



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.

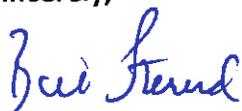
The Tribe believes interim regulations are warranted as an immediate threat of fossil fuel oriented developments exist on the Puyallup Reservation today. We believe that in order for the environmental impact statement (EIS) of the Tideflats Subarea Plan to be properly developed, it should have a clear 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

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 9 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

From: [John Atwill](#)
To: [Atkinson, Stephen](#)
Subject: Protect the Tacoma Tideflats from Fossil Fuels
Date: Tuesday, August 15, 2017 8:24:35 AM

John Atwill
6514 North 53rd Street
Tacoma, WA 98407

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 Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
John Atwill

From: [Denise Day](#)
To: [Atkinson, Stephen](#)
Subject: Protect the Tacoma Tideflats from Fossil Fuels
Date: Tuesday, August 15, 2017 2:14:20 PM

Denise Day
506 East 64th Street
Tacoma, WA 98404

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 Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Denise Day

From: [Becca \(Krzmarzick\) Fairchild](#)
To: [Atkinson, Stephen](#)
Subject: Please Pause Fossil Fuels
Date: Tuesday, August 15, 2017 3:55:16 PM

Dear members of the Tacoma Planning Commission,

I am commenting in solidarity with the Protect Tacoma's Tidelands Coalition. Thank you for reviewing the need for interim regulations in the Tacoma Tidelands during the lengthy subarea planning process to come. 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 Tidelands 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 pause covers all new and expanded industrial fossil fuel facilities and infrastructure. Please ensure that the 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.

Thank you,

Becca Fairchild

11 year Tacoma resident, mom, PLU alumna

360.581.8716

From: TODD IVERSON <toddiverson@hotmail.com>

Date: August 16, 2017 at 9:12:52 AM PDT

To: Beale <bealec714@gmail.com>, Edmonds <cedmondstpc@gmail.com>, McInnis <jmcinnis@huitt-zollars.com>, Petersen <arl1@humboldt.edu>, Santhuff <bsanthuff@gmail.com>, Strobel <strobelski@gmail.com>, Waller <wallerdorian@gmail.com>, Wamback <steveintacoma@gmail.com>, Woolley <jeremyw@tacomaparks.com>

Cc: Dean McGrath <deanmcgrath@ilwulocal23.org>

Subject: Tideflats interim regulations

Dear members of the Planning Commission,

My name is Todd Iverson and I am a member of ILWU Local #23 at the Port of Tacoma. I am writing you regarding the interim uses of the Port and tideflats and speak on behalf of the 1,500 longshore workers at the Port as agreed upon by our local president.

In May I testified in front of the Tacoma City Council that there is some benefit of a long-term subarea zoning of the Port and an interim use policy to address any issues that may be grandfathered in or loopholed while the city undertakes the lengthy subarea zone process. The Port is the economic base for Pierce County and with its access to deepwater, its industrial lands need to be protected. That being said, we understand the large public sentiment to keep it safe and have been working with some local environmental groups to oppose any new oil terminals at the Port. Besides being a poor use of land for jobs, a new oil-export terminal would tie up our rail lines and make further expansion of the port's container business less viable.

We are also concerned that encroaching residential use on the tideflats needs to be addressed and are in favor of any interim use policy that prohibits expansion of residential use on Marine View Drive and anywhere else on the tideflats including the Thea Foss and Puyallup Avenue.

The latest proposal that you will be discussing on Wednesday goes beyond what needs to be done on the tideflats. They have included too many industries (metal recycling, pulp and grain facilities) and in my opinion, the scope of the original intention of the interim use regulation. The approach by staff, or whomever, to basically throw everything under the sun into this process is disingenuous to the original intention and only gives those who oppose any interim use regulations due justification. I would also encourage you to not accept the new proposed 10% conditional use permit expansion but find a better way to allow current business to be able to expand, create new jobs and adjust to changing markets.

