Tideflats Interim Regulations

Public Comments Received*

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

Prepared for
Planning Commission Meeting
September 20, 2017

City of Tacoma
Planning & Development Services Department
Planning Services Division
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September 13, 2017

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

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

Dear Mr. Beale and members of the Planning Commission:

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

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

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The City of Tacoma has sufficient regulations and ordinances in place to allow for enhanced review of new projects. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations, interim or not.
We will make more progress as a region not when we merely cater to extremists but when we work together to balance our shared interests in our economic, social, and environmental wellbeing. Let's do the hard work of applying current regulations and having open dialogue to allow a fair process of evaluating businesses and projects.

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

Sincerely,

Thomas L. Absher
Absher Construction Co.

Cc: Mayor Marilyn Strickland and City Councilmembers
    Elizabeth Pauli, City Manager
    Steve Atkinson, Planning Services Division, and Planning Commission members
11 September 2017

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

City of Tacoma – Planning Commission,

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

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

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

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

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

Sincerely,

COL (R) WILLIAM G. ADAMSON, USA
Program Manager, South Sound Military & Communities Partnership
Category 1 Expanded Notification for Heavy Industrial Uses
Since ALL property tax payers and interested parties would be notified under this Amendment, is the 2,500' for those outside the City Limits and/or renting? If so, the distance should be extended to 2 miles to cover those Heavy Industries that are high risk/high impact.

Category 2 Amend Non Industrial Uses in the Port of Tacoma M/I C
Not sure why these new uses are being prohibited at this point. They are not high risk/high impact to Tacoma like chemicals and fossil fuels are, nor are they expanding like the fossil fuels want to.
These uses should be addressed in the Subarea Plan, use by use. Remove this Category.

Category 3 Marine View Drive Residential Development Restrictions
This is something that should have been done long ago, before there were housing developments on the down side of the hill toward the Tide Flats.
Maintaining a buffer is important not only here but along South Tacoma Way if that area is truly to stay a Heavy Industrial Zone.
The Brewery District needs to drop its M-2 designation in that Warehouse Residential Zone.
Existing industrial businesses would be grandfathered in. But that is part of the Subarea Plan.

Category 4 Heavy Industrial Special Use Restrictions
It would be less ambiguous to say, prohibit all new Heavy Industrial uses that pose high risk/high impact on neighboring areas.
Those that don’t pose high risk/high impact would not be included in this list.
This is the statement that does not work it is the 3rd point. This one small sentence - "Existing uses would be considered allowed and not subject to limitations on expansion.”
There is no justification for this and flies in the face of prohibiting new or expansion of highrisk/highimpact uses until the Subarea Plan has been adopted. This is why we asked for this interim regulation in the first place. Drop Category 2 and this one sentence from Category 4 and we will live with the rest.

Map 1 - Area where Nustar tanks are at the end of E Street at E 3rd is in the Buffer. Change to Dark Blue, actually all the way down to E 7th should be Heavy industrial with a buffer all along the west side to buffer the Downtown.
Why is the buffer in the middle of this peninsula rather than on the west side facing the downtown? What is the name of this peninsula?

Map 2 -

Map 3 - Shows the buffer commented on above as it should be - protecting the downtown.
What is the difference between M-2, M-2StGPD and M-2StGPD-M/I C? Where is glossary or legend explaining these acronyms?
New Section TMC 13.06.580

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

and expand storage and production capacity without limitation.

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

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

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

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

27. Public Hearing Notification Process -
Don’t forget to change the dates on this. Right now (9/12/17) would be good. I did have to recheck to make sure I had the times right when I saw this……

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

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

And what is wrong with these Non Industrial uses currently allowed in the zone? Who is so against having them out there?
If there are allowed uses that are not wanted out there, like a new stadium, then we will deal with that when we do the Subarea Plan.

Why no new or expansion of existing Non Industrial uses when they aren’t even high risk/high impact?
What about all the Distribution Centers and warehousing, why are they different than Vehicle Storage?
The decision to limit some at this time and not others is very curious. And not justified or explained.
Is it all a smoke screen to protect existing businesses like Targa, US Oil and PSE? The expansion of an existing Heavy Industrial facility (like adding new tanks) is a new development to that facility, and should not be allowed until the Subarea Plan is adopted.

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

A Dome District land owner, resident and very involved volunteer for Tacoma
Jori Adkins
301 Puyallup Ave.
Tacoma, 98421
253-365-1459
September 13, 2017

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

Dear Mr. Beale and members of the Planning Commission:

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

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

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

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

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

Sincerely,

[Signature]

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

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

**INTENT OF PROPOSED INTERIM REGULATIONS**

"the intent...to limit the establishment of certain new industrial uses. In this paragraph it doesn't say that you are not allowing heavy but control it. Is that not correct?

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

So, you say the pollution the Arco plant left us with won't happen again because you will regulate? Maybe, not in the same way but there will be pollution. Yes, not much and not the same but enough to create illness in some.
City of Tacoma Planning Commission
747 Market Street, Room 345
Tacoma, WA 98402

SENT VIA EMAIL: planning@cityoftacoma.org

SUBJECT: Public Hearing - Proposed Interim Tideflat Regulations

Planning Commission Members:

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

- The development of a subarea plan for a port facility is a highly complex task and involves many diverse interests. It is fraught with many challenges. Thus, the subarea plan process may take considerable time to develop. In the meantime, there is a concern that if the interim regulations are adopted they may stay in place for longer than expected; they may ‘more or less’ become permanent regulations; this could adversely affect the economic vitality of the Port. There is an expectation that should Tacoma adopt interim regulations and, thereafter, follow suit with a subarea plan, that such actions occur expeditiously, while at the same time assuring public outreach, not just to Tacoma property owners, but for those business interests within the region that could be adversely affected by major land use changes within the Tideflats.

- The proposed interim regulations, if approved, confer an interest in the port properties of each landowner to those who control the political power in Tacoma. This allows Tacoma to shape the port environment and its property tax base. However, the Port of Tacoma was established by Pierce County voters many years ago as a port authority and its boundaries and interests far exceed Tacoma’s City limits. It is a public agency that today has regional, international, and National Defense related implications. The Commission is asked to take great care in promulgating rules so as to not develop interim or permanent regulations that address a local rationality at the expense of some of these other broader interests.

- The proposed interim regulations will result in unintended consequences. Case in point and of particular concern to Lakewood is any regulation that limits fuel supply and/or the delivery of fuel resources to Joint Base Lewis McChord (JBLM). In times of national crisis, to include humanitarian and disaster relief efforts, the proposed interim local zoning regulations could have a detrimental impact on the nation’s security.
Moreover, JBLM is the nation’s only West Coast power projection platform and has definite connections with the Port of Tacoma for deep-water access of heavy military equipment. Any land use proposal, whether temporary or permanent that impacts military operations is opposed by the City of Lakewood. Additionally, such regulation could cause considerable consternation should the federal government choose another round of Base Realignment and Closure (BRAC).

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

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

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

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

Respectfully,

Don Anderson
Mayor, City of Lakewood

Copies:
- Tacoma Mayor Marilyn Strickland
- Tacoma Councilmember Anders Ibsen, Position 1
- Tacoma Councilmember Robert Thoms, Position 2
- Tacoma Councilmember Keith Blocker, Position 3
- Tacoma Councilmember Marty Campbell, Position 4
- Tacoma Councilmember Joe Lonergan, Position 5
- Tacoma Councilmember Lauren Walker Lee, Position 6
- Tacoma Councilmember Conor McCarthy, Position 7
- Tacoma Councilmember Ryan Mello, Position 8
- Lakewood Councilmember Mary Moss, Position 1
- Lakewood Councilmember Michael Brandstetter, Position 2
- Lakewood Councilmember Jason Whalen, Position 3
- Lakewood Councilmember John Simpson, Position 5
- Lakewood Councilmember Marie Barth, Position 6
- Lakewood Councilmember Paul Bocchi, Position 7
Commissioners:
Please oppose the portion of interim regulations that limit uses for the tideflats area. It appears the underlying purpose of proposed limitations is to prevent the construction and usage of any facility that processes, stores, or utilizes any type of fossil fuel. Please consider:

1. There exist several facilities within designated areas that operate under existing regulations, federal, state and local and do so without significant negative environmental or safety effects to life and property.
2. There are adequate laws and regulations presently to accommodate good quality of life in the surrounding areas.
3. Addition of new facilities bring high paying jobs to our area, both during construction and operational phases.
4. New jobs created will be across a broad spectrum, both “blue collar,” and “white collar” and high tech as virtually all industries are utilizing technology to a high degree.
5. There is a shortage of properties suitable for such facilities. The Port is blessed to have considerable land that can be used for such.
6. To rule out utilization of the Port of Tacoma for facilities involving fossil fuels simply means they may locate to Canadian, California, or Southeastern ports.

My family and I located to Tacoma in 1968 and have seen substantial tangible improvements in air and water quality during this period. I was active in the HVAC engineering and construction industry for 40 years prior to retirement, 35 of those as head a company working in commercial, industrial and institutional work. One of our company goals was to strive for perfection, but accept excellence. I believe that goal should prevail in all environmental matters as well.

During the referred to 40 year period our industry and the industries we served experienced a multitude of new laws and regulations covering virtually all areas of business. Many regulations served good purposes and produced good results. A large number of regulations, however produced negative consequences with no discernible improvement in processes or quality of environment. As a result we observed many attempts to begin or expand a business fail due to increase of costs in permitting or potential business operations.

On the larger picture, a word about the ideal of elimination of all fossil usage as some appear to advocate. Obviously the prime users of a major fossil fuel, gasoline, are automobiles and trucks. While some see an ideal world where all ground transportation would be fueled by electricity, consider the necessity to rework and add to the power grid, both in main and local lines for accommodating power charging stations. Imagine the million tons of copper required for such a large undertaking. Added copper must necessarily be mined, either domestically or imported. While domestic sources exist, the idealists who oppose the usage of fossil fuel and added facilities such as might be built in the Port, in general are the ones who oppose any mining, citing environmental concerns. Applications for major copper mining operations currently may take 8 to 10 years or more, may require approval from more than 30 agencies and cost hundreds of millions of dollars in permit fees and litigation.

Please consider carefully the impact on new regulations, both local and on the larger scale.

Respectfully,
Curt Anderson
1 Stadium Way North # 3
Tacoma, 98403
253-405-2207
In regards to the Tideflats Interim Regulations (proposed Amendment to the Tacoma Municipal Code, including the Shoreline Master Program), I have an opinion.

I do not want to see our economic bloodline fall due to regulations and permits not being granted in the future. I am an electrician. I have worked at two of the large industrial entities on the port, Westrock and U.S. Oil, and was always on improvement projects and in training programs for environmental concerns and how we handle them. The improvements alone are creating livable wage jobs all the time. I think it is an asset that our city is a major backbone in industry and trade. We can be both environmentally friendly and industrial here. Most of the housing that sprung up near this area was built by and for the families that created and worked at these industrial sites. Living there now should be awe inspiring, not something newbies want to change.

We will always continue to grow and improve. It can be done responsibly. Stifling work for the population is not responsible for our future. Please consider what power these regulations could hold over continued improvements and keeping our backbone way of life viable.

Thank you for your time and consideration in this.

-Maria Anderson

IBEW Local 76 Member
I am a homeowner living on Hilltop in Tacoma. Every so often at nights/early mornings, usually after midnight, the air has a horrible smell, like the burned tires or bad car breaks or like if I'm standing next to a grinder in a machine shop. It is much worse that the customary Tacoma-aroma. It makes my throat sore. I can never leave my windows open through the night. It is very likely that one or more of the industrial facilities in the port do some sort of cleaning the smoke stacks, releasing the dirt into the air, and they are doing it at night, so they don't get caught. I brought it to the attention of the Air Quality people, and they said they couldn't do anything about it, because they are home in bed at nights, and are not willing to get out of bed and go to check out the air. The point is, whoever was saying during the public comment meeting yesterday that we have sufficient regulations - we don't. There is lots of room for cheating, as well. And those businesses do cheat as much as they can get away with.

Historically, all the towns with heavy industry - coal mining towns, oil refineries, chemical plants, etc. had depressing streets covered with soot, no shops, no beauty, no fun, short life expectancies, lots of lung diseases and poverty. Only the poorest people would live in those towns. Only the owners of the factories benefited, and that never even lasted for very long time. The factory owners sucked the towns dry, and moved on. There are many ghost towns in the US like that. I implore you not to sacrifice Tacoma.

If you want economic growth you have to have clean air, clean water, clean soil, to attract businesses and people with money. Tacoma has not been growing as it should have been because of the industrial contamination. No one with money would want to buy a home in a place where the tap water and the soil are full of lead and arsenic and air stinks, and there are banging noises coming from the port all the time. Only the poor people who can't afford to live anywhere else end up in Tacoma, resulting in lots of crime and general feelings of hopelessness and resignation and no one wanting to care about their neighborhoods. Trash is everywhere, houses with peeling paint and boarded up windows. The only way to turn Tacoma's economic growth in positive direction is to prohibit any further fossil fuel industries, coal terminals, oil refineries and chemical manufacturing. And clean up the area as fast as possible to make it attractive for clean businesses and residential builders. People need somewhere to live, there is a housing shortage in the NW and prices are going up. But Tacoma's prices are still only a fraction of Seattle prices because people don't want to live in a place that is smelly, dirty, and populated mainly by very low income people who purposely dirty the streets and sell drugs on every corner and do everything to scare investors and home-buyers away and to impede the gentrification, so the prices don't go up.

I implore you to go with the Interim Regulations in Category 4, and to start actively reviewing the current existing uses in that category and making sure that they don't pollute on the sly, like at nights. And do vigorous cleaning of the soil.

Tacoma homeowner
Margarita Andreeva
718 Yakima Ave. Tacoma WA 98405
Because I am unable to come to the hearing Wednesday evening, Sept 13th, I am writing to express my strong support for the draft Interim Regulations including:

- A prohibition on “high risk/high impact” uses concerning fossil fuels, mining and quarrying
- A prohibition on any unlisted industries (those not falling under an existing category)
- A prohibition on new non-industrial uses in the Port (hospitals, group housing, etc)
- Extended notification about new projects in the Port (2500’ from boundary of Port of Tacoma)
- A moratorium on new housing development along Marine View Drive

I believe Tacoma and the surrounding area deserves to have clean water and air. We do not want to have a facility like ICE that violates human rights and dignity. We do not want fossil fuel industries that contribute to global warming. We do not want dangerous industries like the LNG plant. We want to save the rivers, Puget Sound, and our wildlife which are already suffering from extreme pollution. We want a healthy environment now and in the future for the public. We want decent paying jobs that are good for workers and good for the environment. We do not want our elected or appointed public officials serving industries and the wealthy at the expense of the public.

Sincerely,

Dr. Julie Andrzejewski
703 Short Street
Steilacoom, WA 98388
Concur with the majority of zoning proposals.
Coal is a fading dying industry besides the environmental effects we want eliminated.
Oil or other fossil fuel development usages are unneeded as described in announcement. Mining, quarrying, or smelting are, also, unneeded.
Land use zoning along the unused cliffs outlined is in the public interest. Other uses for public use to include natural areas, parks, bike and pedestrian pathways would be an improvement.

Bulk chemical storage or processing can be done to include all of the items stated in the public information announcement with available technology and regulations. This industry would provide jobs and infrastructure development in the public interest.

Pedestrian, bikeway access across the tide flats should be considered. Current State transportation planning does not consider non-motor means of transportation as demonstrated along the Nalley Valley interstate freeway construction experiment.

dnb
Dale N Bickenbach
5232 South Mason Avenue
Tacoma, Washington
98409-1817
Only Phone 253 475 5242 (Please e-mail 1st)
SKYPE: dale.n.bickenbach
To the Planning Commission;
I, David Bingham, and my business partner, John Crabill, are the owners of the Marina, the restaurant, and the real property known as Johnny’s Dock 1900 East D Street. We have owned the property since 1985 and the restaurant has been on this site since 1977. Quite simply stated, our portion of the tideflats needs to be left open to Mixed use development because it has the best view of the skyline and cityscape of Tacoma from any angle. Residential and commercial properties on the east side will provide an adjunct to the cramped downtown core, giving Tacoma the urban city room to grow.

David Bingham
Members of the planning commission,

My name is Don Blagsvedt. My wife and I are homeowner in North Tacoma,. I am a former science teacher and district science coordinator in TPS, and active member in my faith community and a kayaker. My wife works as a rehab doctor and physiatrist at the Veterans administration we love where we live. We care deeply about sustaining and contributing to a healthy environment in our city and for a viable, thriving Port that can be leader in creating non-polluting industries. I stand in support with 350 Tacoma and the Tideflats Coalition in favor of imposing interim regulations that would put a ban on any new fossils fuel development or expansions of and new permits for current fossil fuel projects while the sub-area plan for the Port of Tacoma is being developed.

All of us experienced a climate nightmare this summer, and continue to witness, the devastating effects of wildfires and hurricanes upon social life, families health, job disruption. This is our new reality. This is not some freak accident of nature. Science has been predicting since 1980’s that the continued use of fossils fuels will contribute to extreme temperature rise, increased rainfall during storms, the warming of the seas, increased flooding and increased droughts. All of this has occurred as predicted by 97% of climate scientists. Ultimately this is a social justice issue The people most vulnerable to the new climate reality, are the poor, whether that be the in Syria, Central Africa, India or the low lying tidal plains in Houston, Miami, or Mew Orleans.

For me this is a spiritual issue. If we say we care about God’s creation if we are serious about our commitment to the Paris Climate Agreement or the implementation of 100% renewables, we cannot do business as usual. That would be a sin. Keep the poison of fossil fuels in the ground. Do not contaminate the sub-area planning process for the Port by allowing new permits or expansion of current operations for the oil and gas industry. Rather use already existing technologies and your creative energies to plan for a Port that uses 100 renewable energy to create living wages and meaningful work.

I thank you for your time.

Don Blagsvedt

5414 N. 42nd Street

Tacoma, Washington

98407
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Don L Blagsvedt
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September 12th, 2017

Send to:
Stephen Atkinson
Senior Planner
satkinson@cityoftacoma.org

Please forward this message to the Planning Commissioners:

Commission Chair - Stephen Wamback
Commissioner Chris Beale
Commissioner Dorian Waller
Commissioner Brett Santhuff
Commissioner Jeff McInnis
Commissioner Anna Petersen
Commissioner Carolyn Edmunds
Commissioner Jeremy Woolley
Commissioner Andrew Stroebel

Dear members of the Tacoma Planning Commission,

As the Sustainable Tacoma Commission, we welcome this opportunity to provide input on the proposed Tideflats Interim Regulations. We also look forward to engaging as a strong voice in the Tideflats subarea management plan initiative that was approved to proceed earlier this year. We believe both of these initiatives are the right direction for Tacoma to redefine itself as a thriving place for both economic prosperity and environmental stewardship.

We agree with the City Council and Planning Commission in seeing the urgency for interim regulations to limit the uses that may be able to take root before a well thought out plan is complete. Without these temporary regulations, Tacoma may see the expansion of the fossil fuel industry as a result of permit applications. We want to avoid a situation similar to the big box retail moratorium, whereby delay of implementation led to an outcome at odds with community desires. Pausing fossil fuels now is essential not only for Tacoma’s protection in the short term, but also for a high-quality subarea plan.

The subarea plan will provide an opportunity to review any number of issues within the Tideflats to create a comprehensive, long-term solution. In contrast, interim regulations will appropriately and meaningfully address the critical, urgent threats that cannot wait for the subarea plan. There can be no doubt that new fossil fuel proposals are the urgent environmental and economic threat.

These fossil fuel proposals could take many different forms. It is critical that the pause covers all new and existing expanded industrial fossil fuel facilities and infrastructure. Please ensure that the pause is as broadly encompassing as possible. With regards to fossil fuel industries, the latest proposal, as presented at the 9/6/2017 informational session, only covers new coal, oil, or other liquid or gas fossil
fuel facilities. We strongly believe that this falls short in that it would not restrict the expansion of existing fossil fuel facilities, yet these are exactly some of the facilities that are of concern. The interim regulations should absolutely restrict the expansion of existing fossil fuel facilities.

We also appreciate the proposed expanded notification for heavy industrial uses, however we do not believe that it goes far enough. Given Tacoma’s storied environmental legacy, we believe that such notification should include the entire City of Tacoma, and not be restricted to 2500’ from the manufacturing and industrial center boundary, or tax parcel. The environmental degradation that plagues Tacoma affects all of the residents. If we are to fully break from our dirty past, this requires entire community involvement and that begins by making the entire community aware.

In considering these Tidflats Interim Regulations, we also call your attention to the Tacoma Environmental Action Plan (EAP) that was signed by the Mayor and City Manager in 2016. As noted in the cover letter, the EAP “outlines the actions that our City government and local community will take over the next five years to become more environmentally sustainable.” We call your attention to a number of the EAP goals, all of which align closely with the need to implement the Tidflats Interim Regulations restricting new or expanded fossil fuel facilities:

- M2 - Support and advocate for strong product stewardship policies at the state and national levels, minimizing environmental impacts of product and packaging throughout all lifecycle stages, especially manufacturing.
- N1 - Reduce stormwater quantity and/or increase quality in each of the city’s watersheds by developing Management Plans that use best practices appropriate to each watershed’s natural and built conditions.
- N2 - Implement code that discourages development on lands where such development would endanger life, property or infrastructure, or where important ecological functions or environmental quality would be adversely affected.
- C1 - Incorporate climate resilience actions into equity initiatives and programs, and consider future climate risk in emergency planning and hazard mitigation planning updates.
- C3 - Prioritize the most vulnerable neighborhoods for capital improvement, development, and planning activities to ensure that these communities receive the services they need to build resilience to climate change and other stressors.
- C4 - Begin a conversation with the business community around climate impacts and resilience.
- C5 - Engage with and support community organizations that enhance community resilience.
- C6 - Ensure that near-term capital improvement projects consider climate change risks.
- C7 - Conduct additional studies (including data gathering, research, and mapping) to identify infrastructure that will be impacted by sea level rise and flooding.

Finally, the urgent threat of fossil fuels warrants as rapid a response as possible. Interim regulations need to pause proposals before any new ones can be made and grandfathered in. While we understand the sensitive nature of this issue, Tacoma cannot wait to take action. We are speaking up as volunteer citizens using the processes already in place for citizen input. Please implement interim regulations to pause new fossil fuel proposals as quickly as possible. With this protection in place, we can then take the time necessary to address other issues and long-term solutions.

Thank you for your work on the commission and for considering this input.
Sincerely,

Lexi Brewer, Chair
Sustainable Tacoma Commission

Cc: Kristin Lynett, Office of Environmental Policy and Sustainability
Dear Planning Commission:

Had I known Carolyn Lake was going to deliver a threat-laced lecture on the US Constitution to you late last night, I would have signed up and spoken after her.

Tacoma is a sitting target for fossil fuel expansion due to grandfathered existing uses. This should be clear by now. I wanted to encourage you to pass these emergency interim regulations, and maintain your sense of urgency on this important topic. Locally, we absolutely must shift course away from the tar sands, Bakken crude and fracked gas/LNG, which are inundating the Port of Tacoma. A simple reading of MSDS sheets will show these fossil fuel products are fundamentally different, carrying both higher safety and environmental risks, which render them incompatible with existing current and future uses.

As we see the monster fires consuming our beautiful Northwest, while monster hurricanes consume the South and East, the social license for dirty energy infrastructure projects will quickly evaporate. Failing to act sets up the City and Port for a great deal of future economic disruption, 'opportunity cost', and pollution.

Whether it’s immoral oil companies Oregon Regulators Issue $117,000 Fine For Oil Terminal’s Permit Violation or the disruption to jobs when public pressure finally forces closure of dirty dangerous energy sources http://faculty.washington.edu/jwilker/382/CoalPlant.docx, we must get out in front as most ports have and begin to plan for a just transition to sustainable industry, high tech and safe renewable energy.

Most sincerely,

Phil Brooke
Summit-Waller
oldbrickhousefarm@yahoo.com
Dear Members of the Planning Commission,

I write to strongly urge you to instate a pause on fossil fuel and other potentially harmful energy infrastructure and activity, to protect the health and safety of Tacoma's residents, the quality of our air and water, and the future of the planet. Our current policies and procedures are not sufficient. The economic benefits to Tacoma of allowing out-of-state and non-US companies to build, transport, and store fossil fuels are not enough to warrant waiving our rights to health and safety.

Sincerely,
Gwynne K Brown

1112 N Fife St
Tacoma, WA 98406
(253) 301-2591
September 13, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma WA 98402

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

Dear Mr. Atkinson:

Having various conversations with local businesses and members of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. General Mechanical, Inc. embrace’s a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

We rely heavily on local industry to be a viable local employer. Our core business includes working in the industrial and heavy commercial markets here in Tacoma and the “Tide Flats”. Locations we work include US Oil, Targa, Graymont, Westrock, Nustar, Pabco, GP Gypsum, Glenn Springs Holding, Stericycle, Gardner Fields, Olin Bleach, BHS, Arclin Overlays, just to name a few. We also work at the Tacoma Waste Water facility (which I would love to know how new regulation may impact this site).

The proposed regulation changes we are hearing about will have an impact. There will be fewer man-hours worked at General Mechanical, Inc. thus affecting families. There will be less material and consumables purchased affecting those local businesses and their families. There will be fewer subcontractors hired, affecting their craftsmen and vendor’s and families. And in the end, there will be less tax generation for the City of Tacoma. It just doesn’t make much financial sense.

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

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

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interest in our economic, social, and environmental wellbeing.

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

Sincerely,

Matt Campbell
President
Dear Planning Commission Members:

Thank you for taking the steps in planning the interim regulations and for listening to the public.

I fully support your recommending to the city council implementing interim regulations. These regulations should include all of your proposed amendments with the following changes:

1. In Category 1, specific property owner/user notifications should be sent to all within a 1 mile radius.
2. Agree with Categories 2 & 3.
3. Category 4 should include prohibition of expansion of heavy industrial uses that have a potential for high risk or impact to neighboring area and fish/sea life.

It is impossible to predict worse case scenarios, but as we have seen recently in Texas, Louisiana and Florida, the worse case does happen. As you know, we are sitting in an area of the planet that will have a major earthquake with catastrophic destruction. Additionally, should we have rains that are even 1/2 as bad as what happened in Texas, the tideflats area would be forever changed by the water that would drain into the Commencement Bay. What would 25 inches of rain in 24 hours look like? Then we also must consider Mt Rainier is an active volcano though I certainly hope it doesn’t get angry while we humans live around it! We can either look at the world on a minute by minute basis or we can be prudent and plan for the worse case scenario. Please be wise.

Thank you.

Carol Colleran

PS: I have been toying with the idea of solar panels and an all-electric car. Many people would install renewable energy if it were promoted and presented in a logical manner. Right now, I think, the idea of renewal energy is downplayed due to negative input from the fossil fuel industry. All the while, manufacturing of these solar panels or wind energy equipment is a very fast-growing industry to be considered.
To Whom it may Concern,

My name is John Crabill and I am co-owner of Johnny's Dock Restaurant and Marina (City Waterway Investments). I am opposed to any changes to the current regulations. These proposed changes would be have a negative effect on this property now and in the future.

John Crabill
Johnny's Dock Restaurant and Marina
City Waterway Investments

Sent from my iPhone
September 11, 2017

Tacoma City Planning Committee

My name is Linda Craig I have worked on the tide flats for over 20 years along with many family and friends. I am extremely opposed to any interim or permanent zoning changes to properties within the port tide flat area. This area has been zoned and used in this manner since the very beginning of the City of Tacoma. This so called buffer zone nonsense will do absolutely nothing, to quiet the people of Point Woodworth who knew exactly where they were moving to and the businesses have been there way before them. They have a big hillside and elevation buffer. A few hundred more feet will not stop pollution or the noise from the tide flats which has been going on for decades. The city of Tacoma should never have allowed the change of zoning from industrial gravel pit (Woodworth and Company) to residential zoning in the first place. Please take into consideration all the employees you are putting in danger of losing their jobs for this absolute nonsense. We have worked hard to raise our families and be good tax paying citizens, just to have a few people putting our livelihoods in danger. We will fight you at every opportunity.

Sincerely X ______________________________

Linda Craig
Dear Planning Staff,

Thank you for your work to create balanced protections for the Tacoma Tideflats via interim regulations.

Attached is a letter signed by members of the Protect Tacoma’s Tideflats Coalition voicing support for a swift, focused and complete pause on all fossil fuel and petrochemical projects, be they new uses or expansions of existing facilities. Please forward this along to the Planning Commissioners in preparation for tonight’s public hearing.

We look forward to continuing our participation in the interim regulation discussion as well as in the subarea planning process to come. Please let me know if you have any questions.

Thanks again,

Ryan Cruz
Conservation Engagement Coordinator
Citizens for a Healthy Bay
535 Dock Street, Suite 213
Tacoma, WA 98402
T 253-383-2429 | W healthybay.org
Connect with us: Facebook | Twitter | Instagram | LinkedIn | Subscribe to our enews
May 21, 2017

Dear members of the Tacoma Planning Commission,

Fossil fuel industries have significant negative impacts on the community – from the congestion caused by mile-long oil trains that stopped other flow of commerce to the air pollution to the threat of oil spills, derailments, and other types of disasters. We believe that the future of the Tideflats should be transitioning away from fossil fuel industries and towards clean energy industries that provide family-wage paying salaries without the health and safety risks.

While the City and Port of Tacoma as well as the Puyallup Tribe undergo a multi-year sub-area planning process for the Tideflats, our community will be left vulnerable. An interim regulation is needed immediately to preserve the ability of the City and broader community to put in place the policies and vision for the future of the Tideflats without being tied to projects that are ‘grandfathered in’ during this uncertain time when the fossil fuel industry is looking to increase its extraction and increase the amount of products being transported through the Pacific Northwest.

I support passage of an interim regulation to put a pause on any new fossil fuel proposals in the Tideflats.

Key items include:

- Pass an interim regulation, or moratorium, effective for not longer than 180 days following its effective date, but may be renewed as necessary until the sub-area planning process is complete and the recommended policy changes are made,
- Cover fossil fuels, including but not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats; and condensate.
- Apply to bulk fossil fuel facilities that provide access to marine, rail, or pipeline transport; or that provide storage capacity.

This will not impact:

- Non-fossil fuel industrial activity in the Tideflats. For example, the temporary regulation would have no impact on WestRock, Schnitzer Steel, etc.
- Approved fossil fuel facilities, such as Targa Sound Terminal or the PSE LNG plant.
- Improvements to existing facilities to upgrade for the safety, efficiency, seismic resilience, or operations of existing energy infrastructure.
- Jobs or job creation in the Port of Tacoma.

Sincerely,

Melissa Malott
Executive Director
Citizens for a Healthy Bay

Becky Kelley
President
Washington Environmental Council
Alex Ramel  
Field Director  
Stand.earth

Aaron Ostrom  
Executive Director  
Fuse Washington

Steven J Kelly  
Senior Organizer  
Pierce County Activist Council

Chris Wilke  
Executive Director  
Puget Soundkeeper Alliance

Marian Berejikian  
Executive Director  
Friends of Pierce County

Bruce Hoeft  
Conservation Committee Chair  
Tahoma Audubon

Laura Skelton, MS  
Executive Director  
Washington Physicians for Social Responsibility

Alexandra Brewer  
Chair  
Sustainable Tacoma Commission

Emily Johnston  
Board President  
350 Seattle

Taylor Wonhoff  
Chairperson  
Surfrider Foundation, South Sound Chapter

North End Neighborhood Council
Dear Planning committee of Tacoma: When I arrived in Tacoma in 1985, the city was polluted, in a state of recession, and property value was at an all-time low. Over the years, I've been proud to live in Tacoma amidst the concerted efforts of citizens in its various neighborhood to revive Tacoma. The cleanup of our waterfront and the polluted land in the North End has resulted in the kind of positive economic change I voted for and waited for, while many of my colleagues at the University of Puget Sound decided to live in Seattle. Now, your short-sighted, unethical, and greedy practices, far from serving the voters of Tacoma, threaten once again to devalue my property and poison the environment. I can promise you that I will not be complacent about returning to a 1985 scenario of Tacoma.

I write to register my opinion on the matter of interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma. I strongly urge the committee to prohibit the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to prevent the expansion of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am aware that the latest amendment to interim regulations includes a loophole that permits the expansion of existing terminals, and I urge the committee to close the loophole. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to allow non-polluting businesses to expand if needed in order to encourage non-polluting industry over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business—as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally—and foundationally—the committee must respect the wishes of the Puyallup Tribe when formulating and monitoring interim regulations.

If you are interested in securing the health and well-being of all Tacoma residents you must put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide together how to move forward. Since the City of Tacoma and the Port affiliates often raise "jobs" as a reason to promote dirty industry, I assure you that clean industry
provides job opportunities too. Take a look at the world around you and forget about short-
term profits. You will see many, many examples of successful shifts of this sort. Institute a
moratorium on all petrochemical growth in our beloved city of Tacoma NOW. If not, prepare
for the lawsuits those of us will initiate to protect our property, our families, and our city.
Professor Denise L. Despres (University of Puget Sound)
3818 North 35th St Tacoma WA 98416
Tacoma Planning Commission,

I have lived in the South Puget Sound area for 52 years. The last ten years I have lived in Tacoma. I would like to live the rest of my life in Tacoma because I love the city. If the city does not change it’s policy toward toxic industries however, I will leave Tacoma. We have 100 years of toxic pollution. We are always in the top ten most polluted cities in the country! It’s disgraceful. It’s time to change the direction of Tacoma and re-invent ourselves as a clean renewable, progressive city that is on the cutting edge of the 21st century. Please stop the building of the Liquid Natural Gas Pipeline in the Tacoma Tideflats. I was one the thousands who protested the methanol plant and I am just as passionate about stopping the LNG project. Please listen to the citizens of Tacoma. We want a clean livable city that we can be proud of.

Sincerely,
David Fenbert

Sent from Mail for Windows 10
September 12th 2017
Planning Commission:

I object to the proposed amendment to the Tacoma Municipal code, including the Shoreline Master Program. We have lived at 1244 and 1242 Browns Point Blvd for over 40 years. We have paid taxes all these years. And now you want to rezone my property line. This is unfair to all the people on the Northeast Tacoma Hill I feel the Planning Commission is taking advantage of us the property owners.

Patricia M. Fengler
1244 Browns Point Blvd. N.E.
Tacoma, Wa.98422
David Fischer  
708 Market Street, #411  
Tacoma, WA 98402  
(253)468-0749  
Email: ghotier59@gmail.com

September 11, 2017

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

RE: Tideflats Interim Regulations

Dear Mr. Beale and members of the Planning Commission:

As an active advocate for Tacoma and Pierce County, I work across many sectors – at my day job it's obviously arts and culture. Not as visible is my service as a volunteer and advisor: I am active in both K-12 education and higher education causes, civic engagement and social justice causes, as well as deeply experienced in environmental, and urban planning issues from my days working with Lawrence Halprin, F-AIA, F-ASLA. My investment of education, time and financial contribution in these causes has given me the opportunity to learn how important it is to keep our economy diversified; and recognize how interdependent is our entire community!

As a non-profit leader, I see that our social fabric is fraying, and our economy is tenuous. I am committed to conversations, actions and policies that will hold us together. Pitting one sector against another will not help us advance our common goals and strengthen our community. Making progress on safety, environmental protection and our economic strength are NOT mutually exclusive. We can navigate the issues that are in conflict, ensure progress, compromise and keep strong our focus on jobs all at the same time!

I do not support the proposed interim regulations that would have the City of Tacoma arbitrarily lump existing and potential businesses into a category called “high risk/high impact industrial uses.” This will further divide us, and undermine the balanced approach to the creation and retention of jobs in Tacoma. Such a policy will create a chilling effect on much of the business sector, from trade to manufacturing, from finance to legal support, and of course, will impact our community’s capacity to give and support the non-profit sector.
Washington State's environmental laws are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. The City of Tacoma has sufficient regulations and ordinances in place to protect our environment. It is incumbent upon the City to ensure that the existing laws have been applied fully and equally before putting in place any new regulations.

The proposed interim regulations are unnecessary. I respectfully urge the Planning Commission to reject these recommendations and to ensure that the Tideflats Sub-area Plan is supported by quality research, public involvement, and economic realities. Thank you, and your fellow commissioners for your time and energy in serving our community.

Sincerely,

David Fischer
Karen Fleckner  
1922 Lighthouse Lane NE  
Tacoma, WA 98422

City of Tacoma Planning Commission  
747 Market Street, Room 345  
Tacoma, WA 98402  
planning@cityoftacoma.org

September 13, 2017

Dear Planning Commission:

My name is Karen Fleckner and am a resident of Pointe Woodworth in NE Tacoma. I am writing you this communication in support of creating a buffer zone between residential neighborhoods and unabashed industrial growth located at Marine View Drive from Taylor Way to the 11th Street bridge. Our residents deserve a balanced consideration for their health and well-being as well as the commercial viability of the businesses at the Port.

I recognize the need for economic growth for Tacoma, but it is also necessary to remedy the poor planning of permitting a residential neighborhood so close to industrial processes that will no doubt imperil citizens health. I believe there needs to have some interim regulations that protect Tacoma's NE taxpayers, voters, friends and families that are being negatively impacted. We need our planning commission and elected officials to provide regulatory protection against carcinogenic pollution continuously showering our homes and endangering our lives.

Our community is requesting limitations on allowed uses and growth of certain industrial processes; namely fossil fuels. We need to have a voice in this process and to know that our concerns are not only being heard, but heeded. An outcome that will work for all of us (businesses and residences alike) in Tacoma is required.

Sincerely,

Karen Fleckner
Please support clean energy and environmentally responsible project to make and keep Tacoma beautiful.
Dear Planning Commission,

I am a business owner and employer. In addition to providing quality civil construction and asphalt paving services, our business provides 65 family-wage jobs in the Tacoma area.

We here at Puget Paving are all concerned about the proposed regulations that seek to drastically alter or limit industrial uses on the Tacoma tideflats. The environment and our shared social values are important, but please consider jobs, and any adverse impacts to our Port’s competitiveness, while also balancing our economic, social and environmental values. This is NOT a choice between jobs and the environment.

Thank you.

Gunnar Gehring
President

Puget Paving & Construction, Inc.
10817 26th Ave S, Lakewood, WA 98499
Phone (253) 474-5616 Fax (253) 474-5877
Dear Members of the Planning Commission:

I am writing to share my thoughts on interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma.

As a Tacoma homeowner, employee, and mother, I urge the committee to act now to prohibit the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to prevent the expansion of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am deeply concerned that the latest amendment to interim regulations includes a loophole that permits the expansion of existing terminals, and I ask the committee to close the loophole. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to allow non-polluting businesses to expand if needed in order to encourage non-polluting industry over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business--as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally--and foundationally--the committee must respect the Puyallup Tribe and their preferences when formulating and monitoring interim regulations.

If you care for the health and well-being of all Tacoma residents you will put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide together how to move forward. Since the City of Tacoma and the Port affiliates often claim "jobs" as a reason to promote dirty industry, I wish to remind you that clean industry provides job opportunities too--and that continued or expanded dirty industry only makes our Port undesirable to such forward-looking corporations.

The many natural disasters of the past few weeks attest to the urgency of making our nation truly green if we and the planet are to survive. Please don't keep Tacoma stuck in our dirty and toxic past. Institute a moratorium on all petrochemical growth in our beloved city of Tacoma NOW and help us develop a healthy, clean, and profitable future!

Thank you for your serious and thoughtful consideration and for your service to our community. We look to you for moral and ethical action that will ensure the health of our environment, our citizens, and our economy.

