



Staff Responses to General Comments/Questions

Tideflats and Industrial Land Use Regulations

General Questions

A. Question: How do the proposed amendments affect existing uses?

Response: The proposed amendments have been drafted to limit impacts to existing uses and to provide for continued investment in these facilities. However, it is likely that impacts to these existing uses will vary. For example, prohibited uses that become non-conforming maintain non-conforming use rights, which include the following:

- Nonconforming uses may continue current operations and perform normal maintenance and repair activities;
- Nonconforming uses may rebuild and re-establish the use in the event of a natural disaster or fire or other such calamity;
- The nonconforming use may change to another use permitted in the zoning district, or another nonconforming use;
- The nonconforming use may expand subject to limits, including limits on off-site impacts, operating hours, and only if the expansion will not result in greater than 10% increase in trip generation or a 10% increase in the required parking.
- Nonconforming uses may exceed these limitations through a conditional use permit and demonstrating consistency with conditional use criteria.

Uses that are currently allowed but become conditional uses would be considered as vested conditional uses. If such uses proposed an expansion to the existing facility, the expansion would be subject to Minor and Major Modification procedures for conditional uses as described in TMC 13.05.130. If the proposal is a Minor Modification, no additional Land Use permitting is necessary and review can occur through other associated permitting. The following applies to a Minor Modification:

1. The modification will result in a change of use that is permitted outright in the current zoning classification.
2. The modification will not add more than a 10% increase in square footage to the site or approved structures.
3. If a modification in a special condition of approval imposed upon the original permit is requested, the proposed change does not modify the intent of the original condition.
4. The modification will not increase the overall impervious surface area of the site by more than 25%.
5. The modification is unlikely to result in a notable increase in or any new significant adverse effects on adjacent properties or the environment.
6. Any additions or expansions approved through a series of minor modifications that cumulatively exceed the requirements of this section shall be reviewed as a major modification.

Existing Major Fossil Fuel Facilities are considered permitted uses but the proposed amendments include specific limitations on expansion. These limitations prohibit specific facility expansions that would increase the throughput capacity of the existing facility while allowing broad non-capacity improvements to occur without special permitting or procedural requirements.

B. Question: What are the economic impacts of the proposed amendments?

Response: The economic impacts are likely varied. Insofar as the proposed regulations prohibit or limit any uses in the subject areas, certain opportunities for employment growth will be limited. For example, schools and hospitals would be prohibited due to incompatibility with industrial activity in the Tidelands even though these uses generally support living wages and high employment densities. However, the proposal also prohibits uses that are generally characterized by low employment densities, such as golf courses, that would diminish land available for more productive economic uses. These impacts apply to industrial uses as well. For example, some industrial uses, such as fossil fuel production facilities, support living wage jobs, yet also have low employment densities, while other uses, such as automobile storage areas, have low employment densities but are priority uses as they directly support container shipping and international trade. Furthermore, the proposed amendments were developed to avoid and minimize impacts to existing uses that may result in job losses. For example, fossil fuel production facilities are considered permitted, not non-conforming uses, and are allowed to continue investing in non-capacity enhancements to maintain the viability of existing operations. Finally, the allowance for Renewable Fuel Production recognizes that market changes and new renewable fuel standards at the federal and state level create new economic opportunities that City is poised to capitalize on. For example, given the City's plentiful supply of clean electricity and multi-modal transportation access in the Tidelands, hydrogen fuel production could be a potential area for economic growth that also supports the City's environmental goals.

The Tidelands area supports a wide variety of businesses and economic activity, most of which are not directly impacted by the proposed amendments. Per the City's most recent data, the transportation and wholesaling sub-sectors are highly concentrated in the Port of Tacoma MIC. Employment in the transportation subsector is likely fueled by Port of Tacoma marine cargo operations as well as private businesses involved in general freight trucking, coastal freight transportation, pipeline transportation, general warehousing, and storage, among others. The wholesaling subsector is made up of a diverse array of private firms wholesaling motor vehicle parts, lumber, construction equipment, professional and industrial supplies, hardware, fresh fruit, and groceries, etc. Warehousing, while low in total employment, has been the fastest growing sector in the Tidelands. Other sub-sectors highly concentrated in the MIC include wood, petroleum, and chemical manufacturing as well as metal and equipment manufacturing. Firms in the metal and equipment subsector include such businesses as boat and shipbuilding firms, firms related to iron foundries and metal manufacturing, and firms manufacturing motor vehicle parts, among others. These sub-sectors are also among the slowest growing subsectors in Pierce County over the last several years.

C. Question: Do the proposed amendments constitute a "taking" of private property?

Response: Please see the attached Memorandum from Steve Victor, Deputy City Attorney.

D. Question: What are the likely environmental impacts of the proposed amendments?

Response: The City of Tacoma as lead agency has made a preliminary determination that this project does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2) (c). This decision was made after review of an environmental checklist and other information on file with the lead agency. This information is available to the public upon request. This Preliminary Determination of Nonsignificance (DNS) is issued under WAC 197-11-340(2). The Responsible Official will reconsider the DNS based on timely comments and may retain, modify, or, if significant adverse impacts are likely, withdraw the DNS. The City is currently reviewing and considering three comment letters that were submitted on the DNS.

The proposed amendments would limit certain industrial activities in the Port of Tacoma, require conditional use permits to evaluate potentially high impact uses, and maintain appropriate transitions to buffer industrial activities and adjacent residential areas. As a result, the proposed amendments would likely reduce the potential for long-term and cumulative impacts to the environment and public health as compared to the baseline ordinance. The proposed amendments would not retroactively apply to existing uses, which could continue operations as legally permitted.

New permit applications would still be subject to project level environmental review. Furthermore, the City, in partnership with the Puyallup Tribe of Indians, Port of Tacoma, Pierce County, and City of Fife, is developing a Subarea Plan for the Tldeflats area that will include an area-wide Environmental Impact Statement.

E. Question: Will limiting housing development in NE Tacoma impact Tacoma’s housing capacity and ability to meet adopted growth targets?

Response: The 2014 Pierce County Buildable Lands report identifies City targets to accommodate 127,000 new residents by 2040, approximately 55,000 new housing units. While the proposed amendments would reduce the potential for new housing units along the hillside, based on the findings of the Buildable Lands Report, the City has sufficient capacity to meet housing targets in the Downtown and Tacoma Mall Regional Growth Centers, Mixed-use Centers and other areas of the City. The proposed amendments would not jeopardize the City’s ability to meet housing targets. During the past decade the City has implemented multiple initiatives to facilitate increased housing production and has begun to see an increase in housing production, particularly in multi-family housing downtown and in the mixed-use centers. In addition, the City is currently considering broader housing amendments that could facilitate missing middle housing in more areas of the City.

F. Question: How do the proposed amendments affect and respond to the City’s equity goals and policies?

Response: The City has adopted a policy to review all legislation for impacts to health, equity and sustainability. In support of this, all legislation is required to evaluate how the legislation will reduce racial and other inequities, disparities, or discrimination to under-represented communities as well as to identify the positive impacts on equity, equality, diversity or inclusion, if any. This proposed legislation will:

- **Public Health:** Support the City’s long-term goals to improve air quality and reduce greenhouse gas emissions – emissions that disproportionately impact black and indigenous communities and people of color. The proposals limit and provide greater

oversight of uses that are of a higher risk for explosion, discharge, and exposure of employees and community members to hazardous materials. Further, the proposed amendments would provide additional protection and oversight of uses that pose higher risks to adversely effect shoreline resources, fisheries, and other ecological functions. Transition area standards would maintain a greater separation of residences from port/industrial uses limiting exposure of new residents to off-site impacts from the port/industrial activity.

- **Employment:** The proposal prohibits or limits specific non-industrial and industrial uses in the area based on adopted use priorities in the Growth Management Act, Shoreline Management Act, Vision 2040, and the One Tacoma Comprehensive Plan. The restriction of these uses do impact potential future job growth in order to maintain sufficient land area to allow for the growth of priority uses. Priority uses in the area, including container shipping and compatible industries, provide career pathways that do not require college degrees. Provisions allowing for renewable fuel production enable the City to respond to a growing market for renewable energy and fuel production that can provide economic opportunities that are also consistent with the City’s environmental goals. Furthermore, the proposed amendments recognize that multiple economic activities and livelihoods are based on renewable marine, riverine, and estuarine resources that would enjoy heightened protections as a result of the proposed amendments.
- **Consideration of Impacts to the Puyallup Tribe of Indians:** The proposed amendments give particular attention to the potential impacts of new heavy industrial use and development, particularly renewable fuel, fossil fuel, coal facilities, and chemical manufacturing, on the Puyallup Tribe of Indians and Tribal Trust Lands. The proposal would add consultation with the Puyallup Tribe as part of the conditional use permit for specific types of uses and require mitigation for uses that may detrimentally impact Tribal lands and planned housing or community projects. In addition, the proposal gives consideration to Treaty fishing rights and the preservation of fish and wildlife habitat to sustain salmon and shellfish harvest.

G. Question: Can the City regulate throughput of fuels at existing facilities absent any development activity or improvement?

Response: Exclusive authority to regulate transportation of fuels in Washington, including through pipelines, is vested in the Washington Utilities and Transportation Commission. Exclusive authority to regulate the dispensing of fuels is vested in the Washington State Department of Agriculture. While cities and counties are involved in permitting fuel related facilities, there is no existing State statute that authorizes local governments to regulate the operating throughput of fuels at facilities.

H. Question: Why isn’t the Planning Commission considering broader potential amendments for the Tidelands and South Tacoma? Such as regulating metal recycling, revising land use allowances in the South Tacoma Groundwater Protection District, creating an overlay district for the Port of Tacoma MIC, or addressing incompatible land use in areas surrounding the MIC.

Response: In October of 2020, the City Council, as part of Amended Ordinance No. 28696, directed the Planning Commission to consider non-interim regulations and to return a recommendation to the City Council by April of 2021 for Council consideration. The Ordinance adopted by the City Council provided guidance on the scope of work, requesting 1. That the Planning Commission consider

only those issues identified in the Interim Regulations, and 2. That the review consider only those specific uses affected by the Interim Regulations. Following this Council action, the Planning Commission conducted a public scoping period, accepting public comments on the draft scope of work. On December 2, 2020, following a public scoping hearing, the Commission amended the draft scope and approved a final scope of work closely following City Council guidance. The proposed amendments address the issues identified in the scope of work. Staff understands that other issues, uses, or zoning amendments have been requested for inclusion in the proposed amendments and that the proposed amendments do not address the full extent of community concerns. While many of these requests fall outside the approved scope of work for this process, they may be considered as part of the Tideflats Subarea Plan. Additional information on how to participate in the Tideflats Subarea Planning process at www.cityoftacoma.org/tideflatsplan.