I encourage the Planning Commission to seriously narrow the focus of the interim use regulation to only new oil export facilities and residential use, and if you must give a little latitude to existing companies on the tideflats to expand their footprint to meet future changes to their respective industries.

As always you can reach me via this email or my cell at 253-219-8717.

Thank you,

Todd Iverson

ILWU Local #23

From: [Alex Macdonald](#)
To: [Atkinson, Stephen](#)
Subject: Protect the Tacoma Tideflats from Fossil Fuels
Date: Tuesday, August 15, 2017 8:44:37 AM

Alex Macdonald
6010 Woodlake Drive
University Place, WA 98467

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. The 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.

I'd much rather you work to attract industries promising a healthy future than a controversial industry founded in the past.

Please forward this message to the following individuals:

Planning Commission Chair Chris Beale
Planning Commission Vice-Chair Stephen Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Alex Macdonald

From: [Bruce Martin](#)
To: [Wung, Lihuang](#)
Subject: For Planning Commissioners: Tideflats Area Interim Rule Comments from WestRock
Date: Tuesday, August 15, 2017 4:42:14 PM
Attachments: [image001.png](#)

To: Planning Commissioners: Chris Beale; Stephen Wamback; Carolyn Edmonds; Jeff McInnis; Anna Petersen; Brett Santhuff; Andrew Strobel; Dorian Waller; Jeremy Woolley

Subject: Planning Commission Tideflats Area Interim Rule Comments

Provided below for your consideration are observations and comments from the last Planning Commission Meeting's discussion:

- Staff's discussion regarding the concept of the need to "Pause to do the Right Plan" was originally presented in the context of taking the time to work through the Interim Rule development process correctly, and not rush that process to conclusion. It was not originally presented as a concept to justify getting the Interim Rule done quickly to provide a back-drop of "pause" for the Sub Area Planning process. Somewhere between subsequent Planning Commission Meeting dates this concept got turned around by Staff.
- Temporary interim rules should be defined in such a way as to be the minimum rule structure needed to maintain Planning Department oversight to avoid uncontrolled expansion during the Sub Area planning process. This can be most easily and directly accomplished through expanding the applicability and use of Conditional Use Permits during the interim period, not by an entirely new (temporary, interim) regulatory construct.
- Temporary regulation implementing growth limits for existing newly defined "High Risk/High Impact" regulation of business land use should be questioned in depth:
- If carried through to become an interim rule, there is significant concern over lack of clear definition of what is meant by "growth". However, trying to address a concern over lack of definition of growth by adding more layers of definition does not make the interim rule or rule process clearer or easier for staff to implement or for anyone to live with.
- A temporary, interim rulemaking should not be the vehicle to invent an entire new regulatory function to administer case-by-case ongoing assessments of Business growth. To do so would require an administrative process not intended to be the basis for new or final rules, which has never been required in the context of Land Use permitting.
- The proposed 10% or 20% threshold of for limiting business growth is clearly arbitrary. What is the rational basis that a 10% or 20% limit is appropriate? What is the likelihood, on a short-term basis, that uncontrolled business expansion is likely to

occur? Would uncontrolled growth likely occur across all businesses located in the Tide flats?

- If the concern the rule proposal is attempting to address is the potential impact to the environment from a significant business expansion, there are already Environmental requirements in place that limit growth with significant requirements for public notice and involvement.
- How would the Planning Department propose to measure and enforce a business growth limit?
- What is the practical justification or underpinning in what the Planning Department normally does in its course of business to support undertaking and implementing the business growth limit concept as proposed? A Rule development that requires affirmative reporting of business “growth” metrics for purposes of assessing compliance would be a dramatic expansion of the reach of the Planning Department mission. Contemplating any such dramatic expansion should not be implemented in a temporary interim regulation.
- There are no current Planning Department requirements addressing business productivity, and no foundation within the Department or staff to support development of productivity based rules. Examples of rules based on such concepts do exist for EPA and Ecology permitting of manufacturing facility operations. However, for those programs, compliance administration is funded and staffed appropriately to address the complexity required to appropriately implement such regulation.
- Defining a new, “High Risk / High Impact” land use category with specific listed prohibited activities is short sighted and problematic in that it presumes that Planning Staff know what manufacturing activities are unwanted by the public, without any actual opportunity to review a specific project for assessment. It also assumes that interim temporary rule making is the appropriate place to define new land use categories.