Sincerely yours,

Alison Hale
September 14th, 2017

CITY OF TACOMA
Planning and Development Services Department
747 Market Street
Tacoma, Washington 98402

Attn:    Mr. Brian Boudet, Planning Division Manager
Subject: Interim Regulations for the Tideflats

Dear Mr. Boudet:

Thank you for the opportunity to comment on the proposed Interim Regulations for the Tideflats and Tacoma M-IC Zoning areas. To better understand the changes that the Planning Commission is considering with respect to industrial projects, we have reviewed the following:

- The current Zoning Code for M2, PMI, and the M/IC Overlay District
- The City of Tacoma Zoning Reference Guide 2015
- Resolution No. 39723 (Amended 5-19-2017)

We consider the industries in the Port of Tacoma and the South Tacoma M/IC Overlay Zones to be an integral part of the varied economic base that makes Tacoma successful. This is consistent with language presented by Council Members Campbell, Ibsen and Walker Lee in City of Tacoma Resolution No. 39723, “Whereas, the City has identified the following overall goals and guidelines for the Tideflats Subarea Plan… (2), the plan will support continued growth of this community’s economy and employment base, and the important role of the Tideflats area as an economic engine for the City, Pierce County, and the region.” We believe that interim and future Zoning Regulations should be: transparent; predictable; equally protective of the environment and the ability of industrial users to develop and expand their operations in appropriate locations.

A considerable portion of our core business at Sitts & Hill is for industrial clients in the City and the Port of Tacoma. There are many provisions that are under consideration in the proposed Interim Regulations for the Tideflats which would affect Industrial Districts citywide that we find encouraging. These include preservation of industrial land for industrial uses, restricting further residential development adjacent to Marine View Drive, and existing uses would be considered allowed and not subject to limitation on expansion.
September 14th, 2017
Page 2 of 2

Our clients consider many factors prior to beginning a new industrial project or expanding industrial uses. The following are some of these considerations:

1. Understanding the complexity of and timelines for the permitting process

2. Project pre-planning access with City Departments

3. The ability to work with Staff to help define SEPA Mitigating Measures that are appropriate to the project, if required

4. The ability to work with Staff after a Draft Staff Report has been prepared for a project prior publication and dissemination for a Public Meeting or a Public Hearing. This gives the Applicant an opportunity to obtain a favorable final Staff Report

5. A defined permit intake and review process

Industrial developers, like all large project developers, want to know that when they propose an industrial project that is allowed in the M2, PMI and M/IC Overlay Zones, if they follow the City Codes and Ordinances for development, their project can be constructed.

We know that our industrial businesses have choices when it comes to where to invest in their future. We also know that many industrial businesses provide living wage jobs to the communities in which they choose to invest. We want to see Tacoma continue to be a preferred location for industrial growth and expansion.

We do not recommend The Tideflats Interim Regulations, as "Emergency Measures" be implemented. We recommend the normal process by which the Zoning Code may be changed is followed for the Tideflats Subarea Plan. This allows all stakeholders, including the Port of Tacoma’s tax base supporters (extending to all of Pierce County), to be included in the public process prior to implementation of proposed changes.

Sincerely,

SITTS & HILL ENGINEERS, INC.

[Signature]

Kathy A. Hargrave, P.E., Principal
9/14/17

Dear Tacoma Planning Commission,

I’ve been a resident of Tacoma since 1988.

Last month I attended my 1st Port Commissioner’s meeting. A majority of the meeting concerned contaminated areas at the port.

1. Additional funds were approved for a study involving the Arkema Manufacturing area at the port. Arkema is the same company that walked away from chemical tanks in Crosby TX during Hurricane Harvey, allowing the tanks to explode and cause harm. These additional funds include looking at the sheet pile wall that is meant to stop contaminates from entering the Hylebos Waterway. They are concerned it could be making things worse, instead of better. They also need to study the stability of a plume containing arsenic.

2. Funds were also approved for environmental cap repairs for another piece of property on the Hylebos Waterway.

3. There was also a 1st reading for a new 5-year lease agreement with Fibres International, Inc. at 401 Alexander Ave. According to the Dept of Ecology’s website, this is a superfund site with contaminants consisting of chlorinated solvents, PCBs, pesticides, and metals (especially zinc). The website also gives the status of the clean up and listed it as having started so I was surprised the port would even consider an extended lease on a site that is not fully cleaned up and more surprised that an industry is willing to place its employees on contaminated land.

I mention this port meeting because it really disturbed me. All I could see for the rest of that day and days that followed was a vision of port and city officials running on something like a hamster wheel – just running around and around in circles – with nobody willing or able to jump off.

I’m asking you to recommend a moratorium on all fossil fuels. The LNG plant must be halted. Stop the conversion of the Targa tanks to natural gasoline and stop US Oil expansion. The proposed interim plan allowing expansion is unacceptable. For the sake of Tacoma take the opportunity now to move forward and get off this self destructive cycle. I’m convinced that there are many viable, sound and economical possibilities for our port. It’s past time to turn the port and Tacoma around.

Reflecting on this last month of environmental disasters, I don’t want Tacoma, WA to be the next Crosby, Texas. I don’t trust PSE, Targa, US Oil or any other fossil fuel industry to do the right thing during a critical time like an earthquake? It’s obvious - they are in survival mode for themselves, not for us. We also saw that in such disasters, it is deemed unsafe for emergency personnel – they can’t do a thing. Without a doubt, there is potential for a similar
or worse disaster to happen right here in Tacoma.

Please protect our citizens and recommend a moratorium of all fossil fuels, including the LNG plant, during this period before adoption of a subarea plan. My 2 grandchildren and grandchildren everywhere need a future of clean air, land and water.

Thank you for your work on this matter.

Sincerely,
Kathy Hewitt
Dear Planning Commission,

I am a Tacoma Citizen with a view of the Salish Sea out my window that I have enjoyed these past 21 years. Recently I bought solar panels for my home instead of a car. I bike commute or use public transit and I support community based agriculture. So I try to decrease my personal dependency on carbon.

I thank you for your influence and work on behalf of the Port of Tacoma. I think you are the most important people in the world at this moment in history, not just for Tacomans but for the world. I mean this! You have a great opportunity to make the right decision. Please protect the Tideflats. Local governments must step in since the federal government supports continued reliance on fossil fuels.

Interim Regulations must be immediately put into place to prevent further fossil fuel projects from being constructed in our Tide Flats. It is imperative that we make local decisions about how to best use the precious land at the port. Otherwise powerful multinationals will reap profits for themselves while they pollute our waters, air and soil. Projects from outsiders like the Liquefied Natural Gas Plant take too much space and wipe out the potential for other sustainable industries that could employ Tacomans into the future. The Port is uniquely deep and will continue to attract fossil fuel industries, so we must protect it now with a pause on new and existing projects.

Thank you for your service. I beg you to protect the Salish Sea and Tacoma!

Janet Higbee-Robinson
This will be very short. We seriously NEED Regulations for this area that heavy, relative dirty, industry companies see as a goldmine. PLEASE step up as our representatives and institute the well thought out plan.

Methane?, Steel, LPG?, Gas Refining and loading?….It’s all a ticking time bomb down there below me with serious environmental consequences for Puget Sound and the Bay.

Lets focus on attracting a clean soft industry, if any. I heard Amazon is looking for a new headquarters….

Seriously, Thanks for your service and focus on this important initiative. Last thing on the labor front, I see help wanted signs and advertisements all over Tacoma, including Milgard Windows. A Labor shortage is a weak argument at best.

Thanks again,

Eric Johnson
1418 Browns Point Blvd
Tacoma
Office 253-576-3040
Tacoma being a working class city and one which I have made my living, needs to keep the port of Tacoma industrialized. It is hard enough finding work now days in the industrial work and one which pays a livable wage.

please see that the shore and the port of Tacoma keeps it standard the way it is. for the sake of the working class. Please

thank you

mark jones
1426 military rd south
spanaway wa 98387
Lihuang,
Planning Commission,
Thank you for taking the time to review my comment. I will keep this short as I have already submitted a comment.

I would appreciate the commission to consider the following.
I continue to believe the best course regarding Fossil Fuel based businesses in the Tideflats is a complete moratorium. The Planning Commission could use the pause without interference to concentrate on preparing a concise, thorough, workable, generational, Sub Area Plan.

I would also ask the commission to consider including businesses that are not obvious abusers of our environment. Such as acres of warehouses serviced by fuel burning vehicles. The degradation to our home is not limited to the exhaust pollution but also particulate matter released from rubber and concrete contact, noise pollution, drippings from the chassis, traffic stoppages. As the tideflats are mostly off the public transportation grid employees will be asked to provide their own transportation, adding to the polluting congestion.

Thank you for your time and work with this difficult task, I sincerely appreciate all that you do.

Charles Joy
Tacoma, WA
253 459 3319
August 17, 2017

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

RE: Tideflats Interim Regulations (New) Staff Recommendations – Exacerbating the Problem

Dear Mr. Beale:

My letter to you dated August 2, 2017 (enclosed) expressed the EDB’s concerns regarding the Planning Commission’s Staff Recommendations relative to proposed Tideflats Interim Regulations. As I indicated then, and re-emphasize now, the recommendation that would have the City of Tacoma create a category called “high risk/high impact industrial uses” and lump a variety of existing and potential businesses into that category is arbitrary and unjustified.

Unfortunately, staff has exacerbated the problem with its updated recommendations. I refer to the memo dated August 11, 2017 from Stephen Atkinson addressed to the Planning Commission, subject: Tideflats Interim Regulations. This memo recommends the City (1) expand its arbitrary list even further to include additional categories of businesses as well as (2) expand the geographic reach of the recommendations to include additional industrial areas of Tacoma which are completely outside the boundaries of the subarea plan. Once again, I respectfully urge the Commission to reject these recommendations to ensure that the Tideflats Sub-Area Plan is supported by quality research, public involvement, and economic realities.

Sincerely,

Bruce Kendall  
President and CEO

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

ENCLOSURE
August 2, 2017

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

RE: Tidelflats Interim Regulations Staff Recommendations

Dear Mr. Beale:

I am writing with regard to the memo from Stephen Atkinson dated July 27, 2017 to members of the Planning Commission, subject: Tidelflats Interim Regulations. Specifically I would like to address Attachment 1: Tidelflats Interim Regulations: Summary of Staff Recommendations.

The staff recommendations would have the City of Tacoma arbitrarily create a category called “high risk/high impact industrial uses” and lump a variety of existing and potential businesses into that category. This is beyond the pale.

There is neither scientific research nor quantifiable method to the proposed categorization of industrial uses in the Tidelflats. In addition, the recommendation to limit existing companies’ growth potential by 10-20% creates a chilling effect across the Tacoma economy.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for most eco-friendly. Legal and appropriate business activities operate within these strict parameters. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is good for their employees, customers and the bottom-line.
The Tideflats area is designated by the City of Tacoma and the Puget Sound Regional Council as a Manufacturing/Industrial Center. That very designation was, by design, created to encourage the very kind of industrial uses that the proposed interim regulations now seek to block. The family-wage industrial jobs in the Tideflats pay among the highest in Tacoma and are well above the City and County average. Randomly slapping prohibitions or limitations on the creation of these jobs will have detrimental effects for the quality of life of hundreds of families as well as the city’s tax base.

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

Sincerely,

Bruce Kendall
President and CEO

Cc: Marilyn Strickland, Mayor
    Elizabeth Pauli, City Manager
    Steve Atkinson, Planning Services Division
September 13, 2017

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

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

Dear Mr. Beale and members of the Planning Commission:

The Economic Development Board for Tacoma-Pierce County places equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is good for their employees, customers, and the bottom-line.

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

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

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

Sincerely,

Bruce Kendall  
President and CEO

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

2017. Let me remind you of the year again, 2017. There is NO need for fossil fuels of any kind any longer!

Please don't let the corporations tell you that jobs will come and money will increase the coffers of city government b/c one tiny accident will destroy everything!

How many times do people have to repeat history before realizing that it's NO LONGER NECESSARY to use fossil fuels, FRACKED GAS, when solar is available, clean and won't cause a DISASTER if there is an accident.

What I find so remarkable is the news that we're told almost on a daily basis that we are in for a HUGE earthquake! With that news, how can any sane individual consider anything but solar!?!?

PSE is playing Tacoma for a fool. They will lose nothing if an accident occurs b/c we see constantly what little corporations ever pay for their environmental disasters. The people will lose not only their property but their health if an accident occurs.

Please take a stand to put our planet and our neighbors first.

WATER IS LIFE!

Sincerely,
Kriss

3716 103rd Ave CT NW Gig Harbor, WA 98335
Kriss A. Kevorkian, PhD, MSW
www.drkkevorkian.com

It is horrifying that we have to fight our own government to save the environment. ~Ansel Adams
I am writing to express my concerns for the Tideflats subarea plan as proposed:

1. I am concerned that the proposed 2500 foot “expanded notice” area for any heavy industrial projects city-wide which would require a SEPA determination or discretionary permit is not wide enough. 2500 feet from the current PSE LNG plant, which is now in the process of preliminary construction as permitted, does not give notice to most residents, either in single family residences, or multi-family residences, who would be adversely affected in the event of a worst-case scenario, i.e., an explosion or even severe leakage from that liquefied natural gas storage tank.

As of this date there has not yet been issued a permit from the Puget Sound Clean Air Agency, which jurisdiction covers emissions from that plant. To date, Puget Sound Energy has attempted to convince PSCAA that they will be in full compliance with all air quality requirements. The Puyallup Tribe published a 51 page report on climate change and its impacts in 2016. It listed multiple concerns, from damage to sea life to an increase in asthma rates in children in Tacoma, all as result of the decrease in air quality in this region due to pollution directly related to heavy industrial projects within the Port of Tacoma.

“This threat is especially critical in Pierce County, where asthma is already a concern; studies have shown a 1 to 7% increase in asthma diagnoses between 2002 and 2012, with 30% of children in Pierce County public schools experiencing an asthma attack in 2012.”[69]

The above is directly from the report prepared by the Puyallup Tribe. It obviously doesn’t pertain only to indigenous children but affects all of our children and grandchildren.

Nevertheless, the Port of Tacoma entered into a 25-year lease with Puget Sound Energy to construct a storage tank for the purpose of storing liquefied natural gas. That LNG would in turn be used by TOTE to fuel their ships, and to a lesser degree for use by consumers in “peak” periods of usage.

The fact that the City of Tacoma is NOT a consumer of energy provided by PSE, but rather has its own utility for its customers, was apparently not taken into account. The sole purpose of this storage facility seems to be for the purpose of fueling the TOTE vessels.

I would request that given the fact that the 2500 foot “notice” area does not include most residences or schools which would be directly adversely affected by the pollution produced by this LNG plant, that notice be expanded to a one mile wide area in all four directions surrounding the site of this heavy industrial project.

I would further ask that since #2 of the proposed subarea plan prohibits “the expansion of existing non-industrial uses in the Port/Tideflats, that it would be nonsensical to not have this same prohibition apply to Heavy industrial uses in existence. Why would existing facilities such as the LNG plant (which has not yet been constructed, and is still in the middle of the permit process), which has the potential to cause widespread harm, not just from leaks or explosions but also inherent air pollution, be allowed to expand under this subarea plan, while non-industrial uses be prohibited from expanding its uses?
Further, I am concerned that as of this date, there is NO fire station or other facility in place to mitigate any damage the existence of the LNG plant might incur.

We have seen first hand in the last few weeks the extreme damage in Texas and Florida caused by natural disasters, including the explosion of a large chemical plant in Texas. We have witnessed and felt first hand the damage caused by the rampant forest fires throughout the West, including the State of Washington. We have experienced the increased difficulty of even breathing the air, caused by ash and smoke from those fires which hung over the skies of this region. We are aware of the massive earthquake which took place in Mexico earlier this week.

If we continue to ignore the fact that we live in a fault zone, that we live on the water, and that we are not immune to such natural disasters, and we allow such an industry such as a liquefied natural gas storage facility in our backyard, we must at least give notice, and have the very minimum response mechanisms in place. We do not.

We have no fire station. We have no viable evacuation routes out of that area. We are not immune from the pollution from forest fires which occur hundreds of miles from where we live. How can we possibly think that pollution which occurs from toxic emissions in our own neighborhoods would not affect us? This concern is immediate. There is no legal language which guarantees 100% protection and mitigation of all disasters. That is clear at this very moment in time.

There is, however, language which would address the planning necessary to prevent some of the worst consequences of heavy industrial uses within the Port of Tacoma, which is part of this subarea interim regulations plan.

This city, and the Puyallup Tribe of Indians, has been subject to contamination and pollution from heavy industrial uses (including all of the uses included in #4 of the Subarea Plan) for over 100 years. Hundreds of millions of dollars have been spent by the EPA, the State of Washington, and the City of Tacoma to mitigate some of the damage from these sites.

It is insane to look at what it has cost to clean up this subarea, and to blindly enter into yet another contract with another polluter, if not destroyer of this body of water and land. The lease contract has already been signed between the Port of Tacoma and Puget Sound Energy.

I am not asking for the Port to rescind its contract. I am asking that protections be put in place to protect the residents of Tacoma, native and non-native, in the event of a catastrophic event exacerbated by the existence of a liquefied natural gas storage plant within this subarea. That includes expanded notice, beyond which is being proposed, and the construction and full operation of a fire station before any consideration of “expansion” by existing heavy industrial facilities take place.

Respectfully submitted,

Carol M. Kindt
5939 North 26th Street, Apt. 100
Tacoma, WA 98407
(253) 576-5248
Sent from Mail for Windows 10
June 19, 2017

Hand Delivered & Email
Tacoma Planning Commission
Tacoma Municipal Building
747 Market Street #345
Tacoma, WA 98402

Subject: Tideflats Interim Regulations

Dear Chair Beale & Commission,

We serve as the Port of Tacoma’s General Legal Counsel. We have had the pleasure of working closely alongside the City Staff in successful defense and support of numerous City land use planning decisions. However, today we speak in opposition to adoption of the proposed interim Regulations. We outline the reasons below.

1. Interim Regulations Disrupt Important State, City and Regional Planning Processes & Mandates.

Given how state law mandates have already been thoughtfully implemented and regionally synchronized, the proposed interim regulations are both unnecessary and legally disruptive.

A. State Law. Numerous state planning elements extend protections to the industrial and Port uses within the Tideflats, which the proposed interim regulations do not recognize or comply with.

The Growth Management Act (GMA) requires a mandatory “Comprehensive plan—Port element”,¹ applicable to the City and Port of Tacoma. This State planning law establishes

¹ RCW 36.70A.085-Comprehensive plans—Port elements.

(1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.
(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.
(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:
    (a) Define and protect the core areas of port and port-related industrial uses within the city;
several protections for the Port, and provides that the City and Port are to work together and “must establish policies and programs” to:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and

(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

Rather than limit and stifle growth, state law provides that the Container Port Element must “retain sufficient planning flexibility to secure emerging economic opportunities.” Id. 2

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and
(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

(4) Port elements adopted under subsections (1) and (2) of this section must be:
(a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and
(b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.

(5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

(6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:
(a) Creation of a port overlay district that protects container port uses;
(b) Use of industrial land banks;
(c) Use of buffers and transition zones between incompatible uses;
(d) Use of joint transportation funding agreements;
(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;
(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and
(g) Use of other approaches by agreement between the city and the port.

(7) The department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.

(8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071.

2 Other tools available under this section include authorization for the City to:
(a) Create a port overlay district that protects container port uses;
(b) Use of industrial land banks;
(c) Use of buffers and transition zones between incompatible uses;
(d) Use of joint transportation funding agreements;
(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;
Additional ways the current process for developing Interim Regulations conflict with state law include:

- **State law** requires Collaboration with Port is required when adopting elements of a Port Container Plan.³

- **State law** RCW 36.70A.085 (6) lays out a menu of available actions that cities and port may use to develop Container Port Element – which do NOT include the unilateral city action of imposing interim regulations.⁴

- In fact under state law, deviation for the list of available planning actions laid out in RCW 36.70A.085 (6) expressly requires “agreement between the city and the port,” which is not present here.

- The interim regulations, as proposed, have the state law concept of buffering for incompatible uses exactly backward.⁵ RCW 36.70A.085 (f) calls for the Use of

  (f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port

³ “Port elements adopted ...must be developed collaboratively between the city and the applicable port”  RCW 36.70A.085 (3).

⁴ In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:
  (a) Creation of a port overlay district that protects container port uses;
  (b) Use of industrial land banks;
  (c) Use of buffers and transition zones between incompatible uses;
  (d) Use of joint transportation funding agreements;
  (e) Use of policies to encourage the retention of valuable warehouse and storage facilities;
  (f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port.

⁵ “Finally, existing core area buffers need to be reviewed against Policy CP-1.4, which states ”Reduce the potential for land use conflicts between industrial development and surrounding non-industrial uses by providing for adequate Industrial/Commercial buffer areas ... " Given recent development activity, the CPE observation that " ... to the east, the steep bluff rising above Marine View Drive provides a clear transition from the industrial area to the residential development at the top of the bluff ... " and the CPE conclusion that " ... the existing geography provides a very effective buffer and no additional transition area is necessary ... " needs to be reviewed against current best practices and the changing development landscape. This review will complement the citywide Open Space Corridors regulatory review that is currently underway.”  Office Of The City Council Consideration Request (CCR). Significantly, the CCR is signed by only one council person, lacks the additional two supporting Council signatures and should not override Resolution #39723, adopted by the full City Council, which provides that “that a subarea planning process is the best course of action to comprehensively address land use issues associated with the future of the tideflats/port area in Tacoma”.

“Currently zoned as PMI, parcels along Marine View Drive and east of the Hylebos waterway and creek do not provide a sufficient transition area that would allow the long-term viability of the industrial areas while protecting the surrounding residential areas from unreasonable impacts.”  North East Tacoma Neighborhood Council.
limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; not elimination or watering down of industrial uses within the Port areas.

- The interim regulation proposals are contrary to the purpose and intent of why state law requires inclusion of a Container Port Element in the Comp Plans of qualifying cities and counties, including Tacoma, because:
  
  o “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
  
  o directly create thousands of high-wage jobs throughout our region, and
  
  o “container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, ...and limit the opportunity for improvements to existing port-related facilities 6

B. City Comprehensive Plan and Codes. The City of Tacoma adopted its Container Port Element of the City’s Comp Plan in 2009. The current proposed, interim regulations impermissibly conflict nearly every one of these over-arching, adopted Comp Plan policies:

- Protect the long-term function and viability of this area, GOAL CP–1.8

“Within the City, the 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.”

6 RCW 36.70A.085. - Findings—Intent—2009 c 514: "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts.” [ 2009 c 514 § 1.]

7 RCW 36.70A.085

8 GOAL CP–1 Identify the core port and port-related container industrial area and protect the long-term
Planning Commission - Opposing Interim Regulations
Port Legal Counsel
June 21, 2016 - 5 -

- Protect the **continued viability** of the Core Area, GOAL CP–2.9
- Promote the continued **growth** and vitality of port and port-related industrial activity. GOAL CP–3.10

- **Work in partnership with the Port of Tacoma** and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers. GOAL CP–4.11

- Identify, **protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods** within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system. GOAL CP–6.12

- Provide, **protect and preserve the capital facilities and essential public services needed to support** activities within and beyond the Core Area. GOAL CP–5.13

In addition:

- The interim regulations which propose to downzone, restrict and or limit industrial uses conflict with the existing Comp Plan element CP-1.2, which requires that the City “**Prohibit uses that would negatively affect the availability of land for the primary port and port-related cargo and industrial function of the Core Area**. Encourage aggregation of industrial land for future development as cargo port terminals and supporting uses.

- The interim regulations which propose to interfere with existing buffers conflicts with the **City’s own Comprehensive Plan**, which conclusively determines that the existing buffers are “very effective” and that “no additional Industrial / Commercial Buffer area is necessary.”14

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9 GOAL CP–2 Establish an Industrial/Commercial Buffer Area around the Core Area that will protect the continued viability of the Core Area while providing for a compatible Industrial/Commercial Buffer to development in the larger surrounding area.
10 GOAL CP–3 Promote the continued growth and vitality of port and port-related industrial activity.
11 GOAL CP–4 Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers.
12 GOAL CP–6 Identify, protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system.
13 GOAL CP–5 Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area.
14 CP-4 Land Use Buffers of the City’s Comp Plan, Container Port element, identifies the existing buffers and has concluded that “the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.”

“To the west, the railroad tracks and steep bluff rising above Dock Street to the neighborhoods to the west provide a clear buffer to the industrial area. Similarly, to the east, the steep bluff rising above Marine View Drive provides a clear buffer from the industrial area to the residential development at the
It is not just coincidental that Tacoma City Code\textsuperscript{15} conflates “interim regulations” and “Moratoria”, because interim regulations, as proposed, are just that. The Port challenges that the required criteria is in place to support this type of action.

C. Required Regional Planning Directives. The proposed interim regulations erode regional planning directives. The City’s Comprehensive Plan, Container Port Element as currently written is consistent with Regional Planning Framework, overseen by the Puget Sound Regional Council (PSRC)\textsuperscript{16} and implemented through its Vision 2040 Policy Report.

PSRC is the vehicle by which the Counties develop regional planning policies per GMA. The Growth Management Act states that “multicounty planning policies shall be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas and may be adopted by other counties.” (RCW 36.70A.210 (7)).\textsuperscript{17}

GMA calls for coordination between local, regional, and state planning efforts.\textsuperscript{18}

To advance this coordination, state law requires PSRC to certify that regional transit plans, countywide planning policies, and local comprehensive plans within the central Puget Sound region conform to: (1) established regional guidelines and principles, (2) the adopted long-range regional transportation plan, and (3) transportation planning requirements in the Growth Management Act. RCW 47.80.023.

Within the central Puget Sound region, the multicounty planning policies in VISION 2040 serve as the regional guidelines and principles under RCW 47.80.026.

Jurisdictions and agencies applying for PSRC funding or proceeding with any project submitted into the Regional Transportation Improvement Program, are required to

\textit{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.} \textsuperscript{15}

\textsuperscript{15} TMC 13.02.055

\textsuperscript{16} PSRC is the vehicle by which the Counties develop regional planning policies per GMA. The Growth Management Act states that “multicounty planning policies shall be adopted by two or more counties, each with a population of 450,000 or more, with contiguous urban areas and may be adopted by other counties.” (RCW 36.70A.210 (7)). The multicounty policies provide a mechanism for achieving consistency among cities and counties on regional planning matters. They also guide a number of regional processes, including the Regional Council’s policy and plan review process, the evaluation of transportation projects seeking regionally managed funding, and the development of criteria for Regional Council programs and projects.

\textsuperscript{17} The multicounty policies provide a mechanism for achieving consistency among cities and counties on regional planning matters. They also guide a number of regional processes, including the Regional Council’s policy and plan review process, the evaluation of transportation projects seeking regionally managed funding, and the development of criteria for Regional Council programs and projects.

\textsuperscript{18} RCW 36.70A.100 and 108.
have first obtained PSRC’s “certification” of local comprehensive plans.\textsuperscript{19}

Specific to Tacoma, PSRC last certified the City of Tacoma’s comprehensive plan amendments in 2014.\textsuperscript{20}

More recently, PSRC reviewed the City of Tacoma’s Comprehensive Plan’s periodic update, adopted by the city on December 1, 2015, and issued a January 28, 2016 recommendation\textsuperscript{21} to the PSRC Growth Management Policy Board, Transportation Policy Board, and Executive Board that:

The Puget Sound Regional Council certifies that the transportation-related provisions in the City of Tacoma 2015 comprehensive plan update conform to the Growth Management Act and are consistent with multicounty planning policies and the regional transportation plan.

In addition, the proposed interim regulations are directly counter to PSRC’s regional designation and its goals. PSRC has designated various “Centers”.\textsuperscript{22} Port of Tacoma was designated a Regional Manufacturing/Industrial Center in 2002.\textsuperscript{23}

- Vision 2040 provides “manufacturing/industrial centers are primarily locations of more intense employment and are typically not appropriate for housing.”

- VISION 2040 calls for the “recognition and preservation of existing

\textsuperscript{19} The certification requirement in the Growth Management Act is described in RCW 47.80. The specific requirements for transportation elements in local comprehensive plans are spelled out in RCW 36.70A.070. PSRC has developed an overall process (Adopted Policy and Plan Review Process, Revised September 2003) for reviewing and certifying local, countywide, regional, and transit agency policies and plans. PSRC’s Interlocal Agreement, Section VII, also provides direction for the review of local comprehensive plans and countywide policies (Resolution A-91-01, amended March 1998). The Council’s Executive Board last updated its process for Policy and Plan Review in September 2003. The process is also described in VISION 2040, Part IV: Implementation.\textsuperscript{20} See Page1 here... http://www.psrc.org/assets/13075/Tacoma-CompPlan-2015-Certification.pdf

\textsuperscript{21} See Page 1 here... http://www.psrc.org/assets/13075/Tacoma-CompPlan-2015-Certification.pdf

\textsuperscript{22} “VISION 2040 describes multiple types of centers, including regionally designated centers (regional growth centers and regional manufacturing industrial centers), other centers (centers in Larger Cities and centers in Small Cities/Town Centers), and other central places (such as neighborhood centers, activity nodes, and station areas).” VISION 2040, Appendix E-4 Center Plans.

\textsuperscript{23} Regional Manufacturing/Industrial Centers. Unlike regional growth centers, manufacturing/industrial centers are primarily locations of more intense employment and are typically not appropriate for housing. VISION 2040 calls for the recognition and preservation of existing centers of intensive manufacturing and industrial activity and the provision of infrastructure and services necessary to support these areas. These centers are important employment locations that serve both current and long-term regional economic objectives. VISION 2040 discourages non-supportive land uses in manufacturing/industrial centers, such as retail or non-related offices. And see: http://www.psrc.org/assets/281/mic-profile-PortofTacoma.pdf
Planning Commission - Opposing Interim Regulations
Port Legal Counsel
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centers of intensive manufacturing and industrial activity and the provision of infrastructure and services necessary to support these areas. These centers are important employment locations that serve both current and long-term regional economic objectives”.

- Also, “VISION 2040 discourages non-supportive land uses in manufacturing/industrial centers, such as retail or non-related offices.” Vision 2040 at page 49.

- Vision 2040 provides the following goals for Regional Manufacturing/Industrial Centers24:
  o The region will continue to maintain and support viable regional manufacturing/industrial centers to accommodate manufacturing, industrial, or advanced technology uses.
  o MPP-DP-8: Focus a significant share of employment growth in designated regional manufacturing/industrial centers.
  o MPP-DP-10: Give funding priority — both for transportation infrastructure and for economic development — to support designated regional manufacturing/industrial centers consistent with the regional vision. Regional funds are prioritized to regional manufacturing/industrial centers. County-level and local funding are also appropriate to prioritize to these regional centers25.

The proposed interim regulations completely fail to address the resulting regional planning impacts. As just one example, your Staff Report acknowledges that the City relies heavily on the Port Tideflats to meet the job growth allocated by VISION2040. That job growth allocation is based on the existing Comp Plan and uses, as certified by PSRC, which would be negatively impacted by the interim regulation proposals.

2. The Subarea Plan Process is the Authorized and Better Process.

Tacoma is already undertaking the Tideflats sub area planning contemplated by GMA26. The Sub Area Planning process is consistent with state law’s mandate for cities to develop Port Container Elements collaboratively, Tacoma’s own Comprehensive Plan and land use codes, and the PSRC’s Vision 2040 Report and its designation of the Tacoma Tideflats as a significant Manufacturing and Industrial job growth Center.

The Port agrees with Tacoma Resolution #39723, adopted by the full City Council,

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25 Vision 2040 at page 49.
26 (RCW 36.70A.080 2), “A comprehensive plan may include, where appropriate, subarea plans, each of which is consistent with the comprehensive plan”).
where it concludes that “a subarea planning process is the best course of action to comprehensively address land use issues associated with the future of the tideflats/port area in Tacoma”. 27

The Planning Commission is urged to devote its finite energies and resources to the Sub Area Planning process. Thank you for your consideration.

Sincerely,

Goodstein Law Group PLLC

Carolyn A. Lake

cc: Port of Tacoma Commission
    Chief Executive Officer John Wolfe
    Tacoma City Council Mayor Marilyn Strickland
    Deputy Mayor Robert Thoms
    Tacoma City Council Council
    Elizabeth Pauli, Tacoma City Manager
    Peter Huffman, Tacoma, Director Planning and Development Services
    Department
    Lihuang Wung, Tacoma Senior Planner

27 “WHEREAS the City and Port of Tacoma ("Port") have agreed that a subarea planning process is the best course of action to comprehensively address land use issues associated with the future of the tideflats/port area in Tacoma ("Tideflats Area"), and
WHEREAS the City has received multiple applications/requests for zoning and land use process changes in the Tideflats Area, including the Northeast Tacoma Buffer Zone application, the implementation of the Container Port Element of the City’s Comprehensive Plan, and the Director's Rule relating to Expanded Notification for Large Industrial Projects, and
WHEREAS consolidating these requests into a subarea plan will contribute to the Port and City and the community as a whole by facilitating a j well-defined, comprehensive community discussion about creating clear policy and a long-term vision for the Tideflats Area that addresses issues such as land I use and zoning, capital facilities including transportation and infrastructure, environmental protection and review, and economics,...” Tacoma Resolution #39723.
B E F O R E T H E C O U R T is Defendant’s Motion to Dismiss for Lack of
Subject Matter Jurisdiction and Failure to State a Claim (ECF No. 11). This matter
was submitted for consideration with oral argument. The Court held a hearing on
July 12, 2017. At the hearing, Lindsey Schromen-Wawrin represented Plaintiffs
and Serena M. Orloff represented the United States. The Court has reviewed the
record and files herein, and is fully informed. For the reasons discussed below,
Defendant’s Motion to Dismiss (ECF No. 11) is **GRANTED**.
BACKGROUND

This case arises out of a failed initiative to ban the transportation of certain fossil fuels by rail through the city of Spokane. Relevant to this case, Spokane encourages residents to take part in the legislative process by allowing its citizens to submit citizen’s initiatives. Spokane City Charter § 82. Citizens submit the initiative by filing the proposed law with the City Clerk, who forwards the initiative to the City Council for consideration. Spokane Municipal Code § 02.02.030.

The City Council “may pass the measure as proposed, reject [it] and propose another one dealing with the same subject to be considered as council legislation, or submit the initiative measure to the voters . . . .” Id. § 02.02.040. If the City Council “does not pass the measure as proposed or submit [it] to the voters,” the initiative is forwarded to the City Hearing Examiner who must “issue a formal written opinion as to the legal validity and effect of the proposed measure . . . .” Id. With the benefit of that analysis, the proponent can choose to revise the measure by withdrawing it and submitting a new one. Id.

Alternatively, the proponent may seek to bypass the City Council by collecting signatures from Spokane voters. Id. If the proponent is able to collect the signatures of at least five percent of the electorate, “the council shall either pass such ordinance without alteration or submit it to popular vote at the next available general municipal election.” Spokane City Charter § 82.
FACTS

Plaintiff Dr. Holmquist submitted two initiatives (Initiative Nos. 2016-2 and 2016-6) to amend the City Charter and City Code, respectively—the first on June 10, 2016, and the second on July 6, 2016. ECF Nos. 1 at ¶¶ 13, 17; 1-2; 1-3. The initiatives sought to ban the transportation of coal and oil by rail within the City of Spokane, citing concerns that such violated the “right of the people of Spokane to a healthy climate.” ECF No. 1 at ¶¶ 14, 18. The City Council took no action to place the first initiative on the ballot and declined to place the second initiative on the ballot, “citing concerns about federal preemption. ECF No. 1 at ¶¶ 16, 19.

Spokane City Councilmember Breean Beggs introduced Resolution No. 2016-0064 on July 18, 2016 proposing a similar prohibition of the transit of certain fossil fuels by rail within the City of Spokane. ECF No. 1 at ¶ 20. The Spokane City Council voted unanimously to adopt the resolution, and requested that the Spokane County Auditor hold a special election on November 8, 2017 for the ballot proposition. ECF No. 1 at ¶ 21.

On August 2, 2016, the Hearing Examiner for the City of Spokane issued a legal opinion regarding Initiative 2016-6 opining that federal law would preempt any attempt to restrict or prohibit the operations of a rail carrier and that a “ban on the transport of oil and coal by rail is therefore outside the scope of the initiative power.” ECF No. 1 at ¶¶ 22-23. On August 15, 2016 Council President Ben
Stuckart, citing preemption concerns, introduced Resolution No. 2016-0071 to rescind Resolution No. 2016-0064 and thereby withdraw the Spokane City Council’s request to the Spokane County Auditor for the placement of the Resolution on the November 8, 2016, ballot. ECF No. 1 at ¶¶ 24-25. The City Council adopted the resolution to rescind by a 5-2 vote. ECF No. 1 at ¶ 26. Later, Councilmember Beggs filed a new initiative seeking – once again – to ban the transit of coal and oil by rail through the City of Spokane, but the City Council decided to take no action on the initiative. ECF No. 1 at ¶¶ 26-28.

INTRODUCTION

The parties do not dispute that the Interstate Commerce Commission Termination Act of 1995 (ICCTA) preempts the proposed initiatives. The dispute centers on whether – as Plaintiffs argue – the preemptive effect violates Plaintiff’s purported constitutional right to a livable and healthy climate by prohibiting Plaintiffs from passing legislation that would curb the purported deterioration of the climate. Defendant has moved the Court to dismiss the action for failure to state a claim and lack of standing. The Court finds Plaintiffs claim fails on justiciability grounds because the issue is not ripe, fails for lack of standing, and any relief requested would amount to an advisory opinion; the Court need not address the remaining contentions.
The jurisdiction of federal courts is defined and limited by Article III of the Constitution, which extends judicial Power to cases and controversies. *Flast v. Cohen*, 392 U.S. 83, 94 (1968). This forms the basis for the judicial doctrine of justiciability—“the term of art employed to give expression to this dual limitation placed upon federal courts by the case-and-controversy doctrine.” *Flast*, 392 U.S. at 95. “Justiciability is itself a concept of uncertain meaning and scope.” *Id.* Courts have mixed judicial prudence¹ with this limitation² on judicial power and crafted specific categories of justiciability, including: advisory opinions, feigned and collusive cases, standing, ripeness, mootness, political questions, and administrative questions. *See Flast*, 392 U.S. at 95; *Justiciability, 13 Fed. Prac. & Proc. Juris. § 3529* (3d ed.) (citing cases). Notably, these categories are not

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¹ *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 156 (1951) (concurring opinion) (“Whether ‘justiciability’ exists . . . has most often turned on evaluating both the appropriateness of the issues for decision by courts and the hardship of denying judicial relief.”).

² *Hodgson v. Bowerbank*, 9 U.S. 303, 304 (1809) (“Turn to the article of the constitution of the United States, for the statute cannot extend the jurisdiction beyond the limits of the constitution.”).
mutually exclusive, and “the same concerns often can be reflected in the language of two or more of these categories.” 13 Fed. Prac. & Proc. Juris. § 3529.

1. Standing

The party invoking a federal court’s jurisdiction must demonstrate it has standing. Wittman v. Personhuballah, 136 S. Ct. 1732, 1736 (2016) (citing Arizonans for Official English v. Arizona, 520 U.S. 43, 64 (1997)). “A party has standing only if he shows that he has suffered an ‘injury in fact,’ that the injury is ‘fairly traceable’ to the conduct being challenged, and that the injury will likely be ‘redressed’ by a favorable decision.” Wittman, 136 S. Ct. at 1736 (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–561 (1992)). “[T]he injury or threat of injury must be ‘real and immediate,’ not ‘conjectural’ or ‘hypothetical.’” City of Los Angeles v. Lyons, 461 U.S. 95, 95 (1983).

