50.608*. This general state preemption of drug related laws limits the City of Tacoma's
11 authority to pass ordinances inconsistent with state statutes. The State of Washington has
12 addressed the permissible locations for cannabis related activities as follows:

13 Except as provided in (b) through (d) of this subsection, the state
14 liquor and cannabis board may not issue a license for any premises
15 within one thousand feet of the perimeter of the grounds of any
16 elementary or secondary school, playground, recreation center or
facility, child care center, public park, public transit center, or
library, or any game arcade admission to which is not restricted to
persons aged twenty-one years or older.

17 *RCW 69.50.331(8)(a)*.

18 Local jurisdictions are allowed to reduce the 1,000-foot buffer for certain types of facilities, but
19 buffers for schools and playgrounds cannot be decreased:

20 (b) A city, county, or town may permit the licensing of premises
21 within one thousand feet but not less than one hundred feet of the
facilities described in (a) of this subsection, *except elementary*

1 *schools, secondary schools, and playgrounds*, by enacting an
2 ordinance authorizing such distance reduction, provided that such
3 distance reduction will not negatively impact the jurisdiction's civil
4 regulatory enforcement, criminal law enforcement interests, public
5 safety, or public health.

6 *RCW 69.50.331(8)(b)(emphasis added).*

7 The Washington State Liquor and Cannabis Board adopted administrative regulations
8 addressing the buffer requirements for cannabis related facilities and providing definitions for
9 relevant terms. The setback requirements provide:

10 (10) The WSLCB shall not issue a new marijuana license if the
11 proposed licensed business is within one thousand feet of the
12 perimeter of the grounds of any of the following entities. The
13 distance shall be measured as the shortest straight line distance from
14 the property line of the proposed building/business location to the
15 property line of the entities listed below:

- 16 (a) Elementary or secondary school;
- 17 (b) Playground;
- 18 (c) Recreation center or facility;
- 19 (d) Child care center;
- 20 (e) Public park;
- 21 (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to
 persons age twenty-one or older).

 (11) A city or county may by local ordinance permit the licensing of
 marijuana businesses within one thousand feet but not less than one
 hundred feet of the facilities listed in subsection (10) of this section
 except elementary and secondary schools, and playgrounds.

WAC 314-55-050.

1 The Board also adopted definitions, including a definition of playground that focuses on the
2 nature of the space and ownership:

3 (24) "Playground" means a public outdoor recreation area for
4 children, usually equipped with swings, slides, and other playground
5 equipment, owned and/or managed by a city, county, state or federal
6 government.

7 *WAC 314-55-010(24)*. The Board also defined a public park based on property characteristics
8 and ownership.

9 (25) "Public park" means an area of land for the enjoyment of the
10 public, having facilities for rest and/or recreation, such as a baseball
11 diamond or basketball court, owned and/or managed by a city, county,
12 state, federal government, or metropolitan park district. Public park
13 does not include trails.

14 *WAC 314-55-010(25)*. Unlike the definition of playground, the public park definition
15 specifically addresses ownership by a metropolitan park district.

16 The City of Tacoma adopted an ordinance addressing the location of cannabis
17 businesses that incorporates the definitions found in WAC 314-55-010:

18 3. For purposes of this Section and the standards applicable to state-
19 licensed marijuana uses, the terms and definitions provided in WAC
20 314-55 shall generally apply unless the context clearly indicates
21 otherwise.

22 *TMC 13.06.565.B.3*. The City of Tacoma location requirements for cannabis related businesses
23 parallel the state buffer zones by stating:

24 a. As provided in RCW 69.50.331 and WAC 314-55-050, marijuana
25 uses shall not be allowed to locate within 1,000 feet of elementary
26 schools, secondary schools, or playgrounds. For purposes of this
27 standard these uses are as defined in WAC 314-55.