By way of example, proposed rules would categorically *prohibit* the existence any new “Bulk chemical storage, production, or processing” facility.

However, such a manufacturing operation could be proposed for acid hydrolysis of biomass, which would produce renewable non-fossil fuel for transportation. As proposed, this plant would be one of the Clean Energy and Clean Transportation technologies everyone is clamoring for as the future of Tide flat area manufacturing. Another example would be the same prohibition against a new facility to create synthetic natural gas from pyrolytic conversion of biomass. Again, the product would be used to displace fossil fuel use while simultaneously creating a product that promotes water conservation in the agricultural industry. Yet, as written, the proposed temporary interim rules would categorically prohibit anyone attempting to attract either such businesses for at least the next several years.

These are examples of the unintended but real consequence of a prescriptive temporary interim rule that presumes to know what value exists in all businesses, and on that basis specifically prohibits them by defined categories.

Defining new, “High Risk / High Impact” land use category with specific listed prohibited

activities is also short sighted and problematic because it is based on an attempt to address “concerns” by citing different issues for each industry segment as the basis of reason. From events that have happened around the country Staff could also easily cite similar qualifying “concerns” about a number of businesses not on the new “High Risk / High Impact” list... like a conference center causing legionnaire disease, or a hotel gassing people from swimming pool chemicals, high rise building fires, the hotel that exploded from natural gas on the peninsula last year etc. Using Staff’s logic in creating a new category of “High Risk / High Impact”, we would need to limit growth of those businesses as well due to valid concerns. Point is that laws regulate all businesses and it is unjust to limit growth of certain newly-chosen businesses in this manner because of narrow special interest group concerns.

Temporary interim regulation is not the platform to establish such detailed and rigid structure – and is not the way or strategy that makes sense for interim regulation. New prescriptive rule making is the level of detail that should be left to the Sub Area Planning debate.

A preference for Enhanced Review of development proposals of all kinds should suffice to provide the necessary protections sought in adoption of Interim Regulation.

Bruce Martin
Energy Resource Manager



801 E. Portland Ave. | Tacoma, WA 98421
T 253.596.0183 | M 253.307.2072

Bruce.Martin@westrock.com | www.westrock.com

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Atkinson, Stephen

From: maureenjerry@yahoo.com
Sent: Monday, August 14, 2017 10:01 PM
To: Atkinson, Stephen
Cc: Ryan Cruz
Subject: Review of the Need for Interim Regulations in the Tacoma Tideflats

August 14, 2017

Send to:
Stephen Atkinson
Senior Planner

Please forward this message to the following individuals:

Planning Commission Chair Chris Beale
Planning Commission Vice-Chair Stephen Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Dear members of the Tacoma Planning Commission,

I am commenting in solidarity with the Protect Tacoma's Tideflats Coalition. Thank you for reviewing the need for interim regulations in the Tacoma Tideflats during the lengthy subarea planning process to come. 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, 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 pause covers all new and expanded industrial fossil fuel facilities and infrastructure. Please ensure that the 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.

Thank you,

Jerry Kunz and Maureen Howard
3320 S. 8th St.
Tacoma, WA 98405 (USA)
phone: 253-756-8146
email: maureenjerry@yahoo.com

Wung, Lihuang

From: amsierra <amsierra@yahoo.com>
Sent: Monday, August 07, 2017 3:15 PM
To: Planning
Cc: Mello, Ryan; Thoms, Robert; McCarthy, Conor; Strickland, Marilyn; Lauren Walker
Subject: RE: Electronic billboards

Dear Planning Commission, Mayor Strickland and City Councilmembers Mello, Walker, McCarthy and Thoms, Electronic bill boards would be very detrimental to Tacoma. Please reinforce the 1997 Billboard Law. Thank you.