2. Ripeness

“Ripeness is peculiarly a question of timing.” Thomas v. Union Carbide Agr. Prod. Co., 473 U.S. 568, 580 (1985) (brackets omitted) (quoting Blanchette v. Connecticut Gen. Ins. Corps., 419 U.S. 102, 140 (1974)). “A claim is not ripe for adjudication if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” Id. at 580-581 (quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532 (1984)). “[I]f the contingent events do not occur, the plaintiff likely will not have suffered
an injury that is concrete and particularized enough to establish the first element of standing . . . In this way, ripeness and standing are intertwined.” *Bova v. City of Medford*, 564 F.3d 1093, 1096 (9th Cir. 2009) (citing *Lujan*, 504 U.S. at 560).

3. **Advisory Opinions**

“[T]he oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.” *Flast*, 392 U.S. at 96 (internal quotations and citation omitted). Under Article III, Federal courts are confined to “real and substantial controversies admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990) (citations and brackets omitted). “In any case the Court will not pass upon the constitutionality of legislation in a suit which is not adversary, or upon the complaint of one who fails to show that he is injured by its operation, or until it is necessary to do so to preserve the rights of the parties.” *Coffman v. Breeze Corp.*, 323 U.S. 316, 324-25 (1945) (citations omitted).

Relevant to this case, “[t]he declaratory judgment procedure is available in the federal courts only in cases involving an actual case or controversy, where the issue is actual and adversary, and it may not be made the medium for securing an advisory opinion in a controversy which has not arisen.” *Coffman*, 323 U.S. at 324 (citations omitted).
DISCUSSION

At its base, Plaintiffs complaint alleges: ICCTA “prohibits local laws” – in this case, laws prohibiting the transit of certain fossil fuels by rail – that would secure Plaintiff’s right to live in a healthy and safe Spokane and this undermines – and thus infringes on – Plaintiff’s purported constitutional right to a livable habitat. See ECF Nos. 1; 15. In other words, (1) the federal law prohibits local laws (2) that would secure (3) Plaintiff’s right to live in a healthy and safe Spokane.

First, of special import here, the federal law does not prohibit the passing of local laws. Rather, it may only preempt certain law’s application. This distinction highlights the impropriety of deciding the merits of this case—because there has been no preemption, there has been no harm in fact traceable to ICCTA, the issue is not ripe for review, and any relief would amount to an advisory opinion and fail to redress Plaintiffs’ concern.

There has been no harm traceable to ICCTA and the issue is not ripe because the challenged law has not been applied—i.e there has been no injury by its operation. Coffman, 323 U.S. at 324-25. Accordingly, deciding the case now is not necessary and would not cause any significant hardship on Plaintiffs. Id.; Joint Anti-Fascist Refugee Committee, 341 U.S. at 156. While the City Council cited preemption concerns in their ultimate decision not to place the initiatives on the ballot, this was based on a legal opinion by a third party, not an actual application
of the statute. Notably, the opinion also cited concerns that the measure would strip business entities of legal rights, an “outcome [that] cannot be squared with the constitution or the associated case law.” ECF No. 1-2 at 10.

Further, Plaintiffs could have attempted to circumvent the City Council by garnering support from five percent of the electorate, which would have placed the measure on the ballot regardless of any legal opinion. This seriously undermines any claim that that ICCTA is preventing the initiative from passing, as opposed to the Plaintiffs’ lack of effort. Plaintiffs argue that pursuing the initiative through support of the electorate would be futile because third parties can bring suit challenging the legality of the initiative based on preemption. This potential does not render this avenue of action futile—rather, it highlights why this action is premature. If the initiative were placed on the ballot, any legal challenge would

3 "[T]he ‘case or controversy’ limitation of Art. III requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” Simon v. E. Kentucky Welfare Rights Org., 426 U.S. 26, 41-42 (1976); see also Washington Envtl. Council v. Bellon, 732 F.3d 1131, 1141 (9th Cir. 2013).
bring the present issue front and center, as Plaintiffs would be able to defend the
initiative based on the arguments posed here.\footnote{ Plaintiffs argue that their right to self-governance is being infringed because federal law preempts state and local laws. For the reasons discussed above, this is not the case. Moreover, Plaintiffs are not precluded from influencing state and federal legislation, which are likely the best avenues where any concern for the climate can be addressed on a state or national scale. Importantly, we have a representative government at the federal level—even if Plaintiffs’ power to change and create laws are diluted, this is the nature of our well-established system of laws and self-governance by representation. It is noteworthy that Plaintiffs did not even exercise the rights available to them. Plaintiffs could have tried to convince the City Council that the law would not be preempted because such would be unconstitutional; and Plaintiffs could have sought the requisite votes to get the initiative on the ballot. Further, other avenues of redress exist. For example, “to the extent that state and local agencies promulgate EPA-approved statewide plans under federal environmental laws (such as ‘statewide implementation plans’ under the Clean Air Act), ICCTA generally does not preempt those regulations because it is possible to harmonize ICCTA with those federally recognized regulations.” \emph{Ass’n of Am. Railroads v. S. Coast Air Quality Mgmt. Dist.}, 622 F.3d 1094, 1098}
Similarly, the requested relief—*i.e.* declaring ICCTA’s preemptive effect unconstitutional—would only amount to an advisory opinion and would not redress Plaintiffs’ claimed injury. Without a concrete application of the statute at issue, any opinion and corresponding order would have no immediate effect, but would rather amount to an advisory opinion as to whether *future* legislation would be preempted. Whether a similar initiative will be placed on the ballot in the future and whether the proposed law would be passed is speculative, at best. As such, Plaintiffs’ claim rests upon “contingent future events that may not occur as anticipated, or indeed may not occur at all.” *Thomas*, 473 U.S. at 580-581 (1985) (internal quotations and citation omitted). In the words of the Supreme Court, “[w]e can only hypothesize that such an event will come to pass, and it is only on this basis that the constitutional claim could be adjudicated at this time. An opinion now would be patently advisory . . . .” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 304 (1979).

(9th Cir. 2010); see also *Quinault Indian Nation v. Imperium Terminal Servs., LLC*, 187 Wn.2d 460, 469 (2017) (the Washington Ocean Resources Management Act is “a balancing tool intended to be used by local government to weigh the commercial benefits of coastal development against the State’s interest in protecting coastal habitats and conserving fossil fuels.”).
Second, Plaintiffs’ claim of harm is not fairly traceable to ICCTA and any relief requested would not redress the purported harm. Plaintiffs’ argument is premised on a causal link (1) from ICCTA to the failure of the initiative to pass and (2) from the failed initiative to general global warming. The first link fails to hold because ICCTA did not prevent the legislation from passing, as discussed above. *Bellon*, 732 F.3d at 1142 (“where the causal chain involves numerous third parties whose independent decisions collectively have a significant effect on plaintiffs’ injuries, . . . the causal chain is too weak to support standing.”) (citation omitted).

The second link – the causal connection between the failed initiatives and Spokane’s climate - is tenuous, at best. Plaintiffs do not argue that the mere transit of fossil fuels through Spokane harms the environment. *See* ECF No. 1. Rather, Plaintiffs rely on the purported fact that the *use* of fossil fuels is contributing to global warming, which – as Plaintiffs argue – will eventually lead to mass extinction. Plaintiffs’ position is premised on the idea that banning transportation of certain fossil fuels through Spokane will create a choke point and effectively throw a wrench in the cogs of the fossil fuel industry—thereby leading to less extraction and combustion due to the inability to transport the fossil fuels. This causal chain is too attenuated to establish standing—it is not the transit, but the combustion, that purportedly causes climate change. Importantly, Plaintiffs cannot
rely on “vague, conclusory statements” that ICCTA preemptive effect “contributes
to greenhouse gas emissions, which in turn, contribute to climate-related changes
that result in their purported injuries.” *Bellon*, 732 F.3d at 1142. Although an
avalanche of similar legislation across the country may achieve Plaintiffs’ goal,
this possibility is highly questionable and purely speculative. Indeed, the proposed
legislation may even increase fossil fuel emissions if trains must travel around
Spokane or if the fossil fuel is delivered by truck. *Lewis*, 494 U.S. at 477 (“Article
III denies federal courts the power ‘to decide questions that cannot affect the rights
of litigants in the case before them . . . .’”) (quoting *North Carolina v. Rice*, 404
U.S. 244 (1971)).

AMENDMENT OF THE COMPLAINT

At oral argument, Plaintiffs’ counsel conceded that Plaintiffs have put their
best foot forward with respect to the complaint⁵; and when the Court asked
whether amendment of the complaint would be futile, Plaintiff’s counsel did not

⁵ THE COURT: Okay. I understand your argument and I, from your
argument, I don’t see that you need leave to amend . . . I take it there isn’t any
other allegation you could make in response to the government’s motion to dismiss.

MR. SCHROMEN-WAWRIN: That’s right, Your Honor.
bring any additional argument or facts suggesting an amendment would be anything other than futile.

CONCLUSION

Plaintiffs have brought this claim before the statute at issue has been enacted and have failed to plausibly show that the relief they request will achieve their concern for a healthy and safe Spokane. Amendment would be futile, so the Court is **GRANTING** Defendant’s Motion to Dismiss **without leave to amend**.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. Defendant’s Motion to Dismiss for Lack of Subject Matter Jurisdiction and Failure to State a Claim (ECF No. 11) is **GRANTED**.

2. The District Court Executive is directed to **ENTER** this Order and Judgment accordingly, furnish copies to counsel, and **CLOSE** the file.

3. The deadlines, hearings and trial date are **VACATED**. Each party to bear its own costs and expenses.

**DATED** July 14, 2017.

THOMAS O. RICE
Chief United States District Judge
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, and found that the city zoning restrictions were impermissible in conflict with the Portland’s Comprehensive Plan, 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.kxl.com/portland-ban-fossil-fuel-overturned/

3 Prior to adoption of the FFT amendments, the city’s zoning code, Portland City Code (PCC) Title 33, regulated freight terminals of any description, including what the city now calls FFTs, under the general land use category of “Warehouse and Freight Movement.” The use category “Warehouse and Freight Movement” is generally allowed in employment and industrial zones under standards that do not limit the size or number of such terminals. The challenged zoning code amendments establish FFTs as a new land use category, defined as sites that “rely on access by marine, railroad, or regional pipeline to transport fuels to or from the site, and either have transloading facilities for transferring a shipment between transport modes, or have storage capacity exceeding two million gallons for fossil fuels.”

4 “Under these circumstances, we do not believe the city can adopt zoning amendments that restrict FFTs [Fossil Fuel Terminals] to their existing number and capacity, without at least considering the impact of the amendments on the flow of fossil fuel to the region and the state”. Oregon Land Use Ruling at __.
proposal (i.e., demand beyond that “necessary to serve the regional market.”). 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 Impeccably 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 inconsistent with the City’s existing Comp Plan language which requires the City to protect and maximize industrial uses.

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 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 law\(^7\)), as follows:

- **City Comprehensive Plan and Codes.** The City of Tacoma adopted its Container Port Element of the City’s Comp Plan in 2009\(^8\). 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, GOALCP–1.\(^9\)
  - Protect the continued viability of the Core Area, GOALCP–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–3

• Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers. GOAL CP–4

• 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–6

• Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area. GOAL CP–5

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.”

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.

10GOAL CP–3 Promote the continued growth and vitality of port and port-related industrial activity.
11 GOAL CP–4 Work in partnership with the Port of Tacoma and other property owners to promote protection, restoration and enhancement of native vegetative cover, waterways, wetlands and buffers.
12 GOAL CP–6 Identify, protect and preserve the transportation infrastructure and services needed for efficient multimodal movement of goods within and between the Core Area, Industrial/Commercial Buffer Area, and the regional transportation system.
13 GOAL CP–5 Provide, protect and preserve the capital facilities and essential public services needed to support activities within and beyond the Core Area.
14 CP-4 Land Use Buffers of the City’s Comp Plan, Container Port element, identifies the existing buffers and has concluded that “the existing geography provides a very effective buffer and no additional Industrial/Commercial Buffer area is necessary.” “To the west, the railroad tracks and steep bluff rising above Dock Street to the neighborhoods to the west provide a clear buffer to the industrial area. Similarly, to the east, the steep bluff rising above Marine View Drive provides a clear buffer from the industrial area to the residential development at the 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.”

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.

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.”

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

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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.
Planning Commission- Opposing Interim Regulations
Port Legal Counsel
August 14, 2017 - 8 –

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
September 11, 2017

Hand Delivered & Email
Tacoma Planning Commission
Tacoma Municipal Building
747 Market Street #345
Tacoma, WA 98402

Subject: Tideflats Interim Regulations

Dear Chair Wamback & Commission,

We serve as Legal Counsel to the Port of Tacoma. We previously commented in opposition to the Staff’s proposed Interim Regulations.¹

We write again, this time to express our disagreement with the City’s conclusion that the State Environmental Policy Act (SEPA) does not apply to the proposed Tideflat Interim Regulations (“Interim Regulations”).

Interim Regulations are Not Exempt from SEPA Review. Tacoma Planning staff decided that the Interim Regulations are exempt from environmental review pursuant to WAC 197-11-800(19)(b).² We disagree. That SEPA provision allows exemptions from environmental review only as follows:

(19) Procedural actions. The proposal, amendment or adoption of legislation, rules, regulations, resolutions or ordinances, or of any plan or program shall be exempt if they are:

(b) Text amendments resulting in no substantive changes respecting use or modification of the environment.

Given the breadth of changes to uses in the Tideflats, we disagree that the proposed Interim Regulations do not “substantively” change the use or modification of the environment. The City’s finding of exemption on this basis also is flatly contradicted by the other SEPA provision relied on by Tacoma Staff for exempting these Interim Regulations from environmental review:

WAC 197-11-880 Emergencies, which provision states:

Actions that must be undertaken immediately or within a time too short to allow full compliance with this chapter, to avoid an imminent threat to public health or safety, to prevent

¹ Our previous comments described how:
(1) The proposed interim regulations disrupt important state, city and regional planning processes & mandates,
(2) Numerous state planning elements extend protections to the industrial and port uses within the tideflats, which the proposed interim regulations do not recognize or comply with,
(3) The current proposed, interim regulations impermissibly conflict nearly every one of the City’s existing, overarching, adopted Comprehensive Plan policies, and
(4) that the proposed interim regulations are directly counter to PSRC’s regional designation and its goals.

² See Email Sent: Tuesday, August 29, 2017 9:55 AM from Stephen Atkinson, Planning and Development Services Department, 747 Market Street, Room 345, Tacoma, WA 98402, Subject: Tideflats Interim Regulations - Notification to SEPA Review Officials.
Planning Commission- Opposing Interim Regulations  
Port Legal Counsel  
September 11, 2017 - 2 –

an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt. Agencies may specify these emergency actions in their procedures.

The City cannot have it both ways, that the Interim Regulation adoption is required both to “to avoid an imminent threat to public health or safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation” and yet also results in “no substantive changes respecting use or modification of the environment”.

The City’s treatment of Interim Regulation adoption also is inconstant with similar, past City actions. We point out that Tacoma undertook SEPA review for previous Interim Regulations, including the very recent action:


**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

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   Tacoma Planning Commission: (via Lihuang Wung, Tacoma Senior Planner).
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Lihuang Wung, Tacoma Senior Planner
Steve Victor, Tacoma Attorney’s Office
BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

COLUMBIA PACIFIC BUILDING TRADES
COUNCIL, PORTLAND BUSINESS ALLIANCE, and
WESTERN STATES PETROLEUM ASSOCIATION,
Petitioners,

and

WORKING WATERFRONT COALITION,
Intervenor-Petitioner,

vs.

CITY OF PORTLAND,
Respondent,

and

COLUMBIA RIVERKEEPER, OREGON
PHYSICIANS FOR SOCIAL RESPONSIBILITY,
PORTLAND AUDUBON SOCIETY, and CENTER
FOR SUSTAINABLE ECONOMY,
Intervenors-Respondents.

LUBA No. 2017-001

FINAL OPINION
AND ORDER

Appeal from City of Portland.

William L. Rasmussen, Portland, filed a petition for review. With him on the brief was Miller Nash Graham & Dunn LLP. William L. Rasmussen and Steven G. Liday argued on behalf of petitioners.

Phillip E. Grillo, Portland, filed a petition for review on behalf of
intervenor-petitioner. With him on the brief was Davis Wright Tremaine LLP.

Lauren A. King, Deputy City Attorney, Portland, filed a response brief on behalf of respondent. Lauren A. King and Maja K. Haium argued on behalf of respondent.

Maura C. Fahey and Scott Hilgenberg, Portland, filed a response brief on behalf of intervenors-respondents. With them on the brief was Crag Law Center. Scott Hilgenberg argued on behalf of intervenors-respondents.

BASSHAM, Board Member, participated in the decision. RYAN, Board Chair, and HOLSTUN, Board Member, did not participate in the decision.

REVERSED 07/19/2017

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.
NATURE OF THE DECISION

Petitioners appeal Portland city Ordinance No. 188142, which adopts legislative text amendments (FFT amendments) to the city’s zoning ordinance to prohibit new bulk fossil fuel terminals (FFTs) and the expansion of existing FFTs.¹

REPLY BRIEFS

Petitioners and intervenor-petitioner Working Waterfront Coalition (WWC) move to file reply briefs to address alleged “new matters” raised in the response briefs. OAR 661-010-0039 (allowing a reply brief to address new matters raised in a response brief). Intervenors-respondents (collectively, Riverkeepers) oppose the reply briefs, arguing that they do not respond to “new matters” within the meaning of OAR 661-010-0039, but instead embellish arguments already made in the petitions for review, or simply offer rebuttal to responses to arguments made in the petition for review.

We agree with Riverkeepers. “New matters” within the meaning of OAR 661-010-0039 include (1) responses that an argument in the petition for review should fail regardless of its stated merits (i.e., something in the nature of an affirmative defense), and (2) responses to assignments of error that otherwise could not reasonably have been anticipated. Foland v. Jackson County, 61 Or

¹ To assist the reader, an index of the many acronyms in this opinion is attached as an appendix.
LUBA 264, 266-67, aff’d 239 Or App 60, 243 P3d 830 (2010). Reply briefs that simply embellish or elaborate arguments made in the petition for review, rebut direct responses to the merits of arguments made in the petition for review, offer new arguments in support of an assignment of error, or advance new bases for reversal or remand are not authorized by OAR 661-010-0039.

With one exception, the two reply briefs consist entirely of one or more of the latter type of arguments. Riverkeepers concede that WWC’s reply brief at page 4, lines 6-15 addresses a new matter raised in the response briefs. Accordingly, that portion of WWC’s reply brief is allowed. Otherwise, LUBA will not consider the arguments in the two reply briefs.

FACTS

The city of Portland is one of the largest ports on the West Coast, located at the confluence of the Columbia and Willamette Rivers, and at the western end of a low gradient rail and barge passage through the Cascade Mountains, at a strategic commercial position for regional, national and international trade.²

² The Portland Freight Master Plan (FMP) states:

“From its early days, Portland has been a center of trade and commerce in the Pacific Northwest. The city’s growth has been driven by its role in the movement of commodities. At the turn of the 21st century, Portland has established strong international trade connections * * *. Today, Portland is a competitive gateway for international and domestic trade. It is a ‘trans-shipment’ center, where freight is handled on the way to somewhere else. In fact, more goods move through its transportation network to national and international destinations than are consumed here in the
Prior to adoption of the FFT amendments, the city’s zoning code, Portland City Code (PCC) Title 33, regulated freight terminals of any description, including what the city now calls FFTs, under the general land use category of “Warehouse and Freight Movement.” The use category “Warehouse and Freight Movement” is generally allowed in employment and industrial zones under standards that do not limit the size or number of such terminals. The challenged zoning code amendments establish FFTs as a new land use category, defined as sites that “rely on access by marine, railroad, or regional pipeline to transport fuels to or from the site, and either have transloading facilities for transferring a shipment between transport modes, or have storage capacity exceeding 2 million gallons for fossil fuels.”

PCC 33.920.300(A). Examples include crude oil terminals, petroleum products terminals, natural gas terminals, propane terminals and coal terminals. PCC 33.920.300(C). The amendments include a number of exceptions to the definition of FFTs, listed in n 30. “Fossil fuel” is defined as “petroleum products (such as crude oil and gasoline), coal, methanol, and gaseous fuels (such as natural gas and propane) that are made from decayed plants and animals that lived millions of years ago and are used as a source of energy. Denatured ethanol and similar fuel additives, with less than 5 percent fossil fuel content, biodiesel/renewable diesel with less than 5 percent fossil fuel content,
and petroleum-based products used primarily for non-fuel uses (such as asphalt, plastics, lubricants, fertilizer, roofing and paints) are not fossil fuels.”

PCC 33.910.030.

At least 11 existing terminals within the city of Portland meet the newly-adopted definition of FFT: 10 petroleum terminals and one natural gas terminal. The 11 terminals are clustered in the city’s northwest industrial area, at the terminus of the Olympic Pipeline, which delivers petroleum products to Oregon and southwest Washington from four refineries in the Puget Sound area. Record 44-45. At the terminals, petroleum and gas are stored in approximately 300 tanks and transloaded into other modes of transportation (marine, train, truck, and the in-state Kinder Morgan pipeline) to distribution sites all over the state of Oregon.\(^3\) Record 316. The terminals range from 11.6 to 67 million gallons, with most facilities having more than 25 million gallons of storage capacity. Record 55. Together, these 11 terminals handle approximately 90 percent of fossil fuel for the State of Oregon. Record 316.

Much of the city’s northwest industrial area is located in a moderate to high-

\(^3\) The Oregon Freight Plan (OFP) defines “transloading” as “[t]ransferring bulk shipments from the vehicle/container of one mode to that of another at a terminal interchange point.” OFP E-3; App-1205. Relatedly, the Oregon Transportation Plan (OTP) defines “intermodal facilities” as “[f]acilities that allow passenger and/or freight connections between modes of transportation. Examples include airports, rail stations, marine terminals and truck-rail facilities.” OTP 122; App-813. The term “multimodal” is defined as “[t]he movement of goods or people by more than one transportation mode.” OTP 123; App-814.
risk earthquake liquefaction zone. Record 33, 1866. Many of Portland’s fossil fuel storage tanks were built before seismic design requirements in building codes were adopted. Record 2.

In 2015, in response to concerns regarding proposals to establish fossil fuel export terminals in the region, the city began efforts to limit future establishment or expansion of fossil fuel terminals within the city.4 According to the city, that effort was intended to further two objectives: (1) reducing potential for catastrophic damage in the event of an earthquake, and (2) reducing the city’s contribution to greenhouse gas emissions and climate change.

4 The city’s findings state on this point:

“The energy distribution market in the Pacific Northwest is changing. Production of crude oil and natural gas, particularly from North Dakota, has substantially increased in the U.S. since 2009, as shown in Figure 1. In turn, several large new fuel distribution terminals have been proposed in the Pacific Northwest to access West Coast and export markets, as shown in Figure 2. Similar trends have occurred in Alberta and British Columbia.

“[The FFT amendments] propos[e] a prompt, focused response to these market changes. The recommended code amendments will restrict development of new fossil fuel terminals and limit the expansion of existing terminals, consistent with City and State objectives on climate change and public safety.” Record 316.

Figure 2 lists nine oil, gas and coal export terminals that have been proposed in recent years in the Pacific Northwest, including one (the Pembina propane terminal, discussed further below) proposed in an industrial area in north Portland.
change, and encouraging a transition within the city to cleaner, renewable energy sources.

On November 12, 2015, the city council passed Resolution 37168, which states that the city council “will actively oppose expansion of infrastructure whose primary purpose is transportation or storing fossil fuels in or through Portland or adjacent waterways.” Record 3761. The resolution directed the city Bureau of Planning and Sustainability (BPS) to develop zoning code amendments to implement the resolution. Id. Relatedly, in June 2016, the city adopted a new comprehensive plan, the 2035 Comprehensive Plan (2035 PCP). The 2035 PCP includes a new policy, Policy 6.48, which states that it is city policy to “[l]imit fossil fuel distribution and storage facilities to those necessary to serve the regional market.”5 Record 3317.

5 The 2035 PCP is not effective until January 1, 2018, although the city’s decision cites it as “guidance.” In this opinion, unless otherwise noted, we will use “PCP” to refer and cite to the version of the acknowledged comprehensive plan in effect when the city council adopted the zone amendments challenged in this appeal.

Policy 6.48 does not define “regional” market, and neither does the city’s decision. Because resolving the issues raised in this appeal requires terminology with some geographic precision, we will attempt to use the term “local” to describe the city of Portland and its larger urban area (essentially the Metro region or urban growth boundary), plus small areas of southwest Washington that rely on the city’s FFTs to meet local demand for fossil fuels. Record 339. We will use the term “regional” to describe the larger area currently served by transloading via the city’s FFTs and the in-state Kinder Morgan pipeline, which apparently includes 90 percent of the state of Oregon. We will use “state,” “statewide” or “intrastate” to refer to the market
Pursuant to Resolution 37168, BPS developed a draft of proposed zoning code amendments (proposed draft). The proposed draft prohibited FFTs citywide, and made existing FFTs nonconforming uses. The proposed draft defined FFT in part to include facilities with a storage facility of five million gallons. The city Planning and Sustainability Commission (PSC) held hearings on the proposed draft, and approved modifications resulting in the recommended draft. The PSC recommended draft also prohibited new FFTs but allowed up to a 10 percent expansion of existing FFTs, if in conjunction with tank replacement for seismic and safety upgrades. The recommended draft also modified the proposed definition of FFT to include facilities with a storage facility of only two million gallons, in order to capture FFT storage facilities sized to handle a “unit train,” which is a uniform trainload of a single commodity (e.g., coal) designed to be transloaded to other shipping modes as a single unit. Expanding the scope of the definition of FFT to include facilities with as little as two million gallons of storage capacity captures an additional 24 smaller facilities in the Portland area, in addition to the 11 larger terminals that were the subject of the proposed draft. Record 55.

represented by the entire state of Oregon. We will also refer to “interstate” and “international” markets, which have their obvious meanings.

6 The OFP defines a “rail unit train[]” as a “train of a specified number of railcars handling a single commodity type which remain as a unit for a designated destination or until a change in routing is made.” OFP E-3; App-1205; see discussion under the ninth assignment of error, below.
The city council held hearings on the PSC recommended draft on November 10 and 16, 2016. The city council voted to adopt the PSC recommended draft, with seven changes. The changes included eliminating the proposal to allow a 10 percent expansion of existing terminals. On December 14, 2016, the city council adopted the recommended draft, as amended, as Ordinance No. 188142. This appeal followed.

JURISDICTION

Riverkeeper argues that if LUBA concludes that FFTs are “transportation facilities” as petitioners contend, then the consequence is that LUBA lacks jurisdiction over the appeal of the FFT amendments pursuant to ORS 197.015(10)(b)(D), which excludes from the definition of “land use decision” a decision that determines the “operation, maintenance, repair or preservation of a transportation facility that is otherwise authorized by and consistent with” the comprehensive plan and city code. We reject the argument. The exclusion at ORS 197.015(10)(b)(D) encompasses technical decisions regarding operation, maintenance etc., of transportation facilities that are planned and authorized under the plan and zoning code. The exclusion does not encompass decisions that adopt or modify plan or zoning code text regarding transportation facilities.

STANDARD OF REVIEW

As all parties recognize, the challenged decision is a legislative decision that amends the city’s land use regulations. Because it is a legislative decision,
principles of preservation that would govern a quasi-judicial decision, e.g., the “raise it or waive it” requirements of ORS 197.763(1), do not apply. In addition, a local government is not necessarily required to adopt findings supporting a legislative decision; nonetheless the record on appeal must be sufficient to demonstrate that “required considerations were indeed considered.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002).

PCC 33.835.040(A) provides that:

“Text amendments to the zoning code must be found to be consistent with the Comprehensive Plan, Urban Growth Management Functional Plan, and the Statewide Planning Goals. In addition, the amendments must be consistent with the intent or purpose statement for the base zone, overlay zone, plan district, use and development, or land division regulation where the amendment is proposed, and any plan associated with the regulations ***.”

LUBA’s standard of review of a decision that amends a local government’s land use regulations is subject to ORS 197.835(7), which provides:

“[LUBA] shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

“(a) The regulation is not in compliance with the comprehensive plan; or

“(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.”
In addition, ORS 197.835(9) provides that LUBA shall reverse or remand a land use decision if LUBA finds that the local government “[i]nproperly construed the applicable law,” or “[m]ade an unconstitutional decision[.]” ORS 197.835(9)(a)(D) and (E).

Finally, under ORS 197.829, LUBA must affirm a governing body’s interpretation of its comprehensive plan or land use regulations, unless the interpretation is inconsistent with the express language, purpose or policy underlying the local legislation under interpretation, or the interpretation is contrary to a statewide planning goal, statute, or administrative rule that the local legislation implements.

ORS 197.829 provides:

“(1) [LUBA] shall affirm a local government’s interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government’s interpretation:

“(a) Is inconsistent with the express language of the comprehensive plan or land use regulation;

“(b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;

“(c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or

“(d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.
ORGANIZATION OF THIS OPINION

Petitioners and WWC advance a number of overlapping assignments of error, arguing that the FFT amendments are inconsistent with city comprehensive plan provisions, statewide planning goals, Metro regional plan provisions, and statewide transportation plans. Petitioners and WWC also argue that the FFT amendments violate the dormant Commerce Clause of the United States Constitution.

As discussed below, we conclude under petitioners’ ninth assignment of error that the FFT amendments violate the dormant Commerce Clause of the United States Constitution. OAR 661-010-0071 provides that LUBA shall reverse a land use decision when the Board finds that the decision is unconstitutional. Accordingly, reversal is the appropriate disposition. However, given the likelihood that LUBA’s opinion is not the last stop on the appellate ladder, and to minimize potential for multiple trips up and down that ladder, we deem it appropriate to also resolve challenges to the city’s decision under local, regional and statewide standards. Additionally, in our view, those challenges inform the analysis under the dormant Commerce Clause.

“(2) If a local government fails to interpret a provision of its comprehensive plan or land use regulations, or if such interpretation is inadequate for review, [LUBA] may make its own determination of whether the local government decision is correct.”
We address the local, regional and statewide standards roughly in that order. As discussed below, we sustain some of the challenges under local and state standards. In ordinary circumstances, sustaining such challenges would result in remand to the city for additional evidence or consideration. However, in the present circumstances our resolution of those challenges is necessarily, if unfortunately, somewhat advisory.

SIXTH AND SEVENTH ASSIGNMENTS OF ERROR
SECOND ASSIGNMENT OF ERROR, Subsection (iii) (WWC)

These assignments and sub-assignments of error concern whether the FFT amendments are consistent with the Portland Comprehensive Plan (PCP) and subordinate plans, including the city’s Transportation System Plan (TSP), the city’s Freight Master Plan (FMP), and the Guild’s Lake Industrial Sanctuary Plan (GLISP), an industrial area within the city of Portland that includes most of the existing fossil fuel terminals affected by the FFT amendments.

A. PCP Policies

Petitioners and WWC argue that the city’s decision is inconsistent with a number of PCP goals and policies, which generally require the city to support its industrial areas and its multimodal and intermodal freight system. The city

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8 Petitioners and WWC cite PCP Goal 5 (Economic Development), Policy 5.1, Objective C; Policy 5.4; Policy 5.4, Objective A; Policy 5.12; PCP Goal 6 (Transportation), Policy 6.9, Objective A; Policy 6.18; Policy 6.29; and Policy 6.31.
adopted findings addressing consistency with the PCP goals and policies it deemed relevant, which include almost all of the PCP goals and policies that petitioners and WWC cite.

The city and Riverkeeper respond that petitioners and WWC fail to demonstrate that the city erred in concluding that the FFT amendments are consistent with the applicable PCP goals and policies. For most of the cited PCP goals and policies, we agree with respondents. Most of the cited PCP goals and policies are generally worded expressions of support for the city’s industrial areas and multimodal transportation facilities. The city council adopted findings addressing most of the cited PCP goals and policies. Petitioners and WWC disagree with the city council’s findings of consistency, and invite us to second guess those conclusions. However, given the generally-worded language of most of the goals and policies at issue, and the leeway a governing body has in balancing and weighing consistency of a zoning text amendment with a variety of sometimes competing policy objectives, petitioners and WWC must do more than simply disagree with the city’s conclusions. Petitioners and WWC must demonstrate that the city council failed to meaningfully consider a reasonably specific and pertinent PCP goal or policy.

We have considered petitioners’ and WWC’s challenges to the county’s findings regarding consistency with PCP goals and policies, and for the most
part reject them without further discussion. In our view, only two challenges warrant further review.

PCP Policy 5.1, Objective C, is to “[r]etain industrial sanctuary zones and maximize use of infrastructure and intermodal transportation linkages with and within these areas.” PCP 5-1; App-3. Petitioners and WWC argue that prohibiting new and expanded FFTs is clearly inconsistent with “maximiz[ing]” intermodal transportation linkages.

The city’s finding addressing consistency with PCP Policy 5.1, Objective 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 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 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. Had the city adopted findings addressing Policy 5.4, Objective A, it might be able to explain why the FFT amendments are consistent with this objective. However, the city’s decision did not address Objective A, there is no evidence that the city in fact considered that objective, and the city’s attempt to demonstrate consistency on appeal falls short of demonstrating consistency with the objective. That the city’s code as amended continues to allow new or expanded terminals for aviation fuel or non-fossil fuels does nothing to demonstrate that prohibiting new or expanded fossil fuel terminals is consistent with Objective A. Further, the city cites no evidence supporting its assertion that existing FFTs have the excess capacity or ability to increase throughput to meet any increased demand for fossil fuels in local, regional, statewide, interstate, or international markets.

**B. Guild’s Lake Industrial Sanctuary Plan (GLISP)**

Most of the city’s large FFTs are located within the Guild’s Lake Industrial Sanctuary Plan (GLISP) area. The introduction to the GLISP notes
that the sanctuary is “equipped with intermodal transportation facilities that 
enable it to serve the nation, the Pacific Rim and other worldwide markets.
The [sanctuary’s] businesses and facilities help make Portland the leading 
exporter in the state, and Oregon one of the top ten exporting states in the 
country.” GLISP 6; App-103. The GLISP is incorporated into the city’s 
comprehensive plan, and the city does not dispute that PCC 33.835.040(A) 
requires the city to demonstrate that the FFT amendments are consistent with 
the GLISP. However, the city adopted no findings addressing consistency with 
the GLISP.

As relevant here, the GLISP includes three policies, each of which is 
refined by a number of objectives. Petitioners argue that the FFT amendments 
are inconsistent with these three GLISP policies and objectives. We address 
each in turn.

1. **Policy 1, Objective 2**

GLISP Policy 1 (Jobs and Economic Development), Objective 2 is to:

“Maintain and expand industrial business and employment 
opportunities in the Guild’s Lake Industrial Sanctuary. Stimulate 
investment in the area’s public and private infrastructure and 
industrial facilities.

“Objective 2: Foster a business and policy environment that 
provides continued private and public sector investments in 
infrastructure, facilities, equipment and jobs.” GLISP 34; App-
131.

Petitioners and WWC argue that the FFT amendments fail to foster a business 
environment that promotes continued investment in infrastructure and facilities
within the sanctuary, because it discourages continued investments in the
sanctuary’s FFTs, which are a significant component of the sanctuary,
occupying approximately 242 acres. Record 331.

The city responds that while the FFT amendments limit one type of
industrial use, the amendments do not affect the industrial land supply within
the sanctuary. Further, the impacts of the amendments are moderated by
exempting new and expanded terminals handling the growing market in non-
fossil fuels. The city argues that nothing in Policy 1, Objective 2 requires the
city to allow the unlimited expansion of any one particular land use.

While it is certainly true that Policy 1, Objective 2 does not require the
city to allow unlimited expansion of existing industrial land uses in the
sanctuary, Objective 2 does require the city to foster a policy environment that
promotes continued private investment in the sanctuary. Arguably, that
requires the city to protect the ability of existing industrial uses in the sanctuary
to expand, or at least consider that objective balanced against other policy
objectives. But we do not know how the city council views Objective 2, or
how it would balance it against other policy objectives, because the city
adopted no findings addressing Objective 2, and apparently gave no
consideration to whether the amendments are consistent with the GLISP. The
city’s arguments on appeal are insufficient to establish that these required
considerations were indeed considered.
2. Policy 2, Objective 1

GLISP Policy 2 (Transportation), Objective 1 is to:

“Maintain, preserve and improve the intermodal and multimodal transportation system to provide for the smooth movement of goods and employees into and through the Guild’s Lake Industrial Sanctuary.

“Objective 1: Maintain, protect, and enhance the public and private transportation investments in the [sanctuary], including rail and marine terminal facilities, to ensure its continued viability as a major center for the import and export of industrial products in the State of Oregon.” GLISP 38; App-135.

Petitioners and WWC argue that prohibiting new and expanded FFTs in the sanctuary fails to protect and enhance rail and marine terminal facilities in the sanctuary, and reduces the sanctuary’s viability as a major center for fuel imports and exports.

The city responds that Policy 2, Objective 1 is not particularly concerned with fuel terminals, and does not require the city to allow unlimited expansion of existing fuel terminals. The city also argues that the FFT amendments do not limit the ability of existing FFTs to increase throughput via efficiency or other measures.

However, Policy 2, Objective 1 requires the city to maintain, protect and enhance private transportation investments, with particular emphasis on rail and marine terminals, and does not exclude fossil fuel terminals from the scope of the objective. Further, Objective 1 states that the purpose of maintaining, protecting and enhancing such investments is to ensure the sanctuary’s
“continued viability as a major center for the import and export of industrial products in the State of Oregon.” As explained elsewhere in this opinion, one purpose of the FFT amendments is to preclude new or expanded fossil fuel export terminals within the city. That purpose seems difficult to square with the language of Policy 2, Objective 1, and in its decision, the city council did not even make the attempt.

The city’s attempt on appeal to articulate a demonstration of consistency with Policy 2, Objective 1 falls far short. As noted, the city cites no evidence that the existing terminals have the capacity or ability to increase throughput without expansion of storage or transloading capacity.

### 3. Policy 3, Objective 7

GLISP Policy 3 (Land Use), Objective 7 is to:

“Preserve and protect land primarily for industrial uses, and minimize land use conflicts in the Guild’s Lake Industrial Sanctuary. Allow compatible nonindustrial uses within the [sanctuary] that provide retail and business services primarily to support industrial employees and business.

“Objective 7: Preserve the [sanctuary’s] Willamette River waterfront as a location for river-dependent and river-related uses.” GLISP 42; App-139.

WWC argues that approximately 242 acres of the industrial sanctuary are occupied by waterfront FFT’s that depend in part on marine transportation. Because those sites are already committed to use as fossil fuel terminals, and the amendments prohibit any expansion of those FFTs, WWC argues that the
amendments effectively fail to preserve the GLISP’s river waterfront as a location for river-dependent and river-related uses.

The city responds that the focus of Policy 3 and its objectives is on protecting industrial uses within the sanctuary from competition with non-industrial uses. According to the city, restricting expansion of one type of river-dependent and river-related industrial use is not inconsistent with Policy 3, Objective 7, because the waterfront will remain available for other types of river-dependent and river-related industrial uses.

We understand WWC to argue that the city ignores practical reality if it expects that potential expansion areas of existing waterfront FFTs, which are massively committed to fossil fuel operations, will be developed or redeveloped with other types of water-dependent industrial uses.

The city is correct that Policy 3 and Objective 7 are focused on preserving industrial areas from non-industrial development, and preserving waterfront for river-dependent and river-related uses, and are not expressly concerned with preserving existing types of river-dependent industrial uses against competition with other types of river-dependent industrial uses. WWC is also probably correct that it is optimistic to expect that prohibiting expansion of existing waterfront FFTs will simply result in displacing one type of river-dependent industrial use with another. The practical result may well be that the sanctuary’s waterfront will be underutilized, compared to its potential. However, while that result might be inconsistent with some other GLISP policy
or objective, we agree with the city that it does not appear to offend Policy 3, Objective 7.