I. Question: Does this proposal impact the South Tacoma Superfund site?

Response: The following is a summary of a response provided by Jeremy Jenning, EPA Remedial Project Manager, provided to the City via email: Some of the M-2 zoned land at the South Tacoma MIC is co-located with the South Tacoma Field Operable Unit of the Commencement Bay – South Tacoma Channel Superfund Site. Activities in these areas must not impair the integrity of the remedial actions implemented and be consistent with all applicable Superfund restrictions. However, nothing prohibits the City from adopting regulations that are more restrictive than those prohibitions.

While the remedial actions at the Superfund site have been implemented, most of the soils were remediated to levels safe for industrial/commercial uses, not residential users. As such, Environmental Covenants have been attached to property deeds in this area. The covenants require, among other things, that there be no residential use except as approved by EPA and that EPA be contacted prior to any excavation of the soils. For your information, I have attached a copy of the covenant and a map showing the area addressed.

In my cursory review of the information posted on the Tideflats Interim Regulations website, I have not identified any specific concerns relative to the Superfund Site.

J. How does this process affect the Subarea Plan and is the City still committed to completing the Subarea Plan?

Response: The City of Tacoma remains committed to completing the Subarea Plan and conducting that work in collaboration with the Port of Tacoma, Puyallup Tribe of Indians, Pierce County, and City of Fife in accordance with the Interlocal Agreement and approved Work Plan. The Subarea Plan, however, has been related to the Interim Regulations from the beginning. The Interim Regulations were adopted in 2017 to maintain baseline conditions and prevent vesting of certain development activity while the City was in the process of developing a Subarea Plan. Due to delays to the Subarea Plan process, and subsequent impacts from the COVID-19 pandemic, the City Council initiated this non-interim process to provide greater certainty to businesses as well as interested and potentially impacted community members, while the Subarea Plan process proceeds. At this time the expectation is that the Subarea Plan will require 2-3 more years until approval. At the same time, interim regulations are required by State law to be re-authorized through a City Council legislative process every 6-months, and this extension process has been creating heightened uncertainty around business and investment in the Port and industrial lands.

Furthermore, while the Subarea Plan is a forward looking process with a 20 year plan horizon that may result in goal, policy, or program modifications, the non-interim regulations are focused on resolving current inconsistencies between existing policies and land use and development regulations. These are fundamentally different tasks. The consideration of non-interim regulations does not constrain the scope of work or issues to be considered as part of the Subarea Plan. The Subarea Plan will include community visioning, environmental scoping, and significant community input throughout its development and adoption.

K. Why isn't the City taking more time to consider these amendments, and can the City consider limiting future consideration of these issues (i.e. no two bites at the apple)?

Response: The timeline for the Planning Commission's deliberations and recommendation was provided for by the City Council in order to ensure that the Council could consider an updated recommendation prior to the expiration of the interim regulations on June 2, 2021. The process and scope of work were developed with the understanding that the Commission would be tasked with making a recommendation prior to April of 2021. These issues will likely be further discussed and considered as part of the Subarea Plan process over the next 2-3 years.

Neither the Commission nor the City Council can prevent future City Council's from considering amendments to Comprehensive Plan or Land Use Regulatory Code. In the near term, any amendments approved by the City Council can be revisited as part of the Subarea Plan. In addition, the City maintains an ongoing Annual Amendment to the Comprehensive Plan and Land Use Regulatory Code process in which zoning and land use regulations can be modified based on new information, changing community needs, new legislative mandates, best available science, case law, or changing or unanticipated community impacts from development activity. Following the development of the Subarea Plan it is expected that the Plan and implementing regulations will be periodically reviewed and amended as necessary.

Topic 1: Permit and Land Use Notifications

Supports expanded notice	CHB, JF	
Concern with duplicate meeting, unclear how "center" will be measured, expanded notice unnecessary and burdensome.	BM	See response to Port comments below.
Requests expanded notice beyond 2500'	JF	Comment noted. Staff does use other notification methods to expand the reach of public notice and input above and beyond the direct mailing.
Port of Tacoma Technical Comments: <ul style="list-style-type: none"> Avoid confusion between "Notice of Application and "public notice" 	EJ	

<ul style="list-style-type: none"> • Unclear how “residents” will be identified for public notices. • Public meeting requirements are unclear – are these duplicative of other hearings or comment periods? • Designated projects that trigger the expanded notice are undefined. • Propose amendments to public notice language to improve consistency and remove duplicate references. • For notice areas measured from the “center” how are the centers defined? 		<ul style="list-style-type: none"> • Staff concurs and recommends clarifying language to distinguish the “notice of application” from the “public notice.” • “Residents” will be replaced with “occupants.” Occupant lists are an approved US Post addressing method. • Public meeting provisions are in addition to the public hearing and comment period, but serve a different purpose. The purpose of the meeting is to provide information on the project application, permitting process, and opportunities for comment. The meetings are staff led. Current codes allow the option of holding a public meeting, the proposed amendments would simply make it a requirement as part of the expanded notice provisions, rather than making a decision on a case by case basis. • Staff concurs that public notice language can be improved and simplified. • The term “center” refers to the Manufacturing and Industrial Centers adopted within the City of Tacoma Comprehensive Plan. Staff recommends including a map of the center and notification distances for clarity.
Topic 2: Conversion of Industrial Lands		
Supports the preservation of industrial lands and proposed non-industrial use restrictions.	WR, BM, NTNC	Support noted.
Accommodate park and recreation and shoreline access, access to restoration sites	NTNC, STC, CHB	Comment noted. Staff has recommended clarifications to improve the applicability of the proposed amendments to shoreline access and recreation.

Proposal prohibits the kind of non-industrial uses STNC would like to see in South Tacoma	STNC	Comment noted. For clarification, the proposed amendments do not affect non-industrial uses in the South Tacoma MIC.
Proposed amendments affect permitted uses surrounding the future Portland Avenue light rail station. Sound Transit encourages further consideration of appropriate uses in the vicinity of this station.	ST	Comment noted. The proposed amendments would make residential uses a conditional use in this area of the MIC to ensure that new residential development mitigates impacts to industrial activity.
<p>Port of Tacoma Technical Comments:</p> <ul style="list-style-type: none"> Consider adopting an Overlay District for the Port of Tacoma M/IC. Consider minor amendments to conditional use criteria for consistency with other notice procedures, including the Land Claims Settlement. 	EJ	<ul style="list-style-type: none"> Staff acknowledges that an overlay district may be an appropriate methodology for addressing specific land uses or development standards unique to the Port of Tacoma. However, the Port of Tacoma MIC does have a base zone that accomplishes much of what an overlay would achieve. Second, staff recommends that the creation of an overlay district is more appropriate within the context of the Subarea Plan. Staff concurs that some clarifications are warranted to ensure that the term “consult” is not redundant and that this purpose of this criteria is clear.
Topic 3: Residential Encroachment on the Port of Tacoma		
New residential encroachment should be regulated and discouraged.	JP1, RL, CHB, JF, NTNC, KP	Comment noted.
Concerns about loss of development potential to undeveloped single-family properties.	RH, SAR, PW, CBRE	See the attached memorandum from Deputy City Attorney Steve Victor.
Remove this topic from non-interim regulations.	SAR	Staff does not recommend removing this topic as it was within the scope of work requested by the City Council.
Remove Heiberg property from proposed overlay.	SAR, RH	Request noted.
Fine tune regulations – the minimum lot size is a blunt tool. Instead bolster the notice on title, allow clustering.		Staff concurs and recommends modifying the proposal to a maximum density rather than minimum lot size and to allow

		the use of density bonuses through the Planned Residential Development code.
Consider removing parcel 0321361040 and 0421312077	CBRE	Staff recommends removing parcel 0421312077 due to the current condition of the site, BPA transmission lines and easement.
Support removing area NW of 33 rd Street NE from proposal	JS	Support noted.
<p>Port of Tacoma Technical Comments:</p> <ul style="list-style-type: none"> Consider expanding the Overlay District to additional areas adjacent to the Port of Tacoma MIC, including the Foss Waterway and Dome Districts. Ensure consistent terminology. Minimum lot sizes may have unintended consequences that are contrary to the intent. New subdivisions should be required to incorporate specific measures to minimize impacts, including noise mitigation. The Port recommends specific revisions to notice on title. 	EJ	<ul style="list-style-type: none"> Staff does not recommend a modification to the Public Review Draft, but acknowledges that land uses in these areas warrant inclusion in the Subarea Planning process. Staff concurs. Staff concurs and recommends a shift to maximum density. Staff concurs and recommends language specific to noise and light. Staff concurs with the revisions to notice on title.
Topic 4: Siting of Potentially High Risk/High Impact		
Generally supports proposal, including prohibition on coal, smelting, mining, petrochemicals, explosives manufacturing, fertilizer manufacturing + Conditional Use for chemical manufacturing, renewable fuels, and limits on expansion of fossil fuels.	STC, JP2, DK, RL, CHB, RM, STNC, DB, VA, KA, BB, MB, CB, LB, DC, CC, TD, BJ, FK, RK, NM, KN, RN, JS1, VS, DV, CW, FP, EG1, JM, JB, JS2, JV, GC, FD, EG2, IM, JP2, JW, IA, JB, JG, SS, PW,	Comment noted.

	AK, RL, JF, WEC, NTNC, BJ2	
Generally opposed to amendments.	BM, WSPA, AT, EJ, WR	Comment noted.
Support conditional use pathway for renewable fuels and chemical manufacturing	BF	Comment noted.
<p>Address the following shortcomings in the code:</p> <ul style="list-style-type: none"> • Conversion of renewable fuel facilities to fossil fuel facilities • Replacement of tanks should not allow expansion • CUP criteria should address incarcerated people • Lower the volumetric threshold for fossil fuel storage • Mitigation should address full lifecycle emissions 	VA, KA, IA, BB, MB, JB, CB, STC, LB, DC, CC, TD, BJ, FK, RK, NM, KN, RN, JS1, VS, DV, CW, FP, EG2, JM, JB, JS2, JV, FD, WEC, JF, BJ2, RL, IM	Staff concurs and has recommended modifications to the first three comments. Staff does not recommend modifying the storage volume as the focus is on bulk storage and currently all but one of the identified fossil fuel production facilities is significantly greater than the one million gallon threshold. Staff further does not recommend full mitigation for lifecycle emissions impacts as this would only apply to renewable fuel production which is already required to demonstrate compliance with EPA approved pathways which are based on lifecycle GHG reductions.
<p>Proposed Eco-Industrial Park for South Tacoma MIC/STGPD:</p> <ul style="list-style-type: none"> • Prohibit metal recycling • No new above or below ground hazardous wastes • No new heavy industrial uses in South Tacoma • Promote a new eco-industrial park and green zone for South Tacoma 	HS	Comments noted. Proposals are outside the scope of this process.
Renewable fuel definition should be aligned with federal Renewable Fuels standard at 40CFR parts 79 and 80.	AT	The current definition cites the EPA approved pathways but with a baseline 50% lifecycle GHG reduction to be consistent with regional goals.
CUP criteria are too subjective and discretionary – eliminate criteria	AT	The public review draft does not allow for expansion of Fossil Fuel Facilities – Major. Conditional use criteria apply to renewable fuel production and certain chemical