1 *TMC 13.06.565*. Given this statutory and regulatory framework, the City evaluated
2 Mr. Gosselin's request for a variance from the 1,000-foot buffer between the playground at
3 Irving Park and the proposed cannabis production/processing site. The City concluded that it
4 could not vary the 1,000-foot setback because Irving Park contains a playground and
5 playgrounds are one of the uses that are not subject to local buffer reduction under RCW
6 69.50.331 and WAC 314-55-050.

7 Mr. Gosselin points out that the definition of a playground in the administrative
8 regulations, which have been incorporated by reference in the TMC, does not explicitly include
9 playgrounds owned by a metropolitan park district. The facilities at Irving Park comply with
10 that portion of the playground definition describing the physical characteristics of a playground.
11 However, the fact that Metro Parks holds title to the park property puts the facility outside the
12 parameters of the playground definition's requirement addressing ownership. The language of
13 the regulation contains a list of entities that must own a playground to fall within the definition.
14 The list does not contain metropolitan park districts. Mr. Gosselin argues that the plain
15 language of the regulation governs and that Irving Park does not qualify as a playground for
16 purposes of WAC 314-55-010(24) and by extension TMC 13.06.565, because it is not owned
17 by one of the identified entities.

18 The City maintains that the clear intent of the state statutes and regulations is to provide
19 enhanced protection to playgrounds and that omitting playgrounds owned by metropolitan park
20 districts from the extra buffer protection for schools and playgrounds is inconsistent with the
21 intent and purpose of state law. The City has submitted a sworn declaration from Rebecca

1 Smith, Director of Licensing and Regulation for the State of Washington Liquor and Cannabis
2 Board indicating that the Board had no intent to omit playgrounds owned by metropolitan parks
3 from the definition of playgrounds with 1,000-foot buffer protection.⁵ She further indicates that
4 failure to include playgrounds owned by a metropolitan park district in the regulation was an
5 omission the Board will be moving to correct.

6 The Planning and Development Services Director's decision concluded that it would be
7 an absurd result to interpret WAC 314-55-010(24) to exclude playgrounds owned by Metro
8 Parks from the 1,000-foot buffer protection. To do so would leave playgrounds in parks within
9 the City of Tacoma with reduced, rather than enhanced, protection from cannabis uses. The
10 Director's concern over lack of buffer protection is valid given the fact that Metro Parks owns
11 the vast majority of public playgrounds in the City of Tacoma. Leaving a large segment of
12 playgrounds in public parks without increased buffer protection, based on ownership alone,
13 makes no sense to the City.

14 Unfortunately, the language used in WAC 314-55-010(24) to define the class of
15 protected playgrounds omits any reference to playgrounds owned by metropolitan park districts.
16 This appears to be an oversight and there is no evidence that such playgrounds were intended to
17 fall outside the protected class. However, a discrete list cannot be expanded through
18 "interpretation." As the court held in *State v. Delgado*, 148 Wn.2d, 723, 727, 63 P.3d 792
19 (2003), the court cannot add statutory language to correct an omission:

20 The statute expressly lists those qualifying prior convictions which
21 expose an offender to a sentence of life without parole as a two-

⁵ Use of an individual's comments regarding intent cannot be used to establish the intent of the larger body, like the Legislature. The court in *Scott v. Cascade Structures*, 100 Wn.2d 537, 544, 673 P.2d 179 (1983) ruled: "We have consistently held that the comments of individual legislators cannot be used to establish the intent of the entire legislative body." (citing *Woodson v. State*, 95 Wn.2d 257, 264, 623 P.2d 683 (1980)).

1 strike persistent offender. The statute ends with the limiting
2 language 'of an offense listed in (b)(i) of this subsection.' Statutory
3 rape is not listed. We conclude this list of predicate strike offenses is
4 exclusive, and we can find no basis to add any offenses not listed.

5 E.g., *Dot Foods Inc. v. Dep't of Revenue*, 166 Wn.2d 912, 920, 215 P.3d 185 (2009)(To
6 achieve such an interpretation, we have to import additional language into the statute that the
7 Legislature did not use. We cannot add words or clauses to a statute when the Legislature has
8 chosen not to include such language); *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)
9 (cannot add words or clauses to an unambiguous statute). The *Delgado* court went on to
10 observe that the courts have long refrained from inserting language in statutes, even to correct a
11 legislative error. *Delgado*, 148 Wn.2d at 730.