Petitioners’ sixth and seventh assignments of error are sustained in part.

WWC’s Second Assignment of Error, Subsection (iii), is sustained in part.

FIFTH ASSIGNMENT OF ERROR
SECOND ASSIGNMENT OF ERROR, Subsection (ii) (WWC)

These assignments and sub-assignments of error concern whether the FFT amendments are consistent with the plans adopted by the Metro regional government.

PCP Goal 1 requires that the city comprehensive plan shall “support regional goals, objectives and plans adopted by” Metro. PCP 1-1; App-1. The Metro Regional Framework Plan (Framework Plan) is Metro’s overarching plan for the region. It is implemented by several sub-plans, including the Metro Regional Transportation Plan (Transportation Plan). The Transportation Plan in turn is implemented by the Metro Regional Transportation Functional Plan (Functional Plan). Petitioners and WWC argue that the city’s decision is inconsistent with several goals, objectives and vision statements in either the Framework or Transportation Plan. At one point in the petition for review, petitioners refer to the Functional Plan, but all cites to specific language are to either the Metro Framework or Transportation Plans.

Initially, the city argues that the PCP Goal 1 obligation to “support” Metro “plans” does not mean that the city must evaluate whether the FFT amendments are consistent with either the Framework or Transportation Plan.
According to the city, Metro functional plans are the vehicles that Metro uses to require changes in city and county comprehensive plans. See Framework Plan Policy 7.5.2 (it is the policy of the Metro Council to “[u]se functional plans as the identified vehicle for requiring changes in city and county comprehensive plans in order to achieve consistence and compliance with this Plan”). MRFP 3; R-App-39. The city argues that the city achieves consistency with the Framework Plan by achieving consistency with applicable elements of Metro’s functional plans. As noted, petitioners and WWC do not argue that the FFT amendments are inconsistent with any provision of any Metro functional plan, including the Transportation Functional Plan. Further, the city and Riverkeeper argue that PCP Goal 1 requires only that the city comprehensive plan support regional goals, objectives and plans; it does not require that city land use regulations provide such support. Respondents note that PCC 33.835.040(A) governs zoning text amendments, and expressly requires only that the city evaluate whether the text amendment is consistent with the Metro Urban Growth Management Functional Plan, which the city did. We understand respondents to argue that if the city intended to obligate itself to consider whether a zoning text amendment is consistent with other Metro plans, it knows how to do so, and the omission of that express obligation in PCC 33.835.040(A) should be understood as a deliberate choice.

We agree with respondents. Petitioners and WWC have not demonstrated that PCP Goal 1 or any other source of authority cited to us
obligates the city to evaluate whether a text amendment to its zoning code is consistent with the Framework or Transportation Plans. Absent a more developed argument, petitioners and WWC’s arguments do not provide a basis to reverse or remand the challenged decision.

Petitioners’ fifth assignment of error, and WWC’s second assignment of error, subsection (ii), are denied.

SECOND, THIRD, FOURTH ASSIGNMENTS OF ERROR

SECOND ASSIGNMENT OF ERROR, Subsection (i) (WWC)

These assignments and sub-assignments of error concern whether the FFT amendments are consistent with state transportation plans and requirements.

A. Background

Statewide Planning Goal 12 (Goal 12) (Transportation) is:

“To provide and encourage a safe, convenient and economic transportation system.”

Goal 12 generally requires local governments to adopt transportation plans, which among other things must “facilitate the flow of goods and services so as to strengthen the local and regional economy[.]”

Goal 12 continues:

“A transportation plan shall (1) consider all modes of transportation including mass transit, air, water, pipeline, rail, highway, bicycle and pedestrian; (2) be based upon an inventory of local, regional and state transportation needs; (3) consider the differences in social consequences that would result from utilizing
OAR 660, chapter 012, the Transportation Planning Rule (TPR), one purpose of which is to “[f]acilitate the safe, efficient and economic flow of freight and other goods and services within regions and throughout the state through a variety of modes including road, air, rail and marine transportation[.]” OAR 660-012-0000(1)(d). The TPR requires the Oregon Department of Transportation (ODOT), regional governments, and local governments to adopt Transportation System Plans (TSPs), consistent with the standards and requirements set out in the rule. Local TSPs must include an “air, rail, water and pipeline transportation plan which identifies where public use airports, mainline and branchline railroads and railroad facilities, port facilities, and major regional pipelines and terminals are located or planned within the planning area.” OAR 660-012-0020(2)(e).

**B. Transportation Facility**

Both Goal 12 and its implementing regulations at OAR 660-012-0005(30) define “transportation facilit[y]” as “any physical facility that moves or assist[s] in the movement of people or goods including facilities identified in differing combinations of transportation modes; (4) avoid principal reliance upon any one mode of transportation; (5) minimize adverse social, economic and environmental impacts and costs; (6) conserve energy; (7) meet the needs of the transportation disadvantaged by improving transportation services; (8) *facilitate the flow of goods and services so as to strengthen the local and regional economy*; and (9) conform with local and regional comprehensive land use plans. Each plan shall include a provision for transportation as a key facility.” (Emphasis added.)
petitioners argue that under those definitions FFTs are clearly “transportation facilities.” See also OAR 660-012-0045(1)(a)(A) (identifying “major regional pipelines and terminals” as transportation facilities). Petitioners contend that in its findings the city failed to recognize that FFTs are transportation facilities for purposes of Goal 12 and the Goal 12 rule, and hence failed to address the impacts of the amendments on the FFTs themselves.\textsuperscript{10}

The city responds that a “transportation facility” as defined in Goal 12 and the Oregon Transportation Planning Rule (TPR) does not include a storage facility, such as a warehouse. That may be the case, but we do not understand the city to dispute that the scope of “transportation facility” includes intermodal facilities that transfer persons or cargo from one transportation mode to

\textsuperscript{10} The city council did not adopt findings addressing Goal 12 itself, but adopted findings addressing a section of the TPR, OAR 660-012-0060 (discussed below) and PCP Goal 6, Transportation. The findings addressing OAR 660-012-0060 are quoted in n 14, below. The only finding that appears to address impacts on the existing terminals themselves is as follows:

“This amendments create a new land use category, but impose prohibitions and limits that restrict the level of development to less than what is allowed under the current standards. The zoning code currently allows Bulk Fossil Fuel Terminals as a Warehouse and Freight Movement use without any limits on the size of terminals. The amendments will prohibit new terminals and limit the expansion of existing terminals.” Record 20.
another. As defined by PCC 33.920.300, the category of FFT includes facilities that engages in both the transport and the bulk storage of fossil fuels. Therefore, the FFTs subject to the amendments are “transportation facilities,” because they move or assist in the movement of goods, notwithstanding that they also involve storage of fossil fuels.

Petitioners are correct that the city’s findings do not appear to recognize that the existing FFTs are “transportation facilities,” for purposes of evaluating compliance with Goal 12 and the TPR. However, the city’s failure to adopt findings directly addressing impacts on existing FFTs as transportation facilities is not, in itself, reversible error. The question is whether the decision and record demonstrate that the amendments comply with the substantive requirements of the goal and rule. See n 7. We first turn to the parties’ arguments under the TPR, and then to Goal 12 and state-level plans such as the Oregon Transportation Plan (OTP) and Oregon Freight Plan (OFP).

C. Transportation Planning Rule (TPR)

OAR 660-012-0060, part of the Oregon Transportation Planning Rule (TPR) implementing Goal 12, requires that local governments determine

11 The city may be correct that the natural gas facility located in the city’s northwest industrial district may not constitute a “transportation facility” as defined in Goal 12 and the TPR, if it merely functions as a peak storage facility for natural gas that arrives and leaves the site by same modality (pipeline). However, an intermodal facility, such as an airport or freight transloading terminal, etc., is clearly a “transportation facility” within the meaning of Goal 12 and the TPR.
whether an amendment to a land use regulation would “significantly affect an existing or planned transportation facility” in one of three ways and, if so, adopt one or more measures to offset the significant effect.\(^{12}\)

1. Change the Functional Classification of a Transportation Facility

Two of the three ways in which a local government plan or zoning amendment can “significantly affect” a transportation facility involves changes to functional classification or the standards implementing a functional classification system. If the amendment does significantly affect a transportation facility, OAR 660-012-0060(2) requires the local government to adopt one or more measures.\(^{13}\) Among the possible measures listed are to

\(^{12}\) OAR 660-012-0060(1) provides, in relevant part:

“If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule * * *. A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

“(b) Change standards implementing a functional classification system[.]”

\(^{13}\) OAR 660-012-0060(2) provides, in part:
amend the local transportation system plan to modify the planned function of a transportation facility. OAR 660-012-0060(2)(c).

The city council adopted findings concluding that the FFT amendments do not significantly affect any transportation facility in any of the three ways described in OAR 660-012-0060(1). The findings state, in so many words,

“If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, * * *.

“(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

“(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.”

The city council’s findings state, in relevant part:

“a. These amendments do not change the functional classification of an existing or planned transportation facility, nor change standards that implement a functional classification system.

“b. These amendments create a new land use category, but impose prohibitions and limits that restrict the level of development to less than what is allowed under the current standards. The zoning code currently allows Bulk Fossil Fuel Terminals as a Warehouse and Freight Movement use without any limits on the size of terminals. The amendments
that the amendments do not change the functional classification of an existing or planned transportation facility, or change standards that implement a functional classification system.

As explained above, intermodal FFTs are a type of “transportation facility” within the meaning of the TPR and OAR 660-012-0060. Petitioners contend that the city’s findings of compliance with OAR 660-012-0060 focus exclusively on impacts to roads and similar types of transportation facilities, and do not evaluate the impacts of the amendments on existing and future FFTs themselves.

will prohibit new terminals and limit the expansion of existing terminals.

c. Given the new prohibitions and limits on expansion, the amendments will not reduce or worsen the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

d. For the same reason, these changes will not have a significant effect on existing or planned transportation facilities because the proposed amendments are minor changes to the allowed uses in industrial uses, and will not increase development intensity in a manner that will be inconsistent with the function or classification of existing transportation facilities or increase automobile traffic.

e. There are not changes proposed to the Comprehensive Plan or Zoning Map that will impact the overall size or intensity of development in the industrial areas of Portland.” Record 20.
According to petitioners, the amendments “significantly affect” FFTs within the meaning of the meaning of OAR 660-012-0060(1), because the amendments effectively change (1) the functional classification of an existing or planned transportation facility, or (2) the standards implementing a functional classification system. Petitioners argue that PCP Transportation Goal 6.9 and the city’s Freight Master Plan (FMP) provide a functional classification system for freight infrastructure, which includes a system of freight roads as well as “freight facilities,” a classification that includes marine terminals, intermodal rail yards, airports and pipeline terminals.¹⁵ Petitioners

¹⁵ PCP Goal 6.9, entitled “Freight Classification Descriptions,” is to “[d]esignate a system of truck streets, railroad lines, and intermodal freight facilities that support local, national, and international distribution of goods and services.” PCP 6-11; App-19. PCP Goal 6.9(I) describes “Freight Facilities,” and states that “Freight Facilities include the major shipping and marine, air, rail and pipeline terminals that facilitate the local, national, and international movement of freight.” PCP 6-12; App-20.

The FMP states:

“Portland relies on a multimodal classification system to describe the design and function of a street or other transportation facility. There are seven classification categories: Traffic, Transit, Pedestrian, Bicycle, Freight, Emergency Response, and Street Design. When funding, designing, or operating a facility all model classifications are considered.

“Portland’s freight system is comprised of streets, rail lines, and freight facilities including marine terminals, intermodal rail yards, airports, and pipeline terminals. [PCP] Policy 6.9 describes each of the freight system classifications in the hierarchy. The
argue that in reclassifying FFTs from the general land use category of “Warehouse and Freight Movement,” formerly allowed without any limit on size or function, to a new land use category (FFT) subject to prohibitions on new terminals and the expansion of existing terminals, the city’s decision effectively changed the city’s freight functional classification system, and the standards implementing the city’s freight functional classification system.

The city and Riverkeeper respond that a zoning code amendment that merely adds a new land use category to distinguish one sub-type of freight facility from others does not change the functional classification of that facility, or the standards that determine the functional classification of any facility, within the meaning of OAR 660-012-0060(1).

The TPR does not define the term “functional classification,” and as far as we are informed, neither city nor state transportation plans define the term. As applied to transportation facilities such as roads and streets, the term “functional classification” appears to refer to a scheme that sorts the universe of such facilities into a hierarchical classification scheme, e.g., highway, arterial, collector, local street, etc., and assigns different function, capacity, mobility, or access standards to each classification.

classifications correspond to land use activities. For classifying network features, freight movement is divided into two broad categories: industrial-serving and commercial delivery of goods and services.” FMP 21; App-268.
Portions of the city’s freight classification system described in PCP Goal 6.9 and FMP at pages 21-23 (App-268-70) are similar to the typical hierarchical classification system used for roads and streets. FMP Table 3 lists “Freight Classification by Activity Type,” and describes a hierarchical and interrelated system of truck roads: regional truckway, priority truck street, major truck street, truck access street, local truck street, and freight district. FMP 22; App-269. Each of these classifications serves a distinct function within the city’s freight transportation system, and appears to be subject to different standards. It would be no stretch to describe the portion of the city’s freight classification system that concerns truck roads as a functional classification system, for purposes of OAR 660-012-0060.

FMP Table 3 also lists three other types of freight classifications, but these classifications are isolated from the truck road classifications, and do not possess the same hierarchical character as the truck road system described above. FMP 22; App-269. One such stand-alone classification is for “Freight Facilities,” which as noted lumps together the major marine terminals, airport, railyards, and intermodal facilities that are located in Freight Districts. The rest of the FMP includes almost no discussion of the Freight Facilities classification, and there appear to be no standards or functional distinctions among the various sub-types of freight facilities.

We understand petitioners to argue that the FFT amendments effectively modify the functional classification of Freight Facilities, creating a new sub-
classification in order to distinguish the function of FFTs from other intermodal terminals. According to petitioners, the amendments are intended to restrict existing FFTs to serve only “regional” needs for fossil fuels, see n 5, consistent with the intent of PCP Policy 6.48, and to preclude new or expanded terminals that might serve an interstate or international market, for example, a coal or propane export terminal. Freight transloading facilities that serve other bulk commodities, including non-fossil fuels, are allowed to site new facilities or expand existing ones, and the city has expressed no intent to restrict the function of such non-FFT facilities to serve only regional needs. We understand petitioners to argue that the creation of these distinctions among freight facilities constitute a *de facto* “[c]hange [in] the functional classification of an existing or planned transportation facility” for purposes of OAR 660-012-0060(1). Accordingly, petitioners argue, the city must adopt one or more of the measures listed in OAR 660-012-0060(2), such as amending its TSP and FMP to expressly modify the planned function of FFTs, to reflect the change from unrestricted to restricted fossil fuel transportation facilities.

We disagree with petitioners that the FFT amendments “change the functional classification” of Freight Facilities or FFTs, within the meaning of OAR 660-012-0060(1). Although the classification of Freight Facilities exists within what appears to constitute a functional classification system, it is a stand-alone classification, lacking the kind of hierarchical, relational connections exhibited by the truck road classifications. Within the
classification of Freight Facilities, the various facilities are lumped together
indiscriminately, with no functional distinctions among them. No standards
appear to apply to distinguish one type of freight facility from another. While
the FFT amendments introduce some distinctions between FFTs and other
types of freight facilities, those distinctions serve normative purposes
extraneous to a functional classification system, and do not have the effect of
creating a functional classification system for freight facilities, as petitioners
argue. Accordingly, we agree with respondents that the city did not err in
concluding that the FFT amendments do not change the functional
classification system for any transportation facility, within the meaning of OAR
660-012-0060(1).

2. Degrade the Performance of a Transportation Facility

The third, and more common way, in which an amendment can
significantly affect a transportation facility is described in OAR 660-012-
0060(1)(c), which generally concerns impacts of increased traffic levels
generated by uses allowed under the amendment on the function or
performance of transportation facilities. Petitioners argue that by prohibiting

\[\text{\ref{footnote}}\]

\text{\footnotetext{16 OAR 661-012-0060(1)(c) provides that an amendment significantly affects a transportation facility if it would:}}

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“Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the
der end of the planning period identified in the adopted TSP ** ** *.”
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the expansion of existing FFTs and siting of new FFTs, increased regional
demand for fossil fuel transportation projected by city and state transportation
plans will have to be met by increased levels of truck traffic. According to
petitioners, increased levels of truck traffic on freight roads and streets could
significantly affect the function, capacity or performance of such facilities in
one of the ways described in OAR 660-012-0060(1)(c)(A)-(C). For example,
petitioners cite to testimony that the aviation fuel supply chain relies on FFTs,
and that demand for aviation fuel will increase by more than 50 percent by
2035, requiring new FFTs for aviation fuel. Record 487. Petitioners argue that
by prohibiting the expansion or siting of new FFTs, the amendments will force
aviation fuel trucks to drive from out of state and along surface roads,
including Airport Way, to deliver fuel directly to the Portland International
Airport, which may cause increased levels of truck traffic that would
significantly affect the function or performance of Airport Way. We do not

“(A) Types or levels of travel or access that are inconsistent with
the functional classification of an existing or planned
transportation facility;

“(B) Degrade the performance of an existing or planned
transportation facility such that it would not meet the
performance standards identified in the TSP or
comprehensive plan; or

“(C) Degrade the performance of an existing or planned
transportation facility that is otherwise projected to not meet
the performance standards identified in the TSP or
comprehensive plan.”
know, petitioners argue, because the city made no effort to evaluate the effects
of increased truck traffic on city roads and streets that may be indirectly caused
by restricting new and expanded FFTs.

The city and Riverkeeper respond that petitioners’ arguments regarding
impacts of increased truck traffic on city freight roads are entirely speculative.
Riverkeeper also notes that in response to testimony regarding aviation fuel
supply, the city council exempted facilities storing or transloading aviation fuel
from any restrictions. Riverkeeper argues that that exemption eliminated the
only specific example of potential impacts on city roads that petitioners
identify.

We agree with respondents that petitioners’ arguments do not provide a
basis for reversal or remand. OAR 660-012-0060(1)(c) generally concerns
circumstances where a proposed plan or zoning amendment has the effect of
increasing land development potential, causing increased traffic generation
compared to the unamended plan or zoning regulation. In that circumstance,
local governments are required to evaluate impacts of traffic generated under
the increased development potential on affected transportation facilities. In the
present case, the FFT amendments effectively freeze the development capacity
of FFTs at current levels. This is not the type of amendment that could directly
cause increased traffic compared to the unamended zoning regulations (which
allowed unrestricted expansion or siting of FFTs). Essentially the FFT
amendments downzone the development potential within the city’s industrial
districts, as the city’s findings conclude. Petitioners argue, however, that by effectively restricting one mode of fossil fuel transportation in the city, the amendments will indirectly cause future fuel demand to be met entirely by other modes, such as tanker trucks, which will cause increased levels of truck traffic over that anticipated in the city’s transportation plans, which in turn might be inconsistent with the planned function or performance of some city freight routes.

However, we do not think that OAR 660-012-0060(1)(c) requires the city to evaluate the possibility that downzoning the intensity of one particular type of land use at one location in the city may indirectly cause compensatory development and related traffic generation elsewhere in the city. For example, an amendment that restricts potential for commercial development on one property need not be supported by an evaluation of the possibility that other commercially-zoned sites in the city will meet future commercial demand by intensifying development, causing increased traffic impacts on city streets elsewhere. Further, to meaningfully evaluate impacts on transportation facilities under OAR 660-012-0060(1)(c), the local government must be able to identify the transportation facilities affected by the amendment. Under petitioners’ indirect impact approach, that task would be an impossible burden, potentially requiring evaluation of every freight route in the city. Petitioners identify only one specific transportation facility that might be impacted under that indirect approach, but, as Riverkeeper argues, the city adopted exemptions
that appear to moot arguments based on that example. Accordingly, we reject petitioners’ arguments that the city erred in concluding that the FFT amendments do not significantly affect any facility within the meaning of OAR 660-012-0060(1)(c).

D. Statewide Planning Goal 12

As noted above, Goal 12 requires local governments to adopt transportation system plans that “facilitate the flow of goods and services so as to strengthen the local and regional economy[.]” Further, the TPR requires that TSPs “[f]acilitate the safe, efficient and economic flow of freight and other goods and services within regions and throughout the state through a variety of modes including road, air, rail and marine transportation[.]” OAR 660-012-0000(1)(d).

Petitioners argue that the FFT amendments violate Goal 12 and the intent of the Goal 12 rule because rather than “[f]acilitate the safe, efficient and economic flow of freight and other goods and services within regions and throughout the state through a variety of modes including road, air, rail and marine transportation,” the amendments instead will impede the flow of fossil fuels within the region and throughout most of the state, by prohibiting the expansion of existing terminals and the siting of new terminals. Similarly, WWC argues that the unique cluster of intermodal transportation facilities along Portland’s industrial waterfront is a critical component of the statewide fossil fuel transportation system. According to WWC, the FFT amendments
create a less economic, less convenient, and less safe transportation system by forcing any future expansion of fossil fuel storage and distribution needed to address increased local, regional or statewide demand to be met through small (two million gallon or less) terminals or terminals that use a single mode of transport—trucks.

The city responds that because the city has a TSP that is acknowledged to comply with Goal 12, re-examination of compliance with Goal 12 is triggered only if the FFT amendments trigger evaluation under OAR 660-012-0060(1), i.e., the amendments have a significant effect on a transportation facility. We disagree with the city. PCC 33.835.040(A), as well as state law, require that a zoning code amendment be consistent with the Statewide Planning Goals. While OAR 660-012-0060 provides specific and additional standards for certain types of plan and zoning code amendments, nothing in OAR 660-012-0060 or elsewhere cited to us suggests that an amendment is required to comply only with the OAR 660-012-0060. OAR 660-012-0060 is not particularly concerned, for example, with other Goal 12 and TPR requirements intended to “[f]acilitate the safe, efficient and economic flow of freight and other goods and services within regions and throughout the state through a variety of modes including road, air, rail and marine transportation.” The requirements of Goal 12 and other portions of the Goal 12 rule may well apply to a plan or zoning amendment that does not “significantly affect” a
transportation facility in one of the three ways specified in OAR 660-012-0060(1)(c). See n 16.

The city and Riverkeeper next argue that much of Goal 12 and the Goal 12 rule are concerned with the adoption of transportation system plans (TSP), and nothing in the goal or rule is triggered by a plan or zoning amendment that does not amend a TSP. However, that is too facile an answer. A local transportation system plan does not exist in a vacuum, but is highly integrated with local zoning and land use schemes. As discussed below, a local transportation system plan is also integrated to some extent with regional and state transportation system plans. A plan or zoning amendment that changes the zoning classification for a specific type of transportation facility, particularly one that has regional and statewide significance, could potentially affect whether the local TSP remains in compliance with applicable Goal 12 or rule requirements that are in addition to those imposed under OAR 660-012-0060. If so, we believe that the local government is obliged to consider that question in adopting the plan or zoning amendment.

On the merits, the city and Riverkeeper argue that the FFT amendments are consistent with Goal 12. According to respondents, the amendments do not limit the ability of the city, under its TSP, to facilitate the flow of goods and services throughout the region and state. Respondents argue that the amendments do not expressly limit the quantity of fuel that flows through pipelines or terminals, or the ability of existing terminals to increase
throughput to other parts of the state, if that is required, by operating more efficiently. Respondents also note that the amendments include a number of exemptions, for aviation storage facilities, and for facilities handling non-fossil fuels (ethanol, biodiesel, etc.), for which the city anticipates an increasing demand. The amendments also allow new small terminals (less than two million gallons) and fossil fuel terminals served by a single mode—trucking. Given these considerations, respondents argue that the amendments will have only a minimal effect on the flow of fossil fuel through the city’s terminals to the rest of state.

The considerations cited by respondents in their briefs might be the kind of considerations that would justify a conclusion that the FFT amendments do not affect the city TSP’s continued compliance with the Goal 12 requirement to facilitate the flow of goods. However, there is no indication in the city’s decision or in the record that the city in fact evaluated such considerations. For example, no findings or evidence are cited to us that the existing terminals have the ability to increase throughput to the region or the rest of the state by adopting more efficient operations. As noted, the city adopted no findings addressing Goal 12 itself (as opposed to OAR 660-012-0060), and there are no findings or analysis cited to us that evaluates the impact of the FFT amendments on the flow of fossil fuel through the city’s terminals to the region and to the rest of the state. As discussed, the city enjoys a commanding geographic and logistical position with respect to the fossil fuel supply for the
state of Oregon: the city’s existing FFTs transload or handle 90 percent of the state’s petroleum supply. Record 31. Under these circumstances, we do not believe the city can adopt zoning amendments that restrict FFTs 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. Specifically, the city must consider whether the city’s TSP and zoning regulations, post-amendment, continue to comply with the Goal 12 requirement to facilitate the flow of goods and services.

**E. Oregon Transportation Plan (OTP)**

Petitioners and WWC advance similar arguments based on the Oregon Transportation Plan (OTP) and the Oregon Freight Plan (OFP), which is a component of the OTP. OAR 660-012-0015(3)(a) requires local governments to adopt local TSPs that are consistent with the Oregon TSP. In turn, OAR 660-012-0045(1) requires local governments to amend their land use regulations to implement the local TSP. Petitioners argue that the FFT amendments restrict transportation facilities in a manner that cause the city’s zoning regulations to conflict with several OTP goals and policies.

Among other OTP goals and policies, petitioners cite to OTP Strategy 1.1.2, which is to “[p]romote the growth of intercity bus, truck, air, pipeline and marine services to link all areas of the state with national and international transportation facilities and services.” OTP 47; App-738. OTP Strategy 1.2.2 also requires that local governments “[c]oordinate and support the development
of intermodal connections between air, marine, pipeline, public transportation, rail and road transportation.” OTP 48; App-739. Further, OTP Policy 3.1 states: “[i]t is the Policy of the State of Oregon to promote an integrated, efficient and reliable freight system involving air, barges, pipelines, rail, ships, and trucks to provide Oregon a competitive advantage by moving goods faster and more reliably to regional, national and international markets.” OTP 54; App-745.

Similarly, OTP Goal 7 requires that local governments “remove barriers and bring innovative solutions so the transportation system functions as one system.” OTP 74; App-765.

The city responds that because the challenged decision does not amend the city’s TSP, the FFT amendments are not required to be consistent with the OTP. The city notes that the OTP was adopted by the Oregon Transportation Commission (OTC), which explains in a preface to the OTP that it lacks statutory authority to impose OTP goals, policies and performance recommendations on entities other than state agencies.\(^\text{17}\)

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\(^{17}\) The OTP quotes ORS 184.618(1), which authorizes the Oregon Transportation Commission to develop the OTP to provide a comprehensive, long-range plan for a safe, multimodal transportation system for the state, including aviation, highways, mass transit, pipelines, ports, rails, and waterways, to be used by state agencies and officers to guide and coordinate transportation activities. OTP 34; App-725. The OTP continues:

“ORS 184.618(1) requires state agencies to use the OTP to ‘guide and coordinate transportation activities,’ but it does not give the OTC authority to impose OTP goals, policies and performance recommendations on other than state agencies. However, the OTP
The city is correct that nothing cited to us requires that a city zoning code amendment be consistent with the OTP, or applies OTP goals and policies as direct review standards for the challenged FFT amendments. However, it does not follow that OTP goals and policies are completely irrelevant to a zoning code amendment that directly affects key multimodal transportation facility of statewide significance. The FFT amendments do not occur in a vacuum, or concern only local transportation infrastructure. As discussed above, given the nature of the FFT amendments, the city is required to consider whether, post-amendment, the city’s TSP continues to comply with the Goal 12 requirement to facilitate the flow of goods and services in the region and state. As the quoted OTP excerpt at n 17 states, the OTP operates within a legal context that includes Goal 12 and the Goal 12 rule. The OTP and the incorporated OFP represent a state-level body of information and policy guidance that speak directly to the state’s interest in maintaining and improving the flow of goods and services throughout the state (and beyond). In essence, the OTP represents the judgment of the highest transportation planning entity in the state about what it means to “facilitate the flow of goods and services.” In considering whether the FFT amendments are consistent with Goal 12, there operates in the legal context of the State Agency Coordination Program and the Land Conservation and Development Commission’s Transportation Planning Rule which impose additional requirements and authority in the planning process for other jurisdictions. The OTP must also comply with federal legislation.” Id.
may be no authority that requires the city to apply relevant OTP goals and policies as approval standards; nonetheless, such OTP goals and policies would seem to be pertinent considerations to any such evaluation under Goal 12.

F. Oregon Freight Plan (OFP)

As noted, the Oregon Freight Plan (OFP), adopted in 2011, is an incorporated part of the OTP. The OFP includes a number of projections and estimates regarding demand for freight, including estimates that many areas of the state will experience significant increases in demand for fossil fuels through the year 2035. See, e.g., OFP 47; App-1043 (estimating a compound annual growth rate of 2.3 percent for truck freight of petroleum and natural gas-based products in the state). WWC argues that the OFP estimates contradict the city’s apparent presumption, in the findings supporting the FFT amendments, that local and regional demand for fossil fuels will be relatively flat or even decline in the foreseeable future.¹⁸

¹⁸ The city’s decision includes the following finding:

“The most recent cargo forecast for Portland Harbor in 2012 projected 1.0% AAG [average annual growth] in liquid bulk tonnage to 2040 as a high scenario and 0.5% AAG as a low scenario (BST Associates, 2012). Based on this forecast, EcoNorthwest (2012) estimated no additional land need for new liquid bulk terminals ***.” Record 48.

The city also found:

“The potential impacts of the code amendments on constraining the fossil fuel supply to meet regional demand is uncertain. Fossil
The city and Riverkeeper respond that the OFP projections and estimates cited by WWC are not in the record, and further are the kind of “adjudicative facts” that cannot be judicially noticed, even if located within documents that are subject to judicial notice. We agree with respondents. Blatt v. City of Portland, 21 Or LUBA 337, aff’d 109 Or App 259, 819 P2d 309 (1991), rev den 314 Or 727, 843 P2d 454 (1992) (“LUBA does not have authority to take official notice of adjudicative facts, as set out in OEC 201.”). WWC offers no theory we can understand that would allow LUBA to consider the data in the OFP, which is not in the record, for purposes of undermining the city’s reliance on evidence that is in the record. Accordingly, WWC’s arguments regarding the OFP estimates of future demand for fossil fuels in the state do not provide a basis for reversal or remand.19

Petitioners’ second and fourth assignments of error are sustained; Petitioners’ third assignment of error, and WWC’s second assignment of error, subsection (i), are denied.

19 That said, to the extent Goal 12 or the Goal 12 rule requires the city to evaluate the impacts of the FFT amendments on statewide fossil fuel supply and demand, the OFP appears to provide relevant data that could be used for that evaluation.
FIRST ASSIGNMENT OF ERROR

Statewide Planning Goal 2 (Goal 2) (Land Use Planning) requires in relevant part that comprehensive plan and implementing measures be “coordinated with the plans of affected governmental units,” and that land use decisions be supported by an “adequate factual base.” Petitioners and WWC argue that the city erred in failing to coordinate with the plans of affected governmental units and in adopting a decision that is not supported by an adequate factual base.

A. Coordination with the Plans of Affected Governmental Units

The Goal 2 requirement to coordinate comprehensive plan and implementing measures with the plans of affected governmental units is satisfied by (1) inviting an exchange of information between the planning jurisdiction and affected governmental units, and (2) using the information gained in that exchange to balance the needs of all affected government units and the citizens they represent. ODOT v. City of Klamath Falls, 39 Or LUBA 641, 671, aff’d 177 Or App 1, 34 P3d 667 (2001); Rajneesh v. Wasco County, 13 Or LUBA 202, 210 (1985).

Petitioners argue that despite proposing to enact major legislation that would have consequences throughout the metropolitan area and state, the city

WWC incorporates petitioners’ first assignment of error as its first assignment of error.
made no concerted effort to involve Metro, ODOT, other cities, the Port of Portland or other affected governmental units.

The city responds that it mailed notice of the proposed amendments to Department of Land Conservation and Development (DLCD) pursuant to ORS 197.610, and many multiple notices of the PSC hearings and the city council hearings to Metro (34 notices), ODOT (94 notices) and the Port of Portland (369 notices). Record 1247-81 (city council hearing), Record 3456-3674 (PSC hearings). According to the city, only the Port of Portland submitted comments, expressing concern that the amendments should not impact aviation and marine fuel supplies. In response, the city modified the proposal to exclude aviation and marine fuel storage facilities. The city argues, and we agree, that Goal 2 does not require more from the city.

PCP Goal 1 provides that the comprehensive plan shall be coordinated with federal and state law and support regional goals, objections and plans adopted by Metro, to promote regional planning framework. The city council adopted findings concluding that PCP Goal 1 is met basically for the same reasons why the Statewide Planning Goal 2 coordination requirement is met.21

21 The city council findings state, in relevant part:

“Goal 1, Metropolitan Coordination, calls for the Comprehensive Plan to be coordinated with federal and state law and to support regional goals, objectives and plans. The amendments are consistent with this goal because notification of the proposals, and an opportunity to provide comment at a public hearing before the [PSC], was provided to [DLCD] consistent with ORS 197.610,
Petitioners contend that a local coordination requirement such as PCP Goal 1 requires more than Statewide Planning Goal 2. Petitioners cite *Twin Rocks Water District v. City of Rockaway*, 2 Or LUBA 36 (1980), and *Textronix, Inc. v. City of Beaverton*, 18 Or LUBA 473, 479 (1989), for the proposition that local coordination requirements cannot be met by simply providing affected governmental entities with notice and soliciting comments.

However, both of the cited cases predate ORS 197.829(1) and caselaw requiring that LUBA defer to a governing body’s interpretation of local land use legislation. See n 7. Petitioners do not acknowledge or challenge the city council’s findings of consistency with PCP Goal 1. Under those findings, it is clear that the city council does not interpret PCP Goal 1 to impose more onerous coordination obligations on the city than does Statewide Planning Goal 2. Petitioners have not demonstrated that that understanding of PCP Goal 1 is inconsistent with its express language, or otherwise reversible under ORS 197.829(1). Petitioners’ arguments regarding PCP Goal 1 do not provide a basis for reversal or remand.

**B. Goal 2 Adequate Factual Base**

Statewide Planning Goal 2 is:

“To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.”

and to Metro, Tri-Met, the Port of Portland, and [ODOT] consistent with [PCC] 33.740.020 * * *.” Record 8.
LUBA has interpreted the Goal 2 requirement to “assure an adequate factual base” to mean that legislative decisions must be supported by substantial evidence, i.e., findings of fact supported by evidence in the record which, viewing the record as a whole, would permit a reasonable person to make that finding. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 377-78, aff’d 130 Or App 406, 882 P2d 1130 (1994).

The PSC recommended draft includes findings addressing future regional demand for fossil fuels, noting studies showing a trend toward increased local or regional demand, but noting the possibility that increases in

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22 The recommended draft includes the following:

“Analysis to date is limited on the energy consumption forecasts and how the recommended code changes would impact the demand for additional fossil fuel storage capacity. Fossil fuel demand in this growing region may increase moderately, as indicated by trend-based forecasts, or may plateau and decline with implementation of climate resilience goals and strategies. National forecasts of energy consumption by the U.S. Energy Information Administration show varying growth trajectories by energy type, including a relatively flat outlook for petroleum fuels, decline for coal, and moderate growth for natural gas and renewables ***.

“Liquid bulk cargo in Portland Harbor is projected to expand at a range of 0.5% to 1.0% average annual growth (AAG) to 2040 (BST Associates, 2012), providing an estimate of potential market expansion needs for petroleum fuels, which could mean a need for an additional 10-20% increase in storage capacity. However, based on this forecast, ECONorthwest (2012) estimated that there was no additional land needed for new liquid bulk terminals in Portland. The 1.9% average annual growth to 2034 (NW Natural
demand for fossil fuel may plateau and decline “with implementation of climate resilience goals and strategies.” Record 330. In part to account for the need to accommodate possible increased future demand, the PSC recommended draft proposed allowing existing terminals to expand by 10 percent. Record 363.

The city council adopted a similar finding, noting that the impact of the FFT amendments on constraining the growing regional demand for fossil fuel is “uncertain,” but expressing the hope that such demand may decline “with a continued shift to other modes of transportation, more fuel-efficient vehicles, electric vehicles and other carbon reduction strategies.”23 However, as noted,

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2014 Integrated Resource Plan) provides an estimate of market expansion needs for natural gas distribution facilities.

“Even if regional fossil fuel demand follows trend-based local forecasts, there is a wide margin between the size of recently proposed crude oil, coal, and [liquefied natural gas (LNG)] terminals in the Pacific Northwest and the scale of expected growth of existing Portland fuel terminals that generally serve the regional market area * * *. ” Record 330.

23 The city council findings state, in relevant part:

“The potential impacts of the code amendments on constraining the fossil fuel supply to meet regional demand is uncertain. Fossil fuel demand in this growing region has been relatively flat over the last 15 years. At best, the demand for fossil fuel may increase moderately, as indicated by trend-based forecasts, or may plateau and decline with a continued shift to other modes of transportation, more fuel-efficient vehicles, electric vehicles and other carbon reduction strategies.” Record 17.
the city council eliminated the provision for a 10 percent expansion. Record 50.

Petitioners argue that findings to the effect that regional demand for fossil fuels will plateau or decline are not supported by substantial evidence in the record. According to petitioners, that unsupported finding is the apparent basis for rejecting the PSC recommendation to allow a 10 percent increase in the size of existing terminals, and instead completely prohibiting the expansion of existing terminals. Petitioners argue that the uncontradicted evidence in the record, cited in the city’s own decision, is that growing regional demand for fossil fuels will likely require a 10-20% percent increase in storage capacity.24

The city responds that the record includes evidence from which a reasonable decision maker could conclude that future fossil fuel demand, while uncertain, may be relatively flat. Record 245 (graph showing relatively flat actual consumption of fossil fuels in Oregon between 2005 and 2014, a period of time that included the recent national recession); Record 330 (staff finding citing a 2016 federal forecast of national energy consumption indicating a

24 In addition, petitioners argue that the city’s findings are contradicted by projections in the Oregon Freight Plan (OFP), to the effect that statewide demand for fossil fuels is projected to increase over the next 15 to 25 years. However, as explained, the OFP is not in the evidentiary record, and data contained in the OFP cannot be considered by LUBA to support or controvert evidence in the record to resolve an evidentiary dispute. That said, if the city is again called upon to evaluate evidence regarding future demand for fossil fuels in the region or statewide, we note that the projections in the OFP would seem to be highly probative to that inquiry.
relatively flat outlook for petroleum fuels, decline for coal, and moderate
growth for natural gas and renewables); Record 247 (2015 graph from the
federal Energy Information Administration projecting a relatively lower profile
of future increases in national oil consumption, compared to a much higher
2003 projection); Record 2127 (state clean fuels program is expected to reduce
the consumption of petroleum fuels).

However, none of the cited evidence supports the finding that future
demand for fossil fuels in the region may plateau or decline “with implementation
of climate resilience goals and strategies,” or “with a continued shift to other
modes of transportation, more fuel-efficient vehicles, electric vehicles and
other carbon reduction strategies.” While the cited evidence suggests that
future demand for fossil fuel over the region or state may be lower than earlier
projections or historical increases, there is nothing cited to us suggesting that
the demand may plateau or decline. Based on the portions of the record cited
to us, that finding appears to represent pure speculation on the city’s part.