		manufacturing uses. Staff does concur that with the more limited applicability to chemical and renewable fuel uses, the criteria can be simplified to some extent.
CUP for maintenance and repair is too onerous and could harm ability to conduct maintenance and repair activities.	AT	Staff concurs and recommends an approach to allow normal maintenance and repair while continuing to prohibit expansion of storage and refining for Fossil Fuel Facilities – Major.
Language regarding “increased capacity” is overly broad – refer to Whatcom County approach.	AT	Staff concurs that the term “capacity” is overly broad and recommends modifications to 1. Establish a baseline for current oil refining and storage, and 2. To allow normal maintenance and repair as well as other improvements that do not increase the current baseline.
Definitions should better differentiate between petrochemical manufacturing and other uses like oil refining, asphalt production, and other uses typically categorized in the NAICS 325 and 324.	AT	Staff concurs and recommends a clarification to the definitions to ensure that uses are not categorized under more than one use classification.
GHG emission requirements are overly restrictive	AT	Comment noted.
Concerned with impacts from industry on adjacent neighborhoods	CF	Comment noted.
Does not support CUP for renewable facilities/or for other uses	RL, EJ, AT	Comment noted.
Consider South Tacoma superfund site	VD	Comments and information noted.
Port of Tacoma Technical Comments: <ul style="list-style-type: none"> The Port disagrees with the use of Conditional Use Permits for chemical manufacturing, but suggests amendments to criteria language as well as amendments to streamline criteria and clarify role of the Hearing Examiner. Confusion regarding high risk/ high impact uses and associated definitions. 	EJ	<ul style="list-style-type: none"> Staff partly concurs and recommends some modifications to CUP criteria to include proposed language revisions as well as the deletion of specific criteria. Further amendments are proposed by staff to improve clarity and applicability. Staff concurs. The proposed use category is “High Impact Use” not “High Risk Use.” This will be

<ul style="list-style-type: none"> The Port recommends simply prohibiting new oil and liquefied fossil fuel facilities and relying on the non-conforming use standards already in place. 		<p>reviewed for consistent usage. The definition for the “High Impact Use” is recommended for revision to base the use category on Type H Occupancies in the Washington State Fire Code.</p> <ul style="list-style-type: none"> Staff does not recommend relying on non-conforming use provisions for the regulation of fossil fuel facilities. Non-conforming use provisions allow expansion of non-conforming uses up to specific thresholds of impact, but these thresholds are based on parking and trip generation. Fossil fuel facilities could significantly expand storage and refining without meeting these thresholds.
Topic 5: Legal		
Concerns about takings	RH, SA, PW, CBRE	See the attached memorandum from Deputy City Attorney Steve Victor.
Concerns about commerce clause/constitutional infringements	PW, WSPA, AT	Comment noted.
Concerns about legal precedence relating to other industries in the tide flats	WSPA, AT	Comment noted.
Concerns about negative impact to tideflats sub-area planning process.	WSPA, WR, BM, EJ	See the general response to topic J above.
Concerns about impact to Puyallup Tribe	JW, EG, DS, AK	Impact to the Puyallup Tribe of Indians have been considered as part of the Planning Commission process, documented in the findings, and will continue to be considered as part of project level review for permitted and conditional uses.
General Comments from Port of Tacoma		
A fully functioning and successful industrial area is vital to support our container port. The Tideflats needs to have	EJ	Comment noted. The proposed amendments are intended to limit certain uses found to be inconsistent with City

flexible zoning that allows for a mix of industrial uses absent confusing and restrictive permitting, such as conditional use permits.		policies or incompatible with the land use and development patterns, as well as environmental conditions, of the Tideflats and South Tacoma, while maintaining flexibility for economic development.
Public feedback from the community during our strategic planning process this past year has indicated that the number one priority is JOBS. Jobs that pay well and are accessible to people without a college degree are especially valued. Imposing use limitations and complicated permitting requirements on manufacturing jobs will result in fewer jobs in Tacoma.	EJ	Comment noted. The Planning Commission findings include data on employment and wages as well as noting the pathways to careers for individuals without a college degree. The City's current plans call for significant employment expansion within the Port of Tacoma MIC.
The City adopted the Container Port element in 2014 but has yet to implement those policies in the development regulations. Specifically, the code fails to recognize the Port MIC and does not address encroachment on the edges or limits on non-industrial uses. These issues sound familiar because they are the root of the interim regulations. The Port's January comments help improve consistency with the comprehensive plan, with such ideas as adopting similar protections for the Port MIC that have been granted to the regionally unrecognized South Tacoma MIC. We feel this is a small ask.	EJ	Staff concurs that policies in the Container Port Element, adopted in 2014, were not wholly implemented. Staff notes that this internal inconsistency was part of the basis for the 2017 Interim Regulations as well as a basis for the Commission's current review. Staff also notes that the current process is only a partial step toward resolving these internal inconsistencies and that additional review will be conducted as part of the Tideflats Subarea Plan.
We understand you are compelled to address fossil fuels and appreciate the recognition of a new definition for renewable fuels. We urge you to reconsider any restrictions to existing businesses that would limit their ability to provide or transition to cleaner/greener fuels and practices, such as requiring conditional use permits. Please also note that the exemption referred to by city staff at public meetings for vessel fueling and transmission of military fuels is unclear in the proposal.	EJ	Staff concurs that a more flexible approach for existing uses may be warranted. Staff is proposing an amendment that would allow existing fossil fuel uses to transition to renewable fuels without a conditional use permit so long as the transition is within the limits of the existing baseline refining and storage. For expansions beyond that established baseline a conditional use permit would continue to be required.

<p>The proposal would impose a conditional use permit for development of renewable fuel facilities which appear to be inconsistent with City and Port goals for carbon and greenhouse gas reduction and which fail to incentive the shift to cleaner fuels.</p>	<p>EJ</p>	<p>While staff concurs that a pathway for renewable fuels is necessary to respond to greenhouse gas reduction targets, the City must weigh these costs and benefits against the potential adverse impacts of locating such facilities in the Tideflats, given the environmental assets, hazards, emergency response limitations, and dense areas of employment and population surrounding the Port of Tacoma MIC. The staff recommendation to permit such uses as a conditional use is a means to evaluate, at a project and site level, the potential benefits and impacts of a proposal, and through that permit, to balance the different goals established in City policy. For example, siting such facilities in close proximity to Downtown can have a potential detrimental impact on the City’s use of HUD funds for affordable housing and community development. The CUP process is designed for such circumstances where the complexity of the use and context warrants a deeper project review.</p>
<p>The PRD impose substantial additional requirements on legally existing fossil fuel facilities beyond current non-conforming use limitations and permitting requirements found in City codes. T</p>	<p>EJ</p>	<p>Staff has recommended special use standards to limit expansion of fossil fuel facilities, rather than a reliance on non-conforming use standards. The City Council asked the Commission to consider limitations on existing uses. Non-conforming use standards are one mechanism to do so. However, in this case, the thresholds that are established to limit expansion of non-conforming uses do not provide substantial limitations on the facilities under review since the expansion of refining and storage facilities do not trigger parking quantity requirements or result in significant trip generation, which are two of the measures used in the non-conforming code. Instead, staff has proposed limitations based on the specific uses and potential adverse impacts of those uses.</p>

<p>Port of Tacoma requests:</p> <ul style="list-style-type: none"> • Consider expanding overlay zone to other areas adjacent to the MIC including Dome District and Foss Waterway. • Identifying M-1 and M-2 Zones as “buffers” is inconsistent with City policy. Buffers must extend outward from the MIC. • Conduct comprehensive land use review of non-industrial uses and consider a more expanded list of uses for prohibition in the MIC or for size restrictions. • The code does not recognize the MIC. Consider adopting an overlay zone similar to South Tacoma MIC. 	<p>EJ</p>	<p>Staff recommends no modifications to the proposal based on these comments and considers these requests to be outside the scope of this review. See response to “H” above.</p> <p>Further:</p> <ul style="list-style-type: none"> • The M-1 and M-2 zones within the MIC correspond to the area mapped in the Container Port Element as an “Industrial/Commercial Buffer.” The policies include buffering and transitions within the MIC as well as addressing encroachment outside the MIC. • While the TMC does not include a map of the MIC, the MIC boundary is established and recognized in the Comprehensive Plan, which was adopted by ordinance, and the Municipal Code includes a Port Maritime Industrial Zoning District (PMI) which was created for the purpose of serving the Port of Tacoma MIC. The South Tacoma MIC does not include any base zones unique to that MIC, which is a key difference between the two. • Staff does not recommend expanding the list of non-industrial uses affected under this ordinance for several reasons: <ul style="list-style-type: none"> ○ The uses identified by the Port were not affected by the Interim Regulations and were not expressly considered as part of this scope of work or public noticing. Including them now would preclude a full vetting and public noticing and constitute a significant expansion of the scope. ○ Further use restrictions at this time could have a detrimental impact on the viability of the Portland Ave Light Rail Station. Any additional land use modifications to this
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		<p>area should be considered as part of the Subarea Plan.</p> <ul style="list-style-type: none"> ○ In addition, expanding a buffer or limits on uses outside the MIC would potentially detrimentally impact the ability for the City to meet growth targets for the Downtown Regional Growth Center, particularly around the Dome District and Foss Waterway. Staff recommends that these issues be considered as part of the Subarea Plan rather than this non-interim process.