Sincerely,

Ana Maria Sierra, Ph.D.
W 253-686-5184
P 206-552-8516

Wung, Lihuang

From: maureenjerry@yahoo.com
Sent: Monday, August 14, 2017 10:01 PM
To: Atkinson, Stephen
Cc: Ryan Cruz
Subject: Review of the Need for Interim Regulations in the Tacoma Tideflats

August 14, 2017

Send to:
Stephen Atkinson
Senior Planner

Please forward this message to the following individuals:

Planning Commission Chair Chris Beale
Planning Commission Vice-Chair Stephen Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

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Thank you,

Jerry Kunz and Maureen Howard
3320 S. 8th St.
Tacoma, WA 98405 (USA)
phone: 253-756-8146
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GROUP**

PLLC

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Carolyn A. Lake
Attorney at Law
clake@goodsteinlaw.com

August 14, 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 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 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.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.

<https://www.bizjournals.com/portland/news/2017/07/19/portlands-ban-on-bulk-fossil-fuel->

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-seeke/>

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 9 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 Tideflats 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)

¹⁸ RCW 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

Wung, Lihuang

From: Boudet, Brian
Sent: Monday, August 14, 2017 10:40 AM
To: Wung, Lihuang
Subject: FW: Response to August 4th letter re: interim regulations for the Tideflats

Please forward to the Commissioners for their information.

BRIAN BOUDET
Planning Division Manager
City of Tacoma, Washington
747 Market Street, Room 345
Tacoma, WA 98402

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City of Tacoma
WASHINGTON

From: Holderman, Celia
Sent: Monday, August 14, 2017 10:19 AM
To: Blocker, Keith; Mello, Ryan; Ibsen, Anders
Cc: Pauli, Elizabeth; Huffman, Peter; Boudet, Brian; Lauzier, Mark; Wille, Tadd; Boydston, Rebecca; Campbell, Marty; Lonergan, Joe; McCarthy, Conor; Strickland, Marilyn; Thoms, Robert; Walker Lee, Lauren
Subject: Response to August 4th letter re: interim regulations for the Tideflats

Councilmembers Mello, Blocker and Ibsen,

Thank you for your communication of August 4th regarding the timing and scoping for the consideration of interim regulations for the Tideflats.

In regard to the schedule, I fully appreciate your sense of urgency and concern for expediency. However, please note that the direction to the Planning Commission from the full Council, was not to "put in place interim regulations" but was, as reflected in Resolution No. 39723, to "immediately begin discussion regarding, and consideration of the need for interim regulations ..." As a result, the first step taken by the Planning Commission, which took place on June 21st, was to discuss whether there exists a need for interim regulations. As a result of that discussion, the Planning Commission determined that there is a need for interim regulations. Please be advised that the Planning Commission will be reviewing draft interim regulations at its meeting on August 16th. This sequence and timing remains consistent with Council direction and the schedule conveyed to Council at the study session of July 18th. The current schedule would allow, among other considerations, for an additional public hearing, and would result in approximately a one month extension of the initial time frame conveyed to Council. However, the Commission has received your feedback regarding urgency, along with other public input reflecting concerns of the community. Thus, while staff has recommended, and continues to recommend, that the Planning Commission conduct a public hearing on the proposed interim regulations, this is not a legal requirement and the Commission, in its discretion, may determine to forward the proposed regulations to Council without a hearing to assist in expediting the schedule for Council consideration.

In regard to scope, your letter encourages the Planning Commission to focus on fossil fuels. As you are likely aware, the Commission has received much citizen input on the need for, and scope of, interim regulations for the Tideflats, and much of this input has been directed at fossil fuels. As the full Council considers the recommendation that comes from the Commission, the Council has discretion to expand or narrow the scope of the interim regulations if the Council determines that the recommended scope does not appropriately deal with this issue.

Thank you for sharing your concerns with me. I can assure you that staff recognizes that these issues are of great significance to our community, and that we will continue to align our efforts and resources to implement Council's direction on these important matters. Please let me know if you have any questions.