Projecting future demand for fossil fuels is an uncertain enterprise, and if
the question were merely a matter of estimating local demand for fossil fuels,
the city might have wider leeway for applying speculation and assumptions,
given the inherent uncertainty of forecasts, in a normative effort to bend the
trajectory of the local economy toward a desired policy objective, i.e., reduced
local reliance on fossil fuels. However, as explained elsewhere in this opinion,
the city is in a unique geographic and logistical position with respect to
regional, statewide, interstate and international markets in fossil fuels. We held, above, that the city has obligations under Goal 12 and the Goal 12 rule to ensure that its plan and zoning regulations comply with the obligation to facilitate the flow of goods within the region and statewide. Further, as explained below, the federal dormant Commerce Clause constrains the city’s ability to limit interstate or international trade in fossil fuels. Under these circumstances, we do not believe the city can limit the scope of its evidentiary inquiry to evaluating only the local or even regional demand for fossil fuels. The above-quoted findings acknowledge the “wide margin between the size of recently proposed crude oil, coal, and LNG terminals in the Pacific Northwest and the scale of expected growth of existing Portland fuel terminals that generally serve the regional market area,” Record 45, but purport to evaluate and address only the latter. However, even focused exclusively on the local or regional demand, the findings essentially ignore uncontradicted projections of moderate growth in demand for fossil fuels, and instead rely on what are no more than unsupported speculations that demand will actually plateau or decline. The city’s findings on that point, which appear to be key support for the prohibition on any expansion of existing terminals to meet even local or regional needs, are not supported by substantial evidence, and hence not supported by an adequate factual base.

The first assignment of error is sustained.
EIGHTH ASSIGNMENT OF ERROR

Petitioners argue that the city’s new restrictions on FFTs are inconsistent with Statewide Planning Goal 9 (Goal 9) (Industrial Land).

Goal 9 is:

“To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.”

Goal 9 also provides:

“Comprehensive plans and policies shall contribute to a stable and healthy economy in all regions of the state. Such plans shall be based on inventories of areas suitable for increased economic growth and activity after taking into consideration the health of the current economic base; materials and energy availability and cost...” (Emphasis added.)

Goal 9 is implemented by administrative rules at OAR 660, chapter 009. OAR 660-009-0005(3) defines “industrial use” to include facilities that provide storage, importation, distribution and transshipment, and states that industrial uses “may have unique land, infrastructure, energy, and transportation requirements.”

Petitioners and WWC contend that the restrictions on FFTs violate the Goal 9 requirement to adopt plans and policies that consider “energy availability and cost[.]” Further, petitioners and WWC argue that the FFT amendments violate the Goal 9 requirement to provide “adequate opportunities

25 WWC incorporates petitioners’ eighth assignment of error as its third assignment of error.

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for a variety of economic activities” by effectively creating a bottleneck for the multimodal movement and storage of fossil fuels. As noted, 90 percent of the petroleum consumed in the state of Oregon arrives via the Olympic pipeline, and is then transloaded and distributed to the rest of the state by the FFT terminals at the end of the pipeline. By prohibiting expansion of existing FFTs and siting of new FFTs, petitioners argue that the amendments not only restrict a key industrial activity in the city, but also effectively impose economic and energy supply restrictions on the rest of the state, as well as interstate and international market interests.

The city responds that Goal 9 does not require local governments to provide for every and any specific kind of economic use, or protect every economic interest from harm, but only to provide an adequate inventory of land zoned for industrial use, and adequate opportunities for a variety of economic activities. Home Depot USA, Inc. v. City of Portland, 37 Or LUBA 870, aff’d 169 Or App 599, 10 P3d 316 (2000), rev den 331 Or 583, 19 P3d 355 (2001); Setniker v. Oregon Department of Transportation, 66 Or LUBA 54, 68 (2012).

The city argues that the FFT amendments do not reduce the supply of inventoried industrial lands, nor threaten the city’s ability to provide an adequate opportunity for a variety of economic activities. With respect to the alleged bottleneck, the city argues that nothing in the amendments prohibit the existing terminals from increasing throughput to the rest of the state.
Goal 9 and the Goal 9 rule are largely focused on comprehensive planning, and rather light on specific obligations. The most rigorous and specific obligation is to adopt and maintain an adequate inventory of lands zoned for industrial use. However, the FFT amendments do not reduce at all the city’s inventory of industrials lands. The city is correct that Goal 9 does not require a local government to accommodate any and all economic activities, or prevent local governments from restricting some economic activity, based on a balancing of competing economic interests or other policy objectives.

It is less clear whether it is consistent with Goal 9 to balance competing policy objectives in a manner that arguably would cause the city to become a bottleneck for the intermodal transportation and storage of fossil fuel supply that 90 percent of the state depends upon, as well as the impact on interstate and international market interests. Because of its unique geographic situation, any restrictions the city places on FFTs has the potential to affect a much greater sphere beyond the city’s own infrastructure and industrial capability. If future demand for fossil fuel increases statewide, and no source is available other than the Olympic Pipeline, serious economic consequences could follow for the state. The city’s decision does not address the possibility that the FFT amendments could inadvertently cause the city to act as a fossil fuel chokepoint for the entire state.26 On appeal, the city’s response that nothing in the FFT

26 The city’s only finding regarding Goal 9 states:
amendments prevents terminals from increasing throughput assumes, without any evidence, that the existing terminals have extra capacity or can otherwise significantly increase throughput using the existing storage capacity and infrastructure.

However, petitioners identify no specific obligation under Goal 9 or the Goal 9 rule compelling the city to consider whether and how amendments to its zoning ordinance may indirectly impact the state’s economy (much less interstate and international fossil fuel markets). Absent such an obligation, petitioners have not demonstrated that the city erred in concluding that the FFT amendments are consistent with Goal 9.

The eighth assignment of error is denied.

**NINTH ASSIGNMENT OF ERROR**

In the ninth assignment of error, petitioners argue that the FFT amendments violate the dormant Commerce Clause of the United States

“Goal 9, Economic Development, requires provision of adequate opportunities for a variety of economic activities vital to public health, welfare and prosperity. The amendments are consistent with this goal because these changes and restrictions only apply to a new land use category, Bulk Fossil Fuel Terminals, and do not have a significant effect on the other allowed uses in industrial and employment zones. There are no changes proposed to the [PCP] or Zoning Map that will impact the overall size or intensity of development in the industrial areas of Portland.” Record 19.

WWC incorporates petitioners’ ninth assignment of error as its fourth assignment of error.
Constitution because the ordinance impermissibly discriminates against or unduly burdens interstate trade in fossil fuel. For the following reasons, we agree with petitioners.

The Commerce Clause of the United States Constitution provides that “Congress shall have Power * * * [t]o regulate Commerce * * * among the several states.” US Const Art I, § 8, cl 3. Where Congress has explicitly exercised that grant of power, states are of course bound to conform to federal law. The “dormant” aspect of the Commerce Clause protects Congress’s latent ability to regulate interstate commerce, even in areas where Congress has not spoken, 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. Or. Waste Sys. v. Dep’t of Envtl. Quality, 511 US 93, 114 S Ct 1345 (1994); Fort Gratiot Sanitary Landfill v. Michigan Dep’t of Natural Resources, 504 US 353, 361, 112 S Ct 2019 (1992) (“[A] State (or one of its political subdivisions) may not avoid the Commerce Clause’s strictures by curtailing the movement of articles of commerce through subdivisions of the State, rather than through the State itself.”)

The courts have generally adopted a two-tiered approach to Commerce Clause challenges: When a state or local law directly regulates or facially discriminates against interstate commerce, or when its purpose or practical effect is to favor in-state economic interests over out-of-state interests, courts have generally struck down the law without further inquiry, under an elevated
level of scrutiny. *Rocky Mt. Farmers Union v. Corey*, 730 F3d 1070, 1087 (9th Cir 2013) (a law may violate the dormant Commerce Clause if it “discriminates against out-of-state entities on its face, in its purpose, or in its practical effect[.]” (citing *Maine v. Taylor*, 477 US 131, 138, 106 S Ct 2440 (1986))). Discrimination “means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.” *Id.* (quoting *Or. Waste Sys., Inc.*, 511 US at 99). Where a law is discriminatory in practical effect, the government must demonstrate that the law is supported by a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives. *Hunt v. Wash. State Apple Adver. Comm’n*, 432 US 333, 353, 97 S Ct 2434 (1977) (“When discrimination against commerce of the type we have found is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake.” (Internal citations omitted.)).

On the other hand, where the law is facially non-discriminatory, and does not discriminate against out-of-state economic interests in its purpose or practical effect, the courts engage in a balancing test, subject to a lesser level of scrutiny, that weighs the state’s interest against the indirect burden on interstate commerce. Such a law will only be struck down when the burden on interstate commerce is “clearly excessive” in relation to the local benefits. *Pike v. Bruce Church*, 397 US 137, 142, 90 S Ct 844 (1970).
Petitioners argue, and we agree, that the city’s FFT amendments fail the Commerce Clause analysis under either test.

A. Discriminatory Purpose or Practical Effect

In the present case, no party argues that the FFT amendments facially discriminate against interstate commerce. The FFT amendments are silent regarding the origin or final destination of fossil fuels stored or transloaded in the affected FFTs. Petitioners argue, however, that 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. As the city mayor explained in the proceedings leading to adoption of the FFT amendments:

“The rapid development of fossil fuel resources in the western part of our country and Canada has put a lot of pressure on Portland and other cities and has sought to transport and move huge quantities of fossil fuels through and into our communities. As we all experienced with the [P]embina proposal last year, the zoning code actually allows fossil fuel terminals as a warehouse and freight movement use in our zoning code today without any limit on the size of these terminals. We, of course, passed [Resolution 37168] saying we’re going in a different direction and today is the proposal to put that into city law, into our code.” Record 206.

The Pembina proposal in north Portland was ultimately abandoned in the face of significant local opposition. However, as the mayor notes, one consequence
of the Pembina proposal was adoption of Resolution 37168, which resolved that the city council would actively oppose expansion of infrastructure whose primary purpose is the transporting or storing of fossil fuels in Portland or adjacent waterways. The city council later adopted a new comprehensive plan policy, Policy 6.48, which states that the city’s policy is to “[l]imit fossil fuel distribution and storage facilities to those necessary to serve the regional market.” Record 3317.

Even though Policy 6.48 is not yet in effect, the city’s findings state that the FFT amendments “specifically implement[]” Policy 6.48. Record 324. As adopted, the FFT 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.28 Notwithstanding the facial neutrality of the

28 As noted earlier, the city’s findings explain:

“The energy distribution market in the Pacific Northwest is changing. Production of crude oil and natural gas, particularly from North Dakota, has substantially increased in the U.S. since 2009, as shown in Figure 1. In turn, several large new fuel distribution terminals have been proposed in the Pacific Northwest to access West Coast and export markets, as shown in Figure 2. Similar trends have occurred in Alberta and British Columbia.

“[The FFT amendments] propos[e] a prompt, focused response to these market changes. The recommended code amendments will restrict development of new fossil fuel terminals and limit the expansion of existing terminals, consistent with City and State objectives on climate change and public safety.” Record 316 (emphasis added).
amendments regarding the origin or destination of fossil fuels, 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 proposal ("i.e., demand beyond that “necessary to serve the regional market.”"). As the commentary to the definition of “Bulk Fossil Fuel Terminal” explains, terminals subject to the FFT amendments function as “regional gateway facilities, where fossil fuels enter and exit the region.” Record 370. Further evidence of the intent to preclude fossil fuel export terminals is the fact that the size of terminals subject to the amendments was deliberately set to capture facilities large enough to handle “unit trains,” *i.e.*, trains with a single load of a bulk fossil fuel that is transported as a unit and not intended for local distribution, but for transloading for more distant markets. See n 6. In the amendments, the city implements Policy 6.48 and attempts to freeze the status quo, in which the city’s existing FFTs serve only local, regional and intrastate markets for fossil fuels.29

29 It is true, as the city argues, that nothing in the FFT amendments expressly prohibits changing the 11 existing large FFTs into export terminals, *i.e.*, using existing facilities to store and transship fossil fuels to interstate or international markets, rather than store and transship fossil fuels for local or regional markets, as is the current state of affairs. However, the city cites no evidence that such redevelopment would be a practical or economic reality. Such changes would likely require new facilities and changes in modality, *e.g.*, shifting from a train to truck modality to a train to ship modality, and perhaps different fuels (*e.g.*, petroleum to coal) with different storage and handling characteristics. It seems unlikely that it would be economically feasible to
The question before us is whether legislation with that intent and that practical effect is consistent with the dormant Commerce Clause. The parties cite a number of dormant Commerce Clause cases, discussed below, to support their respective positions. Before turning to that discussion, we first note that the city emphasizes that the stated purposes of the FFT amendments include (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. The city argues that these are legitimate local interests that outweigh any incidental impact on interstate commerce. We address the cited purposes below, both under the discriminatory practical effect analysis, and under the *Pike* balancing test. However, in evaluating discriminatory purpose or practical effect, we note that the Ninth Circuit states that it will “assume that the objectives articulated by the legislature are the actual purposes of the statute, unless an examination of the circumstances forces us to conclude that they could not have been a goal of the legislation. But we will not be bound by the stated purpose when determining the practical effect of the law.” *Rocky Mt. Farmers*, 730 F3d at 1097-98 (citing *Minnesota v. Clover Leaf Creamery*, 449 US 456, 463 n 7, 101 S Ct 715 (1981); *Hughes v. Oklahoma*, 441 US 332, 336, 99 S Ct 1727 (1979) (internal citations and quotation marks omitted)). Similarly, in the present case, even if the two abandon long-standing investments in existing facilities serving local and regional markets in order to redevelop those facilities to handle different modalities or types of fossil fuels.
purposes stated above are among the actual purposes of the FFT amendments, it does not follow that they are the exclusive purposes, or that those two stated purposes limit the analysis of the practical effect of the FFT amendments.

We make one other preliminary observation. Most of the dormant Commerce Clause cases cited to us involve claims of economic protectionism in one guise or another. The present case does not involve economic protectionism in the classic sense of a state or municipality trying to favor local economic interests by restricting or burdening competition from out-of-state actors. See, e.g., Hunt v. Wash. State Apple Adver. Comm'n, 432 US 333, 351 (regulations that burdened out-of-state apple growers, to the indirect economic benefit of in-state growers). The city, and Oregon, have no local refineries or sources of fossil fuel to promote or protect against competitors. Nonetheless, we believe that the FFT amendments embody elements of economic protection for local interests—protections from the burdens that the city is willing to impose on interstate commerce—and the city’s attempt to shield local interests from the burden of obstacles it places in the path of interstate commerce is one of the fatal flaws of the FFT amendments. Raymond Motor Transportation, Inc. v. Rice, 434 US 429, 445-47, 98 S Ct 787 (1978) (exceptions in favor of local interests “weaken the presumption in favor of the validity of [a regulation], because they undermine the assumption that the State’s own political processes will act as a check on local regulations that unduly burden interstate commerce.”)
In the FFT amendments, the city attempts to limit its participation in the traffic of fossil fuels, which the city clearly deems to be an undesirable commodity. The city is indifferent to the *sources* of that commodity (none of which are local), but is concerned with the ultimate *destinations* for fossil fuels that enter the city for storage or transloading. As Policy 6.48 indicates, the city’s policy goal is to limit fossil fuel storage and transloading to the quantities needed to meet local and regional demands. The concomitant (and expressly-stated) goal is to preclude establishment or expansion of FFTs that would store or transload fossil fuel for destinations outside the state. Because the status quo at present is that the city’s FFTs adequately serve current local and regional demands, the city chose to advance both these policy goals together by simply prohibiting new and expanded FFTs. To shield local users from the consequences of a more comprehensive ban on new or expanded FFTs, the city adopted a number of exceptions and exclusions, listed in the margin.  

30 PCC 33.920.300.D. lists exceptions to the definition of “bulk fossil fuel terminal,” (FFTs) many of which appear calculated to shield local fossil fuel storage facilities and end users from harm that could otherwise be inflicted by the FFT amendments. The exceptions include:

“2. Truck or marine freight terminals that do not have transloading facilities and have storage capacity of 2 million gallons or less are classified as Warehouse and Freight Movement uses. However, multiple fossil fuel facilities, each with 2 million gallons of fossil fuel storage capacity or
prohibition on export terminals, to effectively restrict interstate or international commerce in fossil fuels, while at the same time shielding its citizens and local less but cumulatively having a fossil fuel storage capacity in excess of 2 million gallons, located on separate parcels or land will be classified as a Bulk Fossil Fuel Terminal when two or more of the following factors are present:

“a. The facilities are located or will be located on one or more adjacent parcels of land. Adjacent includes separated by a shared right-of-way;

“b. The facilities share or will share operating facilities such as driveways, parking, piping, or storage facilities; or

“c. The facilities are owned or operated by a single parent partnership or corporation.

“3. Gasoline stations and other retail sales of fossil fuels are not Bulk Fossil Fuel Terminals.

“4. Distributors and wholesalers that receive and deliver fossil fuels exclusively by truck are not Bulk Fossil Fuel Terminals.

“5. Industrial, commercial, institutional, and agricultural firms that exclusively store fossil fuel for use as an input are not Bulk Fossil Fuel Terminals.

“* * * * *

“7. The storage of fossil fuels for exclusive use at an airport, surface passenger terminal, marine, truck or air freight terminal, drydock, ship or barge servicing facility, rail yard, or as part of a fleet vehicle servicing facility are not Bulk Fossil Fuel Terminals.

“8. Uses that recover or reprocess used petroleum products are not Bulk Fossil Fuel Terminals.”
end-users to some extent from the adverse consequences of the restrictions on
new or expanded terminals.\footnote{31} While not a classic form of economic
protectionism vis-a-vis out-of-state competitors, in our view a law that
embodies the above goals represents a species of protectionism and burden-
shifting that infringes on Congress’s latent authority under the Commerce
(“[T]he whole objective of the dormant Commerce Clause doctrine is to protect
Congress’s latent authority from state encroachment.”)

With those observations, we turn to the cases cited by the parties.
Dormant Commerce Clause jurisprudence is highly fact-specific, and the
analysis often turns on identifying the most analogous fact patterns. In general,
the cases cited by the city are distinguishable. The city relies heavily on
\textit{Chinatown Neighborhood Ass’n v. Harris}, 794 F3d 1136 (9th Cir 2015), in
which the United States Court of Appeals for the Ninth Circuit upheld the State
of California’s “Shark Fin Law,” which made it unlawful for any person to

\footnote{31} The city’s ability to significantly impact interstate and international
commerce in fossil fuels is, of course, limited. Export terminals can still be
located in other cities throughout the region. Indeed, as the findings note, at
least eight export terminals have been proposed in the region in places other
than Portland. Record 317. Nonetheless, as Ordinance No. 188142 recognizes,
the city enjoys several geographical and logistical advantages, including a
location at the western end of a low-gradient railroad and barge route for heavy
cargo through the Cascades, a corridor that is an economical conduit for fossil
fuels from interior states for transshipment to overseas destinations. Record 48.
Few other cities in the region are as well-placed as Portland to disturb the flow
of fossil fuels in interstate commerce.

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possess, sell, trade, or otherwise distribute shark fins anywhere in the state. The plaintiffs argued that the law violated the dormant Commerce Clause by curbing commerce in the flow of shark fins through the state to out-of-state markets. *Id.* at 1145. The Ninth Circuit rejected that argument, concluding that the law simply regulates conduct within the state, and any extraterritorial impacts of the law are incidental. *Id.* at 1146. The city argues for the same conclusion here: the FFT amendments simply regulate conduct within the state, and any extraterritorial impacts are incidental.

However, a critical difference between the present case and *Chinatown Neighborhood Ass’n*, is that in the latter case the state law did not purport to shield state residents from the impacts of an otherwise comprehensive prohibition. We believe it doubtful that the Ninth Circuit would have affirmed a statute that allowed state residents to possess, sell, or trade shark fins, and thus protected the existing domestic market in shark fins, but had the intent and effect of restricting the storage or transport of shark fins for interstate or international markets.\(^\text{32}\) Similarly, in the present case, we think the Ninth

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\(^{32}\) Another significant difference is that in *Chinatown Neighborhood Ass’n*, the Ninth Circuit noted that Congress had adopted legislation prohibiting “finning” or the taking of shark fins in all U.S. waters. *Id.* at 1140. Thus, the state law prohibiting the possession, etc., of shark fins of any origin within the state was entirely consistent with federal legislation. *Id.* at 1144. Indeed, the Ninth Circuit first had to determine whether congressional legislation had already preempted or occupied the field of shark finning. *Id.* In the present case, as far as we are informed Congress has passed no law restricting interstate or international commerce in fossil fuels. If anything, it is more probable that
Circuit would not affirm regulations that are intended and have the practical effect of prohibiting the storage or transloading of fossil fuel for interstate and international markets, but which largely protect the local fossil fuel economy and local end-users from the impacts of those regulations.

Another Ninth Circuit case cited by the city, *Rocky Mt. Farmers Union v. Corey*, 730 F3d 1070, is also distinguishable. In *Rocky Mt. Farmers Union*, the California Air Resources Board adopted a low carbon fuel standard regulation for ethanol, an additive in fossil fuel. *Id.* at 1079-83. To comply with the fuel standard, a fuel blender had to keep the average carbon intensity of its total volume of fuel below the fuel standard’s annual limit, taking into account various credits available under a cap-and-trade scheme. *Id.* Out-of-state suppliers filed suit, arguing that the fuel standard violated the dormant Commerce Clause. *Id.* at 1086. The district court concluded that the fuel standard facially discriminated against out-of-state energy firms, because it federal statutes foster the free flow of fossil fuels in interstate (and international) commerce. See *Raymond Motor Transp., Inc.*, 434 US at 440 (“[I]t never has been doubted that much state legislation, designed to serve legitimate state interests and applied without discrimination against interstate commerce, does not violate the Commerce Clause even though it affects commerce. In areas where activities of legitimate local concern overlap with the national interests expressed by the Commerce Clause—where local and national powers are concurrent—the Court in the absence of congressional guidance is called upon to make delicate adjustment of the conflicting state and federal claims.” (Internal citations and quotation marks omitted.)); see also *Pac. Merch. Shipping Ass’n*, 639 F 3d at 1178 (“The foreign commerce context places further constraints on state power because of ‘the special need for federal uniformity.’”).

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took into account the origin of the fuel and the distance fuel travels to reach California. *Id.*

The Ninth Circuit disagreed, concluding that the fuel standard did not facially discriminate against interstate commerce, because the state based its standards on the carbon intensity of fuel sold in the state, not on the fuel’s origin. 730 F3d at 1078. The Ninth Circuit remanded to the district court for a determination of whether the regulation’s ethanol provisions discriminated in purpose or practical effect. *Id.* If not, it was to apply the *Pike* balancing test. *Id.*

The city argues that, like the state fuel standard at issue in *Rocky Mt. Farmers Union*, the FFT amendments are facially neutral regarding the origin of fossil fuels, with no motive to protect local economic actors from out-of-state competition. However, we have already concluded that the FFT amendments are not facially discriminatory, or designed to protect in-state economic actors from direct out-of-state competition. The question is whether the FFT amendments discriminate against interstate commerce in purpose or practical effect. We fail to see how the holding or facts in *Rocky Mt. Farmers Union* assists the city. The facts in *Rocky Mt. Farmers Union* would be closer to all fours with the present case if the fuel standard had limited fuel terminals in the state in a manner that effectively prohibited storage or transloading of high-carbon fuels intended for other states or to international markets, but allowed high-carbon fuels to continue to be stored, transloaded and sold at
current levels to California residents, with numerous exemptions to protect local economic actors from the impacts of the restriction on commerce in high-carbon fuels effectively imposed on fuel that passes through to other states.\(^{33}\)

One of the signal characteristics of a law that discriminates in purpose or practical effect in violation of the dormant Commerce Clause, and is thus subject to elevated scrutiny, is unequal treatment between in-state and out-of-state economic actors or markets. Or. Waste Sys., 511 US at 99 (discrimination “means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter); see also Philadelphia v. New Jersey, 437 US 617, 628, 98 S Ct 2531 (1978) (“It does not matter that the State has shut the article of commerce inside the State in one case and outside the State in the other. 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.”). Despite the facial neutrality of the FFT amendments, the city has done all it can to effectively eliminate any city role in the export of fossil fuels, while continuing to provide for existing and projected local consumption of fossil fuels. Hunt v. Wash. State Apple Adver. Comm’n, 432 US

\(^{33}\) In addition, the Ninth Circuit recognized that the federal Clean Air Act expressly authorizes California to adopt its own fuel standards. 730 F 3d at 1078. Again, in the present case, no party cites us to any act of Congress authorizing a city or state to regulate the size or number of fossil fuel transportation facilities in a manner that has the practical effect of prohibiting export terminals.

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333, 350, (referring to “the Commerce Clause’s overriding requirement of a
national ‘common market’” (internal citations omitted)). Nothing cited to us in
Rocky Mt. Farmers Union, or any other case, suggests that a law with that
purpose and that practical effect can avoid elevated levels of scrutiny under the
dormant Commerce Clause analysis.

Among the dormant Commerce Clause cases cited to us are two cases
involving zoning or land use regulations. The city relies on Wal-Mart Stores,
Inc. v. City of Turlock, 483 F Supp 2d 987, 991-92 (E D Cal 2006), which
involved a city zoning text amendment that created three new categories of
commercial retail land uses: discount stores, discount clubs, and discount
superstores. Under the amendments, the first two categories were allowed as
conditional uses in commercial zones, but the last category, discount
superstore, was not allowed in any city zone. Id. Wal-Mart, which operated a
discount store in the city but sought to establish a discount superstore, argued
that the prohibition on establishing a discount superstore in any zone
discriminates against interstate commerce in practical effect, because it
prevents Wal-Mart, an out-of-state retailer, from operating within the city in
Wal-Mart’s preferred superstore format. Id. at 1009-14. However, the district
court rejected those arguments, concluding that the facially neutral ordinance
did not discriminate against interstate commerce because any retailer, in-state
or out-of-state, can locate retail operations in the city, and offer any products,
except in the discount superstore format. Id. The court held that the Commerce
Clause does not protect the preferred structure or methods of a retail operation, or the right to conduct business in the most efficient manner. *Id.* In the present case, the city argues likewise that FFT owners are not entitled to establish terminals in any preferred format or conduct terminal operations in the most efficient manner.

Like the present case, *Wal-Mart Stores, Inc.*, involved creation of a new land use category, which the ordinance then prohibits within the city. However, the resemblance mostly ends there. In the present case, the city deems a particular commodity in interstate commerce (fossil fuels) to be undesirable and therefore adopt steps to freeze the number and size of facilities that meet local demands for that undesirable commodity, and to preclude facilities that would store and transload the undesirable commodity for further shipment to interstate and international markets. In *Wal-Mart Stores, Inc.*, the commodities at issue were desirable, it was only the size and format of the building in which the goods would be sold to which the city objected. 483 F Supp 2d at 1012. Before and after the zoning amendments in *Wal-Mart Stores, Inc.*, the same type and quantity of goods flowed from the stream of interstate commerce to enter the city and be sold. *Id.* The only difference was that after the amendments those goods would have to be sold in smaller retail outlets, not in the larger superstore format that Wal-Mart preferred. *Id.* at 1016. By contrast, in the present case, if the FFT amendments achieve the city’s several goals, the amendments strongly affect the type and
quantity of fossil fuels that could potentially flow into and out of the city from the stream of interstate commerce. Prior to the FFT amendments, a new propane or coal export terminal could be sited within the city, to transload those types of fossil fuels from North Dakota or Montana for shipment to overseas markets. Under the FFT amendments, such facilities are effectively prohibited, and the types and quantities of fossil fuels that are stored and transloaded in the city are, as a practical matter, limited to those needed to satisfy the current and projected future local or regional demand.34

34 The city’s findings recognize that the establishment of fossil fuel terminals in the region would significantly increase the quantity of fossil fuels flowing into, and out of, the state. As the findings note:

“[T]here is a wide margin between the size of recently proposed crude oil, coal, and (LNG) terminals in the Pacific Northwest and the scale of expected growth of existing Portland fuel terminals that generally serve the regional market area * * *.” Record 330.

In other words, due to the large volumes of fossil fuel that could be transported via fossil fuel export terminals (like the Pembina project), if established in the city or elsewhere in the region or state, these export terminals would significantly increase the amount of fossil fuel that enters the state, compared to any increase attributed to local or regional consumption. Record 46 (Figure 7). Conversely, if the city succeeds in discouraging the establishment of fossil fuel export terminals in the city, that could effectively reduce the quantity of fossil fuels that would otherwise cross state lines, and which is intended to again cross state lines on its way to interstate or international markets. Generally, a law with the intent and the effect of reducing the free flow of commerce across state lines is viewed with suspicion under the dormant Commerce Clause. See Hughes v. Oklahoma, 441 US 322, 337-38, 99 S Ct 1727 (1979) (statute prohibiting the transport of minnows out of the state violates the dormant Commerce Clause, because it “overtly blocks”
To put the circumstances in *Wal-Mart Stores, Inc.* on a closer footing with the present case, imagine that the City of Turlock objects to the import of goods manufactured overseas, and adopts amendments that prohibit new distribution centers that receive and transfer foreign-made goods to stores across the United States, but nonetheless the amendments allow local retailers to continue to sell foreign-made goods in city stores to meet the local demand. While a comprehensive and even-handed embargo on importation of foreign goods to local markets *might* survive scrutiny under a dormant Commerce Clause analysis, if the ban did not unduly impact interstate commerce, the above-described selective approach would not, because it does not evenhandedly distribute benefits and burdens, but instead concentrates the bulk of its impacts on interstate commerce, while attempting to shield local interests from those impacts.\(^{35}\) The FFT amendments suffer the same flaw.

Petitioners argue, and we agree, that the circumstances in *Island Silver Spice, Inc. v. Islamadora*, 542 F3d 844 (11th Cir 2008), bear a closer

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\(^{35}\) Indeed, the Eastern District of California rejected a similar argument made by Wal-Mart. As the court stated: “[The ordinance] leaves the market open to all local or foreign retailers of all local or foreign products, except in the discount superstore format. The Commerce Clause does not protect the particular structure or methods of operation of a retail market.”) *Wal-Mart Stores Inc.*, 483 F Supp 2d at 1012.

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resemblance to the present circumstances. In Island Silver Spice, Inc., a municipality adopted zoning amendments that effectively prohibited establishment of new “formula” restaurants and retail establishments, defined as a retail sale establishment required by contract to provide a standardized array of services or merchandise, décor, architecture, layout or similar standardized features, by limiting street level frontage and total square footage only for “formula” establishments, but not for similar retail uses. Id. at 845. The apparent target of the zoning prohibition was nationally and regionally branded formula retail stores, such as chain pharmacies. Id. The zoning amendment did not facially discriminate against out-of-state stores; nonetheless, the Eleventh Circuit concluded that by limiting the square footage and street frontage for “formula” establishments, the amendment had the practical effect of discriminating against interstate commerce, because it effectively eliminated the establishment of new regionally and nationally branded retailers, a quintessential type of interstate commerce. The Eleventh Circuit therefore applied the elevated scrutiny test and ultimately concluded that the amendment failed that test. Id. at 847.\textsuperscript{36}

The present circumstances are similar to those in Island Silver Spice, Inc., in that in both cases the city objects to a particular article or aspect of commerce that is intrinsically interstate in nature (nationally branded retail

\textsuperscript{36} The Eleventh Circuit also affirmed findings that the zoning amendment failed under the \textit{Pike} balancing test. \textit{Id.} at 847 n 2.
stores on the one hand, fossil fuels on the other hand), and adopts a zoning amendment that prohibits establishment of such uses, or the expansion of existing uses above a certain size, but allows existing undesirable uses to continue in the city essentially as nonconforming uses. 542 F3d at 846-47 (noting the municipality’s existing zoning allowed the use of the subject property as a retail use comprising over 12,000 square feet of floor area, greatly exceeding the ordinance’s dimensional limitations for “formula retail” businesses). In Island Silver Spice, Inc., the Eleventh Circuit had no trouble concluding that a municipality’s efforts to prohibit new and expanded nationally branded formula retail uses (by limiting square footage and street frontage) had a discriminatory practical effect on interstate commerce. Id.

The Eleventh Circuit then considered whether the zoning amendment was supported by a legitimate local purpose that could not be adequately served by reasonable nondiscriminatory alternatives. 542 F3d at 847. In Island Silver Spice, Inc., the stated purposes of the zoning ordinance prohibiting “formula” retail included the protection of the municipality’s small town character. Id. The Eleventh Circuit concluded that while preserving small town character is a legitimate purpose, the municipality had no small town character to preserve, because the town already included a number of pre-existing formula retail businesses, and had no historic district or affected historic buildings. Id. Further, the Eleventh Circuit noted that the zoning ordinance included exceptions that would allow smaller formula retail stores, as well as large non-
formula retail establishments, none of which furthered preservation of a small town character. \textit{Id.} at 847-48. Because the municipality failed to identify a legitimate local purpose to justify the amendment’s discriminatory practical effects, the Eleventh Circuit invalidated the amendments without considering whether the municipality could show that adequate, nondiscriminatory methods were available to achieve the legitimate local purpose. \textit{Id.}

In the present case, the city argues that its stated interests in reducing vulnerability to seismic damage and reducing the city’s contribution to climate change caused by fossil fuel consumption are both legitimate local interests, and we agree. However, as explained below, the FFT amendments do not, in fact, appear to further those interests. Moreover, the city makes no effort to demonstrate that adequate, nondiscriminatory methods are unavailable to meet those interests.

With respect to vulnerability of existing FFTs to seismic events, the FFT amendments appear to do nothing to reduce that vulnerability.\textsuperscript{37} With respect to new or expanded FFTs, such facilities would presumably comply with modern seismic codes, and it is not clear how a blanket ban on new or expanded FFTs serves the purpose of reducing vulnerability of FFTs to seismic events. It is also not clear why the city could not continue to allow new or expanded FFTs

\textsuperscript{37} The PSC recommended draft offered existing FFTs an incentive to upgrade to current seismic standards, in exchange for a 10 percent expansion. However, the city council eliminated that incentive.
in industrial areas of the city that are not located on soils subject to liquefaction, instead of broadly prohibiting new and expanded FFTs everywhere in the city. Further, the FFT amendments allow without restriction (1) small fossil fuel terminals below two million gallons in size, (2) unlimited size mono-modal fossil fuel terminals served only by trucks, as well as (3) terminals of any size that handle non-fossil fuels such as bio-diesel and ethanol, in the same industrial areas that are vulnerable to seismic shocks. We are cited to no evidence that seismic damage to a bio-diesel tank farm would be any less catastrophic than seismic damage to a tank farm of petro-diesel, or that an intermodal petroleum terminal is any more susceptible than a similarly sized mono-modal petroleum terminal served only by trucks. There is no evidence presented to us that the express target of the FFT amendments, intermodal terminals, is uniquely vulnerable to seismic damage compared to mono-modal facilities.

In short, although reducing vulnerability to seismic damage is a legitimate local interest, the FFTs amendments appear to do very little, if anything, to reduce that vulnerability, and are riddled with exceptions that appear to undermine any steps toward reducing vulnerability to seismic damage that the amendments might achieve. Further, and most importantly for our analysis here, the amendments appear to favor local interests, to the detriment of interstate and international market interests. Finally, as noted, the city makes no attempt to demonstrate that there are no adequate, nondiscriminatory
alternatives to serve the local interest in reducing vulnerability to seismic
damage to FFTs. Based upon the record before us, it is not clear that such a
showing can be made.

The city’s other stated goal—reducing the city’s contribution to global
warming and climate change—is an entirely laudable goal. However, the city
identifies nothing in the FFT amendments directed at actually accomplishing
that goal. The FFT amendments include no provisions designed to reduce the
local consumption of fossil fuels, and thus the local emission of greenhouse
gasses. In implementing Policy 6.48, the city attempted to limit local FFTs to
serve only the regional demand for fossil fuels, but the amendments do not
propose anything to reduce local or regional demand. As discussed with regard
to Goal 12, the city’s working assumption is that local demand for fossil fuels
will plateau and even decline in the foreseeable future, making new or
expanded FFTs unnecessary. But the city does not identify anything in the FFT
amendments that would cause or contribute to any plateau or decline in local
fossil fuel demand and therefore reduce local greenhouse gas emissions. In
other words, although the amendments prohibit new or expanded FFTs, under
the city’s assumptions—that local demand will plateau or decline—there is no
basis to assume that new or expanded FFTs would ever be necessary to meet
increased local demand. The prohibition on new or expanded FFTs appears to
do little or nothing to further the city’s interest in reducing local consumption
or the carbon content of locally consumed fossil fuels.
The only scenario we can understand that could causally connect the prohibition on new or expanded FFTs with a reduction in local demand for fossil fuel (and a resulting reduction in local greenhouse gas emissions) would require that the city’s working assumptions be incorrect, and in fact local demand for fossil fuel will increase in coming years beyond the capacity of the existing FFTs and of new small or mono-modal FFTs to accommodate. In that circumstance, the shortage of FFT capacity might cause a local shortage of fossil fuel that could raise prices, thus discouraging consumption and encouraging a transition to non-fossil fuel sources. However, that speculative chain of causation, contrary to the city’s working assumptions, is a thin basis for meeting the city’s burden of demonstrating the existence of a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives.

In any case, the most important impact of the FFT amendments for purposes of the dormant Commerce Clause analysis is the fact that the amendments are intended to and have the practical effect of precluding the establishment of new fossil fuel export terminals. We question whether the city’s desire to preclude establishment of fossil fuel export terminals reflects a legitimate local interest. As noted, the city may well take responsibility for its own greenhouse gas emissions from local consumption of fossil fuels without running afoul of the dormant Commerce Clause (if those efforts create only incidental impacts on interstate commerce). However, we do not believe the
city can, consistent with the dormant Commerce Clause, deliberately attempt to slow or obstruct the flow of fossil fuels from other states to consumers in other states or countries with the apparent goal of reducing generation of greenhouse gases elsewhere in the world, and justify that attempt as a legitimate local interest. Finally, even if reducing fossil fuel consumption and emissions elsewhere in the world can be viewed as a legitimate local interest for purposes of the discriminatory practical effect analysis, as noted the city makes no effort to demonstrate that that purpose cannot be adequately served by reasonable nondiscriminatory alternatives.

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 dormant Commerce Clause.

B. Pike Balancing Test

In the event that the FFT amendments are deemed to be nondiscriminatory and to have only indirect impacts on interstate commerce, we consider whether the FFTs amendments survive under the so-called “Pike balancing test.” Under Pike, “nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless ‘the burden imposed
on interstate commerce is clearly excessive in relation to the putative local

As explained above, the FFT amendments appear to provide little if any
local benefits with respect to reducing seismic vulnerability and reducing the
city’s local contributions to global warming. The city’s other express goal of
precluding export terminals is arguably the FFT amendments’ most potentially
significant burden on interstate commerce. It is difficult to evaluate how much
of a burden the city’s prohibition on new or expanded FFTs would have on the
establishment of new export terminals, or on the flow of fossil fuels into and
through any future export terminals in the city or region, because the record
includes no attempt to conduct that evaluation. Nonetheless, it is clearly the
city’s intent that the impact on the interstate and international market in fossil
fuels will be significant, and that few or no fossil fuel export terminals will
become established in the city or perhaps even in the region. See Record 206
(“As we all experienced with the [P]embina proposal last year, the [city’s]
zoning code actually allows fossil fuel terminals as a warehouse and freight
movement use in our zoning code today without any limit on the size of these
terminals. We, of course, passed [Resolution 37168] saying we’re going in a
different direction and today is the proposal to put that into city law, into our
code.”)