Initials	Name	Initials	Name	Initials	Name
VA	Virginia Alvord	JM	Julie Martinson	SS	Sandy Spears
KA	K Anderson	IM	Ian McCluskey	JV	Jordan Van Voast
BB	Brian Amundsen Barnkow	NM	Nakanee McCord	PW	Pete Weymiller
MB	Marian Berejikian	KN	Kristofer Nystrom	DB	David Bluhm
CB	Carolyn Blasdel	RN	Ranell Nystrom	ST	Sue Comis/Sound Transit
STC	Sustainable Tacoma Commission	JP1	JERALD R PISCHEL	WEC	Washington Environmental Council/Anna Doty
LB	Lark Brown	JP2	Jeanne Poirier	SC	Sierra Club/ Brett Johnson and Dorothy Walker
DC	Dennis Cline	JS1	Josef Sellers	WSPA	Western States Petroleum Association
CC	Carol Colleran	VS	Vladimir Shakov	AK	Anne Kroeker
GC	Geoff Corso	DV	Daniel Villa	RL	Russ and Janette Ladley
VD	Venus Dergan	JW	Jerry & Donny Webster	CHB	Citizens for a Healthy Bay/Melissa Malott and Erin Dilworth
FD	Felicity Devlin	LW	Lucinda & Donald Wingard	WR	WestRock/John Brandt
TD	Therese Dowd	CW	Chris Wooten	BM	Bruce Martin
SD	Shammai Durette	IA	Ingrid Archibald	RM	Roger Martin

NTNC	New Tacoma Neighborhood Council	JB	Jim Bernthal	CBRE	CBRE/Don Moody and Teresa Patton
CF	Colleen Faye	JG	Jim Barb Gregg	PSE	PSE
BF	Bryan Flint	EG1	Eddie Griffiths	RS	Ray Schuler
EG2	Erin Gubelman	EM	Mason, Evette	HS	Heidi Stephens
RH	Randy Heiberg	DK	David Kipnis	STNC	South Tacoma Neighborhood Council
BJ	Brett Johnson and Sorothy Walker	SAR	Samuel A. Rodabough	ST	Sheri Tonn
FK	Floyd Knodel	JS2	Joanna Schoettler	AT	Andrew Troske/Par Pacific
RK	Robb Krehbiel	DS	Diana Schooling	JF	Judy Ferguson
BJ2	Brett Johnson			EJ	Eric Johnson

**INTEROFFICE MEMORANDUM
CITY OF TACOMA**

TO: Stephen Atkinson, Principal Planner

FROM: Steve Victor, Deputy City Attorney

SUBJECT: Tide flats Non-Interim Regulations – RCW 36.70A.370 Takings Review

DATE: March 10, 2021

Per your request, provided below is a legal review of the draft Tide flats non-interim regulations in the context of RCW 36.70A.370 which requires local governments to implement a process to prevent proposed regulatory or administrative actions from resulting in an unconstitutional taking of private property. In performing my legal analysis, I follow the guidance of the Washington State Attorney General (“AGO”) set out in the AGO’s 2018 “Avoiding Unconstitutional Takings of Private Property” Memorandum.

In addition, I must emphasize the limitations of the legal review. The law of takings relies primarily on an analysis of three underlying factors: 1. The requirements of planning policies, including mandatory GMA policies and locally adopted policies; 2. Alternatives to proposed or adopted plans that may have less impact on private property, but still achieve the policy goals; 3. Economic impacts of the proposed or adopted plans. The effectiveness of this legal review is wholly dependent on the substantive data on the above-referenced factors that is included in the draft documents.

1. Does the Regulatory Action Result in a Permanent or Temporary Physical Occupation of Private Property?

This review noted no data in the draft regulations that indicated they would result in a permanent physical occupation of all or a portion of private property within the area of effect.

2. Does the Regulatory Action Deprive the Owner of All Economically Viable Uses of the Property?

This review noted no data in the draft regulations that indicated they would result in permanently eliminating all economically viable or beneficial uses of any private property within the area of effect.

3. Does the Regulatory Action Deny or Substantially Diminish a Fundamental Attribute of Property Ownership?

This review noted no data in the draft regulations that indicated they would result in denial of a property owner's ability to exercise a fundamental attribute of property ownership on any private property within the area of effect.

4. Does the Regulatory Action Require a Property Owner to Dedicate a Portion of Property, to Grant an Easement, or to Undertake Some Independent Financial Obligation?

This review noted no data in the draft regulations that indicated they would result in requiring a property owner to dedicate a portion of the property, to grant an easement, or to undertake some independent financial obligation within the area of effect.

5. Does the Regulatory Action Have a Severe Impact on the Landowner's Economic Interest?

The draft regulations will have an impact on the economic interests of the affected landowners, however, that impact may not result in a taking if some economically viable use of the property remains and the regulations are the least intrusive means to prevent a public harm.

Where there is less than a complete deprivation of all value, a court will evaluate whether a taking has occurred by considering the economic impact in relation to at least two other factors: (1) the extent to which the government's action impacts legitimate and long-standing expectations about the use of the property; and (2) the character of the government's actions—is there an important interest at stake and whether the government tended to use the least intrusive means to achieve that objective.

In evaluating impacts to legitimate and long-standing expectations about the use of the property, a court will evaluate the regulation's economic impact on the property as a whole, and not just on the portion of the property being regulated by assessing whether there is any profitable use of the remaining property available. The existence of some economically viable use of the property, even if the remaining use does not necessarily have to be the owner's planned use, a prior use, or the highest and best use of the property, will usually not be found to be a taking unless the regulation acts more to provide a public benefit than to prevent a public harm.

The question of whether the regulation is the least intrusive means to achieve the objective of preventing a public harm will also be evaluated by a court. The regulation should be clear as to the public harm it prevents and should be the least impactful means of preventing the public harm. If the harm is not clear or other regulatory approaches could have allowed more economic use of impacted property while still preventing the harm, a court could find a taking.

RESPONSES TO COMMENTS ON DETERMINATION OF NON-SIGNIFICANCE FOR TIDEFLATS AND INDUSTRIAL LAND USE REGULATIONS | APRIL 2021

Introduction

The City of Tacoma is proposing new land use regulations in the Port of Tacoma Manufacturing and Industrial Center and Industrial Zoning Districts City-wide to address the following issues:

- Public notification requirements for permits and land use amendments;
- Conversion of industrial lands to non-industrial uses;
- Encroachment of residential developments on industrial lands; and
- Siting of potentially high risk/high impact heavy industrial uses.

With new regulations, interim regulations first established in November 2017 through Ordinance 28470 and renewed every six months through October 2020, would expire.

This development of regulations to replace the interim ones has allowed a greater understanding of agency and community concerns. Topics beyond the scope of non-interim regulations should be addressed either through the Subarea Plan or independent review include but are not limited to:

- Periodic review of the South Tacoma Groundwater Protection District;
- Consideration of a Port of Tacoma Overlay District;
- Addressing land use compatibility around the Sound Transit Portland Avenue Station;
- The need for a State or Regional fuel standard and a clear pathway to meet GHG reduction targets.

The City issued a preliminary Determination of Non-Significance (DNS) for Tideflats and Industrial Land Use Regulations on February 22, 2021. The associated SEPA Checklist evaluated alternatives illustrating a range of code allowances:

- Option A: Proposal Alternative – Planning Commission Hearing Draft for February 3, 2021.
- Option B: Baseline – the “No Action” Pre-Interim Ordinance.
- Option C: Current Ordinance – the Interim Regulations that are in effect.

The City received three comments during the 14-day comment period. Responses to comments on the DNS are voluntary. The City is considering comments per its SEPA Rules in TMC 13.12.430.

Responses to Comments

Response to Comments: Port of Tacoma, Dierdre Wilson, March 3, 2021

#	Comment	Response
1.	<p>Please accept this written comment on behalf of the Port of Tacoma about the Preliminary Determination of Environmental Non-significance for new permanent land use regulations in the port of Tacoma Manufacturing Industrial Center and Industrial Zoning Districts City-wide to address: Public notification requirements for permits and land use amendments; Conversion of industrial lands to non-industrial uses; Encroachment of residential developments on industrial lands; and Siting of potentially high risk/high impact heavy industrial uses.</p> <p>It is unclear what the city means by 'permanent'. The Tacoma Municipal Code offers annual opportunities to amend the comprehensive plan and zoning code (see TMC 13.02.070). The issuance of the DNS appears to contradict the City's commitment to the Tideflats Subarea Plan project which includes review of land use.</p>	<p>Ordinance No. 28470 references permanent regulations to replace interim regulations following a work plan identified in TMC 13.05.030. The use of the term "permanent" follows from that ordinance. However, the City continues to have procedures to docket and update its plans and regulations in accordance with the Growth Management Act (GMA) and may amend them in the future at any time consistent with its procedures including public comment opportunities and recommendations by the Planning Commission and decisions by the City Council.</p> <p>The City continues to develop the Tideflats Subarea Plan and Environmental Impact Statement (EIS).</p> <p>Amended Ordinance No. 28470, establishing the interim regulations, identified the Tideflats Subarea Plan as the initial path to develop permanent regulations to replace the interim ordinance. The initial schedule called for the plan to be recommended to the City Council within two years. Due to project delays, including potential long-term impacts of the COVID-19 pandemic on community outreach and engagement, the recommendation is unlikely to occur until 2023, which would be a full 6 years after the initial adoption of the interim regulations.</p> <p>Due to delays in the subarea planning effort resulting from the COVID-19 pandemic and seeking to provide predictable development regulations for community members and businesses affected by the interim regulations, the City's Tideflats Steering Committee representatives requested that the Steering Committee consider how the Interim Regulations</p>

#	Comment	Response
		<p>issues could be addressed on an expedited schedule. The Steering Committee discussed potential pathways on July 9, 2020. Following that meeting, the staff leadership team reported to the Steering Committee a lack of agreement and a recommendation to maintain the separation between the Subarea Plan and Interim Regulations.</p>
2.	<p>The City issued the Determination of Non-significance for the ‘permanent’ regulations on February 19, 2021, shortly after release of the public review draft documents, and nearly two weeks prior to Planning Commission’s scheduled March 3, 2021 public hearing. In the ordinary course, the Port would have expected a SEPA determination to be issued after the Planning Commission process had concluded and a recommendation with proposed regulations had been sent to the City Council.</p>	<p>The SEPA DNS, supported by a checklist, was issued consistent with TMC 13.12.240 to be integrated with the planning process and to be issued in a timely way to support the Planning Commission public hearing and deliberation process.</p> <p>The SEPA Checklist considers a range of options to support the decision making process. The Planning Commission recommendation is anticipated to be similar to the options studied or within the range of them.</p>
3.	<p>As currently timed, the City’s SEPA process appears to assume a final result coming out of the Planning Commission which has not yet occurred. The Port is concerned about the City’s separation of the Tideflats development regulations from the corresponding Tideflats Subarea Planning process, for which a comprehensive Environmental Impact Statement (EIS) is being prepared.</p>	<p>See above. The City is continuing with the Subarea Plan process and associated EIS.</p> <p>The SEPA Checklist considers a range of options to support the decision making process. The City Council has the authority to make decision on the regulation amendments and the Planning Commission only a recommendation.</p>
4.	<p>Note: This comment is specific to the SEPA process. The Port will submit written comment on the Public Review Document by separate communication.</p>	<p>Thank you. Your comments on the proposal have been provided to City decision makers.</p>