12 The City is asking that the regulation defining playgrounds be interpreted to expand
13 coverage to entities that are not contained in the adopted regulation. The tenants of statutory
14 construction do not allow the addition of language to a duly adopted regulation, no matter what
15 the subjective intent of the legislative or administrative body might have been. In this case, the
16 plain language of the regulation defining playground contains a list of covered owners that does
17 not include metropolitan park districts. Statutory interpretation does not support adding a new
18 entity to the existing list.

19 The City further argues that Metro Parks should fall within the definition of a city
20 owned playground under WAC 314-55-010(24) because Metro Parks is the functional
21 equivalent of a city. While it is true that Metro Parks operates much like the parks department
of a city, there is no legal support for actually considering Metro Parks a city. Metro Parks has

1 a much more limited scope of functions than a municipality and simply cannot be equated to
2 the term “city.”

3 The evidence strongly suggests that playgrounds owned by metropolitan park districts
4 should be included within the definition of playgrounds receiving added protection from
5 cannabis businesses. The appropriate remedy for the oversight that led to this dilemma is to
6 amend the definition of playgrounds to include playgrounds owned by metropolitan park
7 districts. The Liquor and Cannabis Board can undertake this amendment, and apparently plans
8 to do so. The City of Tacoma can also modify its own ordinance to extend 1,000-foot buffers
9 to playgrounds owned by metropolitan park districts, rather than relying on the state
10 regulation’s definition. In either case, under the currently operative language, playgrounds
11 owned by metropolitan park districts are not within the class of playgrounds that must be
12 protected by a 1,000-foot buffer.

13 The Director rejected the variance application filed by Mr. Gosselin because he was of
14 the opinion that playgrounds owned by Metro Parks should be covered by the definition of
15 playground in WAC 314-55-010(24). Given the ruling in this decision that the definition of
16 playground in WAC 314-55-010(24) does not extend to playgrounds owned by metropolitan
17 park districts, the merits of the variance application should be considered. This case is properly
18 remanded for consideration of the merits of Mr. Gosselin’s variance application under the facts
19 and circumstances specific to his site. Irving Park is not a playground given protection by the
20 terms of WAC 314-55-010(24). However, Irving Park remains a public park under the
21 definitions of WAC 314-55-010(25), and the variance requested should be considered

1 substantively on remand.

2 Based upon the undisputed facts and the analysis above, the Hearing Examiner enters
3 the following:

4 **ORDER**

5 Mr. Gosselin's Motion for Summary Judgment on the issue of whether Irving Park is a
6 protected playground under the terms of currently governing laws, regulations, and ordinances
7 is GRANTED. Irving Park is a public park, but not a playground, under currently governing
8 regulations. Accordingly, the City's Cross-Motion for Summary Judgment is DENIED. This
9 case is remanded to Planning and Development Services for further consideration of the
10 substance of Mr. Gosselin's variance request.

11 **DATED** this 22nd day of February, 2017.

12 

13 **PHYLLIS K. MACLEOD, Hearing Examiner**

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1 **NOTICE**

2 **RECONSIDERATION/APPEAL OF EXAMINER'S DECISION**

3 **RECONSIDERATION TO THE OFFICE OF THE HEARING EXAMINER:**

4 Any aggrieved person or entity having standing under the ordinance governing the matter, or
5 as otherwise provided by law, may file a motion with the Office of the Hearing Examiner
6 requesting reconsideration of a decision or recommendation entered by the Examiner. A
7 motion for reconsideration must be in writing and must set forth the alleged errors of
8 procedure, fact, or law and must be filed in the Office of the Hearing Examiner within 14
9 calendar days of the issuance of the Examiner's decision/recommendation, not counting the
10 day of issuance of the decision/recommendation. If the last day for filing the motion for
11 reconsideration falls on a weekend day or a holiday, the last day for filing shall be the next
12 working day. The requirements set forth herein regarding the time limits for filing of
13 motions for reconsideration and contents of such motions are jurisdictional. Accordingly,
14 motions for reconsideration that are not timely filed with the Office of the Hearing Examiner
15 or do not set forth the alleged errors shall be dismissed by the Examiner. It shall be within
16 the sole discretion of the Examiner to determine whether an opportunity shall be given to
17 other parties for response to a motion for reconsideration. The Examiner, after a review of
18 the matter, shall take such further action as he/she deems appropriate, which may include the
19 issuance of a revised decision/recommendation. (*Tacoma Municipal Code 1.23.140*)