Weighed against that burden are the putative local benefits. We
understand the city and Riverkeeper to argue that precluding fossil fuel export

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terminals will provide local benefits in the form of reducing harm to its citizens caused by fossil fuel consumption in other countries, which are the final destination for fossil fuels that would be transloaded onto ships at the export terminals that the amendments effectively prohibit. The city argues that simply because “climate-change risks are ‘widely-shared’ does not minimize” a government’s interest in reducing contributions to global warming. *Massachusetts v. EPA*, 549 US 497, 522, 127 S Ct 1438 (2007) (concluding that Massachusetts has standing to file suit challenging denial of a petition for EPA rulemaking to adopt rules to reduce U.S. emissions that contribute to global warming and climate change). The city cites *Rocky Mt. Farmers Union*, 730 F3d at 1103, to argue that a state is free to regulate in-state commerce with the goal of influencing out of-state choices of market participants. The city also cites *Pac. Merch. Shipping Ass’n*, 639 F 3d 1154, for the proposition that a state’s interest in protecting the health of its residents from air pollution far outweighs the federal interest in the free flow of commerce.

However, none of the cited cases support the proposition that a city or state can take steps to slow or block the flow of commerce to other states or countries, in an effort to prevent the blocked commodities from being consumed in those countries, causing air pollution in those countries that contribute to global warming, which in turn will adversely impact the citizens of the city or state (along with everyone else in the world). We do not believe that such attenuated benefits, which would literally apply to every person on
the planet, can be reasonably described as “local” benefits, for purposes of the
Pike balancing test.

The Massachusetts case held that the impacts of global warming on the state (e.g., increased erosion to coastlines) gave the state standing to challenge denial of a petition for the EPA to issue rulemaking directed at reducing national carbon emissions, given the United States’ role as one of the world’s biggest contributors to carbon emissions. 549 US 497, 521-526. However, nothing in the case suggests that the state has a uniquely “local” interest or benefit in preventing the flow of fossil fuels across the state to other countries, in order to reduce the consumption of fossil fuels in those other countries, for purposes of the Pike balancing test.

As noted, Rocky Mt. Farmers Union involved state rules imposing low carbon fuel standards on fuel sold in the state. 730 F3d 1070. The standards took into account the full carbon costs of producing and transporting ethanol intended for the California market, and in so doing, also considered the origin of the ethanol. 730 F3d at 1088-93. As Riverkeeper argues, the Ninth Circuit observed that carbon emitted in manufacturing ethanol in Iowa or Brazil impacts Californians as much as carbon emitted in Sacramento, given the widespread impacts of global warming. Id. at 1081. The Ninth Circuit

38 However, the Ninth Circuit also found that California is “uniquely vulnerable to the perils of global warming,” due to its long coastline, and dry fragile forests and deserts. 730 F3d 1070, 1106.
concluded that the fuel standards did not facially discriminate or discriminate in practical effect, but remanded to the District Court to determine if the impacts on interstate commerce clearly exceeded the putative local benefits under the *Pike* balancing test. *Id.* at 1100. The Ninth Circuit did not, of course, reach the remanded issue, but there is certainly language in the opinion suggesting that the “local benefits” to be balanced under *Pike* could include reducing the state’s unique vulnerability to the impacts of global warming, achieved in part using the state’s economic leverage to persuade out-of-state ethanol producers to reduce the carbon used to produce and transport fuel for the California market. *Id.*

However, the salient difference between *Rocky Mt. Farmers Union*, and the facts presented to us here is that California’s regulatory efforts were entirely directed at fuel intended for consumption *in California*. 730 F3d at 1079-80. In the present case, the city’s effective prohibition on fossil fuel export terminals (like the proposed Pembina project) is intended to slow or obstruct the flow of fossil fuel from other states to international markets, presumably to discourage the consumption of fossil fuels in other countries. At best, that effort, if successful, might slightly reduce consumption of fossil fuels in other countries, but there is no evidence or argument that the city would receive any *particular local* benefit in doing so. The city does not argue that it is “uniquely vulnerable” to global warming, or that it stands to gain or lose
more than any other city in the world from infinitesimal reductions or increases in global warming.

Finally, *Pac. Merch. Shipping Ass’n*, 639 F 3d 1154, also does not assist the city. In *Pac. Merch. Shipping Ass’n*, the Ninth Circuit upheld under the *Pike* balancing test state rules requiring vessel operators calling at a California port to use low-sulfur marine fuels within the state’s territorial waters—rules intended to reduce coastal air pollution caused by burning high-sulfur marine bunker fuel that the record showed directly affected the health of the state’s citizens. *Id.* at 1159. Notably, the rules included an express exemption for vessels traveling through territorial waters toward non-state ports or markets (known as the “innocent passage” provision). *Id.* at 1158. The Ninth Circuit held that the impacts on interstate or international commerce did not clearly exceed the well-documented local benefits of preserving the health of the state’s citizens against coastal air pollution. *Id.* at 1180-1182. The present case differs, again, in that the FFT amendments do little or nothing to reduce or change local consumption of fossil fuels or local contributions to global warming, and the effective ban on fossil fuel export terminals would have, at best, only the most attenuated connection to reduced global warming and concomitant effects on the health of the city’s citizens.

Reduced to essentials, the FFT amendments represent the city’s attempt to isolate itself to some extent from the national and international economy in fossil fuels. *See Chemical Waste Management v. Hunt*, 503 US 334, 341-42,
112 S Ct 2009 (1992) ("The Court has consistently found parochial legislation of this kind to be constitutionally invalid, whether the ultimate aim of the legislation was to assure a steady supply of milk by erecting barriers to allegedly ruinous outside competition,” or a tax discriminating against interstate commerce even when such tax was “designed to encourage the use of ethanol and thereby reduce harmful emissions,” for “in all of these cases, a presumably legitimate goal was sought to be achieved by the illegitimate means of isolating the State from the national economy.” (Internal citations omitted.)).

Given the city’s geographic and strategic position astride a major trade route, its attempts to isolate itself from the national and international market in fossil fuels have far greater potential impact on those markets than would the same efforts by a more geographically isolated city. Weighed against those potentially significant burdens on interstate commerce are local benefits from the legislation that, based on this record, appear to be attenuated at best. We conclude therefore that the burdens on interstate commerce are “clearly excessive” in relation to the putative local benefits, and the FFT amendments also fail under the *Pike* balancing test.

The ninth assignment of error is affirmed.

**DISPOSITION**

OAR 661-010-0071 provides that LUBA shall reverse a land use decision when the Board finds that the decision is unconstitutional. We concluded under the ninth assignment of error that the FFT amendments are
inconsistent with the dormant Commerce Clause. Accordingly, reversal is the
appropriate disposition.

The city’s decision is reversed.
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Dear Planning Staff:

I appreciate your willingness to accept comments on the idea of a "Pause" on fossil fuels on the Tacoma Tide Flats. I strongly and fully support such a pause and think the time has come for the Tacoma to invest entirely on alternative energies including sun, wind, geothermal, and the like. I now live in Fircrest but spend my work days in downtown Tacoma so continue to have a strong investment in the city and quality of life there.

Thank you,

David Lambert

--

Joanna Macy: “Gratitude is the antidote to greed.” "The necessary new version of the American dream is not to get rich, but to realize that we are already rich (Rick Hanson)."
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,

Mike Lindenmeyer
Atkinson, Stephen

From: Ann Locsin <locsinann@gmail.com>
Sent: Wednesday, August 30, 2017 9:54 AM
To: Atkinson, Stephen
Cc: Thoms, Robert
Subject: Schnitzer Steel

Steve-
Could you please share this with the planning commission?

Dear Planning Commission-
I am writing to ask you to please reconsider your removal of scrap metal yards from your list of prohibited uses. This industry represents a huge human health and safety risk to the residents of NE Tacoma living nearby. Scrap Metal yards represent a new source of air pollution that was previously unknown. As a result, they are not regulated as they should be. Schnitzer emissions are raining down on us with metal spheres, some of which contain chromium according to our lab test results. I am sharing with you an article about the city of Houston and what they found when they dug deeper into this issue. If you could please take the time to read it I would really appreciate it. This issue is real and urgent for the residents in NE.

Regards,
Ann Locsin
NE Tacoma Resident

“Subsequent testing outside five Houston metal recycling operations found dangerous levels of hexavalent chromium. Chrome VI, as it’s also called, is a high priority for air experts. When inhaled, hexavalent chromium is deposited in the lungs, can penetrate cells and cause free radicals, which damage DNA, ultimately causing lung cancer. When California gained the authority to regulate air pollution hazards in the 1980s, hexavalent chromium shared top priority, along with benzene. The state considers Chrome VI one of the most potent carcinogens known.

Forty years after the passage of the Clean Air Act, it's rare to find a new source of air pollution. But new sources can appear as the economy changes. The materials economy is evolving. What once was a sideline industry - recycling - is becoming central to manufacturing.”

Steve-
Can you please forward to the Planning Commission?

Dear Planning Commission-
I was very disappointed to hear about what transpired at your meeting yesterday. The people of NE Tacoma were once again set aside and marginalized for the sake of politics.

I am attaching a copy of the NE Tacoma Buffer Zone Proposal to remind you that the City Council directed you to consider interim regulations regarding 3 different proposed amendments, one of which was this. Please read the packet throughly which outlines what we are asking for and more importantly why. Please read all the letters from residents. Please read all the documented noise and odor complaints. Please review the lab test results regarding the cancer causing emissions that are being rained down upon us. You are losing site of our urgent need as you navigate political waters. Politics don’t protect us from Cancer.

I would also like to address comments made by Chris Beale. Did you really say that we are rich white people on the hill who don’t matter? Cancer does not know income, gender, or color. It indiscriminately affects us all. I also resent the stereotype of NE Tacoma. We are a diverse community with a broad range of ethnicities and incomes. Did you know that public housing for the Puyallup Tribe is located 1000 feet from Schnitzer Steel? They too are being subjected to these harmful emissions from Metal particulates. Do their lives matter? I am a huge proponent of environmental justice and what is affecting my affluent neighborhood is also affecting others. Environmental justice aside, does my life matter? I am white and upper income. I pay my taxes and volunteer my time and money to many causes. If you are telling me I don’t matter to Tacoma then it’s time to move to UP or Gig Harbor where the property taxes are lower and the air is clean. I am pretty sure Tacoma needs a diverse mix of high and low in order to strike balance. In short, we matter.

We came to you because we have a big problem. A problem that was created by you and the City of Tacoma. Poor planning means homes are located next door to PMI. As planners you know that buffers are needed. You need to start finding a way to right this wrong. We never asked for any one industry to be banned. We asked for a buffer on one little road (Marine View Drive). Why can’t you propose interim regulations for this area that go beyond fossil fuel? Sorry, but an animal fat rendering plant is not appropriate 600 feet from homes!

Interim regulations are supposed to be for situations that are urgent. Our situation is happening as we speak! A surface mine is going to be permitted next door to our neighborhood tomorrow. We are literally desperate for relief from this onslaught. Help us sleep at night. Stop this madness in the interim while we navigate what will surely be a long and complicated Subarea process.

We are not a "coalition". We are not political. We are just taxpayers and voters who have a serious problem. Who is going to help us?

Ann Locsin
NE Tacoma
Ann Locsin

1843 Pointe Woodworth Dr NE

Tacoma, WA 98422

City of Tacoma Planning Commission

747 Market Street, Room 345

Tacoma, WA 98402

planning@cityoftacoma.org

Dear Planning Commission-

My name is Ann Locsin and I am a 25 year resident of NE Tacoma and member of the NE Tacoma Neighborhood Council Board. The NETNC submitted to you a proposed amendment to the comp plan to rezone Marine View Drive from Taylor Way to the 11th Street bridge to lighter industrial in an effort to create a buffer zone between residential neighborhoods and very heavy/dangerous industrial uses. It is important to note that this situation was created by bad planning on the part of the City of Tacoma. Make no mistake, the City of Tacoma got us into this mess and we will hold you accountable to rectify it. By order of the City Council, our amendment was folded into the upcoming subarea planning process and you were ordered to consider interim regulations as it related to our proposal, along with 2 others.

The purpose of interim regulations has been completely lost in the politicizing of this situation. Between members of the planning commission running for public office and businesses providing financial support to candidates, the issue at hand is not being addressed.

The original proposal created by Staff addressed the issues as it was supposed to. Then, thanks to back door dealings, we are being presented a water sandwich for your consideration. Our concerns are two fold.............no limitations on current industries and a gap on prohibited uses.

Lack of Limitations on Allowed Uses:

NE Tacoma came to you because we have a huge problem RIGHT NOW that needs to be addressed. Particulate Matter is raining on our neighborhoods and we are inhaling it into our
lungs. This includes metal shards from the grinding process at Schnitzer Steel. We have had dust samples tested and discovered that the samples contained Chromium Hexavalent, a known carcinogen. Remember, the movie Erin Brokovich? Same cancer causing poison is right here in NE Tacoma! We asked you for rezoning because PMI allows for industries that should not be located next door to residential neighborhoods. We never asked for an outright ban in the entire Tide Flats, just Marine View Drive. **We are requesting the list of prohibited uses be expanded beyond fossil fuels for the proposed buffer zone area only on Marine View Drive. These uses should include metal recycling facilities, pulp mills, grain terminals, and animal slaughter facilities. These types of facilities have no place next door to homes.**

**Lack of Limitations of Current Businesses**

Allowing unbridled growth of existing businesses completely defeats the purpose of interim regulations. The threat is now. The industries that would be prohibited in the future should not be able to use this time of planning to grow. Targa sits a few feet from our homes. We can barely breathe from the heavy petrochemical fumes. Allowing continued growth is irresponsible and puts the health and safety of residents in NE Tacoma at risk. **We are asking you to limit growth of existing Fossil Fuels businesses to no more than 10% during the subarea planning process. This is the only way to ensure our peace of mind while this process unfolds.**

The Planning Commission is not supposed to be a political body. You were asked to develop interim regulations for NE Tacoma and your recommendation does not address our issues. NE Tacoma is home to 20,000 residents who need your support. Our health depends on it. Don’t politicize that.

Thanks for your consideration,

Ann Locsin
Hi there – please see my attached letter representing input for your consideration on this important matter. My organization has roots in the Tacoma downtown dating back over 100 years; I have been a part of the business and civic community for over 30 years. Thank you all, Bev

Bev Losey, CLU
Senior Vice President
Employee Benefits Practice Leader
Brown & Brown of WA
253-396-5508

Please remember that insurance coverage cannot be bound altered, or canceled by leaving an electronic message or voice mail message.

Coverage confirmation must be communicated through a licensed Brown & Brown representative.

Thank you.

CONFIDENTIALITY NOTICE

The information contained in this communication, including attachments is privileged and confidential. It is intended only for the exclusive use of the addressee. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone immediately. Thank you.
I am writing in solidarity with the Saltwater Climate Action Coalition, Tacoma's Tideflats Coalition, and Redline Tacoma.

I believe that the planning and agreements between Puget Sound Energy and the Port of Tacoma have moved forward without the benefit of any broad public notification, nor opportunities for public input and testimony regarding any agreement that would position a fossil fuel facility like the proposed LNG depot so close to a major population zone.

Even the remote possibility of leaks, spills, or any kind of pollution of the surrounding air or water poses potent threats to the health and well-being of residents who may be either up-wind or down-wind from the storage facility.

And I believe that Puget Sound Energy's interest in a refueling facility, as expressed in its press releases, is only a first step towards pressuring Tacoma to accept gas tankers into Commencement Bay to be filled with fracked gas which will be exported to Asia.

Since PSE has modified its corporate entity and is now a limited liability company (an LLC), the surrounding public in Tacoma and its suburbs will be absorbing all of the risks, but little or no compensation should emissions occur or the groundwater become contaminated through pipe leaks. And what reassurance does the public have that such storage sites could ride out a major earthquake?

As a person living 12 miles north of the proposed storage tanks and some of the pipelines to those tanks (Redondo Beach), I am concerned for the health of both myself and all my neighbors and friends in this area. But on a more
pragmatic level, I'm also concerned about the possibly lowering of property values in the Fife/Federal Way/Des Moines areas because of the proximity to the storage bunkers.

I would refer anyone who is not aware of the possible consequences to their property and their health to articles on-line about the Aliso Canyon leak in California starting in 2015.  

Because of the foregoing comments and questions, I oppose any further permitting or authorizations to proceed with this facility by the Port of Tacoma or the City of Tacoma.

Yours truly,

Lorie Lucky
28313 Redondo Way S., Unit 101
Des Moines, WA 98198
Email: lorie916@gmail.com
Dear Members of the Planning Commission:

I write to register my opinion on the matter of interim regulations for development in the City and Port of Tacoma during the five-year development period for the subarea plan for the Port of Tacoma.

I strongly urge the committee to prohibit the construction of new coal, oil, gas, and other liquefied fossil fuel terminals and to prevent the expansion of existing fossil fuel terminals and bulk storage, production, manufacture, processing, or refining of other petrochemicals in the Port and on Commencement Bay. I am aware that the latest amendment to interim regulations includes a loophole that permits the expansion of existing terminals, and I urge the committee to close the loophole. I am also aware that U.S. Oil has applied for permission to expand its operations, and I sincerely hope that U.S. Oil will receive a firm NO in response to the request.

I ask, too, that the committee prohibit the bulk storage, production, manufacture, processing, or refining of other petrochemicals, and prohibit smelting and acid manufacture.

I urge the committee to allow non-polluting businesses to expand if needed in order to encourage non-polluting industry over polluting industry. We stand poised to make Tacoma a hub of TRULY clean energy and green business—as opposed to green-washed, so-called "natural" fracked gas refineries and their affiliates.

Finally—and foundationally—the committee must respect the wishes of the Puyallup Tribe when formulating and monitoring interim regulations.

If you are interested in securing the health and well-being of all Tacoma residents you must put a temporary halt to additional pollution, greenhouse gases, and risks to public safety as we decide together how to move forward. Since the City of Tacoma and the Port affiliates often raise "jobs" as a reason to promote dirty industry, I assure you that clean industry provides job opportunities too. Take a look at the world around you and see many, many examples of successful shifts of this sort. Institute a moratorium on all petrochemical growth in our beloved city of Tacoma NOW.

Thank you for your serious and thoughtful consideration. Moral and ethical action is required of you now.

Tiffany MacBain
4024 N 36th St.
Tacoma WA 98407
May 21, 2017

Dear members of the Tacoma Planning Commission,

Fossil fuel industries have significant negative impacts on the community – from the congestion caused by mile-long oil trains that stopped other flow of commerce to the air pollution to the threat of oil spills, derailments, and other types of disasters. We believe that the future of the Tideflats should be transitioning away from fossil fuel industries and towards clean energy industries that provide family-wage paying salaries without the health and safety risks.

While the City and Port of Tacoma as well as the Puyallup Tribe undergo a multi-year sub-area planning process for the Tideflats, our community will be left vulnerable. An interim regulation is needed immediately to preserve the ability of the City and broader community to put in place the policies and vision for the future of the Tideflats without being tied to projects that are ‘grandfathered in’ during this uncertain time when the fossil fuel industry is looking to increase its extraction and increase the amount of products being transported through the Pacific Northwest.

I support passage of an interim regulation to put a pause on any new fossil fuel proposals in the Tideflats.

Key items include:

- Pass an interim regulation, or moratorium, effective for not longer than 180 days following its effective date, but may be renewed as necessary until the sub-area planning process is complete and the recommended policy changes are made,
- Cover fossil fuels, including but not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats; and condensate.
- Apply to bulk fossil fuel facilities that provide access to marine, rail, or pipeline transport; or that provide storage capacity.

This will not impact:

- Non-fossil fuel industrial activity in the Tideflats. For example, the temporary regulation would have no impact on WestRock, Schnitzer Steel, etc.
- Approved fossil fuel facilities, such as Targa Sound Terminal or the PSE LNG plant.
- Improvements to existing facilities to upgrade for the safety, efficiency, seismic resilience, or operations of existing energy infrastructure.
- Jobs or job creation in the Port of Tacoma.

Sincerely,

Melissa Malott
Executive Director
Citizens for a Healthy Bay

Becky Kelley
President
Washington Environmental Council
Alex Ramel  
Field Director  
Stand.earth

Aaron Ostrom  
Executive Director  
Fuse Washington

Steven J Kelly  
Senior Organizer  
Pierce County Activist Council

Chris Wilke  
Executive Director  
Puget Soundkeeper Alliance

Marian Berejikian  
Executive Director  
Friends of Pierce County

Bruce Hoeft  
Conservation Committee Chair  
Tahoma Audubon

Laura Skelton, MS  
Executive Director  
Washington Physicians for Social Responsibility

Alexandra Brewer  
Chair  
Sustainable Tacoma Commission

Emily Johnston  
Board President  
350 Seattle

Taylor Wonhoff  
Chairperson  
Surfrider Foundation, South Sound Chapter

North End Neighborhood Council
Hi. I found some typos in my earlier email of this comment. I am hoping, if you can find it, you will replace the earlier one with this one, wherein I have corrected some of my earlier errors.

Thanks a lot,

Roger Martin

----- Forwarded Message ----- 
From: Roger Martin
To: "planning@cityoftacoma.org"
Sent: Thursday, September 7, 2017 2:38 PM
Subject: Comment on Tacoma Tideflats

I am a graduate of biology and oceanography (bachelors') and Systems Management (masters'). I was accepted to pursue a PhD with the US Naval Postgraduate School, but could not attend due to operational commitments in my Air Force unit. I was certified as a scuba Assistant Instructor, and I was a volunteer diver at the Long Beach Aquarium of the Pacific, the National Aquarium in Baltimore, and a scientific diver with the Santa Monica Baykeeper. It has been a long time since school, but I still remember a lot, especially about the oceanography and about systems.

There is hardly a better example of the significance of intertidal geography than what we witnessed with Katrina in New Orleans, Harvey in Texas and Louisiana, and now what I expect we'll see with Irma, especially if hits Florida the way I suspect it will.

The intertidal zone is extraordinary as to its importance to all life on the planet. "Doc" Ed Ricketts wrote a book used in many college oceanography classrooms, Between Pacific Tides. It was the core subject matter in John Steinbeck’s Cannery Row, which is right next to where I first learned to scuba dive. The intertidal zone is getting further and further inland each year, due to sea-level rise. In Louisiana, the destruction of the tidal grasses and tidal plains drastically added to the damage New Orleans suffered with Katrina. People there are now talking about the enormous cost of trying to recover what they should never have lost. By constructing dangerous chemical and petroleum plants all along the Houston area and along the bayous there, the damage caused by winds and flooding are still yet to be known, but what we do know is alarming. People will soon learn the vulnerability of the limestone foundation upon which Miami, Miami Beach, and for that matter, all of Florida has under it, largely due to the unprotected rise of sea level attributable to global warming and the increased acidification of the seawater that flows through the porous calcium-carbonate substrate that makes up Florida's "land"scape. The limestone has been weakening over the years, and the amount of it covered by the now-more-acidic water makes collapse of the substrate more likely.

In addition, we know that a predicted, huge earthquake hitting San Francisco will cause the manmade landfill around the Marina and just south of the Airport at Foster City to likely liquify by the shaking,
and all structures there can be expected to collapse as if on quicksand. This is all because developers and profiteers thought they were smarter than the scientists who were warning them to not do what they did. Building on the Tideflats—especially building industries that contribute to the very global warming that is increasing the damage to the people, structures, and landscape around those same facilities—is insane. I just listed several examples that demonstrate the point.

I can add the San Onofre nuclear power plant, which has finally closed, but still has a lot of radioactive stuff there. How about Fukushima? Any pattern here? You bet. Learn! Don’t build anything that has hazardous materials at all in an area susceptible to earthquakes, tsunamis, and rising sea levels (and yes, tsunamis of up to 35 feet are possible even inside Puget Sound). And certainly don’t build anything in our beautiful area that will contribute a single gram of additional carbon to the atmosphere, including "natural" gas, Diesel, coal, or refined petroleum products.

How about putting a huge solar farm there instead? Contrary to silly forecasts, the area’s population will continue to grow, power demands will grow, but hydro power will NOT grow to keep up; it will decline as our annual precipitation will fall, as we have seen and is predicted (with the notable exception of ONE year, which is surely an anomaly in the statistical trend). How about a wind farm AND a solar farm? Better yet, how about a solar farm over a hydroponic garden? All these things are a lot smarter, and if an earthquake hits, nothing will blow up or contaminate the water and air.

As I was taught during my USAF pilot training class, the primary rule to follow when you are in control of something that can kill you or somebody else is, "Don’t be stupid." The idea of putting chemical plants, petroleum docks, or anything along that line of thinking is indeed stupid.

Thanks,

Roger T Martin, Lt Col, USAF (Ret)
Steilacoom WA
September 13, 2017

Mr. Stephen Atkinson
Senior Planner, City of Tacoma
747 Market Street, Rm 345
Tacoma, WA 98402

RE: Proposed Tideflats Interim Regulation

Mr. Atkinson:

Masco Petroleum would like to comment in response to the planning Commission’s proposal to implement interim land use regulations for the Tacoma tide flats.

Masco Petroleum purchases millions of gallons of fuel from U.S. Oil & Refining CO and are extremely worried about the interim impacts and costs to consumers if a poorly thought out set of regulations is rolled out. We believe that the imposing regulations could restrict our primary supply source and cause unneeded disruptions in an ever-changing supply and demand environment for fuels to our customers.

The fuel industry is one of the most heavily regulated industry from the well to the gas station. We are required to implement BMP’s or face steep and harsh fines to our business. Please do not allow the implementation for additional complicated regulations that in the end will affect both supply of fuel in Tacoma and potentially the price the public will pay at the pump. Putting an infrastructure freeze on the Tacoma Tideflats would negatively impact all consumers and businesses.

Thank you for considering the above comments and please feel free to contact me should you have any other questions.

Regards,

Sean J. Mason
VP MASCO Petroleum
September 14, 2017

Dear Members of the City of Tacoma Planning Commission:

Thank you for allowing public comment on the proposed Port of Tacoma Tideflat Interim Regulations. As a proud citizen of Tacoma concerned for the future environmental health of our city, I appreciate the opportunity to voice my feedback on this extremely important matter.

The City of Tacoma is at a crossroads, transitioning between its industrial past and a more sustainable future. While we have come a long way from our polluted past, in which our waterways and air were dangerously contaminated, the City’s industrial permitting codes still leave the door open for dangerous future development in our Port. For this reason, it is critically important for the Planning Commission & the City Council to take action to impose interim regulations and prevent Tacoma from moving backward on environmental issues.

I applaud the Commission on its Tideflat proposal and its recommendation to limit new heavy industrial and fossil fuel development within the Port. I also support the decision to promote public engagement and expand the required notification zone to 2500’, as public involvement is key to a healthy civic process. However, as you consider the proposed regulations, I would ask you to consider some important changes to the final Plan.

First, I would strongly encourage an expansion of the moratorium on new heavy industrial and fossil fuel development within the Port to existing businesses. As aforementioned, Tacoma must keep moving forward and promote a greener future. To exclude existing fossil fuel businesses within the interim regulations puts this future at risk and leaves our City vulnerable to the threat of harmful development within the Tideflats.

Additionally, this is a project that is too important to delay implementation, so I ask you to take swift and decisive action as soon as possible. Tacoma has been burned before by waiting to put interim regulations into place, and it could certainly happen again. In order to prevent polluters from skirting the new regulations, please take any action possible to expedite their implementation.

Lastly, once these interim regulations are in place, I would ask you to consider taking proactive steps to promote renewable energy development within the Port. The development of a renewable energy sector would provide a unique opportunity for economic expansion and sustainable growth within Tacoma. The City could greatly benefit from such an investment, and I ask you to consider ways to make this a reality.

Thank you for taking the time to read my comments, and thank you again for allowing the public to comment on this critical proposal. I appreciate your hard work on this issue.

Best,

Colin McCann
Atkinson, Stephen

From: Andy McDonald <AMcDonald@columbiabank.com>
Sent: Friday, August 18, 2017 10:52 AM
To: Atkinson, Stephen
Subject: Don’t Kill Economic Development. Please!

Members of the Tacoma City Council and Planning Commission:

Please respect the subarea planning process for the Tideflats and reject attempts to impose interim regulation on industrial businesses across Tacoma. The Planning Commission’s staff recommendation to create a category called “high risk/high impact industrial uses” and lump a variety of existing and potential businesses in that category is unjustified and counterproductive. It not only threatens thousands of jobs in Tacoma it also sends a message to all businesses that Tacoma is willing to arbitrarily ban or inhibit the growth of businesses that have operated with safety and integrity for years, and in some cases generations.

Sincerely,
Andrew McDonald
Members of the Tacoma Planning commission,

My name is David McInturff and I am a local resident and an activist with FUSE and WCV. I am here to urge you to recommend interim regulations for the Tide Flats but with a focus on Fossil Fuel development only.

A few weeks ago I attended the planning commission meeting at which Tacoma City Staff made their recommendations on the issue of interim regulations. I was impressed with the work of the staff in preparing their recommendations. It was detailed, comprehensive and coherent. To summarize, the staff recommended that any interim regulations be comprehensive, that is focus on multiple types of land development, and that the regulations be presented in such a way as to reassure potential high risk/high impact industries that the interim regulations are simply a pause in development of the Tacoma Tide flats to allow the city to do some coherent long range planning for this and other strategic areas of the city.

As much as I appreciated the presentation, I found it to be less than assertive on the question of fossil fuel projects in the Tideflats. I therefore recommend two departures from the staff presentation. First, the interim regulations should not be comprehensive and should only be focused on fossil fuel development. To make the these regulations broader and include issues like real estate development etc, will increase the number of stakeholders weighing in on the regulations, make it difficult for the public to follow the ball on what the real issue is and make any decision for regulating fossil fuels development in the Tide Flats more difficult to put in place.

Second, Tacoma should absolutely be up front with potential fossil fuel developers through these regulations that they are not welcome here. In being clear about this starting now, we will be joining other NW communities including Portland, Coos Bay, Warrenton, Seattle, and many more in saying that we intend to resist the perpetuation of a damaging and dirty fossil fuel industry, that we intend to move toward more progressive forms of resource management and that we intend to make good on our “I’m still in” proclamations with respect to the Paris climate accords.

I commend this commission for undertaking the task of drafting interim regulations. I support such regulation but with a focus specifically on limiting existing fossil fuel projects and excluding new fossil fuel development. Other important development issues can be handled separately and at a later date. Even now the presence of fossil fuel industry in Houston is compounding the immense damage done by Hurricane Harvey. We have similar vulnerabilities. Let’s keep that in mind as we deal with this issue right here in our own back yard.

Thank you for your time and attention.

David T. McInturff
September 13, 2017

VIA E-Mail: svictor@ci.tacoma.wa.us

Planning Commission
c/o Assistant City Attorney
Steve Victor
City of Tacoma
Tacoma Municipal Building N. Room 16
733 Market Street
Tacoma, WA 98402

RE: Tideflats Interim Regulations

Public Hearing: Wednesday, September 13, 2017, 6:00 p.m.

Dear Chair Wamback, Vice Chair Peterson, and Members of the Commission:

The GEO Group, Inc. ("GEO") opposes the Tideflats Interim Regulations - Category 2 that propose to limit new non-industrial uses within the Port of Tacoma M/IC and that further prohibit expansion of existing non-industrial uses like the Northwest Detention Center. GEO urges the Planning Commission to vote against adoption of these sections of the proposed interim regulations.

On May 9, 2017, the City Council adopted Ordinance 28429, a measure that purports to do the following:

- Revise the Correctional Facilities interim regulations so they regulate public and private correctional facilities in the same manner
- Revise the permit modification standards to indicate that any modifications that would increase the inmate capacity of an existing facility shall be processed as a major modification
- Modify the Conditional Use Permit process standards to ensure significant community engagement as part of any permit for significant modification of an existing correctional facility; and
- Extend the duration of the Interim Regulations from six months to one year

The Planning Commission has one year to consider interim regulations specific to correctional facilities. Tideflat subarea plan and interim regulations have taken priority; however the tideflat subarea plan and interim regulations may not conflict with City Ordinance or state law. As proposed, the interim tideflat regulations conflict with both City Ordinance and state law. The recent local ordinance was amended because the Council recognized that state law
prohibits local land use limitations on essential public facilities. Of the prohibited non-industrial uses, the only use that could be considered an essential public facility is a correctional facility. At the federal level, the desire to limit expansion of ICE detention raises federal pre-emption or zoning immunity arguments that may make any local regulations entirely moot as to the development of the Northwest Detention Center.

For purposes of clarity on these legal issues, I enclose materials that have been before the City Council:

- April 24, 2017 Letter from Thomas Homan, Acting Director US Immigration and Customs Enforcement
- April 18, 2017 Memo from the City Attorney’s Office to the Planning Commission
- March 31, 2009 Pauli Memo to Anderson regarding Northwest Detention Center as an “essential public facility.”
- July 22, 2008 Pauli E-mail to Anderson regarding the Northwest Detention Center’s status as an “essential public facility.”

Additionally, Matt Driscoll from The News Tribune published his opinion and corresponding rationale in June of 2017, explaining why blocking any expansion of the NWDC would be a bad policy choice with severe unintended consequences to those immigrants who otherwise have access to one of the best facilities in the nation, within the most favorable jurisdiction, where the best advocates and other community resources are accessible. **A copy of his article is enclosed.** Also enclosed are the statistics that show an exceptionally high Removal Prevention Rate at the NWDC. Limiting expansion does nothing to undermine immigration policies. Limiting expansion for certain curtails upgrades to the facility or other physical plan improvements actually favored by interest groups and stakeholders.

Your attention to these matters is appreciated.

Very truly yours,

[Signature]

Joan K. Mell
Local Counsel for The GEO Group, Inc.

cc: Client
ICE
Ian Munce, imunce@ci.tacoma.wa.us
Lihuang Wung, LWUNG@ci.tacoma.wa.us
Stephen Atkinson, satkinson@ci.tacoma.wa.us
Bill Fosbre, bill.fosbre@ci.tacoma.wa.us
April 24, 2017

Mayor Marilyn Strickland
Tacoma Municipal Building
747 Market Street
Tacoma, WA 98402

Dear Mayor Strickland:

I write to express the significant concerns of U.S. Immigration and Customs Enforcement (ICE) regarding Ordinance 28417, which amends Chapter 13.06 of the Tacoma Municipal Code (TMC) to ban the use of privately owned detention facilities. This action is clearly intended to prevent the operation of ICE’s Northwest Detention Center (NWDC), a federal civil immigration detention facility continuously operated in Tacoma by the GEO Group, Inc. (GEO) since 2005.

At the outset, it appears that some misperceptions are animating Tacoma’s changes to its zoning laws. In a February 24, 2017 letter you sent to GEO, you express “concern[] about the possible detention of individuals in violation of due process rights, the violation of the status of Deferred Action for Childhood Arrivals recipients and other established and relied upon Federal Immigration enforcement priorities.” ICE wishes to go on record with the Tacoma City Council to make clear that neither GEO nor ICE violate the due process rights of immigration detainees housed at NWDC.

ICE manages a nationwide immigration detention system that makes use of a range of different facility types, including some which are owned by the Federal Government, some which are owned by state or local governments that have entered into Intergovernmental Service Agreements with ICE, and some which are privately owned and operated but under ICE’s oversight and legal authority. Regardless of detention facility type, the detention authority at issue arises under federal immigration law, including 8 U.S.C. §§ 1225(b), 1226, and 1231. Sworn ICE officers make all arrest and custody decisions, and these decisions are subject to review by federal courts and immigration judges. Moreover, U.S. immigration law affords aliens subject to detention a substantial amount of process, including multiple avenues of relief from removal, the right to counsel in immigration court (at no expense to the government), the right to an interpreter in removal proceedings before an independent immigration judge, and the opportunity to appeal removal orders from an immigration court to the Board of Immigration Appeals and a federal circuit court of appeals. ICE detention facilities are closely regulated and monitored. The NWDC is subject to ICE’s 2011 Performance-Based Detention Standards, which provide conditions tailored to the civil purpose of immigration detention while maintaining a safe and secure detention environment for staff and detainees. These facilities, which are

www.ice.gov
regularly inspected for compliance, provide medical and mental health screening and services, access to legal services and religious opportunities, recreation and visitation opportunities, a process for reporting complaints, and procedures to ensure access for detainees with limited English proficiency.

It is also important to underscore that immigration enforcement and the establishment of immigration enforcement priorities is within the purview of the Federal Government. Your February 24, 2017 letter to GEO demonstrates that Ordinance 28417 is rooted in the belief that the City of Tacoma has a role to play in assessing whether detention at NWDC somehow violates aliens’ legal rights. While ICE certainly respects the City of Tacoma’s role in our federated system of government, Tacoma’s efforts to alter immigration detention decisions under the guise of a change in zoning policy manifests a lack of appreciation – or understanding – for ICE’s role.

Additionally, Ordinance 28417 does not recognize the advantages of the NWDC and the benefits that can be gained from its expansion. The existence of the NWDC is in many ways beneficial to the detainees. The availability of a local detention facility means many detainees will be located near their families, counsel, and support networks. Likewise, expansion of the facility can benefit the detainees, as it can allow for additional space for enhanced medical and dental service areas, dining and dormitory spaces, attorney-client meeting rooms, immigration courtrooms and judges’ chambers.

ICE would appreciate the opportunity to meet with you in advance of next week’s Tacoma City Council meeting on April 25, to engage with city planning officials, and to speak before the Tacoma City Council, in an effort to answer questions and provide accurate information regarding ICE’s mission and NWDC operations. We would also be pleased to host a visit by you and your fellow councilmembers to NWDC, so that we can demonstrate first-hand the superb work done by our personnel and contractors to ensure fair and humane treatment of aliens who are subject to detention under federal immigration law. If your office could contact Timothy S. Robbins, ICE’s Acting Chief of Staff, at Timothy.S.Robbins@ice.dhs.gov, we can work with you on making the necessary arrangements. I would also be grateful if you could circulate this letter to the members of the Tacoma City Council, for their awareness. Thank you for your attention to this matter, and ICE looks forward to working with you to advance our shared goals of promoting public safety and the rule of law.

Sincerely,

[Signature]

Thomas D. Homan
Acting Director
TO: Tacoma Planning Commission
FROM: The Office of the City Attorney
SUBJECT: Siting of Essential Public Facilities & City Ordinance 28417
DATE: April 18, 2017

The Tacoma City Council recently passed emergency, interim development regulations (City Ordinance No. 28417) regarding the “siting [of] public correctional facilities.” TMC 13.02.055 requires that the Planning Commission make findings of fact and recommendations for the City Council’s consideration before any emergency, interim development regulations can be finalized. By this Memo, the City Attorney’s Office is providing the Planning Commission with the following information and guidance:

1. After additional review, the City does not see challenging any designation of the immigration detention facility in the tideflats as an “essential public facility” under RCW 36.70A.200 and WAC 365-196-550 as a viable course going forward;

2. The City understands that essential public facilities must be accounted for in the City’s Comprehensive Plan, and cannot be prohibited by the Comprehensive Plan and/or the City development regulations (WAC 365-196-550 (3) and (6));

3. The siting and permitting of essential public facilities can, however, be regulated and conditioned in order to mitigate potential impacts of the essential public facility (WAC 365-196-550 (6)); and

4. WAC 365-196-550 provides the best guidance, particularly at subsection (6), for the mitigation of potential impacts.
To: Eric Anderson, City Manager

From: Matt Peelen, Management Assistant

Subject: PSHSED Committee’s Interest in the NW Detention Center

Date: March 31, 2009

During their March 26th meeting, the Public Safety, Human Services and Education Committee expressed interest in additional information on the Northwest Detention Center. During this discussion the committee identified several issues that they would like to explore:

- The jurisdiction of the city in regards to oversight of the Northwest Detention Center.
- Questions related to the siting and permitting of the Detention Center
- Any impacts on City departments and services resulting from the Detention Center
- Questions related to demographics of the Detention Center population

Over time the City has collected various reports and e-mails on the NW Detention Center, many of which address the concerns raised by the Committee. This packet of information was provided to me by Celia Holderman and is attached to this memorandum. I have attempted to classify this information in such a way that it can quickly and efficiently answer the Committee’s questions.