Response to Comments: Puget Sound Energy, March 8, 2021

#	Comment	Response
5.	<p>Please accept these comments from Puget Sound Energy, Inc. (“PSE”) regarding the Preliminary Determination of Environmental Nonsignificance (“DNS”) on the Tideflats and Industrial Land Use Regulations. PSE is the natural gas provider to homes, businesses, and industry in Tacoma, where it has served residents and businesses for over 150 years. Natural gas is a resource used daily in homes to cook food, warm water for showers and laundry, and to heat homes. It is also used to fuel industrial manufacturing activities that provide both commodities and jobs. Washington law recognizes that access to abundant natural gas is in the public’s interest.</p> <p>Based on the comments below, we request that the City of Tacoma withdraw its Determination of Non-Significance (“DNS”) for SEPA File Number LU21-0035 regarding the public review document entitled Tideflats and Industrial Land Use Proposed Amendments to Title 13 Land Use Regulatory Code And Title 19 Shoreline Master Program prepared for the Tacoma Planning Commission’s March 3, 2021 public hearing (“Proposed Amendments” herein) until such time final development regulations and subarea plan are put forth for consideration by the City Council. The City of Tacoma committed to prepare an Environmental Impact Statement for the subarea process, as follows:</p> <p>“The Subarea Plan process will provide:</p>	<p>The City continues to develop the Tideflats Subarea Plan. An EIS will be developed in conjunction with the Subarea Plan.</p> <p>See Response to Comment 1.</p>

#	Comment	Response
	<ul style="list-style-type: none"> ▪ Potential text and map amendments to other elements of the City’s Comprehensive Plan ▪ Potential Amendments to the City’s Land Use Regulatory Code ▪ Potential amendments to City Zoning districts ▪ Amendments to the Shoreline Master Program ▪ Information to support local and regional Capital Facilities Programs ▪ An environmental impact statement (EIS).”¹ 	
6.	<p>The issuance of a DNS violates the City’s commitment to prepare an EIS to examine the substantial impacts that changes that subarea, shoreline and permanent land use regulations will cause to the Tideflats area. The proposed permanent land use regulation amendments impermissibly circumvent applicable Growth Management Act provisions for comprehensive plans, subarea planning and zoning to unlawfully exit a moratorium and circumvent the requirement for an EIS. If the DNS is not withdrawn entirely, a Determination of Significance must be issued in its stead, followed by appropriate scoping (expanded) and preparation of an EIS when the entire subarea plan and attendant permanent development regulations and Shoreline Master Plan amendments are put forth.</p>	<p>See Response to Comment 1. The City is following its procedures in Ordinance No. 28470 and TMC 13.05.030.</p> <p>See the introduction for the scope of the interim regulations. The City is preparing a Subarea Plan and associated EIS to address topics that are not part of the scope of the interim regulations and to collaboratively plan the future of the Tideflats area</p>

¹ https://www.cityoftacoma.org/government/city_departments/planning_and_development_services/planning_services/current_initiatives_and_projects/tideflats_subarea_plan (last viewed March 3, 2021).

#	Comment	Response
7.	<p>The City’s Notice of DNS indicates that it will finalize the DNS on March 15, 2021 unless modified. No administrative appeal is provided. Appeals must be filed in conjunction with appeals of whatever amendments are adopted in the future, and then to the Growth Management Hearings Board. It is, at best, unclear whether the DNS is intended to satisfy SEPA requirements for only the version of the Proposed Amendments that are under consideration by the Planning Commission or whether it intends this DNS to also satisfy SEPA requirements for any revisions to the Proposed Amendments that may be made by the City Council prior to their adoption. Until this is clarified, the DNS must be withdrawn.</p>	<p>The SEPA DNS supported by a checklist was issued consistent with TMC 13.12.240 to be integrated with the planning process and to be issued in a timely way to be a support to the Planning Commission public hearing and deliberation process. The DNS procedures of TMC 13.12.430 also apply, and the City is considering timely comments prior to any action the proposal.</p> <p>The City’s SEPA procedures regarding appeals are addressed in TMC 13.12.820. As noted in that section “Appeals of non–project actions (e.g., decisions made in the course of planning under the Growth Management Act/GMA or the Shoreline Management Act/SMA) shall be appealable to the Growth Management Hearings Board).”</p> <p>The City’s SEPA Responsible Official is charged with SEPA compliance, and will advise decision makers on the appropriate steps. The SEPA Checklist considers a range of options to support the decision making process. Provided the decisions are in the range of options studied additional SEPA review would not be required.</p>
8.	<p>PSE has a direct interest in local legislation that impacts its interests in Tacoma, including its ability to provide required natural gas service to its customers in Tacoma, which is directly linked to the Tacoma LNG facility on the Blair–Hylebos Peninsula. The company should be able to rely on the City’s appropriate consideration of the adverse environmental impacts of their legislative actions. This DNS fails to do so. The inadequacy of the DNS to properly analyze the environmental impacts of the Proposed Amendments will result in uninformed and unreasonable decisions by the city on a non–project action that</p>	<p>See above regarding the continuation of the Subarea Plan and EIS, and the purpose of replacing interim regulations.</p> <p>Each specific comment about the adequacy of the SEPA DNS and associated documentation are addressed below.</p>

#	Comment	Response
	<p>seeks to regulate and impose unfounded, arbitrary and onerous burdens on a critical utility the viability and robustness of which has been deemed by the Washington Legislature as in the public interest.</p> <p>The Proposed Amendments will directly impact PSE’s use, repairs, and maintenance, as well as potential future use, of its facilities as detailed in comments to the Tacoma Planning Commission throughout this subarea planning process. This reference expressly is intended to include all such oral and written comments that may be submitted to the Planning Commission through March 3, 2021 and to the City Council at such time as they consider amendments to the Proposed Amendments.</p> <p>The City did not adequately analyze the environmental impacts of the Proposed Amendments as required under SEPA. SEPA requires agencies to prepare an environmental impact statement (“EIS”) whenever there is a reasonable probability of more than a moderate effect on the quality of the environment. RCW 43.21C.030(2)(c); WAC 197-11-794(1). Tacoma is not excused from conducting a reasonably thorough analysis of the foreseeable direct, indirect, and cumulative impacts of the Proposed Amendments merely because they are a non-project action, and failure to do so is a reversible error. Because of the many legal errors discussed below and which likely appear elsewhere in the City’s administrative record on these permanent development regulations, you as the responsible official under SEPA should</p>	

#	Comment	Response
	withdraw the DNS until the complete package of subarea materials listed by the City itself are submitted to you, after which you must issue a Determination of Significance (“DS”), and prepare an EIS.	

#	Comment	Response
9.	<p>Failure to identify available, appropriate, and relevant environmental information that has been prepared or will be prepared regarding this proposal.</p> <p>SEPA requires the City to consider easily obtainable information regarding limitations on the development, maintenance, or expansion of natural gas facilities in the Port of Tacoma. WAC 197-11-080. The Environmental Checklist specifically fails to list the Reissued Final Environmental Impact State (“FEIS”) prepared by the City of Tacoma for the Tacoma LNG Facility in November of 2015. This EIS focuses specially on the precise environmental impacts that these permanent development regulations are intended to address. Included in those topics by way of illustration, but not limitation, are impacts to land uses, recreation, fisheries, treaty rights, utilities, critical areas, public health and safety, earth, air, and water, including water quality. The Environmental Checklist also fails to identify the Final Supplemental Environmental Impact Statement (“FSEIS”) prepared by the Puget Sound Clean Air Agency for the same proposal in 2019. This document takes the deepest dive ever on the question of use of natural gas for both residential and transportation uses and their impacts on greenhouse gases and climate change both in the Tacoma area and beyond. The failure to review and consider or even list these documents indicates the city has failed to examine known and most current environmental information in the city’s own possession regarding the impacts of natural gas facility development and uses in Tacoma.</p>	<p>The LNG EIS documents cited by the commenter were prepared to support a project level permit.</p> <p>The non-project proposal addresses zoning regulations. It is a non-project areawide proposal, not a site specific project permit.</p> <p>None of the studied options in the non-project DNS impede existing or vested uses, which may continue or develop based on approved permits. See page 3 of the checklist regarding the treatment of the LNG facility as existing (also quoted in responses below).</p>

#	Comment	Response
	To do so, and purposefully, is a reversible error.	
10.	<p>2. Failure to consider impacts to public services.</p> <p>The Environmental Checklist and Preliminary DNS fail to account for the very real impacts to public services that will be result from the Proposed Amendments. The Proposed Amendments will, and are indeed intended to, limit PSE’s ability to perform its obligations under state law to reliably provide as much natural gas as is requested by its customers at any given time. See, generally, RCW 80.28. This prohibition will extend to conducting necessary facility upgrades and environmental improvements, thereby causing direct impacts to Tacoma gas users and PSE. Indirectly, a very real potential direct effect of preventing expansion of the Tacoma LNG will be the approval by the Federal Energy Regulatory Commission of construction of a second natural gas interstate pipeline through the state of Washington, the consequences of which would extend far beyond Tacoma. Additionally, the Proposed Amendments attempt to and would succeed in stymieing PSE’s ability to change and adapt its facilities reasonably and with certainty in response to an ever-changing environment striving for constant environmental improvement. No attempt at analysis is undertaken at all regarding the adverse effects of the Proposed Amendments would have on this ability to adapt as technology and scientific knowledge advance. Last, the public services that are reliant on the tax</p>	<p>The DNS considers a range of options including:</p> <ul style="list-style-type: none"> ▪ Option A: Proposal Alternative – Planning Commission Hearing Draft for February 3, 2021. ▪ Option B: Baseline – the “No Action” Pre-Interim Ordinance. ▪ Option C: Current Ordinance – the Interim Regulations that are in effect. <p>Under Option A, new Major Fossil Fuel Facilities would be prohibited but already existing/permitted facilities are allowed. Even though increases in capacity may not be allowed, that does not limit repair and maintenance, or upgrades and environmental improvements if they would not increase capacity.</p> <p>Page 3 of the SEPA Checklist specifically indicates the LNG facility is considered existing under Option A:</p> <ul style="list-style-type: none"> ▪ Puget Sound Energy – LNG Facility: Puget Sound Energy, Inc. (PSE) is in the process of constructing a natural gas liquefaction and storage facility in the Tideflats. The project was permitted prior to the interim regulations taking effect and as such is considered an existing use under the City’s land use codes. Additional building and mechanical permits for the facility have been issued during the interim period, including an office conversion, interior remodel, right-of-way permits for fencing, and other operations. <p>Public services are addressed in the SEPA checklist in Part B. Fiscal, economic, cost-benefit, and similar topics are not required under SEPA. See WAC 197-11-448 and WAC 197-11-450.</p>