Elizabeth Pauli
City Manager

cc: Mayor Strickland and Council Members

DANA J. PEREGRINE

August 15, 2017

Stephen Atkinson, Senior Planner
City of Tacoma
746 Market Street
Tacoma, WA 98402

Please also forward this message to the following individuals:

Planning Commission Chair Chris Beale

Planning Commission Vice-Chair Stephen Wamback

Commissioners: Scott Winship, Dorian Walle, Brett Santhuff, Jeff McInnis, Anna Petersen, Meredith Neal, Jeremy Woolley

Dear Members of the Tacoma Planning Commission,

Since the citizen opposition to a methanol plant in Tacoma, it is very obvious to me that the Tacoma community, my community, wants their city's economic future to look different than the past. Tacoma citizens and I want a cleaner and sustainable future where the inherent value of the environment is recognized, protected and leveraged. To this end it is imperative to create interim regulations now that pause all fossil fuel proposals as well as all new and expanded industrial fossil fuel infrastructure and facilities. I urge you to hit the "pause" button now so that together, as a collective community we can, using the subarea plan as a tool, plan our long term economic future based on clean and green industries.

Now is the time to work hard and urgently on creating the clean vision for Tacoma's future. Why not make Tacoma a green and clean energy epicenter and hub? Why not make Tacoma an epicenter and hub for new and 3-D manufacturing? Why not make Tacoma and its environmentally unique tide flats area and bay a destination, a destination that doesn't exploit but leverages the beauty and inherent value? Anything is possible.

It's not unreasonable to believe that soon Seattle won't be a place people want, or can live. Bremerton may be where people look. Tacoma can be. Tacoma *will be* the place people come when we create a new Tacoma, not the "aroma of Tacoma", but a Tacoma that is creative, purposeful, and forward-thinking. Anything is possible.

Please act now. Formulate interim regulations *now* that **pause all** fossil fuel proposals and new and expanded industrial fossil fuel infrastructure and facilities.

Thank you,

Dana Peregrine

5036 Hyada Boulevard NE
Tacoma, Washington 98422
253 . 3 0 7 . 6 4 1 3

danaperegrine@hotmail.com

Wung, Lihuang

From: Bruce Martin <bruce.martin@westrock.com>
Sent: Tuesday, August 15, 2017 4:42 PM
To: Wung, Lihuang
Subject: For Planning Commissioners: Tideflats Area Interim Rule Comments from WestRock

To: Planning Commissioners: Chris Beale; Stephen Wamback; Carolyn Edmonds; Jeff McInnis; Anna Petersen; Brett Santhuff; Andrew Strobel; Dorian Waller; Jeremy Woolley

Subject: Planning Commission Tideflats Area Interim Rule Comments

Provided below for your consideration are observations and comments from the last Planning Commission Meeting's discussion:

- Staff's discussion regarding the concept of the need to "Pause to do the Right Plan" was originally presented in the context of taking the time to work through the Interim Rule development process correctly, and not rush that process to conclusion. It was not originally presented as a concept to justify getting the Interim Rule done quickly to provide a back-drop of "pause" for the Sub Area Planning process. Somewhere between subsequent Planning Commission Meeting dates this concept got turned around by Staff.
- Temporary interim rules should be defined in such a way as to be the minimum rule structure needed to maintain Planning Department oversight to avoid uncontrolled expansion during the Sub Area planning process. This can be most easily and directly accomplished through expanding the applicability and use of Conditional Use Permits during the interim period, not by an entirely new (temporary, interim) regulatory construct.
- Temporary regulation implementing growth limits for existing newly defined "High Risk/High Impact" regulation of business land use should be questioned in depth:
- If carried through to become an interim rule, there is significant concern over lack of clear definition of what is meant by "growth". However, trying to address a concern over lack of definition of growth by adding more layers of definition does not make the interim rule or rule process clearer or easier for staff to implement or for anyone to live with.
- A temporary, interim rulemaking should not be the vehicle to invent an entire new regulatory function to administer case-by-case ongoing assessments of Business growth. To do so would require an administrative process not intended to be the basis for new or final rules, which has never been required in the context of Land Use permitting.
- The proposed 10% or 20% threshold of for limiting business growth is clearly arbitrary. What is the rational basis that a 10% or 20% limit is appropriate? What is the likelihood, on a short-term basis, that uncontrolled business expansion is likely to occur? Would uncontrolled growth likely occur across all businesses located in the Tide flats?
- If the concern the rule proposal is attempting to address is the potential impact to the environment from a significant business expansion, there are already Environmental requirements in place that limit growth with significant requirements for public notice and involvement.