**What is the City’s jurisdiction in oversight of the NW Detention Center?**

According to Elizabeth Pauli, this facility is considered by the state Growth Management Act to be an “essential public facility.” The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. For more information please see Attachment A.

**What are the impacts on City departments and services from the NW Detention Center?**

In a May 27th memorandum (Attachment D) to Nicole Persaud with MACTEC Engineering regarding impacts on City Service due to NW Detention Center expansion, the Police Department identifies concerns with protests as their only issue with the NW Detention Center to date. The police department goes on to express concerns at the potentiality of the Washington State Department of Corrections and other parties using...
space within the Detention Center, which could result in an impact to human service funding.

Sigrun Freeman of the Northwest Leadership Foundation, a group which provides social services to the detainees, identifies in Attachment E a need for service to the population granted a release from the facility as they make their way into the general population. She provides no quantitative data. No other impacts are identified.

How was the NW Detention Center sited and what is the City's role in permitting a facility of this nature?

The NW Detention Center opened in Tacoma in the spring of 2004. A memorandum provided by A. Neil Clark, the Field Office Director of the Seattle Detention and Removal to the Public Safety, Human Services, and Education Committee in September of 2007 is included as Attachment B. The memorandum provides an overview of both the federal program run by the Office of Detention and Removal and the GEO Group, whom own and operate the facility.

Are there any permitting concerns?

As described above and in Attachment A, the City can not prohibit the siting of essential public facilities such as the NW Detention Center. However, the Growth Management Act does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements.

What consideration has the City made in regards to their recent proposal to expand the NW Detention Center?

In Attachment C, Charlie Solverson describes the permitting process for the expansion of the NW Detention Center. The expansion project is identified as 104,800 square feet of new construction including 26,000 square feet of a general population housing unit and a 40 bed segregation unit. Permit requirements are identified as a Building Permit, a Grading Permit, and a SEPA addendum.

What are the demographics of the NW Detention Center?

In Attachment B, the countries of origin are identified as being primarily from Central American and East Asian Countries. There is no information on gender or age provided. The average duration of stay for detainees at the Northwest Detention Center is identified as 27 days. In Attachment E, provided by Sigurn Freeman of the Northwest Leadership Foundation, she identifies 9,441 detainees booked into the facility, and 9,258 as booked out in 2007.
From: Holderman, Celia  
Sent: Thursday, May 22, 2008 11:09 AM  
To: Anderson, Julie; Baarsma, Bill; Fey, Jake; Ladenburg, Connie; Lonergan, Mike; Manthou, Spiro; Strickland, Marilyn; Talbert, Rick; Walker, Lauren  
Cc: Anderson, Eric; Pauli, Elizabeth  
Subject: Response to CM Anderson's request regarding the Immigration Customs Enforcement Detention Center and Council's authority limitations

Council Members:

Since we don't have a Weekly Report going out today, please see the response below from City Attorney Elizabeth Pauli regarding Council Member Anderson's request for a reminder on the limitations of the Council's authority in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

Celia

PS: Although we won't have Council notebooks going out today, we will still be sending your mail packets home close to 5:00 today.

From: Pauli, Elizabeth  
Sent: Thursday, May 22, 2008 10:32 AM  
To: Anderson, Eric  
Cc: Holderman, Celia  
Subject: I.C.E. Facility

At the City Council Meeting of May 6th, Councilmember Anderson asked that the Council be provided with a reminder of the limitations on the authority of the Council in regard to "allowing" the Immigration Customs Enforcement detention facility to operate within the City of Tacoma.

This facility is considered by the state Growth Management Act, to be an "essential public facility." Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities, state and local correctional facilities, solid waste handling facilities, and in-patient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities. RCW 36.70A.200(1).

The Act provides that no local comprehensive plan or development regulation may preclude the siting of essential public facilities. RCW 36.70A.200(5). This prohibition also applies to the expansion or improvement of an essential public facility, but does not preclude analysis of state environmental requirements, nor the imposition of reasonable mitigation requirements. City of Des Moines v. Puget Sound Reg'l Council, 108 Wn. App. 836 (1999).

Please feel free to contact me if there are any additional questions.

Elizabeth A. Pauli  
City Attorney

5/22/2008
DeGrosse, Cindy

From: Anderson, Julie
Sent: Monday, July 28, 2008 9:05 PM
To: DeGrosse, Cindy
Subject: Fw: ICE Facility

Please include this in you PUBLIC RECORDS REQUEST.

Julie

From: Pauli, Elizabeth
To: Anderson, Julie
Sent: Tue Jul 22 15:37:20 2008
Subject: ICE Facility

Council Member Anderson,

You have asked about the City of Tacoma's jurisdiction over the Northwest Detention Center which is located within Tacoma City limits, at 1623 East J Street. This facility is considered an essential public facility, and therefore, while citing can be limited, City zoning code and land use regulations cannot prevent such as facility from being cited within the City. The center is operated by Correction Services Corporation, dba NW Detention Center (the parent corporation is the GEO Group). They have a business license with the City and are subject to City regulation relating to business licensees. The facility is subject to an annual company inspection by the Fire Department as well as technical inspections that would occur at least annually.

Please let me know if you have additional questions.

Elizabeth A. Pauli
City Attorney
Matt Driscoll: Closing the Northwest Detention Center now is not realistic. Or right.

BY MATT DRISCOLL
mdriscoll@thenewstribune.com
Shut it down.

That was the sentiment expressed by many who attended an April public hearing to discuss Tacoma’s interim regulations for correctional facilities, which was a not-so-subtle attempt to block any expansion of the privately owned and operated Northwest Detention Center.

They and others think the giant immigration facility on the Tideflats is inhumane and has become a symbol of President Trump’s draconian immigration policy.

They’re not wrong.

But while shuttering the facility — a pipe dream at this point — or limiting its expansion might soothe the city’s burdened psyche, it’s not a realistic answer. Or the right one.

Why?

Because such a move alone would have unfortunate, unintended consequences for immigrants entangled in the system, according to a local coalition that includes prominent immigration scholars and immigration-justice advocates.

In weighing what steps the city should take in handling the detention center, one of the main questions that must be answered before getting to the larger issues is a straightforward one, said Robin Jacobson, an associate professor of politics and government at the University of Puget Sound.

“DO WE REALLY CARE ABOUT THE REAL LIVES OF THE PEOPLE WE’RE IMPACTING?”
Robin Jacobson, University of Puget Sound associate professor of politics and government
“Do we really care about the *real* lives of the people we’re impacting?” said Jacobson, an expert on immigration politics and policy.

Closing the detention center, or even limiting its expansion, would hurt immigrants more than it would help them, she argued.

She pointed to a network of advocates and service providers that have stepped up or blossomed in Tacoma in the decade-plus since the facility opened.

All, in one way or another, work to protect the rights and fair treatment of immigrants. They also provide what amounts to informal oversight through civic engagement and vigilance. Such a network simply doesn’t exist everywhere.

Jacobson rightly points out that unless the federal policies that make facilities like the Northwest Detention Center possible are simultaneously dismantled, Tacoma ridding itself of the facility would have little impact.

At best, it would only serve to insulate us from the problem.

Because without that change in federal policy, immigrants not housed at the Tacoma facility would be housed elsewhere.

That might be in city and county jails, as the Trump administration works to ramp up the number of people being detained and deported. Or, it could be places like Lumpkin, Georgia, sometimes referred to as the “black hole of the immigration system,” where the number of people detained exceeds the population of the town itself.

“It would be a lot better to not attempt to close down this facility, unless we’re moving toward closing all detention facilities,” Jacobson said.

Jacobson acknowledges that closing or restricting the Northwest Detention Center might make us “feel better, like we’re not complicit.”

“To chant ‘Shut it down!’ feels good, but then people get to go back to their lives afterward and think they’ve chalked up a victory,” she said. “But it isn’t really a victory.”

Instead, Jacobson says, we must “keep our eye on the prize.” She means we all have a stake in an unjust federal immigration system and our efforts to fix it should have an impact on that level.

That reality continues to be true, even as the city council recently settled on less-restrictive interim regulations for private and public prisons than the ones that were discussed (and favored by many citizens) back during that optimistic April public hearing.
So if closing or limiting the detention center’s expansion isn’t the answer for Tacoma’s conflict of conscience, what might be?

Jacobson offered two concrete and realistic local steps we could take to push back.

First, find a way to ensure people locked up at the detention center have adequate access to legal representation, something many of them now lack.

In New York, the city has launched an effort to provide lawyers to poor immigrants facing deportation. A similar effort here could have a big impact, she said.

If they had greater access to legal help, immigrants locked up on the Tideflats could “get out quicker” and would be less likely to “get lost in the system,” Jacobson said.

She acknowledged that Tacoma isn’t as big as New York and certainly doesn’t have the same resources, but she said partnering with cities like Seattle or even the state could work.

Jacobson also argues that while Tacoma has settled for its designation as a “Welcoming City,” leaders should have the political will to go farther. She describes Tacoma’s “Welcoming City” status as one largely concerned with “PR and economic growth,” and not much more.

Instead, declaring Tacoma a full-blown sanctuary city — meaning Tacoma would formally put on the books policies that would help “shut off the valve that brings people into the detention regime in the first place,” in Jacobson’s words — would be more than just talk.

Doing both would be immigration victories for which Tacoma actually could be proud.

Matt Driscoll: 253-597-8657, mdriscoll@thenewstribune.com, @mattsdriscoll
Athletes Who Now Own Sports Franchises
SportsChatter

These 10 Houseboats Will Float You Away
HomesChatter
10 Prospects Seek To Reach MLB Just Like Their Famous Fathers
SportsChatter

These Stars Stood Beside Their Pals As A Best Man
CelebChatter
NWIRP + J + 9 = 35%

*NW Immigration Rights Project + NW Detention Center + 9th Circuit = Protection*
*(1623 E. “J” Street)*

**Right Lawyers + Right Location + Right Court = Right Decision**
Removal Prevention Rate NWDC: 35%

Removal Prevention Rates Other Circuits (5th TX, 10th CO, 11th FL)

Oakdale, LA - 17.5%
Houston, TX - 21%
Miami, FL - 31.8%
Lumpkin, TX - 13.1%

Removal Prevention Rates Other Facility Locations In 9th Circuit

Adelanto, CA 26.2%
Eloy, AZ 19.4%
Florence, AZ 28.9%

Asylum Grant Rate NWDC: 28%

Asylum Grant Rates Other Circuits (5th TX, 10th CO, 11th FL)

Oakdale, LA - 4.4%
El Paso, TX - 2.2%
Houston, TX - 7.9%
Miami, FL - 22%
Aurora, CO - 13.7%

Asylum Grant Rates Other Facility Locations In 9th Circuit

Adelanto, CA 13.3%
Eloy, AZ 6.8%
Florence, AZ 8.8%
Atkinson, Stephen

From: Mark <markm@tlcu23.com>
Sent: Tuesday, September 05, 2017 1:56 PM
To: Planning
Subject: Tideflats Interim Regulations

To whom it may concern,

I received the Tideflats Interim Regulations Public Notice today and found that our business, the Tacoma Longshoremen Credit Union, a state-chartered non-profit financial institution, is inside the Industrial/Commercial Buffer of the Manufacturing/Industrial Center. Our Credit Union is located on Alexander Avenue between HWY 509 and HWY 99. The portions of the regulation that are troubling to us are described in the letter as “Category 2: Non-industrial Uses in the Port of Tacoma M/IC”. This section states that “Existing non-industrial uses would be prohibited from expansion.” We designed our building back in 2002 to allow for expansion of the back of the building to make the office larger when needed. This letter seems to indicate expansion would be prohibited. I see that “Category 4: Heavy Industrial Special Use Restrictions.” states “Existing uses would be considered allowed and not subject to limitation on expansion.”

I respectfully submit that existing uses should not be subject to limitation on expansion for Category 2, as is proposed for Category 4.

I understand that these are interim rules, but interim very often becomes permanent. These limitations would have an adverse effect on our non-profit financial services business and we urge you to make changes to the regulation to remove the limitation on expansion for Category 2.

Sincerely,

Mark Merriman, CCE
CEO
NMLS #1076584
Tacoma Longshoremen Credit Union
NMLS #1076944
Phone: 253 272 2161
Fax: 253 572 2887

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Members of the Planning Commission:

The following article says what I have thought now for some time about the nature of fossil fuel storage and use for our community. I realize that a movement away from the use, storage and generation of fossil fuels will take time….probably decades. But where do we start? How about with the realization that fossil fuel use is a detriment to our city, state, nation and of course our planet.

At your next meeting, this Wed., please listen and take under consideration the comments from those in the audience who will speak to actions you may take that will compromise the quality of life for our city. You are intelligent people and with that please look beyond how the infrastructure of fossil fuels impact our climate and quality of life. Let Tacoma stand with Portland and other cities that are taking steps to turn the tide toward clean and renewable energy generation.

As a member of this city for the past 76 years I know our city council and planning commission are highly capable of doing the right thing.

Sincerely,

M.H. Tim Miller

Dear Deputy Mayor Thom's,

I am writing to you for Mrs. Vernice Geraci as she is unable to type, write or travel without assistance. She lives at 2542 53rd Ave. N.E. and I live @ 2732 53rd Ave. N.E. (Gregory Munford)

Mrs. Geraci is 88 years young and she will be drastically affected by this proposed building moratorium that I understand could possibly take affect as soon as October or November.

Mrs. Geraci has been a lifelong resident of Northeast Tacoma, her and her now deceased husband Joseph, having one of the first homes in the area above the now Pointe Woodworth. They were able to purchase numerous acres on top of the hill over 60 years ago and build their home along with their 3 children.

The current property Mrs. Geraci owns is planned to go to her children when she passes unless selling it becomes necessary to sustain her lifestyle into her later years. Being on a limited income, it is vital that she is able to sell the property to help sustain her, but if this property remains in the moratorium area, the property becomes worthless.

The proposed regulations that affect the residential area identified on Map #2 are not realistic for the properties in question which are located at 2542 53rd Ave. N.E. (parcel #0321261011) approx. 5 acres that Mrs. Geraci currently resides on and 2744 53rd Ave N.E, an identified building lot 65’ x 310’ (parcel # 0321265005 of short plat #201103235003).

Both of these properties are located above Marine View Drive in an already developed area and the nearest point of the properties to Marine View Drive is approx. 1750’ or one third of a mile away, as the crow flies, from the SW corner of the property at 2542 53rd Ave. N.E.

The individual lot, 2744 53rd Ave N.E, is located at the corner of 29th St. N.E. and 53rd Ave. N.E. and the 5 ac. parcel is located at 2542 53rd Ave. N.E, the corner of 27th St. N.E. and 53rd Ave. N.E, for reference.

The 5 ac. Parcel has a preliminary short plat design that resides in the trust of Vernice J. Geraci, Trustee and Victoria Ann Geraci, Co-Trustee. This was done to get an idea of how the property could be divided for future potential sale.

The 5 ac. parcel would be divided into 5 proposed residential lots, 4 for new single family dwellings and 1 lot that the existing house currently resides on. The 4 individual lots that would be created do have a severe slope that abuts to the City of Tacoma property and that any structure footprints identified will be a minimum of 30’ feet back from the top of that slope to prevent any potential hazards. Due to that slope, the design was created with only 4 building lots to capture the most available land use on the level area on the top of the slope of the property.
Unfortunately, Mrs. Geraci does not have the finances to proceed with a full fledged short plat. The cost is far too much.

The 5 ac. parcel currently has side sewer stubs into all lots, water available, storm sewer existing, along with power, gas and phone/cable existing. This was all done when Mr. Geraci was alive in conjunction with Holland Builders for the 3 houses located across the street from the 5 ac. parcel that are identified as Lots 34 & 35, 36 & 37, 38 & 39 plat of Northeast Tacoma, records of Pierce County. (2507, 2511 & 2513 53rd Ave. N.E.)

The individual lot at 2744 53rd Ave. N.E. also has all utilities to the lot and has all required restrictions to obtain a building permit, attached to it per the short plat.

These lots are NOT located any nearer to Marine View Drive than other existing homes immediately in the area; in fact they are further away than newly constructed Lennar homes off of 25th St. N.E. above Point Woodworth development.

These parcels are valued and taxed as if they were available to be built on and I’m curious if the City/Port is going to compensate individuals for the loss of use of these properties.

Mrs. Geraci, her daughter Victoria and myself want to see the lines be re-drawn to accommodate these properties for building single family residential homes, as they are currently inside at the edge of the proposed boundary of the moratorium.

Thank you for your time.

Sincerely,

Greg Munford, on behalf of Vernice and Victoria Geraci.

I have been asked to respond and help with this situation and would like to be included in any future mailings about this moratorium.

P.O. Box 1008

Gig Harbor, WA. 98335

My street address is 2732 53rd Ave. N.E.

Tacoma, WA. 98422

253-686-2449
Thank you for recognizing that allowing development of facilities to accommodate fossil fuel transport out of the Port of Tacoma would have serious risks for Tacoma and surrounding communities as well as increasing climate change impacts that are already very serious.

Please do not allow such development. You are the key to protecting our environment and limiting human destruction of our planet.

Sent from my iPhone
Tacoma City Planning Committee

My name is Ron Oline and together with my sister Judy Johnson own approximately 20 plus acres of M-1 Heavy Industrial zoned property between 1850 & 2100 Marine View Dr. Tacoma. 

We are very much opposed to any interim or permanent zoning changes to our properties or any others within the port tide flat area. This area has been zoned and used in this manner since the very beginning of the City of Tacoma. In fact that is what it was intended to be used for. This so called buffer zone nonsense will do absolutely nothing, to quiet the people of Point Woodworth. In fact they already have a big hillside and elevation buffer, much more so than exists in some areas where industry and housing are only separated by a fence. A few hundred more feet will not stop pollution or the noise from the tide flats which has been going on for decades.

The city of Tacoma should never have allowed the change of zoning from industrial gravel pit (Woodworth and Company) to residential zoning in the first place. We will not stand by idle while you try to devalue our property by down zoning and restricting its uses. If you want that kind of power you will need to buy it from us at full industrial value. Otherwise face an endless legal fight for our property owner’s rights

Sincerely X Ron Oline

Ron Oline
Dear Planning Commission:

Thank you for your volunteer service, and thank you for providing opportunities for citizens to voice their concerns about the Interim Regulations for the Tideflats. I am a resident of Des Moines, and live about 14 miles from the Tacoma Tideflats. The proposed interim regulations should focus on fossil fuels only. This is the immediate threat. The regulations should include a moratorium on building new fossil fuel infrastructure, but equally importantly, the regulations must include a pause in the expansion of existing fossil fuel facilities. If Tacoma allows the building of this huge LNG facility, there will be some benefits:

- Substituting LNG for diesel fuel in marine vessels probably provides some reduction in GHG emissions and Diesel Particulate Matter, although an extremely fine-grained and yet wide-ranging analysis is necessary to reach this conclusion.
- Some good union jobs will result--250 jobs over two years and 18 permanent jobs
- PSE, a foreign-owned corporation, will be able to extract a lot of fracked gas, transport it through pipelines, and potentially export it to lucrative markets in Asia. It’s not clear that PSE will use very much of the capacity of this plant to ensure that peak demands of PSE customers will be met, but to the extent that that happens, I guess we can count it as a benefit to the region.

But in my view the benefits are far outweighed by the costs:

- This LNG plant will be supplied with fracked gas, which is largely methane. Methane burns cleanly, but when methane escapes into the atmosphere unburned, it is an extremely potent GHG, about 86 times more potent over 20 years than carbon dioxide. Methane leaks happen during fracking, during transportation by pipelines, and during processing at natural gas facilities. These leaks mean that fracked gas is far from an innocuous “bridge fuel” to a clean energy future—it is arguably worse than coal as a contributor to climate change.
- The safety issues of this plant’s location are not adequately addressed. Transferring LNG from the storage tank to vessels is a dangerous process. It should not be undertaken in a busy port. PSE is not experienced at this sort of thing. Does Tacoma want to be the guinea pig while PSE experiments to find the best way to get LNG to a truck and from there to a vessel?
- Other environmental issues are raised by the Puyallup Tribe and by recreational and fisheries interests, all of whom stand to be impacted by leaks, spills, and increased marine traffic.
- We know that if we are to avoid catastrophic climate change, about two-thirds of known reserves of fossil fuels need to stay in the ground. If known reserves cannot get to markets, they will stay in the ground. Unfortunately, an LNG plant of this size will act like a gigantic siphon, sucking fracked gas from upstream sources for a long time to come, whether the PSE rate payers need it or not. And if they don’t need it, because of transitioning to renewables, conserving energy, and finding ways to increase efficiency of buildings and industries, that LNG will find a market elsewhere, likely in Asia, to the benefit of the Australian stockholders who own PSE and to the detriment of the planet.

We should not be building ANY new fossil fuel infrastructure, nor should we expand existing facilities. We must direct all of our efforts toward the transition to solar and wind power, energy efficiency, and conservation if we are to avoid catastrophic climate change.
September 11, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma, WA 98402

Re: Proposed Tideflats Interim Regulations

Dear Mr. Atkinson:

I would like to offer some comments in response to the Planning Commission’s proposal to implement interim land use regulations for the Tacoma Tideflats. As we understand the situation, the intent of these interim regulations would limit certain new industrial uses, and if implemented, would remain in effect until such time as the Tideflats Sub-Area Plan is put in place. In this regard, please see the following:

U.S. Oil & Refining Co (U.S. Oil), located in the Tideflats, is Washington State’s only independent and truly domestic petroleum refinery. The Company has been in operation for over 60 years. During this time we have been both a reliable and low cost supplier of petroleum products to the residents of Tacoma and the South Sound. Products manufactured and marketed by the Company include: All grades of gasoline, diesel, jet fuel, intermediates, residual fuels and asphalt. The refinery and corporate offices are located on 139 acres of privately owned land which includes 15 acres and 1350 feet of waterfront on the Blair Waterway. The Blair property is our marine terminal and provides access to critical feedstock supplies and markets which are served by ocean going equipment.

As a company we have maintained a long term standing commitment to “Best Practice” along with being early adopters of change with respect to safety, technology and regulatory compliance. U.S. Oil was one of the first companies in the region to bring to market the Ultra-Low Sulfur Fuels (ULSD) mandated by the EPA. ULSD was brought to market more than a year ahead of the implementation deadline and we are currently producing some of the lowest sulfur gasoline in the Industry. U.S. Oil was the first Refinery to co-process synthetic crude oil derived from recycled plastic waste. More recently, U.S. Oil invested in the safest railcars available in the market well ahead of their mandated use. In 2015 we made a substantial proactive investment in our fuel gas recovery system of approximately $15 Million. In addition to providing improvements in operating efficiency and safety, these projects created a net reduction of 25% in our greenhouse gas emissions.

U.S. Oil understands and recognizes the importance of efficient and timely planning and, with this in mind, support the sub area plan concept. However, we are deeply concerned with the prospect of the promulgation of an overly complicated and poorly thought out set of regulations being imposed on an interim basis. Our concerns are based on years of experience in navigating our way in a complicated and highly regulated industry. We feel that in the absence of a demonstrated emergency dictating the need
for an interim set of regulations, there is no rationale for further regulation of otherwise compliant existing business in the Tideflats today. We further believe that imposing regulations that restrict the ability of a business to respond to changes in their operating environment is fraught for the potential for unintended consequences. Not only could it stifle innovation, but interim regulations might well impede a business from complying with the change necessary to meet current and future environmental and/or safety requirements.

Our business is unique in that our production capacity is somewhat fixed while our demand is highly variable, constantly changing and subject to the needs of the market. Given the variable nature of supply and demand in the overall market, attempting to define what is our ordinary course of business, and therefore regulated, is both complicated and problematic. We do not operate commercially in a static environment. Our inflows and output are the result of an ever changing equation, wherein we attempt to balance supply and demand while optimizing economics. The imposition of any regulation that might impede our ability to respond quickly to changing conditions has the potential to do irreparable damage to the economic viability of our enterprise.

Today’s energy equation is very complicated but one thing is clear; the United States still is and represents the pinnacle of innovation and competition in the marketplace. As we transition away from the tried and true traditional/conventional fuel sources in the search for improved sources of energy to power our lives and industry, it is important that we are not impeded by unnecessary regulation. As our company’s history has shown, U.S. Oil plans to be on the forefront of this transition without mandate or rule. Please don’t allow the implementation of additional overly complicated regulations to deter innovation and investment in our community and thus choke off the timely transition onto cleaner fuels. Today U.S. Oil operates under a myriad of regulations as a matter of our course of business. An index identifying many of these regulations is attached for your convenient reference.

Thank you in advance for your time and consideration to my comments. Should you have any questions or require additional information, please do not hesitate to contact me.

Best Regards,

Cameron Proudfoot
President & CEO

Cc: Mayor Marilyn Strickland and City Councilmembers
    Elizabeth Pauli, City Manager
    Planning Staff
## Oil Spill Regulations Impacting USOR

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To go into the record.

From: Sally Radford [mailto:sallyradd@yahoo.com]
Sent: Tuesday, September 12, 2017 2:36 PM
To: Regan, Michelle
Subject: NO LNG

My name is sally Radford and I support a comprehensive sub-area planning process for the Port of Tacoma tide flats properties, which is the city's front door and can be viewed by I-5. I am opposed to the LNG plant, it would be a disaster for our city and not the kind of place that I want to live near or raise a family in. The population and standard of living in Tacoma would stagnate further behind the rest of the surrounding Puget Sound area communities. Any fossil fuel projects/plants do not belong in the city of Tacoma. I saw on the news that Tacoma is trying to attract Amazon. This is a joke considering the proposed LNG plant location. This type of development must be stopped so that Tacoma can successfully attract businesses of the future and leave their past behind.

Sally Radford
6438 South Warner
Tacoma WA 98409
To Whom It May Concern:

We are writing with regards to the memo form Stephen Atkinson dated July 27, 2017 to the members of the Planning Commission, subject: Tideflats Interim Regulations. Specifically I would like to address Attachment 1: Tideflats Interim Regulations: Summary of Staff Recommendations.

The staff recommendations would have the City of Tacoma arbitrarily create a category called “high risk/high impact industrial uses” and lump a variety of existing and potential businesses into that category. This is beyond the pale.

There is neither scientific research nor quantifiable method to the proposed categorization of the industrial uses in the Tideflats. In addition, the recommendation to limit existing companies’ growth potential by 10-20% creates chilling effect across the Tacoma economy.

Washington State voters and elected leaders have adopted state laws that reflect the environmental values of Washingtonians. Our regulations are among the strictest in the country, and as a result our state is ranked #4 for eco-friendly. Legal and appropriate business activities operate within these strict parameters. The companies we work with every day embrace a strong environmental ethic not just because they must under law, but because they know it is for their employees, customers and the bottom-line.

The Tideflats area is designed by the City of Tacoma and the Puget Sound Regional Council as a Manufacturing/Industrial Center. That very designation was, by design, created to encourage the very kind of industrial uses that the proposed interim regulations now seek to block. The family-wage industrial jobs in the Tideflats pay among the highest in Tacoma and well above the City and County average. Randomly slapping prohibitions or limitations on creation of these jobs will have detrimental effects for the quality of life of hundreds of families as well as the city’s tax base.

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

Sincerely,

The Employees of Bennett Industries

David Riddle

General Manager

9-14-17
September 15, 2017

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

Re: Tideflats Interim Regulations

My last communication with the Planning Commission was a letter dated June 10, 2011. Attachment A to this letter provides the relevant paragraph and related map. In short, my recommendation at that time was, “... to let commerce flourish on the Port side of the Foss Waterway and let public access flourish on the City side”.

I am very pleased to see that the Commission is working to establish clear guidance that the Port of Tacoma (the “Port”) is for commerce and industry, but that adjoining City of Tacoma (the “City”) property owners need to be notified and participate in Port property owner permitting (essentially Category 1). Both groups benefit from adequate buffer protections (essentially Categories 2 & 3).

It is easy for me to understand why Categories 1, 2, & 3 are essential. Port property owners do not need City of Tacoma staff permitting a condominium project between two oil terminals on the Port side of the Foss Waterway. City residential property owners do not need industrial businesses in their neighborhoods and both need buffer zones to help keep the peace.

However, Category 4 must be eliminated. The City has an extensive (some say burdensome) permitting process and industrial companies are today subject to a vast array of regulatory requirements from federal and state governments that provide significant protection to City residential property owners while allowing businesses to operate and when markets require to be expanded.
As background, when I graduated from The California Maritime Academy in May 1968 The Propeller Club of the United States inducted me as a member of their Pi Sigma Phi society. The purpose of this society was to recognize and ".. reward scholastic achievement in the field of shipping, marine transportation, economics and foreign trade."

In 1972 I arrived in Seattle at Todd Shipyards as Second Assistant Engineer on the S.S. President Polk. The Polk was converted from a break bulk freighter to a containership and I returned nine months later for sea trials and the vessels return to commercial service. I now had my First Assistant Engineer's license and an MBA. For the next two decades I worked as a banker financing ship owners and energy companies. My family moved to Tacoma in 1992 when I became the Chief Financial Officer of U.S. Oil & Refining Co. In short, I have been a knowledgeable player in and observer of the maritime and energy industries for the past five decades.

In 2015, I retired from U.S. Oil, and how the world has changed! The American Merchant Marine is a shadow of its former self. Medium speed diesel engines have replaced boilers and steam turbines for large vessel propulsion; bunker-C is no longer the fuel of choice. Shore side, lead is no longer in gasoline, MTBE was the great break through; soon it was gone and ethanol was in. There is now WiFi and the World Wide Web; cell phones have the processing powers of the first spacecraft to land on the moon, not to mention containing my favorite music, a few thousand photos and a movie or two.

The basis for my recommendation to eliminate Category 4 is quite simple. I have witnessed massive changes in both the maritime and energy industries. Both are critical to our region and the world. It will be governance at its worst to presume that City staff, or anyone else for that matter, can possibly know what industries the region will need in the future to support its rapidly growing population. No one can possibly know how technology will change "bad" business purposes into "acceptable" or "essential" business purposes or for that matter vise versa.

Respectfully Submitted,

Rietmann
Department of Natural Resources (Attachment 4) asking that the aquatic lease of state land not be renewed. There have been multiple episodes during the past twenty years and this is well known to informed, senior city leadership who have struggled with these facts and the completely inadequate buffer between the Sperry property and adjacent property owners. Again, staff has properly looked to the states guidance (see 36.70A.085(6)(c)) and their recommendation recognizes that there is inadequate buffer between the Sperry property and tenants and the adjoining upland property owners.

With respect to the issues of the core port area and the businesses on the port side of the Foss Waterway, I believe that the S-10 should extend to all businesses on the port side of the Foss waterway. Further, the city should not take any actions that would encourage the general public to congregate anywhere in the core area of the port as illustrated in the Study Area map contained in the July 29, 010 Community Workshop presentation (Attachment 5). In short, let commerce flourish on the port side of the Foss Waterway and let public access flourish on the city side.

The hillside trail has often been talked about. In fact the city sent a work crew there a few months ago to restore it. It remains a wetland in certain areas and Mother Nature has taken back the rest of the trail. I encourage you to try and find it today. Such a trail is completely unrealistic for a number of reasons (Attachment 6). The concept that is a realistic plan is to build an elevated promenade below the bluff. This is an expensive project, but one that should be done with the additional goal of stabilizing the face of the bluff to protect the upland properties including the Stadium High School location and the roadway below. The non-indigenous maple trees should be immediately removed because their height puts too much weight on the face of the bluff and this contributes to sloughing and slides.

In closing, I appreciate the countless hours that the staff has invested in sorting out how to properly balance the many arguments surrounding the anomaly that is the Sperry Dock property and again commend them on their well founded conclusion.

Sincerely,

[Signature]

cc: Mayor Strickland
    City Manager Anderson
    Councilman Fey
Study Area

See text of letter
Dear Planning Commission,

I appreciate the work you do for the City of Tacoma, which has been my home for nearly my entire life, since 2 to 28. I encourage you to please consider long-term effects of continuing to allow our port to play host to fossil-fuel inspired industry, which I and countless others recognize to be unsustainable, unhealthy and extremely dangerous. Such industry threatens the Puget Sound and all the life that relies upon it; it also endangers the people that live here. It is crazy that the life that lives here and relies upon this space is not prioritized over ANY type of industrial growth. Allowing for such plans to go on demonstrates a lack of care for residents, and a failure to look toward the future and the consequences of our actions. Do we want to render this area, which has hosted humans for thousands of years, uninhabitable? Rather than dig ourselves into a hole we can’t well climb out of, let’s move in a greener direction that will actually propel us into a future we can sustain ourselves in. The longer our kind continues to put blinders up to the realities of climate change, the more damage we create for future generations to contend with. I believe that it is totally immoral to continue to ignore reality and we must collectively SHIFT. In order for this to occur, we really need city officials to become the voice of the change that must occur.

My hope is that green industry takes flight here, that parts of the port may be restored to its more natural function, and that locals are given opportunities to work over outsiders.

Thanks for considering my point of view.

-Liza Robinson
09/14/17

Tideflats Interim Regulations

Thank you for the meeting last night. Good discussions and comments. I have been told “To be careful what you wish for, you may get it”. Economics teaches us about the “Law of Supply and Demand”. We have a classic example of Supply and Demand called the current housing market. Limited supply and excessive prices. This is fueled by a tremendous influx of people immigrating into the area. The demand for housing also translates to the need to fuel transportation and homes. This demand is not within our powers to control. I watch fuel barges arrive in Tacoma full and leave empty and wonder where the idea of exporting fuel comes from. It seems the processing of fuel in Tacoma is feeding the local needs. If this is correct then artificially restricting supply without a corresponding reduction in demand would have an immediate and devastating impact on our economy. Like housing, fuel cost would rise rapidly. Those with fixed incomes and limited ability to generate living wages would immediately be impacted. Wage inflation would further exacerbate cost of living in our area. The housing market is a classic example of what we do not want to happen to fuel prices.

Please be careful of what we wish for.
Thank you
Tom Rogers
Commencement Bay Marine Services
tomrogers@cbmsi.com
253-572-2666
Dear City of Tacoma Planning Commission:

I attended your public meeting on Wednesday, September 13th and I am submitting my letter of support for your interim Tideflat Regulations. Thank you for all of your hard work on this, as I know this is a contentious issue.

My husband Stan and I are residents of NE Tacoma, and my husband has lived here for over 30 years. We live in Northeast Tacoma because we love the open spaces, views, and proximity to downtown Tacoma without having to live right in town. There is a sense of community out here and people get involved when they feel the need to come together over a cause.

I have been a planner and understand land use and know that one of the largest concerns with the tideflat businesses is that there is no buffer between the businesses and residential uses. I appreciate that we will have to limit residential development along Marine View Drive. As you know, this is a critical area with steep slopes. Limiting residential development will mean less impact from the existing tideflat businesses on our citizens. My hope is that by instigating the interim Tideflat Regulations, the City of Tacoma will have time to gather necessary data on air pollution, which is my biggest concern with these businesses. While I understand air-monitoring devices are located at certain businesses, no one is collecting this information. There are days that I can smell the asphalt plant located down 11th Street at my house. As you drive towards 11th Street the smell is so strong you think you might faint. Allowing time to stop and collect data will give us some information that will help us decide if we are enforcing the present environmental regulations, or do we need to strengthen them.

The argument that limiting petroleum businesses costs us jobs is a statement with no data. States like Louisiana use this argument continuously for growing their petroleum businesses, but on closer examination, there is little growth from these jobs. A diversification of business types will do more to grow jobs in Tacoma. If we continue to stay behind current job growth trends, we will miss new and growing trends in other areas of the economy. Tacoma needs to diversify its businesses so that people can stay and work here in Pierce County rather than traveling to Seattle and Olympia for jobs.

Hopefully we will find a way to limit the amount of petroleum-based businesses in our tideflats. People are still more likely to have a car that uses gas and we do use natural gas to heat our houses, so we are still reliant on this as a source of energy. But limiting petroleum businesses sends a message that Tacoma is interested in renewable resources and other types of energy.

Sincerely,

Sarah Rumbaugh
253.886.666
Thank you for taking the time to review my comments.

Sincerely,

Kari Scott
Regional Vice President, SVP
Tacoma Regional Commercial Banking Office
Tel 253-593-5611
Cell 253-318-0983
September 12, 2017

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

RE: Request to set aside Tideflats Interim Regulations

Dear Mr. Beale and members of the Planning Commission:

As a member and board Chair of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. As a commercial banker in this region I see the companies I work with in the Tacoma area embrace a strong environmental ethic not just because they are required to by law, but because they know it is good for their employees, customers, and their business.

I am requesting that you do not move forward with the proposed interim regulations that among other things would have the City of Tacoma lump existing and potential businesses into a category called “high risk/high impact industrial uses.” I believe passing interim requirements such as these outside of the sub-area planning process will create a chilling effect on not only the manufacturing sector, but on other industries that are wondering which among them is next to be targeted by our City’s increasingly volatile business climate.

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

Sincerely,

Kari Scott
Senior Vice President, Regional Manager
Wells Fargo Bank, N.A.

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

Wells Fargo Bank, N.A.
To all,

Thank you for taking the time out of your days to read this letter. I trust that you will exhaust every option when addressing the Port of Tacoma/Tideflats future.

Best Regards,

Travis Sharp | Division Manager
Madsen Electric
3939 South Orchard Street
Tacoma, Washington 98466 (253) 383-4546
FAX (253) 591-7079
A Division of Carl T. Madsen Inc.
License # MADSEE*140P8
To the Planning Commission:
Intern regulations need to focus on pausing new and existing fossil fuels. To move Tacoma to a prosperous, livable community we need to focus on clean industries and renewable energy industries such as solar and wind. Thank you for your attention to this important matter.
Diane Shaughnessy
Tacoma, WA 98406
I am writing to you to support industry in the port area. These are living wage jobs that support thousands of families in Tacoma. If we get rid of all industry, Tacoma will not prosper! My family and thousands like mine depend on these living wage jobs. This is nothing more than an attack on families, the middle class and unions. Please do not regulate industry out of Tacoma.
Dear Tacoma Planning Commission Interim Regulations.

I could not attend the Convention center meeting but I am seriously committed and advocate for not going forward on the LNG facility just as I was not for the Chinese Methanol facility. I consider myself an earth steward for our planet earth and have come to that awareness long before the current LNG OR METHANOL. I thought back during the GULF OIL EMBARGO when gas sky rocketed and long lines formed to get gasoline that we needed to move toward this brand new thing called SOLAR ENERGY. FAST FORWARD TO NOW OVER 40 YEARS INTO THE FUTURE AND WE ARE GOING BACK WARDS HERE IN THE PIERCE COUNTY TACOMA SALISH SEA REGION.