20 **NOTICE**

21 **APPEAL TO SUPERIOR COURT OF EXAMINER'S DECISION:**

Pursuant to the Official Code of the City of Tacoma, Section 1.23.160, the Hearing Examiner's
decision is appealable to the Superior Court for the State of Washington. Any court action to
set aside, enjoin, review, or otherwise challenge the decision of the Hearing Examiner shall be
commenced within 21 days of the entering of the decision by the Examiner, unless otherwise
provided by statute.



**VARIANCE PERMIT
APPLICATION FOR:**

FILE NO.: LU16-0195

Timothy Gosselin
3511 N Union Ave
Tacoma, WA 98407

SUMMARY OF REQUEST:

A Variance request to allow a marijuana producer/processor to be located within 1,000 feet of a park. The proposed marijuana use would be located approximately 500 feet from Irving Park. The site is located in the "M-1 STGPD-ST-M/IC" Light Industrial, South Tacoma Ground Water Protection District and South Tacoma Manufacturing/Industrial Center.

LOCATION:

2733 & 2725 S. Ash Street; Parcel Nos.: 2855000280 & 2855000290

SUMMARY OF DECISION on REMAND:

The request for a Variance is **Approved**.

Notes:

The appeal period on this decision closes April 12, 2017, and the effective date of this decision is the following business day, provided no requests for reconsideration or appeals are timely filed as identified in APPEAL PROCEDURES of this report and decision.

The Director has jurisdiction in this matter per *TMC* 13.05.030. The applicant bears the burden of proof to demonstrate the proposal is consistent with the provisions of the *TMC*, the applicable provisions and policies of the City's *Comprehensive Plan*, and other applicable ordinances of the City.

**FOR ADDITIONAL INFORMATION CONCERNING THIS LAND USE PERMIT PLEASE
CONTACT:**

Lisa Spadoni
Planning and Development Services Department
747 Market Street, Room 345, Tacoma, WA 98402
253-591-5281 or lspadoni@cityoftacoma.org

SUMMARY OF RECORD

The following attachments and exhibits constitute the administrative record:

Attachments:

- Attachment "A": Vicinity maps and site plan
- Attachment "B": Photographs of the site and Irving Park

Exhibits¹:

- Exhibit "A": Applicant's Justification for the Variance
- Exhibit "B": Public Comments
- Exhibit "C": Applicant's response to Public Comments

FINDINGS

Proposal:

1. The applicant requests a variance to allow a marijuana producer/processor to be located within 1,000 feet of a park. The proposed marijuana use would be located approximately 500 feet from Irving Park. The *Tacoma Municipal Code (TMC)* requires that marijuana producers/processors be located more than 1,000 feet from public parks and other stated uses.

Project Site:

2. The site is located at 2733 and 2725 S. Ash Street, within the "M-1 STGPD-ST-M/IC" Light Industrial, South Tacoma Ground Water Protection District and South Tacoma Manufacturing/Industrial Center. The site consists of two parcels and is approximately 15,500 square feet. The building located on site is an approximately 13,000 square foot, single-story structure.
3. The site is relatively flat with a slight upward grade from south to north and has frontage on S. Ash Street to the west and alley access to the east. It is located approximately 85 feet from the intersection of S. Ash Street and Center Street on the north side of the Nalley Valley. South Ash Street dead-ends approximately 85 feet north of the site.