#	Comment	Response
	<p>revenues generated within the Port of Tacoma from facilities such as Tacoma LNG.</p>	
11.	<p>3. Actual Consideration of Environmental Elements is Completely Absent.</p> <p>The preliminary DNS and the Environmental Checklist on which it is based lack any actual consideration of many of the environmental factors that the city must examine. Instead, each contains conclusory statements of no impact or simply gloss over subjects as “not applicable” because the DNS is for a non-project action. Where beneficial, the Checklist includes conclusory statements about topics such as the benefits of reducing greenhouse gases or reducing public safety risks while failing to provide any accurate facts or analysis of the Proposed Amendments’ actual consequences. Documents such as the Tacoma LNG FEIS and FSEIS, which contain information specific to the proposal before the City, including the area and exact facilities themselves. Regardless of the non-project nature of the action, its consequences are immediate and real. Ignoring them, and information about them, is in derogation of the minimum responsibilities of a SEPA Responsible Official.</p>	<p>See Response to Comments #10. The LNG EIS documents cited by the commenter were prepared to support a project level permit.</p> <p>The non-project evaluation identifies the implications of each option on the environmental topics, and the procedures in place or in the proposal that would allow the City to obtain appropriate analysis for the allowed uses when permits are sought. The evaluation in Part B.2 of the checklist considers that there are federal, state, and regional laws and rules addressing greenhouse gases associated with land uses in Tacoma. There are fire codes and plans to provide emergency services in affected zones as listed in Part B.7 and B.15 of the checklist.</p> <p>The non-project proposal addresses zoning regulations. It is a an areawide zoning proposal, not a site specific project permit. As noted under Response to Comment 10 above, the LNG facility is considered an existing use and may continue with improvements already permitted. Repair, maintenance, upgrades, environmental improvements, or expansions would be allowed if they would not increase capacity. Within the range of the options reviewed, the City is considering revisions to clarify maintenance and repair and other upgrades as it considers comments made through the public hearing and legislative process.</p>
12.	<p>4. The DNS Fails to Analyze Reasonably Probable Impacts.</p> <p>The City’s DNS erroneously fails to identify and analyze all of the Proposed Amendments’ reasonably probable adverse impacts, including the direct,</p>	<p>Under all studied options, the checklist identifies federal, state, regional and local regulations addressing air quality in Part B.2. The checklist considers fossil fuel and renewable fuel uses under three options including pre-interim regulations allowing fossil fuel operations (Option</p>

#	Comment	Response
	<p>indirect and cumulative impacts on air quality as a result of the Proposed Amendments, which will prevent more use of cleaner, more environmentally friendly marine fuels such as LNG. Instead, the Environmental Checklist relies solely on the assertion that the Proposed Amendments will reduce GHG emissions and air pollutants by restraining any further expansion of the Tacoma LNG facility to produce cleaner fuel than is used by the shipping industry in the Port of Tacoma today.</p>	<p>B), allowing fossil fuel operations with 10% expansions (Option C interim regulations), and the Planning Commission hearing proposal (Option A). While in some of the options fossil fuel production and storage is limited, such fuels including LNG can be used by businesses there or anywhere. Also, renewable fuels can be produced and stored.</p> <p>Under the Planning Commission hearing proposal Option A, the LNG facility is considered an existing use and may continue with improvements already permitted (see checklist page 3). Repair, maintenance, upgrades, and environmental improvements, or expansions are allowed if they would not increase capacity.</p>
13.	<p>5. Land Use.</p> <p>The DNS fails to speak at all to the Proposed Amendments' significant adverse land use impacts that will occur with the significant changes proposed to long-standing permitted industrial uses and activities within the industrial Port of Tacoma. The current land use and container shipping elements of the City's Comprehensive Plan contain several strong policies supportive of the existing shipping, manufacturing and fuel uses in the Port. The Proposed Amendments directly contravene the existing Comprehensive Plan. The Environmental Checklist fails entirely to speak to the inconsistencies that will result from the Proposed Amendments. By law, the City must consider these policies when analyzing the land use impacts from the Proposed Amendments. What will result from their adoption is adverse land use impacts to historical uses that arise through discouraging reinvestment in</p>	<p>The SEPA Checklist addresses land use in Part B, Section 8, identifying the current and future uses and change in mix of industrial uses over time. Existing uses can remain and future ones would conform to the regulations under the selected code option.</p> <p>The SEPA Checklist addresses policy consistency in Part D, Question 7. It also refers to the staff reports with the City's analysis of policy consistency. The City is identifying changes to the code to better implement the One Tacoma Comprehensive Plan and Shoreline Master Program policies balancing compatibility of uses, shoreline dependent uses, and environmental conservation, among others.</p> <p>The future Subarea Plan EIS will address a range of alternatives and will address the consistency of the future defined alternatives to the Comprehensive Plan and Subarea Plan as well. The Steering Committee and public scoping process will determine the range and nature of the alternatives.</p>

#	Comment	Response
	<p>long-standing heavy industrial uses, thus jeopardizing their viability. The City recognized the potential for these significant adverse impacts as a result of the subarea planning and development regulations it intended to develop as a package when it committed to preparation of an EIS. Adoption of these permanent land use controls and development regulation now accompanied by a DNS exempts them from later evaluation in an EIS. The city may not skirt SEPA or the GMA in this fashion.</p>	
14.	<p>6. Public Services.</p> <p>The DNS ignores the Proposed Amendments' adverse impacts to public services, including without limit the tax revenues generated by the facilities that are adversely impacted by the Proposed Amendments. The City is aware of the economic effects of development and operation of such facilities based on the Economic Impacts Analysis in the Tacoma LNG FEIS. Ignoring that information in the Environmental Checklist, when it is so readily available to the city planning department in its own records, should result in withdrawal of this DNS in favor of an EIS at the appropriate time. Contending that economic impacts are not an element of the environment under SEPA is of no avail, either, as they must be considered by the City pursuant to 43.21H RCW, the State Economic Policy Act, which at RCW 43.21H.020 obligates the City to consider economic impacts of its Proposed Amendments along with environmental, social, health, and safety considerations:</p>	<p>Public services are addressed in the SEPA checklist in Part B. The City plans for its public services and facilities consistent with the Growth Management Act and adopted levels of service; the City determines how best to deliver the services. Fiscal, economic, cost-benefit, and similar topics are not required under SEPA. See WAC 197-11-448 and WAC 197-11-450.</p> <p>The City is maintaining the baseline of existing and vested fossil fuel facilities and allowing new renewable fuel facilities. The regulations also promote port and industrial uses and limit non-industrial uses. 43.21H RCW does not require the City to change its methods to comply with GMA, SMA, or SEPA. (RCW 43.21H.030)</p> <p>The City is addressing economic considerations in its planning process and is intending to better implement its Comprehensive Plan and Shoreline Master Program and balance allowances for economic and shoreline dependent use development with environmental conservation.</p> <p>See Periodic Reports with interim regulations reviewing trends in fossil fuel uses and production.</p> <p>See also Staff Responses to General Comments/Questions, Tideflats and Industrial</p>

#	Comment	Response
	<p>“State and local authorities to insure that economic impacts and values be given appropriate consideration in rule-making process. The legislature finds that agency and local government decisions can have negative economic consequences for businesses, particularly small businesses, as well as for employees of those businesses. All state agencies and local government entities with rule-making authority under state law or local ordinance must adopt methods and procedures which will insure that economic impacts and values will be given appropriate consideration in the rule-making process along with environmental, social, health, and safety considerations”.</p>	<p>Land Use Regulations, under separate cover, describing employment use mixes and other considerations under the proposal.</p> <p>For a complete listing of relevant policies and findings, see:</p> <ul style="list-style-type: none"> ▪ Staff Report and Exhibits Section A: Permit Notification ▪ Staff Report and Exhibits Section B: Conversion of Industrial Lands ▪ Staff Report and Exhibits Section C: Residential Encroachment ▪ Staff Report and Exhibits Section D: Siting of Heavy Industrial Uses <p>Within the range of the options reviewed, the City is considering revisions to clarify maintenance and repair and other upgrades as it considers comments made through the public hearing and legislative process.</p>
15.	<p>7. Failure to address inconsistency with other applicable laws.</p> <p>The Environmental Checklist fails to address the the Proposed Amendments’ consistency or conflicts with local, state, or federal laws. WAC 197-11-158 encourages Growth Management Act jurisdictions such as Tacoma to address environmental impacts and necessary mitigation requirements through compliance with existing local, state, and federal laws. The City has undertaken absolutely no assessment of the adequacy of existing laws that affect the facilities and land uses regulated by the Proposed Amendments. These federal laws and regulations include, without limit, the Clean Air Act, Clean Water Act, Endangered Species Act, Bald and Golden</p>	<p>The comment provides no specific areas of inconsistency.</p> <p>The SEPA Checklist addresses policy consistency in Part D, Question 7 including a range of federal, state, and local laws. It also refers to the staff reports with the City’s analysis of policy consistency. The City is identifying changes to the code to better implement its GMA Comprehensive Plan and SMA Shoreline Master Program policies balancing compatibility of uses, shoreline dependent uses, and environmental conservation, among others.</p> <p>Cited state and federal laws are referenced in response to many SEPA Checklist questions such as parts B2, B3, B4, B5, B6, B7, B8, B13, and Part D regarding air quality, water quality, protected species, toxics control, historic preservation, growth management, shoreline management, etc.</p>

#	Comment	Response
	<p>Eagle Protection Act, Marine Mammal Protection Act, Historic Preservation Act, Rivers and Harbors Act, National Gas Act, Coastal Zone Management Act, Comprehensive Environmental Response, Compensation Act, and Liability Act, Resource Conservation and Recovery Act and the National Historic Preservation Act. The state laws and regulations include, without limit, the Washington Clean Air Act, Shoreline Management Act, Water Pollution Control Act, Washington Hydraulic Code, Washington Growth Management Act, Energy Facility Site Location Act, Model Toxic Controls Act and myriad other environmental, natural resource and land use acts and codes adopted to protect fish species, fish work windows, shellfish, in-water, near-shore, wetland and terrestrial habitats, at-risk species and critical areas.</p> <p>In all likelihood, some of the Proposed Amendments are inconsistent with local, state, and federal laws. The Environmental Checklist and DNS are entire devoid of any attempt to address how these pre-existing laws and regulations already address the ills that the Proposed Amendments are putatively intended to cure. At best, failure to do so indicates a lack of objectivity in the preparation of the Environmental Checklist, upon which a DNS should not rely.</p> <p>Based on the multiple issues and errors addressed above, as well as on the comment letter submitted by PSE on March 8, 2021, PSE respectfully requests that the SEPA Responsible Official withdraw the DNS and upon receipt of a complete package of environmental</p>	

#	Comment	Response
	information identified by the City itself on pp. 1–2 above, issue a Determination of Significance and prepare an EIS consistent with the City’s commitment to do so, as well as is required by SEPA.	