- How would the Planning Department propose to measure and enforce a business growth limit?
- What is the practical justification or underpinning in what the Planning Department normally does in its course of business to support undertaking and implementing the business growth limit concept as proposed? A Rule development that requires affirmative reporting of business “growth” metrics for purposes of assessing compliance would be a dramatic expansion of the reach of the Planning Department mission. Contemplating any such dramatic expansion should not be implemented in a temporary interim regulation.
- There are no current Planning Department requirements addressing business productivity, and no foundation within the Department or staff to support development of productivity based rules. Examples of rules based on such concepts do exist for EPA and Ecology permitting of manufacturing facility operations. However, for those programs, compliance administration is funded and staffed appropriately to address the complexity required to appropriately implement such regulation.
- Defining a new, “High Risk / High Impact” land use category with specific listed prohibited activities is short sighted and problematic in that it presumes that Planning Staff know what manufacturing activities are unwanted by the public, without any actual opportunity to review a specific project for assessment. It also assumes that interim temporary rule making is the appropriate place to define new land use categories.

By way of example, proposed rules would categorically *prohibit* the existence any new “Bulk chemical storage, production, or processing” facility.

However, such a manufacturing operation could be proposed for acid hydrolysis of biomass, which would produce renewable non-fossil fuel for transportation. As proposed, this plant would be one of the Clean Energy and Clean Transportation technologies everyone is clamoring for as the future of Tide flat area manufacturing. Another example would be the same prohibition against a new facility to create synthetic natural gas from pyrolytic conversion of biomass. Again, the product would be used to displace fossil fuel use while simultaneously creating a product that promotes water conservation in the agricultural industry. Yet, as written, the proposed temporary interim rules would categorically prohibit anyone attempting to attract either such businesses for at least the next several years.

These are examples of the unintended but real consequence of a prescriptive temporary interim rule that presumes to know what value exists in all businesses, and on that basis specifically prohibits them by defined categories.

Defining new, “High Risk / High Impact” land use category with specific listed prohibited activities is also short sighted and problematic because it is based on an attempt to address “concerns” by citing different issues for each industry segment as the basis of reason. From events that have happened around the country Staff could also easily cite similar qualifying “concerns” about a number of businesses not on the new “High Risk / High Impact” list... like a conference center causing legionnaire disease, or a hotel gassing people from swimming pool chemicals, high rise building fires, the hotel that exploded from natural gas on the peninsula last year etc. Using Staff’s logic in creating a new category of “High Risk / High Impact”, we would need to limit growth of those businesses as well due to valid concerns. Point is that laws regulate all businesses and it is unjust to limit growth of certain newly-chosen businesses in this manner because of narrow special interest group concerns.

Temporary interim regulation is not the platform to establish such detailed and rigid structure – and is not the way or strategy that makes sense for interim regulation. New prescriptive rule making is the level of detail that should be left to the Sub Area Planning debate.

A preference for Enhanced Review of development proposals of all kinds should suffice to provide the necessary protections sought in adoption of Interim Regulation.