Surrounding Area:

4. The larger area is generally known as the Nalley Valley, a low, flat area historically and currently used and zoned as a manufacturing/ industrial area. The Nalley Valley in this area is generally zoned "M-2" Heavy Industrial at the lowest point of the valley and zoned "M-1" Light Industrial on the north and south sides of the valley as it begins to slope upward. The steeper slopes and areas at the top of slopes are generally zoned residential.
5. The properties immediately surrounding the subject site are developed with light industrial warehouse and manufacturing businesses and are also located in the "M-1 STGPD-ST-M/IC" Districts and Overlay. The properties across Center Street to the south are located in the "M-2" Heavy Industrial District and the "STGPD-ST-M/IC" District and Overlay.
6. Approximately 100 feet north of the subject site, the valley slopes steeply upward and is zoned "R-2" Single-family dwelling district. The steeply sloped properties to the north and northwest are undeveloped and are owned by the City of Tacoma and/or the Metropolitan

¹ All Exhibits are contained within associated file of the Planning and Development Services Department. They are referenced and incorporated herein as though fully set forth.

Park District of Tacoma.

7. Irving Park is located approximately 500 feet to the northwest of the subject site at the top of the steep slopes. It is at an elevation approximately 90 feet higher than the subject site. The park is developed with a playground containing swings, a play structure with slide, and benches, and with a basketball court and large open fields. The park is owned and managed by Metro Parks Tacoma.
8. There is no direct vehicle or pedestrian connection between Irving Park and subject site. The shortest walking or driving route is approximately 1,875 feet (0.35 miles) along Center Street, S. Wilkeson Street, and S. 25th Street.

Additional Information:

9. The applicant's justification for the variance application is marked as an Exhibit to this report and decision. In summary, the applicant states the following:
 - State Law (RCW 69.50.331(8)(a)) indicates that the state liquor and cannabis board may not issue a license for any premises within 1,000 feet of the perimeter of the grounds of sensitive uses including playgrounds and public parks. The State has given local governments the authority to reduce the buffer distance to as low as 100 feet from certain uses including public parks, but not including playgrounds. Consistent with this, the City of Tacoma adopted *TMC 13.06.565.C.11* Location requirements. This section requires a 1,000 buffer from playgrounds and public parks. However, the City reduced the buffer for marijuana retail uses in the downtown core to 500 feet from public parks.
 - WAC 314-55-010 provides the following definitions for a park versus a playground:

"Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

"Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.
 - Irving Park is owned by the Metropolitan Park District of Tacoma, not by the City of Tacoma. Therefore, it meets the definition of a public park, but does not meet the definition of a playground, as presently defined. The state legislature knowingly made this ownership distinction in the definitions.² As such, the City is not prevented from granting a variance to the 1,000 foot distance requirement by anything in the state definitions. Such a grant of variance would be similar in effect to how it has reduced the distance requirement in the downtown core.
 - The purpose of the 1,000 foot buffer is to shield certain uses from exposure to marijuana uses, yet many authorized operations of retail, production and processing remain highly visible. Even with a reduced buffer, this site will exceed any expectation for shielding and will be shielded even better than most sites with a 1,000 foot buffer. The site is not on a main street and is not exposed to any pedestrian traffic. Since the street is a dead-end, there is limited vehicle traffic. It is shielded to the north by a high, heavily wooded bluff

² The Director would note here that the definition in question is not promulgated by the state legislature, but rather at the agency level, in this case, by the state Liquor and Cannabis Board.

and is not visible from the sensitive use, Irving Park. To get close to this site, an individual would have to drive or walk approximately ½ mile and would pass through other areas that are approved for marijuana retail sales and processing. Since the natural topography and vegetation in the area provides an even more effective buffer and barrier than the 1,000 foot separate requirement, the strict application of the code is unreasonable in this circumstance.