Response to Comments: WSPA March 8, 2021

#	Comment	Response
16.	<p>I am writing on behalf of the Western States Petroleum Association (“WSPA”) to offer comments on the City of Tacoma’s Preliminary Determination of Environmental Nonsignificance (“DNS”) for the City proposed amendments to land use regulations that apply to fossil and renewable fuel facilities in the M–2 Heavy Industrial and Port of Tacoma Manufacturing and Industrial Center Districts (“Proposed Amendments”). WSPA is concurrently submitting a letter to the Planning Commission regarding the Proposed Amendments, which is incorporated by reference into this letter.</p> <p>WSPA is a non–profit trade association representing companies that explore for, produce, refine, transport, and market petroleum and petroleum products in five western states, including Washington. WSPA members have operated in Tacoma for decades. WSPA members that operate in Tacoma provide key energy and emergency infrastructure, which contributes to Tacoma serving as a regional hub for energy production and distribution. The presence of WSPA members’ facilities have many positive impacts on the economy, the community, and provides sustaining family–wage jobs.</p>	<p>The DNS and Checklist examine a range of options including:</p> <ul style="list-style-type: none"> ▪ Option A: Proposal Alternative – Planning Commission Hearing Draft for February 3, 2021. ▪ Option B: Baseline – the “No Action” Pre–Interim Ordinance. ▪ Option C: Current Ordinance – the Interim Regulations that are in effect. <p>Option B does not limit fossil fuel facilities. Option C provides for some limitations but also 10% expansion of such facilities. Option A would continue to allow existing (and permitted) fossil fuel facilities with non–capacity improvements. It would also allow renewable fuel facilities.</p> <p>The City has identified procedures for permits for different land uses including CUPs.</p> <p>CUP criteria are reasonable and based on typical practices by local governments in Washington and similar to those in state shoreline rules (WAC 173–27–160). CUP criteria are applied similarly in zones across the city and meant to allow for review of size, operating characteristics, potential off–site impacts and/or other similar reasons (TMC 13.05.010.A.1)</p> <p>Within the range of the options reviewed, the City is considering revisions to clarify maintenance and repair and other upgrades as it considers</p>

#	Comment	Response
	<p>The Proposed Amendments threaten to eventually eliminate the energy industry from Tacoma, which the DNS ignores. In the meantime, the Proposed Amendments could impact safety and efficiency. Although the Proposed Amendments purport to allow safety and maintenance projects, they restrict capacity expansions—even if the expansion has no impact on throughput. The Proposed Amendments ignore how safety and maintenance upgrades are often coupled with capacity expansions as a business necessity, and therefore the Proposed Amendments frustrate essential safety and maintenance projects. Further, most projects—including efficiency upgrades that reduce greenhouse gas (“GHG”) emissions—would require a Conditional Use Permit (“CUP”), which would force applicants to meet subjective criteria that are so burdensome they are practically impossible to satisfy. The level of permitting uncertainty associated with the new CUP requirements for existing facilities are likely to discourage important future capital facility investments. Without the ability to invest in Tacoma facilities and allow them to evolve as technology develops, the Proposed Amendments freeze Tacoma fuel production in time and thereby risk its inevitable demise. Further, the Proposed Amendments require a CUP for renewable energy facilities, which essentially guarantees that none will be built in Tacoma.</p>	<p>comments made through the public hearing and legislative process.</p>
17.	<p>The DNS has been issued in error. The DNS and the Environmental Checklist (“Checklist”) violate the State Environmental Policy Act (“SEPA”) for</p>	<p>The City’s proposed regulations are within the City’s authority to regulate land use in its borders to balance multiple goals including but not limited to:</p>

#	Comment	Response
	<p>several reasons. First, they fail to acknowledge that the Proposed Amendments will cause probable significant adverse environmental impacts. Second, the City has failed to consider a large body of data and information relevant to evaluating the full life-cycle GHG impacts of this isolated local regulation that must be considered when adopting land use regulations that could impact global GHG emissions. Third, the Proposed Amendments are inconsistent with local, state, and federal laws. WSPA asks the City to withdraw the DNS, issue a Determination of Significance (“DS”), and prepare an Environmental Impact Statement (“EIS”) that informs the Planning Commission and City Council of the impacts of the Proposed Amendments.</p>	<ul style="list-style-type: none"> ▪ Environmental protection (water quality, sensitive species, air quality, climate resilience, geologic hazards, etc.) ▪ Ports and economic development ▪ Land use and shoreline compatibility <p>The City’s proposed regulations require project level air quality evaluations similar to existing laws (e.g. federal EPA, state Ecology) and focus mitigation that addresses local offsets (e.g. GHG mitigation for renewable fuels).</p> <p>Allowed land uses must comply with state and federal laws and regulations. The City’s Comprehensive Plan is designed to be consistent with regional plans including the regional growth strategy and the growth targets with the Countywide Planning Policies.</p>
18.	<p>I. The Proposed Amendments Will Cause Probable Significant Adverse Impacts.</p> <p>SEPA requires a lead agency to issue a DS and prepare an EIS when a proposal is likely to have probable significant adverse environmental impacts. A threshold determination cannot rely on the fact that a proposal’s purported benefit may outweigh the environmental impacts. Indeed, SEPA expressly acknowledges that even proposals that are purportedly designed to improve the environment “may also have significant adverse environmental impacts.” As such, the Responsible Official must consider all probable significant adverse impacts regardless of whether they are direct, indirect, or cumulative. The DNS, and the Checklist on which it is based, take a rosy outlook on the Proposed Amendments and</p>	<p>The non-project SEPA evaluation identifies the implications of each non-project Option A, B, and C on the environmental topics. The checklist also identifies the procedures in place or features of the proposals that would allow the City to obtain appropriate analysis for future allowed project uses when permits are sought. The evaluation considers that there are federal, state, and regional laws and rules addressing greenhouse gases, energy/nature resources, environmental health, land and shoreline use, transportation, and public services.</p> <p>Fiscal, economic, cost-benefit, and similar topics are not required under SEPA. See WAC 197-11-448 and WAC 197-11-450.</p>

#	Comment	Response
	<p>fail to consider several impacts. Specifically, the DNS ignores the probable significant adverse impacts of the Proposed Amendments to air, energy and natural resources, environmental health, land and shoreline use, transportation, public services, and economics.</p>	
19.	<p>Air</p> <p>The DNS is based on the Checklist’s faulty premise that the Proposed Amendments will reduce air pollutants and GHG emissions by restricting energy production in the City. As a preliminary matter, the City’s scope of review of potential impacts from the Proposed Amendments is improperly narrow. The City’s analysis looks only at purported reductions of GHGs within the City. However, SEPA requires the City to consider probable impacts beyond the City borders.</p> <p>The analysis of impacts beyond the City’s borders is particularly relevant to the issue of GHG emissions. The Proposed Amendments do not affect demand for the products the existing facilities produce, and therefore are likely to encourage fossil fuel production at other locations outside of the City to meet the public’s steady demand for fossil fuels and compensate for any shortfalls from facilities within the City—a concept known as “carbon leakage.” Carbon leakage is an issue that is well-recognized by other agencies evaluating effective GHG reduction or mitigation programs, and there is an abundance of literature on the topic. The City’s failure to consider this generally accepted phenomenon and review the widely available literature on the topic is,</p>	<p>The City’s SEPA Checklist evaluates options that allow a wide range of heavy industrial uses (Option C) and interim (Option B), or proposed regulations (Option A) that limit some heavy industrial uses. The City’s proposed regulations require project level air quality evaluations similar to existing laws (e.g. federal EPA, state Ecology, which consider lifecycle) but focus mitigation within Tacoma to provide local offsets (e.g. GHG mitigation for renewable fuels).</p> <p>The City is planning for growth consistent with regional plans developed by the Puget Sound Regional Council (PSRC) and Countywide Planning Policy growth targets. By planning consistent with these plans and targets the City’s anticipated growth supports regional growth strategies including policies around air quality, climate, and others.</p> <p>Regionally, PSRC has developed non-project EISs that address GHG based on the regional growth strategy that the City fits within. (See Vision 2040 and 2050 documents)</p>

#	Comment	Response
	<p>itself, a legal flaw that requires the City to withdraw its DNS.</p> <p>When preparing the EIS that the Proposed Amendments require, the City should analyze the impact of carbon leakage, the resulting air emissions, and the GHG consequences of replacement fuel production required to meet unfilled energy demands. Additionally, if transportation fuels were to be produced elsewhere and then transported to markets currently served by the facilities in the City, then the GHG life-cycle analysis for the Proposed Amendments must include this transportation emission source.</p> <p>Through requiring a CUP, the Proposed Amendments discourage new renewable fuel facilities, as well as cleaner fuel upgrades at existing facilities. This permitting and economic disincentive will thus cause probable significant adverse impacts on air.</p>	
20.	<p>Energy and Natural Resources</p> <p>The DNS ignores the probable significant adverse impacts to energy resources that will result from the City’s attempts to prohibit new fossil fuel facilities, discourage new renewable energy facilities, and severely restrict improvements or upgrades at existing facilities. The impossible to achieve CUP criteria will effectively discourage investment in and upgrades to the existing facilities, with corresponding impacts to ongoing production. Impacts to transportation fuel production in the City have implications not only on the City, but also on the West Coast and throughout the</p>	<p>The DNS reviews a range of options and addresses energy in the SEPA Checklist. All options allow new renewable fuel facilities. Some options allow for new fossil fuel facilities (Option B) or limit them (Option A), as well as allow 10% expansion (Option C). All options would allow for upgrades though Option A would limit such upgrades to those that do not add capacity.</p> <p>See response to comment 16 regarding the CUP process.</p> <p>The City is responsible for planning land uses consistent with regional plans. City plans fit into regional plans including transportation.</p> <p>The City has considered energy supply in its Periodic Report and in its policy analysis cited in</p>

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	supply market that should be evaluated in an EIS.	the Checklist Part D, Staff Report and Exhibits Section D: Siting of Heavy Industrial Uses .
21.	<p>Environmental Health</p> <p>The Proposed Amendments impose uncertain, time-consuming and onerous new permitting requirements that would adversely impact, delay and perhaps effectively discourage investment in existing facility modifications to meet changing markets or to improve production efficiency. The requirement for a CUP for maintenance and safety upgrades that involve capacity expansions— projects that are frequently paired together—increases the uncertainty and, therefore, the risk associated with even these necessary facility modifications. The DNS ignores this adverse impact of the Proposed Amendments. An EIS is necessary to evaluate these impacts.</p>	<p>The DNS considers a range of regulatory options. All allow for maintenance with different permit types.</p> <p>Relevant to environmental health, the Tideflats area as well as other areas in the City are affected by critical areas (e.g. geologic hazards, critical aquifer recharge areas, fish and wildlife habitat conservation areas, etc.). Many areas addressed in the regulations are shorelines that support Port activities while also supporting aquatic species. Across industrial areas and abutting non-industrial areas, the City must address risks emergency services access. Ensuring uses and facility changes address this complex urban and natural environment can be addressed through land use permit processes like CUPs.</p> <p>The City has not had a discretionary process before in the industrial areas, and the City has used its authority to request additional information (e.g., traffic information) using SEPA authority. The CUP process is an attempt to standardize the required information and the criteria for analysis so that project applicants can have a better idea of what is needed, rather than waiting for initial review and comment from reviewing staff, the public, and other agencies.</p>
22.	<p>Land and Shoreline Use</p> <p>The Proposed Amendments will dramatically change the long-standing history of permitted land uses in the City districts that outright permit heavy industrial uses. Therefore, the Proposed Amendments will have significant adverse impacts to those existing land uses and, additionally, will be inconsistent with several stated polices in the One Tacoma</p>	<p>The City has demonstrated in its policy analysis that the proposal is consistent with its Comprehensive Plan policies and helps implement them. See the SEPA Checklist Part D.7 and referenced staff reports.</p> <p>Existing fossil fuel uses can remain, and maintenance and safety improvements are allowed. New renewable energy facilities are allowed.</p>