Bruce Martin
Energy Resource Manager



801 E. Portland Ave. | Tacoma, WA 98421

T 253.596.0183 | M 253.307.2072

Bruce.Martin@westrock.com | www.westrock.com

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Wung, Lihuang

From: John Atwill <atwill.john@gmail.com>
Sent: Tuesday, August 15, 2017 8:24 AM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

John Atwill
6514 North 53rd Street
Tacoma, WA 98407

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 Wamback Commissioner Scott Winship Commissioner Dorian Waller
Commissioner Brett Santhuff Commissioner Jeff McInnis Commissioner Anna Petersen Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
John Atwill

Wung, Lihuang

From: Alex Macdonald <AlexofSkye@comcast.net>
Sent: Tuesday, August 15, 2017 8:45 AM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

Alex Macdonald
6010 Woodlake Drive
University Place, WA 98467

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. The 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.

I'd much rather you work to attract industries promising a healthy future than a controversial industry founded in the past.

Please forward this message to the following individuals:

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Planning Commission Vice-Chair Stephen Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Alex Macdonald

Wung, Lihuang

From: Sunny Thompson <sunny@wellspringspa.com>
Sent: Tuesday, August 15, 2017 8:55 AM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

Sunny Thompson
54922 Kernahan Rd E
Ashford, WA 98304-9761

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.

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Commissioner Brett Santhuff Commissioner Jeff McInnis Commissioner Anna Petersen Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Sunny Thompson

Wung, Lihuang

From: Susan Wilkie <chris1986@comcast.net>
Sent: Tuesday, August 15, 2017 11:10 AM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

Susan Wilkie
8611 Zircon Drive SW
Lakewood, WA 98498

August 15, 2017

Dear Stephen Atkinson,

Dear members of the Tacoma Planning Commission,

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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.

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Planning Commission Chair Chris Beale
Planning Commission Vice-Chair Stephen Wamback Commissioner Scott Winship Commissioner Dorian Waller
Commissioner Brett Santhuff Commissioner Jeff McLinnis Commissioner Anna Petersen Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Susan Wilkie

Wung, Lihuang

From: Denise Day <denisedays65@outlook.com>
Sent: Tuesday, August 15, 2017 2:14 PM
To: Atkinson, Stephen
Subject: Protect the Tacoma Tideflats from Fossil Fuels

Denise Day
506 East 64th Street
Tacoma, WA 98404

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.

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Commissioner Brett Santhuff Commissioner Jeff McInnis Commissioner Anna Petersen Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Denise Day

Wung, Lihuang

From: Becca (Krzmarzick) Fairchild <beccakrz@gmail.com>
Sent: Tuesday, August 15, 2017 3:55 PM
To: Atkinson, Stephen
Subject: Please Pause Fossil Fuels

Dear members of the Tacoma Planning Commission,

I am commenting in solidarity with the Protect Tacoma's Tideflats Coalition. Thank you for reviewing the need for interim regulations in the Tacoma Tideflats during the lengthy subarea planning process to come. 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, 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 pause covers all new and expanded industrial fossil fuel facilities and infrastructure. Please ensure that the pause is as broadly encompassing as possible.

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Thank you,

Becca Fairchild

11 year Tacoma resident, mom, PLU alumna

360.581.8716

DANA J. PEREGRINE

August 15, 2017

Stephen Atkinson, Senior Planner
City of Tacoma
746 Market Street
Tacoma, WA 98402

Please also forward this message to the following individuals:

Planning Commission Chair Chris Beale

Planning Commission Vice-Chair Stephen Wamback

Commissioners: Scott Winship, Dorian Walle, Brett Santhuff, Jeff McInnis, Anna Petersen, Meredith Neal, Jeremy Woolley

Dear Members of the Tacoma Planning Commission,

Since the citizen opposition to a methanol plant in Tacoma, it is very obvious to me that the Tacoma community, my community, wants their city's economic future to look different than the past. Tacoma citizens and I want a cleaner and sustainable future where the inherent value of the environment is recognized, protected and leveraged. To this end it is imperative to create interim regulations now that pause all fossil fuel proposals as well as all new and expanded industrial fossil fuel infrastructure and facilities. I urge you to hit the "pause" button now so that together, as a collective community we can, using the subarea plan as a tool, plan our long term economic future based on clean and green industries.

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Please act now. Formulate interim regulations *now* that **pause all** fossil fuel proposals and new and expanded industrial fossil fuel infrastructure and facilities.