- The request is the minimum necessary to afford relief from the hardship and conditions could be placed to address concerns such as restrictions on signage, odor control or any visible activities.
 - The proposal would allow a reasonable use of the site consistent with all other zoning requirements and consistent with surrounding uses. Production and processing uses generally do not publicize their locations and produce no unusual sounds, odors or traffic that would cause them to stand apart from other authorized uses. The unique location of the site and topography in relation to Irving Park create an even more effective buffer than what the code otherwise requires.
 - The proposal is consistent with the Comprehensive Plan policies for continued growth and development, diversification and expansion of Tacoma's economic base; cultivation of a business culture that allows existing businesses to grow and draws new firms and encourages homegrown enterprises; and creating robust and thriving employment centers. The Nalley Valley area is housing many other marijuana businesses and this is facilitating the growth of an industrial center that provides opportunities for economic development and job growth.
 - The proposal is beneficial to the general public as it facilitates specific goals of the Comprehensive Plan and does so without negative impact to the community.
10. On December 8, 2016, the Director issued a Decision denying the applicants request for a variance concluding that Irving Park was both a park and playground and that as a playground, the City did not have the authority to grant a variance to the 1,000 foot separation distance between a marijuana production/processing facility and a playground. The Decision did not provide further consideration of the substance of the applicant's request. The applicant appealed the Decision of the Director to the Hearing Examiner. The Hearing Examiner issued an Order that indicated Irving Park is a public park but not a playground under current governing regulations and remanded the case to the Director for further consideration of the substance of the variance request.

Notification and Comments:

11. The application was determined to be complete on August 15, 2016. Written notice of the application was mailed to owners of property within 100 feet of the site as indicated by the Pierce County Assessor/Treasurer's records, the neighborhood council, and qualified neighborhood groups, allowing for 14 days of comment period. Public notice was posted on the site within seven days of the start of the comment period.
12. Two public comment letters were received in opposition to the proposed variance. In summary, the Director understands the concerns to be as follows:
- The processing plant would be within 1,000 feet of Irving Park, a neighborhood park that includes a playground and other amenities for the enjoyment of the public.
 - The ownership of the park by Metro Parks of Tacoma is a governmental agency with an elected board and executive and therefore the public park/playground meets the requirements of WAC 314-55-010 as a playground and park.

- Even though Irving Park is on a bluff, children could climb the fence and explore the area outside the park. Parks need to be safe areas for children to play with no drugs nearby.
- Marijuana processing should only be in heavy industrial sites. Approval of this request would set a precedent for similar requests.

13. The public comments were provided to applicant on October 3, 2016. In summary, the Director understands the applicant's response to be as follows:

- Irving Park is not owned by a governmental agency within the definition of playground in the WAC. Therefore, while it qualifies as a park, it does not meet the definition of a playground under the WAC.
- There is no credible evidence that a nondescript marijuana processing facility within an industrial zone would jeopardize the safety or welfare of children even if it were in closer proximity to a park.
- Children should be protected from exposure to drugs. That concern could be addressed if the variance was conditioned that the building not be allowed external markings or signs that associate it with marijuana production and not emit identifying odors. This would prevent any children who explored the steep bank to the industrial area below from knowing what the building was used for.
- The site is in an industrial area and should be allowed to house a viable economic use.

Additional Regulations and Policies:

14. TMC Section 13.06.400.C.5 allows for marijuana production and processing within the "M-1" Light Industrial District, subject to additional requirements contained in Section 13.06.565.
15. TMC Section 13.06.565 contains the regulations pertaining to the establishment of marijuana uses including signage standards and standards to control odors. It also includes the intent of marijuana regulation, stating in part:

It is the intent of these regulations to ensure that such state-licensed uses are located and developed in a manner that is consistent with the desired character and standards of this community and its neighborhoods, minimizes potential incompatibilities and impacts, and protects the public health, safety and general welfare of the citizens of Tacoma. Recognizing the voter-approved right to establish certain types of marijuana businesses, it is also the intent of these regulations to provide reasonable access to mitigate the illicit marijuana market and the legal and personal risks and community impacts associated with it.