I will work diligently to support only public servants that support moving forward into sustainable jobs and industry that does not involve highly toxic cancer causing and another disease. If you are only concerned with the unions endorsement and that is all you care about is getting elected then you are in the wrong vocation. Let me be clear. I am a union member AFSCME. MY GRANDFATHER WAS IN THE SIT DOWN STRIKE AT DODGE MAIN IN HAMTRAMCK, MICHIGAN (Detroit) in 1937. My grandfather John Ciaramella along with other immigrant workers locked themselves in the plant for 3 weeks and formed the UNITED AUTO WORKERS. MY FATHER HENRY ZEPPI WORKED IN PRODUCTION CONTROL FOR DODGE MAIN, CHRYSLER AND WAS A UNION STEWARD. DO YOU GET MY DRIFT? A human being can encompass unions, jobs and environmental stewardship NOW! THE LOUSY 17 JOBS! ARE YOU KIDDING ME? IN EXCHANGE FOR RATE PAYERS GIVING PSE CORPORATE WELFARE? NO WAY! PSE SHOULD BE PAYING THE WHOLE THING! IT IS STUPID TO BE SPENDING MILLIONS ON INFRASTRUCTURE THAT IS ALREADY OBSOLETE! YOU ARE MAKING A HUGE MISTAKE AND IT WILL HAVE DEVASTATING AND LASTING RAMIFICATIONS! START PHASING OUT ALL THE TOXIC INDUSTRIES! START HONORING THE PUYALLUPS TREATY RIGHTS AND START LOOKING FOR ALL THE AVAILABLE SUSTAINABLE OPPORTUNITIES THAT ARE SPRINGING UP ALL OVER PLANET EARTH. I SEE THEM SO YOU CAN TO IF YOU DO YOUR JOB AND LOVE YOUR JOB. NEED HELP I
WILL HELP POINT YOU IN THE RIGHT DIRECTION!

--

With every good wish, I thank you kindly

Lynnette
D’Achille Shureb

Nature bats last

Next time I send a damn fool, I go” myself.”
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
August 28, 2017

RE: Tideflats Interim Regulations

Dear Commissioners,

I am writing on behalf of the more than 47,000 member families of the Washington Farm Bureau, to share our concern about the draft Tideflats Interim Regulations currently under consideration by the Planning Commission.

This issue is important to our members because we represent 12 percent of Washington’s economy and employ 164,400 workers annually. Each year 15 billion dollars in food and agricultural products are exported through Washington ports. We rely on an efficient farm to market network to move our food products to market in a timely fashion. Washington ports are an integral part of the delivery chain. As such, we need to maintain a world class transportation system and continually seek to upgrade and enhance the system now in use.

The draft Tideflats Interim Regulations are troubling for a number of reasons, but chief among our concern is the prohibition on new bulk grain terminals. It would be short sighted to preclude such facilities from potential development. All options need to be on the table to ensure Washington products can be shipped in a timely fashion from Washington ports. The regulatory process already considers the suitability and safety of potential projects, so we would ask that you give thoughtful consideration to any regulation that might needlessly impact commerce.

It is essential that maritime terminals make adequate investments to compete on a level playing field. That’s why we urge you to carefully consider these draft regulations and not take action that would tie the hands of the port and in turn harm the economic viability of our farms, rural economy, and the general economic health of the state.

Sincerely,

John Stuhlmiller
Chief Executive Officer
Washington Farm Bureau
To:
Stephen Atkinson
planning@cityoftacoma.org

From:
David Sweeting, 9/11/2017

Dear Stephen,

I am a property co-owner on Marine View drive. I am not in favor of restricting residential growth on our property of approximately 26 acres. I am in favor of restricting tide flat industrial expansion if it brings environmental concerns. Proximity to our property is a concern except the nearest heavy industrial operation is more than a half mile away. There are also residences in front of our property between Marine View Drive and the shoreline of Commencement Bay.

Marine view drive properties have the capacity to provide considerable residential development. Most of these properties would only enhance environmental concerns in a positive way. For example: surface runoff and slides have been an annual event that Tacoma has dealt with for years. Properly engineered, runoff would not be a problem and the likelihood of slides would be reduced significantly. Because runoff hasn’t been dealt with, during heavy continuous rain, there are patterns of runoff that appear as creeks – thus wetlands. There is no wildlife that visits the property because of wetlands. There are several species of plants that also grow in true wetlands. Concerns about slope have led to studies of the topography. There are several flatter or plateau areas that would allow the safe building of residences. Two story residences would not block any views of current residences above the property.

We have had an appraiser suggest that there are possibly up to 18 large building sites on our property. Developers would engineer access roads either from above the slopes or from Marine View drive. These homes would have direct views of Commencement Bay, Tacoma waterfront and the Olympic Mountains. Traffic on the property would be very minimal. Adjacent property values would increase.

With the shared desire to make Tacoma a more liveable area, please give full consideration to allowing residential construction in this buffer zone. There is no other property of this size in the Tacoma area of Commencement bay. Anything short of that would highly discount the value of our property and many other property owners on Marine View Drive. The need for housing is clear. Developing this property would provide great benefit to Tacoma.

Sincerely,

David Sweeting
354 797 7697

sweetingdavid@yahoo.com
Dear Planning Commission,

It is of my opinion that fossil fuel and other heavy industries should be banned from the Port of Tacoma. Environmentally sustainable industries that produce large numbers of middle class level income jobs should be sought.

As the planet faces human produced climate change, the Port of Tacoma must do its part to help protect the planet and the communities impacted by the changes being unleashed by human industry and capitalism.

Sincerely,

Ryan Talen
Brian Vance  
Heritage Bank  
201 5th Ave SW  
Olympia, WA 98501  
360-570-7341, Brian.Vance@HeritageBankNW.com

September 13, 2017

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

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

Dear Mr. Beale and members of the Planning Commission:

As a member of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. Heritage Bank embraces a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

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

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

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

Sincerely,

Brian Vance
Chief Executive Officer

Cc: Mayor Marilyn Strickland and City Councilmembers
    Elizabeth Pauli, City Manager
    Steve Atkinson, Planning Services Division, and Planning Commission members
Comments re. Interim Tideflats Regulations - Planning Commission Meeting, Sept. 13, 2017

Thank you for the opportunity to comment on the proposed Interim Regulations. My name is Dorothy Walker. I am the chair of the Pierce County group of the Sierra Club. There are approximately 2000 Sierra Club members in Pierce County who are very concerned with the effects of fossil fuels on our climate and the threats they pose to our future. These are becoming more apparent every day and it is becoming more apparent every day that we need to act locally and regionally to stop expansion of the fossil fuel industry.

Expansion is being driven by the availability of natural gas made cheap by environmentally irresponsible extraction methods (i.e. fracking). It is widely known that the methane (which is natural gas) is 86 times as contributory to global warming as is CO2. There are other energy alternatives. Renewable energy sources, wind and solar, are becoming more viable every year. Increase in the use and export of petroleum products in Tacoma is not only not good for our health and safety but drives increased demand with serious upstream consequences and climate implications.

I support the subarea planning process for the tideflats as a step in defining what Tacoma residents want their city to be. Since this is a multi-year effort, I support Interim Regulations to maintain the status quo during this process. Without regulations the process would be an open invitation for a rush by the industry to expand before a plan is implemented. The regulations must prohibit new coal, oil, gas, and other liquefied fossil fuel facilities including terminals, storage and manufacturing facilities and the processing or refining of petrochemicals and prohibit the expansion of such existing facilities. More cities are banning development of fossil fuel industries and export facilities. Tacoma has become a target for expansion with its wide open welcoming attitude. We do not need to be the pollution pit of the west coast. Tacoma deserves better.

Sincerely,

Dorothy Walker
3608 Forest Beach Dr.
Gig Harbor, WA
253.265.6059
Hi Stephen,

I spoke to Shirley Schultz late last week about clarifying the presently proposed interim tideflats regulations. Specifically, I discussed the attached annotations with Shirley over the phone to clarify that the prohibition on new uses is for those uses specified in new Section 13.06.580.B, not all new uses in the geographic area of the interim regulations. Shirley indicated that she thinks this is a good idea.

Williams Kastner’s client Prologis is currently building a large logistics warehouse in what is proposed to be designated as the tideflats buffer area, located between SR 509 and the City of Fife. We do not want this broad language to serve as any problem for our tenant to obtain a City of Tacoma business license when establishing their use within the new building in 2018.

Second, use of the term “bulk storage” could also be problematic if viewed in isolation from “fossil fuel terminals.” The construct of proposed regulation Section 13.06.580.B at the second bullet point certainly implies that we are only talking about accessory bulk storage, not a standalone indoor bulk storage warehouse. Again, as with our first point requesting clarity of regulatory effect, we request that the words “and accessory” be inserted as indicated on the attached annotation of the draft regulation to forestall problems with administration of the regulation down the road.

We believe that both annotations fully respect what we have read in the newspaper and in the amendment package posted on-line about the purpose and effect of the interim tideflats regulations. We have no other objections to the proposed interim regulations at this time. You can appreciate our concern that the blanket bar to all new uses, absent the cross reference that we suggest, could be misconstrued to mean all uses, not just those in the foregoing section.

I will try calling you Tuesday.

Kind regards,

Alan

Alan L. Wallace
Williams Kastner | Attorney at Law
601 Union Street, Suite 4100
Seattle, WA 98101-2380
P: 206-628-6771 | M: 206-920-6771
www.williamskastner.com | Bio | V-Card
WASHINGTON OREGON ALASKA
September 13, 2017

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

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

Dear Mr. Beale and members of the Planning Commission:

As a member of the Economic Development Board for Tacoma-Pierce County, I know firsthand that our region’s economic development teams place equal emphasis on economic prosperity, social equity, and environmental stewardship in our recruitment and retention efforts. Local companies like Neil Walter Company embrace a strong environmental ethic not just because we are required to by law, but because we know it is good for our employees, customers, and the bottom-line.

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

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

We will make more progress as a region not when we listen to extremists but when we work together to balance our shared interested in our economic, social, and environmental wellbeing.

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

Sincerely,

[Signature]

Mike Hickey
Designated Broker

Cc: Mayor Marilyn Strickland and City Councilmembers
   Elizabeth Pauli, City Manager
   Steve Atkinson, Planning Services Division, and Planning Commission members
Thoughts re jobs, the silent majority and white elephants. . . .

The idea that fossil fuel jobs are a reason to grow that industry on the Tideflats is ludicrous. The LNG plant would provide less than 20 positions. Job growth in Tacoma has been great as our "aroma" and ASARCO and associated stereotypes faded and hotels, conventions, restaurants and night life arrived. Conventioneers, diners, etc. have lots of options. Would they rather patronize a city noted for its fossil fuel industry or the one that we have now?

The "silent majority" of Tacomans are against expansion of the fossil fuel industry. Most are totally or only vaguely aware of the issue. When filled in re what is proposed they are almost universally against such plans.

As far a white elephants go, new fossil fuel construction is a prime candidate. A PSE spokesperson (Jim Hagan in a 7/2/16 TNT interview) said that approximately 45% of the LNG product would go to TOTE, roughly 6% to PSE customers and the other half "projected" to non TOTE ships and cars and trucks. The shipping industry has a variety of ways to meet the 2020 standards. LNG is not popular. (Maersk, the largest shipping line in the world, is not going with LNG.) Hagan also stated that non TOTE ships would have to be fueled from barges. The proposed LNG facility does not include infrastructure to meet that need and Hagan said construction of that infrastructure would take two years. Re vehicles, the industry is going electric. The world's largest auto market, China, is committed to electricity. Volvo has committed to all electric vehicle production. Growth of fossil fuel related projects on the Tideflats has a white elephant look.

So. . . the ask is for the sub area plan to forbid the expansion of existing fossil fuel industries on the Tideflats and to forbid the granting of permits for proposed projects. (Also, the city should accept no permit applications until a sub area plan is in place, as acceptance of such applications puts the applicant in the "existing" category.)

Tacoma has done a lot of things right in the last 30 years. It makes no sense to jeopardize those gains for the sake of a few jobs.
Good day,

My name is Lee Weber and I was born and raised here in Tacoma and am proud to have called it my home for over 67 years now. I am taking this moment to voice my opinion on the interim rules being considered for what operations/businesses will be allowed to operate in the Port of Tacoma general area.

I am very apposed to these new rules. For many of those years I have been blessed to have found employment at a few different business in this area and without that I don't know where my family and I would be today. I have witnessed in the past the bad attitudes of people who move into the NE Tacoma area. They fully know who their "neighbors" are and then want to change the entire culture to meet their particular wants and desires. Please do not let these attitudes gain strength.

Additionally there are those who want to insist the all fossil fuel operations be ridden out of town on a stick. Please take the time to inquiere of these groups, what are their solutions? Where will our energy come from? They will be very silent because, while their desire in the long term may make some sense, in the here and now it makes none. There are no substitutes.

Do not make it harder and harder for our hard working citizens to find good, livable wages locally. Instead, please applaud the port and the businesses for what they have brought and continue to bring to our great city.

As a public servant and a representative please reject the rules.

Respectfully,
Lee Weber
2618 So. 13th St.
Tacoma 98405
FYI

From: Barbara Wesley [mailto:brbwsl@gmail.com]
Sent: Wednesday, September 13, 2017 4:35 PM
To: Regan, Michelle
Subject: Email the Director's Office

Please no LNG PLANT ON THE TIDE FLATS IN TACOMA. Our Wildlife is more Important to Save. Dangerous to Our Community.
To whom it may concern,

Please find attached my testimony to the Tacoma Planning Committee in regards to consideration of new regulations for the Tacoma Tide Flats. I would have loved to attend tonight's meeting and give this testimony in person, but I am working on the Tacoma Tide Flats this evening and am unable to attend.

Best regards,

Chuck Whitt
Waste Treatment Operator

WestRock Tacoma Mill
801 Portland Ave. | Tacoma WA 98421
T 253.596.0187 | M 253.312.1101
chuck.whitt@westrock.com | www.westrock.com
August 28, 2017

City of Tacoma Planning Commission  
Tacoma Municipal Building North  
747 Market Street, #345  
Tacoma, Washington 98402

Subject: Draft Tidflats Interim Regulations

Dear Acting Chair Wambach and Commissioners,

I am writing on behalf of the Port of Tacoma about the proposed Tidflats Interim Regulations. Our position remains unchanged, interim regulations are unnecessary and may result in the negative unforeseen consequences of decisions made in haste. Additionally, as our attorney has pointed out, the process for adoption and content of the interim regulations for the Port Container Element of the City’s Comprehensive Plan may be unlawful.

The Port believes that decisions on Tidflats land use deserves a more thoughtful and comprehensive approach; a Subarea Plan. With that said, we appreciate your situation and wish to offer the following comments/questions on the draft proposal for the September 13, 2017 Hearing before the Planning Commission, as voted on by the Planning Commission on August 16, 2017:

**Non-Industrial Uses**

1. Does the proposed language protect on-terminal aircraft activities and maneuvers. On occasion, military aircraft arrive and depart from our terminals by air.

**New High Risk/High Impact Industrial Uses**

2. Does the proposed language for coal avoid the unintended consequence of prohibiting movement of coal that might serve as a might serve as a component of another product? Coal or coal by-products can be found in: soap, aspirins, solvents, dyes, plastics and fibers, such as rayon and nylon.

3. Does the proposed language for oil or other liquefied or gaseous fossil fuel avoid the unintended consequence of prohibiting movement of these fuels that might serve as a component of another product across container or breakbulk terminals? Examples include: fuel in a vehicle shipped both internationally and domestically, barbecue propane tanks, motor oil or lubricants for retail sale in Alaska.

**Unlisted Uses**

4. Suggest deleting reference to unlisted uses as ‘prohibited’.

For consistency, please instead just refer to TCC 13.05.033 Director Decision Making Authority, C. Permitted Uses – Uses Not Specifically Classified. In addition to the authorized permitted uses for the districts as set forth in this title, any other use not elsewhere specifically classified may be permitted upon a finding by the Director that such use will be in conformity with the authorized permitted uses of the district in which the use is requested.

**Expanded Notification for Heavy Industrial Uses**

5. Request the City consider matching the Port notification, as follows: 2,000’ from project site for projects with DNS or MDNS, or 4,000’ for EIS. This expanded notification was adopted by the Port of Tacoma Commissioners in October 2016.
6. Suggest that the City require Title Notification for all new non-industrial uses within the adopted notification distance. The notification could read something like this:

NOTICE: This parcel lies within XXX feet of land designated as a Manufacturing Industrial Center (MIC) by the Puget Sound Regional Council. A variety of industrial activities occur in the MIC that may be inconvenient or cause discomfort to people on nearby properties. This may arise from manufacturing, recycling, fabrication, processing, washing, diluting, cooling, storing, or transporting a product by rail, truck, or ship, which may generate dust, smoke, noise, and odor. Our region has established a priority for industrial uses within the MIC. Occupants of nearby property should be prepared to accept inconveniences or discomfort from industrial operations.

To give a bit of context, the Port of Tacoma, a countywide organization, was formed and continues to operate with the purpose of job creation and driving economic vitality.\(^1\) We endeavor to meet this purpose while balancing the protection of natural resources and spreading economic impact and opportunity throughout Pierce County. To continue this endeavor it is imperative that our industrial lands are protected from encroachment, and that a broad spectrum of industrial uses are allowed in the Tidelfats.

As stewards, the Port has spent nearly $250 million to purchase, clean up, and put contaminated property back into productive use. We have also deployed innovative, award-winning solutions to ensure our environmental impact is as minimal as possible. This will continue to be a vital element of how we manage the Port.

The Port of Tacoma’s top priority is to protect and grow the maritime cargo activities in and around the Tacoma Tidelfats. Changes that impact cargo-related maritime operations are our primary concern. Thank you for protecting these uses.

We look forward to continued cooperation on land use planning. Thank you for your consideration of this information and our comments on the draft Interim Regulations. Should you or your staff have any questions, please feel free to contact me at 253-209-9154, or by email at dwilson@nwseaportalliance.com.

Sincerely,

\[\hfill \text{Deirdre Wilson, AICP}\]

Senior Planning Manager, Northwest Seaport Alliance

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\(^1\) The Port supports over 29,110 jobs through industrial lease tenants and the movement of marine cargo. Port-related economic activity also generates an estimated $96 million in local tax revenue each year.
Dear City of Tacoma Planning Commission,

I am writing you to voice my support for interim regulations to limit fossil fuel industry expansion in the Port of Tacoma.

I am a resident of Tacoma and I work directly adjacent to the Port. I am worried about having to breath petroleum product laced air for 9 hours a day/ five days a week while I’m working. I am also concerned for my family, especially my 12 year old son.

I feel like we would be taking backward steps if we allow additional polluting petroleum operations to exist in the Port. I am not convinced that the economic benefits outweigh the negative effects of the petroleum industry.

Thank you for considering my opinion.

Best......

David Winfrey
8403 S. 18th St.
Tacoma, WA
98465
Dear Planning Commission,

My name is Sara Wood and I live in NE Tacoma. As a resident, it has always been my hope that the city officials would protect my health and safety.

When we moved to our Tacoma home in 2001, we had clean air and a noise free environment in which to raise our 3 young children. We could sleep with our windows open and breath fresh air. Tacoma was a great place to live, work and raise a family. Within a few years we were shocked when Schnitzer reopened their doors for business. (They had stopped business for a few years due to rising energy costs) The noise was horrible and when they were working at night we could no longer sleep with our windows open. Even with them closed we were/are woken up with loud bangs and crashes.

Then the smells started coming. A strong petro chemical smell so strong that it permeats everything, gives us headaches and makes my dog sneeze. There are times it is so bad I have to shut my windows or run home while on a walk and try to protect myself in doors.
We have had our air filters tested by an independent lab and found they are full of asphalt (Emerald, Garner and Fields, US Oil) and metal spheres (from Schnitzer). We are breathing this stuff in and it permeates our home. Our window cleaner said they have to scrape windows of homes that are around the Port of Tacoma. They have to scrub to get the black stuff off our windows and around the window frames. Nowhere else do they see this!

I have been told by teachers at NE Tacoma Elementary that they have to bring the children inside in the middle of recess because the smells are so bad some days.

The businesses and the port claim to have safe practices but this is disproven by what is happening in our neighborhoods in NE Tacoma.

We need you now, more than ever to do the right thing for us!!! PLEASE (I am begging you) not only support the Interim regulations but re-add the wording that limits growth to 10% for existing fossil fuel businesses along with expanding prohibited industries to include recycling plants, pulp mills, grain elevators and animal fat rendering plants. We are desperate for help and pray that you will do the right thing.

Thank you for your consideration,

Sara Wood
saraewood@hotmail.com
Tacoma Resident, Voter and Taxpayer
September 12, 2017

Mr. Stephen Atkinson
Senior Planner
City of Tacoma
747 Market Street, Room 345
Tacoma, WA, 98402

Mr. Atkinson:

I am writing this letter to formalize concerns I have over the pending interim regulations. Much has been discussed and debated through all local media sources over the past many months on the status of these interim regulations in advance of the ultimate subarea plan review. As a long term current Tacoma business and property owner and past business operator within the area I am concerned over the sense of urgency by city council and the planning commission that would limit or erode existing and new business within the Tidelfats.

The Tidelfats area impacts more than just Tacoma, and is a significant component of trade and economic development for the south Puget Sound. The Tidelfats is one our few centers located strategically in the Pacific NW and is recognized as a manufacturing industrial center under the Washington State Growth Management Act. The businesses and how they integrate within our society are crucial to our region.

Interim regulations will impair and limit any possible future investment by inside or outside businesses to the area and send a negative message that Tacoma is not open for business, or hostile towards businesses. Prohibiting certain industrial use(s) during the subarea planning that could otherwise be planned alongside the subarea plan is inefficient. There is a well-documented and understood process of evaluating projects and meeting all the local and state and federal requirements. Any future industrial proposal would go through the extensive SEPA, EIS, public comment etc review, and projects should be allowed to succeed and flourish on its own merits. If it can’t go through the process, how can we determine if it is or could be a great viable option for Tacoma and its residents? One example would be the Methanol project which was simply not allowed to go through the full process to see if it was an efficient or viable project. The system was usurped and mothballed by public rhetoric. We will never know if it was a good or bad project as it
never had the chance to prove itself. Another hot bed topic in the general domain of Tacoma is the LNG facility. If we didn’t have this option, vessels that call the port of Tacoma would otherwise be required to consume lesser quality fuels as a result? How is denying a viable innovative project that is and continues to be adopted in Europe and Asia vilified here in Tacoma? From the best I can ascertain it had to go through the process and was determined to be a good project for our region, and will meet all the regulatory requirements.

I do support the process of the subarea plan, but by my estimation there is no emergency for these interim regulations, and we must be sure not to impugn and or limit any lawful and existing business operating within the Tideflats that bring economic enrichment to our community. There is a balance between the needs of industrial businesses and the surrounding community.

Sincerely,

Jeff Woodworth
President
Woodworth Capital
To the Planning Commission

I was not able to attend the comment meeting yesterday but still would like my voice to be heard on the interim regulations that are being determined and recommended to the City Council.

My family and I have been residents of Browns Point for 37 years. As boaters, fishers and workers in the tideflats, over the years we have seen so much industrial pollution and disregard for the natural resources and the spoiling of this unique environment. It has been very distressing.

Now however, we are finally seeing more efforts to change that trend, albeit very slowly. It is gratifying to notice that the water is getting cleaner, the industries are less polluting and it’s making this area a place to be proud of, rather than always apologizing about “Tacoma’s industrial wasteland.”

I am however highly concerned about the fossil fuel industry’s current emphasis on expanding current facilities (Targa, US Oil, etc) and developing new fossil fuel projects. This will take us backwards in the City’s development and be a blow to the environment that many people have worked hard to improve.

It’s great that the City will be developing a new sub area plan for the Port area, but that will take a very long time and we need protections NOW!!

Please move interim regulations to the City Council very quickly. Please insist that a “stop” be put on all fossil fuel expansions and new fossil fuel projects, including rail and shipping, so that all parties can be included in the sub area discussions and well-thought-out, quality decisions can be made going forward.

Thank you for working towards an approach that balances all interests to protect the tideflats.

Best Regards,

Chris Wooten
Chris Wooten, SPHR, SHRM-SCP
CWC Consulting
253-905-2176
chriswooten@earthlink.net
Stephen Atkinson
Senior Planner
City of Tacoma

RE: Tacoma Tideflats Interim Regulations Comment

Dear Mr. Atkinson,

I encourage the City of Tacoma to halt all proposed fossil fuel developments in the Tacoma Tideflats until a long term plan for the Tideflats are developed. See attached short power point on cumulative impacts from fossil fuel projects and reason why citizens are protesting.

With the Federal Administration moving to undo environmental protections and expanding development of fossil fuel for energy sources, it falls upon cities and states to expand efforts to protect the publics’ health, safety and welfare. Climate Change Impacts are real and affecting us now with weather extremes from drought and fire to floods and hurricane. See Final Draft Climate Change Science from Federal Agencies and 18 Universities. The link to it is: [http://www.nytimes.com/packages/pdf/climate/2017/climate-report-final-draft-clean.pdf](http://www.nytimes.com/packages/pdf/climate/2017/climate-report-final-draft-clean.pdf)

Thank you very much for the opportunity to comment,

Bob Zeigler
1102A Creekwood Ct. SE
Olympia, WA 98501
(360) 570-0848
zeiglerbob@msn.com
The Climate Alliance Mapping Project

The Climate Alliance Mapping Project (CAMP) is a collaborative effort between academics, environmental NGOs, and Indigenous organizations working for a socially just response to climate change. CAMP responds to climate change with research, resources and interactive story maps that support organizations working to keep fossil fuels in the ground. Through participatory action research and digital story mapping, CAMP aims to engage the public, build
Carbon Budget

The window for action is rapidly closing

65% of our carbon budget compatible with a 2°C goal already used

Total Carbon Budget: 790 GtC

Amount Used 1870-2011: 515 GtC

Amount Remaining: 275 GtC
University of College London study finds the following must stay underground:
- 82%: Coal
- 49%: Natural gas
- 33%: Oil

Fossil fuel development in the Arctic, any exploitation of unconventional oil, and any further investment in new fossil fuel resources are inconsistent with CC mitigation efforts.
US Federal Land Designations and Existing Pipelines

Map: Remy Franklin (2017)
Data: USGS, EIA, PHMSA
US Federal Land Designations and Oil and Gas Spills since 2010

Map: Remy Franklin (2017)
Data: USGS, EIA, PHMSA
Tideflats Interim Regulations
Public Hearing

Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

No! No! More heavy industrial projects! Focus on renewable energy. Work with and encourage the Puyallup Tribe to be at the table and be a part of the decision making.

Hello - Harvey - Irma - Earthquake & volcano eruption is overdue. Wake up!)

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

This is completely ridiculous! We need to encourage businesses especially focused on efforts that are sustainable - life-friendly, job expanding, pro-community!
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Actually, this makes sense—there is already too much development in this area which is a sensitive area due to erosion, landslides, and too much degradation to the shoreline.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I am in favor of restrictions to anything related to fossil fuels; i.e., storage, transport, manufacturing, refining, etc. We need to focus on industries that want to work on sustainable, climate-friendly efforts. Climate change is real—we must act now!
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I support this because it will foster a more democratic and well-informed process for heavy industrial projects. These have a big impact not only on Tacoma but worldwide.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying. Also prohibit expansion of existing fossil fuels.

I STRONGLY support this. We - all people on Earth - must be more wary of the very serious threats and ongoing damage to our society and the environment on which we depend. That means cutting back on fossil fuels as quickly as possible! The industry of Tacoma must focus on renewable energy and social + environmental responsibility. Please, use your position of power to think big picture, long term. It is simply highly rational to move away from fossil fuels. If we continue to support fossil fuels (a corrupt + greedy industry) or do not oppose them vehemently enough, global warming + an increase of water in the water cycle are likely to shut down the Atlantic Current (“AMOC”), leading to devastating global scale climate changes + instability.

PLEASE ACT FAST to protect us from harm and make Tacoma a city to be proud of. There is no point to protecting jobs now, when extreme weather will kill many a few years down the road!
Tideflats Interim Regulations
Public Hearing
Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I'm asking you to please include me in these heavy industrial projects. I'm supposed I even have to make this request. It's reminds of situations that are hidden or not public knowledge because the officials involved don't want the public to know.

Change AND EXPAND Notification

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Please see section 9

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Please see section 9
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Please see section 4

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I am commenting in solidarity with the Protect Tacoma Tideflats Coalition. Interim regulations should focus on preserving new and existing fossil fuel facilities. The imminent threat is around the expansion of existing fossil fuel facilities in the Tideflats. The draft regulations do not address existing fossil fuel infrastructure. The definition of "terminal" should include rail. Please move the interim regulations as quickly as possible. It is important to do this expediently to avoid fossil fuel proposals that interfere with a strong sub-area planning process.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

The public must be informed of industrial projects and incorporate the public into decisions that affect their health and safety.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Port lands should serve the residents that live on their shores, not international expectation interests. Parking, public services, and public spaces should be permitted to occupy port space.

Tide Flats = port
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

It is imperative that we, as a city, uphold socially and environmentally responsible values that serve the health and happiness of the people, not corporate interests. As a new resident of Tacoma, at University, I now have a new perspective on this city and my place in it. We must stop any expansion of harmful fossil fuel industries. We must listen to indigenous peoples of the region, and their wishes regarding their lands. We must value clean air and water over money. THERE IS NO MORE TIME TO WAIT. Not if, but when.
Comments

Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Work on making Port beautiful and green, a place for people and salmon and OCEAS.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Prevent erosion.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

Do limit expansion of polluters. Stop LNG a Targa. Create local jobs. Do not support foreign mega-petro groups reliant on citizen rate payers!
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

This is inadequate. I live in the Hilltop and I have a weather station. For 20 of the 30 days in a typical month, the wind is from the East, NE, or North at least part of the day. This means that both the Hilltop and East side are vulnerable to pollutants and toxins generated by heavy industrial uses in the Tideflats. [Not just NE Tacoma.]

I request and recommend that the notification requirement be further expanded to a minimum of 3 miles downwind of the project whether the winds are from the W, N, NE or E. The City residents who could be directly affected by airborne pollutants and toxins should be notified of each proposed heavy industrial project.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Further, because residents in the Hilltop and E Side are less likely to have internet access, said notice should be provided in hard copy (US Mail). Copies of the notice should be provided in bulk to neighborhood and grass roots organizations to distribute door-to-door. Notices should be in multiple languages.

The goal of notification should be to create a level of knowledge among potentially affected residents so that everyone can participate fully in the discussion and process. Special efforts should be made to engage typically excluded people, including low income folks, people for whom English is not their most proficient language, etc.

Equity considerations should play a prominent role in the design and implementation of the notification process.
3. **Marine View Drive Residential Restrictions:** This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. **Heavy Industrial Special Use Restrictions:** This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.
1. **Expanded Notification:** This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

No - Tacoma does not need more heavy industries.

2. **Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center:** This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Is it healthy for community use currently on the Port/Tideflats?

How much of this land impedes on Puyallup tribal lands? How would this proposal respect treaty rights?
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

No new development!

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

No, No, No

We must invest in renewable resources and be a leader in sustainable development that will not put our community and environment in further harm.

We should not export because that promotes fossil fuel use that will eventually impact all of us.

We are also in a tsunami and high risk earthquake fault line.

No FRACKING in TACOMA.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Agree, must include more in depth description.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Agree!
3. **Marine View Drive Residential Restrictions:** This would prohibit new residential platting or development along the slopes above Marine View Drive.

But, air pollution and hazards to existing homes & schools must be limited, and past industry must include adequate pollution liability insurance to implement by Tacoma.

Consider buying out all existing homes.

4. **Heavy Industrial Special Use Restrictions:** This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

All existing operations must have sufficient pollution control monitoring equipment on premises.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

The regulations for heavy industrial projects must be strengthened and enforced. The safety of residents and workers must be ensured. It seems that human life and health are expendable.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

Why would we prohibit non-industrial uses of the Port? That is ludicrous. The city should move away from heavy industry now. Don't accept any more applications for heavy industry. Do accept applications for sustainable energy businesses. The Port belongs to the people of Pierce County.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

This would please the heavy industry advocates. But what do the people of Pierce County want? What if citizens could vote about.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

More than 200 cities around the country have made this decision to change to sustainable energy projects on their port. These ports are thriving, successful. They provide more jobs.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Yes! Every citizen should be well informed about what is happening in town.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

Residential building must also be restricted. Although residences may not be as harmful as industry, it is still very harmful.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I agree that new facilities should be most highly restricted, but I also feel that restrictions should be placed on the expansion of existing fossil fuel facilities. If new facilities are regulated, but not all, it will simply make it easier for the old to expand. Regulate them both, and do so with great haste! Time is of the essence, so move quickly in the name of God!
Tideflats Interim Regulations
Public Hearing
Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Yes! Every citizen should be aware of what is happening in their area.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I urge the Commission to support this proposal, but with the following change.

We need to not only focus on new fossil fuel facilities, but also on current and expanding fossil fuel facilities. I love Tacoma; I love being able to run along Ruston Way and jump in the Sound without the fear of being poisoned by the pollution of the existing fossil fuel facilities. I am 19 years old and I only hope my children will have the same access to a healthy lifestyle that I have been blessed to have. We can only ensure this vision for a healthy future if we regulate all new and existing fossil fuel facilities. We are all guests on this land, we are privileged to use the land. It is our job and our responsibility to protect this land we love.

Thank you.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

The Tacoma tide flats have already been extremely impacted by existing and past industrial uses. The city is still cleaning up toxic materials and waste in the tide flats and surrounding areas, and has already put an extensive amount of time and money into cleaning up this waste. It would not be economically or environmentally sustainable to build more industrial infrastructures. Therefore going back on the work already done, I support regulations that would prohibit the establishment of new coal, oil, gas, and other fossil fuel uses. On top of this, I strongly encourage putting interim regulations on a pace to all coal, oil, and gas infrastructures.
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

Of course, we should expand the notification and an independent body should also conduct a SEPA or discretionary permit review.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

I strongly oppose this approach of prohibition. The Port & C&O need to be looking to a future vision away from dirty, fossil fuels & the expansion of existing.

We need to look at opportunities that transition us to allow for citizens to enjoy our waterfront.

We need an immediate pause while citizens can have an opportunity to catch up with what has been occurring and reflect upon it.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

While it is important to not place more citizens in potential harms way, I see this restriction as a way to expand the dangerous petrochemicals that are currently at the Port.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

As we listen to the Rep from Lakewood we can take him more seriously when Lakewood takes in heavy industrial themselves.

I.B. can overrule any zoning regardless. While the many Port workers are here tonight to support their jobs we are and continue to be evolving. Jobs & professions come & go we get told this often by corporations at higher levels. Yet when it comes to certain industries it seems like a don'te standard. these guys may not have an illness now, but my father got throat cancer around petro.
Tideflats Interim Regulations
Public Hearing

Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I support expanding notification of projects. In our day to day lives it is difficult to investigate new projects so making them accessible as possible is important.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

No comment
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

No Comment

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I support the prohibition of heavy industrial uses for multiple reasons:

- Health impacts of new fossil fuel industry, as well as the rest listed above will be negative and harmful to both the humans living here, and the environment.
- Environmental impacts will be extensive and harmful as well. The tidal flats are an especially vulnerable ecosystem, effecting both marine life and life on land.
- The unsustainability of these sources of income are not worth the harm to the people of Tacoma, and the environment that we depend on.
Tideflats Interim Regulations
Public Hearing

Please provide comments on the following topics:

1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

   I agree with this proposal.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

   From the beginning, I have asserted that new non-industrial uses should be promoted, along with light, clean industry using sustainable energy. Polluting industries should be phased out and replaced by businesses using sustainable energy. Over 200 ports around the U.S. have gone to sustainable energy. The Port decision-makers need to wise up.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

I absolutely disagree. Don’t let the abusers win! Commencement Bay should be as beautiful as it can be. Then it will attract businesses that bring as much or more product and jobs.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I agree 100% with this proposal. All around the world, these decisions are being made toward clean energy. These nasty polluters are coming to the Port of Tacoma because they are being rejected everywhere else. Commencement Bay is surrounded by business and residential areas. We cannot allow polluting industries to send our children to the hospital.

Dellie Blattner
1. Expanded Notification: This would expand notification for heavy industrial projects city-wide which require a SEPA determination or discretionary permit.

I support expanded notification and an opportunity for citizens to participate in the decision-making regarding heavy industrial projects city-wide.

2. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center: This would prohibit the establishment of new non-industrial uses and prohibit the expansion of existing non-industrial uses in the Port/Tideflats.

I support light industries, but do not support mixing light industry and non-industrial uses for the Port.
3. Marine View Drive Residential Restrictions: This would prohibit new residential platting or development along the slopes above Marine View Drive.

I support these restrictions, and would add that the city should consider buying out all the affected homeowners that are affected by the poisonous pollution of the Port.

4. Heavy Industrial Special Use Restrictions: This would prohibit the establishment of new coal, oil, gas, and other fossil fuel related uses, smelting, chemical manufacturing, and mining and quarrying.

I would support special use restrictions on the industries listed and would also prohibit expansion of the industries listed.

Also, I would stop construction of the PSE LNG plant because this plant will increase the hazard of the industries of the Port of Tacoma to the people of Tacoma and the surrounding area.
NEW SECTION TMC 13.06.580

13.06.580 Interim Industrial Use Restrictions

A. Purpose. Per Ordinance No. XXXXX, on an interim basis, the purpose of this section is to prohibit the establishment of new industrial uses that may pose a high probability of significant off-site impacts or high risks to public health, safety, or welfare, on an interim basis until such time as the Tidelands Subarea Plan is complete.

B. Applicability. These special use restrictions apply to the following uses in all zoning districts:

- Coal terminals and coal bulk storage facilities
- Oil, or other liquefied or gaseous fossil fuel terminals, bulk storage, manufacturing, production, processing or refining
- Bulk chemical storage, production or processing, including acid manufacture
- Smelting
- Mining and quarrying

C. Use Restrictions.

1. New uses. The establishment of a new use is prohibited.

2. Existing uses. Legally permitted uses at the time of adoption of this code are allowed and may continue existing operations and expand storage and production capacity without limitation.

3. Definitions. For the purpose of applying these special use restrictions, the applicable North American Industrial Classification System (NAICS) codes and descriptions are identified as follows.

   a. Coal terminals and bulk storage facilities
      The storage and wholesale distribution of coal and coal products and transfer of coal products via shipping terminal.

   b. Oil or other liquefied fossil fuel terminals, bulk storage, manufacturing, production, processing or refining.
      (1) Petroleum Bulk Stations and Terminals. This industry comprises establishments with bulk liquid storage facilities primarily engaged in the merchant wholesale distribution of crude petroleum and petroleum products. NAICS Code 424710.
      (2) Petroleum Refineries. This industry comprises establishments primarily engaged in refining crude petroleum into refined petroleum. Petroleum refining involves one or more of the following activities: (1) fractionation; (2) straight distillation of crude oil; and (3) cracking. NAICS Code 324110.
      (3) Natural Gas Liquid Extraction. This industry comprises establishments primarily engaged in the recovery of liquid hydrocarbons from oil and gas field gases. Establishments primarily engaged in sulfur recovery from natural gas are included in this industry. NAICS Code 211112. For the purposes of these special use restrictions, this use category also includes bulk storage of liquefied petroleum gas, liquefied natural gas, and natural gas liquids.

   c. Bulk chemical storage, production or processing. The Chemical Manufacturing subsector is based on the transformation of organic and inorganic raw materials by a chemical process and the formulation of products. This subsector distinguishes the production of basic chemicals that comprise the first industry group from the production of intermediate and end products produced by further processing of basic chemicals that make up the remaining industry groups. For the purposes of these special use restrictions, this definition will apply to all industries classified as subcategories of NAICS Code 325 Chemical Manufacturing.

   d. Smelter
      (1) Primary Smelting and Refining of Copper. This industry comprises establishments primarily engaged in (1) smelting copper ore and/or (2) the primary refining of copper by electrolytic methods or other processes. Establishments in this industry make primary copper and copper-based alloys, such as brass and bronze, from ore or concentrates. NAICS Code 331411.
      (2) Alumina Refining and Primary Aluminum Production. This industry comprises establishments primarily engaged in one or more of the following: (1) refining alumina (i.e., aluminum oxide) generally from bauxite; (2)