Thank you,

Dana Peregrine

5036 Hyada Boulevard NE
Tacoma, Washington 98422
253 . 3 0 7 . 6 4 1 3

danaperegrine@hotmail.com



Schnitzer Steel Industries, INC.
1902 Marine View Drive Tacoma WA 98422
(253) 572-4000

August 16, 2017

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

RE: Tideflats Interim Regulations

Dear Mr. Beale:

While Schnitzer Steel maintains that Planning Commission Staff has failed to present a proper legal basis to support Interim Regulations in the Sub-Area Planning Process, at a minimum the limited reasoning offered somewhat informally at various meetings supports the finding that METALS RECYCLING should be removed from the High Risk/High Impact list.

Planning Commission Staff has offered no factual basis for including Metals Recycling in the "High Risk/High Impact" list for interim regulations.

At the August 2, 2017 meeting, and again in the Staff Report for the August 16, 2017 meeting, Staff admits that Metals Recycling is being included on the list of "High Impact/High Risk" industries to be subject to proposed interim Tideflats regulations based solely on the unsupported allegations in the proposed Northeast Tacoma Buffer Zone Amendment to the Comprehensive Plan. The allegations in that proposal are unfounded, and Metals Recycling should therefore be removed from the High Risk/High Impact list for interim regulations.

In identifying "High Risk/High Impact" uses for proposed interim regulation, Staff identified the following six impact categories, without providing any objective analysis to support their assertion that every use on the list creates risk or impact in the areas. In the case of Metals Recycling, and Schnitzer Steel, in particular, the listed impact categories are non-issues.

- Traffic Impacts – Schnitzer has its own turn lane into the yard and does not impact traffic on Marine View Drive.
- GHG Emissions – Schnitzer, like all similar metal recycling facilities, is not regulated by Title V and is also not regulated under Washington State or Federal GHG reporting rules due to insignificant emissions of GHGs.
- Odor – Schnitzer, and the metals recycling industry in general, does not create noxious odors.
- Noise – Schnitzer has never been found in violation of City noise ordinances. Allegations to the contrary in the Northeast Tacoma Buffer Zone Amendment are without factual basis in City records.
- Water consumption – Schnitzer conserves water whenever possible, its water consumption has never been of concern to the City and is not a drain on the community water system.
- Lighting – Schnitzer conserves electricity whenever possible and is not a source of light pollution.

Unless the Planning Commission intends to objectively compare and evaluate every existing industrial use in the Tideflats against these six impact categories and issue a defensible findings of fact to establish plausible linkages with risk and impact where they actually exist, the Planning Commission should put a 'pause' on the proposed Interim Regulations. At the very least, Metals Recycling should be removed from the "High Risk/High Impact" list based upon the lack of factual basis to include the use for enhanced interim regulation.

Sincerely,

Colin Kelly

Corporate Director of Public Affairs

Cc: Marilyn Strickland, Mayor
Elizabeth Pauli, City Manager
Steve Atkinson, Planning Services Division

From: [Sunny Thompson](#)
To: [Atkinson, Stephen](#)
Subject: Protect the Tacoma Tideflats from Fossil Fuels
Date: Tuesday, August 15, 2017 8:54:44 AM

Sunny Thompson
54922 Kernahan Rd E
Ashford, WA 98304-9761

August 15, 2017

Dear Stephen Atkinson,

Dear members of the Tacoma Planning Commission,

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Planning Commission Vice-Chair Stephen Wamback
Commissioner Scott Winship
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Meredith Neal
Commissioner Jeremy Woolley

Sincerely,
Sunny Thompson

From: [Susan Wilkie](#)
To: [Atkinson, Stephen](#)
Subject: Protect the Tacoma Tideflats from Fossil Fuels
Date: Tuesday, August 15, 2017 11:09:43 AM

Susan Wilkie
8611 Zircon Drive SW
Lakewood, WA 98498

August 15, 2017

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Dear members of the Tacoma Planning Commission,

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Sincerely,
Susan Wilkie