16. TMC Section 13.06.565.C.1 indicates that Marijuana uses (marijuana producer, marijuana processor, marijuana researcher, and marijuana retailer) shall only be permitted as allowed under RCW 69.50 and WAC 314-55.
17. TMC Section 13.06.565.C.11 includes the location requirements for marijuana uses including the following:
- d. Marijuana producer, processor and researcher uses shall not be allowed to locate within 1,000 feet of public parks, recreation centers or facilities, libraries, child care centers, game arcades, and public transit centers. For purposes of this standard, these uses are as defined in WAC 314-55.

18. WAC 314-55-010 includes the following definitions for playground:

"Playground" means a public outdoor recreation area for children, usually equipped with

swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government.

19. *TMC* Section 13.06.645.B.1.b includes the criteria required for approval of variance to development regulations such as buffer or setback distance.

20. The *Comprehensive Plan*, which sets forth policy regarding development in the City of Tacoma, provides the following policy guidance relative to industrial development:

GOAL DD-9 | Support development patterns that result in compatible and graceful transitions between differing densities, intensities and activities.

Policy DD-9.5 Protect non-industrial zoned parcels from the adverse impacts of activities on industrial zoned parcels.

Policy DD-9.6 Buffer between designated Manufacturing/Industrial Centers and adjacent residential or mixed-use areas to protect both the viability of long-term industrial operations and the livability of adjacent areas.

CONCLUSIONS³

1. As the Hearing Examiner has determined that Irving Park does not meet the definition of a playground, but does meet the definition of a park, then evaluation of the variance request against the criteria identified in *TMC* 13.06.645.B.1 is made as follows:

a. *The restrictive effect of the specific zoning regulation construed literally as to the specific property is unreasonable due to unique conditions relating to the specific property, and which do not result from the actions of the applicant, such as: parcel size; parcel shape; topography; location; documentation of a public action, such as a street widening; proximity to a critical area; location of an easement; or character of surrounding uses.*

The site is located at the edge of the Nalley Valley, at the bottom of a steep topographic decline. There is an elevation difference of approximately 90 feet between the site and Irving Park and the slope between the site and park is undeveloped and heavily wooded. In addition, there is no direct street or pedestrian connectivity between the site and the Park. The shortest route between the site and the park is approximately 1,875 lineal feet, substantially greater than the code required 1,000 foot buffer distance. The Director concludes that these are unique conditions related to the property that make the restrictive effect of the zoning regulation unreasonable. See Attachments "A" and "B"; Exhibit "A"; Findings 1-10 and 17.

b. *The requested variance does not go beyond the minimum necessary to afford relief from the specific hardship affecting the site*

The variance does not go beyond the minimum necessary to afford relief from the hardships affecting the site since the request is for only the amount of reduction needed to allow the marijuana use. See Attachment "A"; Exhibit "A"; Findings 1-2 and 7.

c. *The grant of the variance would allow a reasonable use of the property and/or allow a more environmentally sensitive site and structure design to be achieved than would*

³ Conclusions are based upon the applicable criteria and standards set forth in the *TMC*, the policies of the *Comprehensive Plan*, and the Attachments and Exhibits listed herein. Any conclusion of law hereinafter stated which may be deemed a finding of fact herein is hereby adopted as such.

otherwise be permitted by strict application of the regulation, but would not constitute a grant of special privilege not enjoyed by other properties in the area

The grant of the variance will allow a reasonable use of the site since marijuana production and processing are allowed uses in the "M-1" Light Industrial zone district and the topography, vegetation and street/pedestrian connectivity provide an alternative buffer between the use and nearby park. The Director concludes that the granting of the variance would not constitute a grant of special privilege not enjoyed by other properties in the area, since other properties could be granted similar relief if they could demonstrate similar circumstances, and other marijuana uses do, in fact, exist in the Nalley Valley. See Attachment "A" and "B"; Exhibit "A"; Findings 1-10, 14 and 15

- d. *The grant of the variance will not be materially detrimental or contrary to the Comprehensive Plan and will not adversely affect the character of the neighborhood and the rights of neighboring property owners.*

The site is located in the Nalley Valley, an area historically and currently used for light and heavy industry. It is in an industrial zone district and further protected as an industrial area under the South Tacoma Manufacturing /Industrial Overlay District. It is surrounded by other light and heavy manufacturing facilities. The site is separated from residential and park uses to the north and northwest by a 90 foot topographic change and by the undeveloped and heavily vegetated nature of the hillside as it rises out of the valley. In addition, there is no direct pedestrian or vehicle connectivity between the site and park and residential uses to the north. The hillside creates a visual and physical barrier between the industrial and park use. The Director would also note that the specific code provisions of TMC 13.06.565 will apply, including sections pertaining to the control of odors and signage standards. Therefore, the Director concludes that the reduction in separation distance between the proposed marijuana production and processing use and Irving Park will not be contrary to the Comprehensive Plan or adversely affect the character of the neighborhood or rights of neighboring property owners. See Attachment "A" and "B"; Exhibit "A"; Findings 1-20.

- e. *The grant of the variance will not cause a substantial detrimental effect to the public interest*

The proposal is consistent with the Comprehensive Plan and will not have a detrimental effect on neighboring properties. Therefore, it will not cause a substantial detrimental effect to the public interest.

- f. *Standard corporate design and/or increased development costs are not cause for variance.*

No information has been submitted to indicate that standardized corporate design and/or increased development costs were cause for the variance request.

DECISION

Based upon the above findings and conclusions, the requested Variance is **Approved**.

ORDERED this 29th day of March, 2017.



Peter Huffman
Director, Planning and Development
Services Department

FULL DECISION TRANSMITTED by first class mail and electronic mail to:

Timothy Gosselin, 3511 N Union Ave, Tacoma, WA 98407
Venus Dergan; vadergan@yahoo.com
Heidi White; batlmaidn3@aol.com

SUMMARY OF DECISION TRANSMITTED by first class or electronic mail to the following:

All property owners within 100 feet of the subject site
Central Neighborhood Council
Metropolitan Park District, Doug Frasier (DougF@tacomaparks.com)
Neighborhood Planning Team Members: Brian Boudet, Ian Munce, and Carol Wolfe

APPEAL PROCEDURES

Any request for RECONSIDERATION and/or any APPEALS must be submitted in the applicable manner as outlined below on or before **April 12, 2017**.

RECONSIDERATION:

Any person having standing under the ordinance governing this application and feeling that the decision of the Director is based on errors of procedure or fact may make a written request for review by the Director within fourteen (14) days of the issuance of the written order. This request shall set forth the alleged errors, and the Director may, after further review, take such further actions as deemed proper, and may render a revised decision. A request for RECONSIDERATION of the Director's decision in this matter must be filed in writing to the staff contact listed on the first page of this document.

APPEAL TO HEARING EXAMINER:

Any decision of the Director may be appealed by any aggrieved person or entity as defined in Section 13.05.050 of the *Tacoma Municipal Code*, within fourteen (14) days of the issuance of this decision, or within seven (7) days of the date of issuance of the Director's decision on a reconsideration, to appeal the decision to the Hearing Examiner.

An appeal to the Hearing Examiner is initiated by filing a Notice of Appeal accompanied by the required filing fee of **\$325.26**. Filing of the appeal shall not be complete until both the Notice of Appeal and required filing fee has been received. **THE FEE SHALL BE REFUNDED TO THE APPELLANT SHOULD THE APPELLANT PREVAIL.** (Pursuant to Section 2.09.020 of the *Tacoma Municipal Code*, fees for appeals shall be waived for qualifying senior citizens and persons who are permanently handicapped who are eligible for tax exemption because of financial status.)

The Notice of Appeal must be submitted in writing to the Hearing Examiner's Office, Seventh Floor, Tacoma Municipal Building, and shall contain the following:

- (1) A brief statement showing how the appellant is aggrieved or adversely affected.
- (2) A statement of the grounds for the appeal, explaining why the appellant believes the administrative decision is wrong.
- (3) The requested relief, such as reversal or modification of the decision.
- (4) The signature, mailing address and telephone number of the appellant and any representative of the appellant.