#	Comment	Response
	<p>Comprehensive Plan. The Comprehensive Plan contains several goals and policies supportive of WSPA members' existing uses in the City's industrial districts. The Proposed Amendments discourage new renewable energy facilities and prevent modernization of current industrial facilities, all while obstructing the maintenance and safety of current facilities. These outcomes directly contradict Comprehensive Plan policies regarding Economic Development Element and the Container Port Element policies that call for protection and prioritization of existing industrial activity. Accordingly, an EIS is required to analyze the impacts of the drastic change in historical land use patterns.</p>	
23.	<p>Transportation</p> <p>The DNS ignores the fact that transportation will be adversely impacted by the Proposed Amendments in at least two ways: (1) the new limitations on production upgrades could impact the supply of cleaner marine, rail, and motor vehicle fuels that otherwise would be produced at these facilities; and, (2) unmet transportation fuel demand could result in the need to transport fuels from other, more distant, production facilities to satisfy that demand. As with air impacts, the City cannot limit its impact evaluation to the City's borders.</p>	<p>Option A would not limit upgrades that produce cleaner fuels; it addresses capacity, storage, and transportation.</p> <p>Fossil fuel production facilities are considered permitted, not non-conforming uses, and are allowed to continue investing in non-capacity enhancements to maintain the viability of existing operations. The baseline fossil fuel production and storage can continue. The allowance for Renewable Fuel Production recognizes that market changes and new renewable fuel standards at the federal and state level create new economic opportunities that City is poised to capitalize on. For example, given the City's plentiful supply of clean electricity and multi-modal transportation access in the Tideflats, hydrogen fuel production could be a potential area for economic growth that also supports the City's environmental goals.</p> <p>The trend in fossil fuel uses and production has been described in periodic reports and</p>

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		<p>discussions at legislative meetings (see response to Comment 20).</p> <p>The City plans for its growth targets and coordinates land use and transportation systems consistent with regional plans (PSRC, Pierce County Countywide Planning Policies).</p>
24.	<p>Public Services</p> <p>The DNS ignores the potential adverse impact of the Proposed Amendments on public services— specifically, necessary funding for public services. The existing energy facilities provide the City with substantial tax revenue that is used to fund public services. Because the Proposed Amendments either prohibit or substantially discourage new facility investment and production, the Proposed Amendments are likely to impact these public service tax revenues. Further, the DNS ignores the likelihood that the Proposed Amendments will discourage capital investment and thus discourage the associated jobs and tax revenues that would support public services. Similarly, if the facilities are forced to close because they cannot compete in the market due to the limitations imposed by the Proposed Amendments, the resulting elimination of the well-paying jobs that the facilities provide would have a corresponding impact on taxes collected by the City. The City must evaluate these adverse impacts to public services in an EIS.</p>	<p>Public services are addressed in the SEPA checklist in Part B.</p> <p>Fiscal, economic, cost-benefit, and similar topics are not required under SEPA. See WAC 197-11-448 and WAC 197-11-450.</p>
25.	<p>Economic Impacts</p> <p>Contrary to State law, the DNS and Checklist fail to consider the economic impacts of the Proposed Amendments. The Proposed Amendments will have</p>	<p>See Response to Comments 14 and 24.</p>

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significant adverse economic impacts that the DNS ignores. For example, by preventing existing facilities from modifying or expanding their production capabilities, the Proposed Amendments put the facilities' capital expenditures at risk and potentially threaten their viability if they are unable to respond to changing market conditions through future expenditures on maintenance and improvements. Petroleum refining has one of the highest labor productivities and highest capital-intensities in the U.S. economy. There is currently a high concentration of jobs and job growth for the petroleum industry in Tacoma. Precluding these industries from continuing or developing in Tacoma will have far-reaching economic impacts, including the loss of well-paying jobs with good benefits for those without advanced education and a corresponding loss of revenue for local governments and special tax districts.

Moreover, these economic impacts are directly inconsistent with the City's policies. For example, and as described above, the Container Port and Economic Development Elements of the Comprehensive Plan contain numerous goals and policies that promote the industrial activity of energy production in heavy industrial districts and the jobs that production creates. By thwarting the ongoing viability of energy production in Tacoma, the Proposed Amendments will have adverse economic impacts, which run counter to these stated objectives. The DNS ignores these impacts, and accordingly an EIS is necessary to analyze these impacts.

#	Comment	Response
26.	<p>II. The City Relies on an Inadequate List of References to Support its Erroneous Determination.</p> <p>SEPA requires the City to consider readily available information on impacts that will help the Planning Commission and Council make a reasoned decision. However, the City has failed to meet this standard. The City's list of references is inadequate, and demonstrates the City's intent to ignore the broader impacts and implications of the Proposed Amendments. By way of example only, the list of references does not include any studies that address the "carbon leakage" consequences of attempts to regulate GHG emissions (an acknowledged global problem) on a local scale. The City should prepare an EIS on the Proposed Amendments that considers a more appropriate range of relevant references, including but not limited to references that address carbon leakage consequences.</p>	<p>The proposal (Option A) allows for new renewable fuels as well as existing fossil fuels. There is an ability to add production of renewable fuels, which would need to provide GHG analysis consistent with state and federal requirements which include a lifecycle analysis as well as local mitigation offsets.</p> <p>The City has land use authority in its city limits and is responsible for balancing goals in the context of the regional coordination required under the Growth Management Act. The City is exercising its police powers to protect human and environmental health as described in Response to Comment 21.</p> <p>The City plans consistent with the Regional Growth Strategy that accounts for cumulative growth in population and employment. The proposed regulations help the City implement its adopted plans that are meant to fit in with regional plans. The City also relies on existing federal state and regional regulations to address state and national requirements. See Response to Comment 19.</p>
27.	<p>III. The Proposed Amendments Violate Local, State, and Federal Laws.</p> <p>The Checklist fails to disclose how the Proposed Amendments will conflict with local, state, and federal laws. As discussed above, the Proposed Amendments conflict with the City's Comprehensive Plan goals and policies, which are considered local laws. As described in WSPA's letter to the Planning Commission, this process is moving so rapidly that we have not yet been able to fully analyze the myriad laws that the Proposed Amendments may run afoul. However, as discussed more fully in that letter, we already know that the Proposed Amendments violate the Takings</p>	<p>The City is following the planning process defined in its municipal code, interim regulations, and SEPA rules.</p> <p>Regarding policy consistency, see the SEPA Checklist Part D.7 and referenced staff reports. The City is planning in the context of regional, state, and federal policies and regulations.</p> <p>The City is exercising its land use authority and considering appropriate land uses in its study area given environmental factors such as presence of critical aquifer recharge areas, geologic hazards (e.g. liquefaction), fish and wildlife conservation areas as well as air quality and greenhouse gas. The City is considering the need to provide for infrastructure and emergency</p>

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	<p>Clauses of the Fifth Amendment of the United States Constitution and the Washington State Constitution ("State Constitution") article 1, section 16; the Equal Protection Clauses of the United States and State Constitutions; the dormant Commerce Clause of the United States Constitution, and the due process clauses of the United States and State Constitutions. An EIS should be prepared to describe whether, or how, the Proposed Amendments can be modified to comply with applicable local, state, and federal law.</p>	<p>services. The City is also considering a range of land uses that fit the City's Container Port Element, Shoreline Master Program, and other economic development policies. The proposed amendments in Option A allow for existing and permitted fossil fuel facilities, and offer new uses like renewable fuels as well as other uses allowed in the zone. Refer also to the March 10, 2017 Interoffice Memorandum, City of Tacoma from Steve Victor, Deputy City Attorney to Stephen Atkinson, Principal Planner. (See PDF page 29 of Planning Commission Packet for the meeting March 17, 2021.)</p>
28.	<p>IV. Conclusion.</p> <p>The City's DNS ignores the Proposed Amendments' devastating impacts on industry, the environment, the economy, and the local, regional, and global community. For the reasons described in this letter, the City should withdraw the DNS, issue a DS, and commence work on an EIS to address the probable significant adverse impacts from the Proposed Amendments.</p>	<p>See prior responses.</p>

Discussion Item 4: Siting and Expansion of High Risk/High Impact Heavy Industrial Uses – Proposed Revisions

1. Issue Description

Broadly, this review will consider the siting of specific potentially high risk/high impact heavy industrial uses. Current zoning and land use regulations consolidate a broad spectrum of industrial use and activity within a single heavy industrial use category despite a diverse differentiation of potential impacts and risks associated with such uses. In addition, current regulations permit heavy industrial use outright within the M-2 Heavy Industrial District and PMI Port Maritime Industrial District without special use standards tailored to address the disparate potential impacts of use and activity that fall under this category. This review will consider the compatibility of specific heavy industrial uses with the use priorities in the Port Tideflats as well as compatibility with environmental site context and surrounding land uses. The result of this review may be the establishment of more specific uses to be regulated under TMC 13.06 Zoning and Title 19 Shoreline Master Program.

2. Planning Commission Modifications – March 17, 2021

Proposed Amendments 4: Chemical Manufacturing, Processing and Wholesale Distribution

- **Proposed Amendments to TMC 13.01 Definitions and Title 19 Shoreline Master Program Chapter 10:**

“Chemical Manufacturing.” The production, processing, and wholesale distribution of chemicals and allied products.

1. “Production and processing:” Establishments primarily engaged in 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.

2. “Wholesaling:” Establishments primarily engaged in the merchant wholesale distribution of chemicals and allied products (except agricultural and medicinal chemicals, paints and varnishes, fireworks, and plastics materials and basic forms and shapes).

3. “Petrochemical Manufacturing:” Establishments primarily engaged in (1) manufacturing acyclic (i.e., aliphatic) hydrocarbons such as ethylene, propylene, and butylene made from refined petroleum or liquid hydrocarbons, (2) manufacturing cyclic aromatic hydrocarbons such as benzene, toluene, styrene, xylene, ethyl benzene, and cumene made from refined petroleum or liquid hydrocarbons, and/or (3) manufacturing methyl alcohol (methanol) from natural gas, coal, or other petroleum based feedstock. NAICS 325110

4. “Explosives Manufacturing:” Establishments primarily engaged in manufacturing explosives.

5. “Fertilizer Manufacturing:” Establishments primarily engaged in one or more of the following: (1) manufacturing nitrogenous or phosphatic fertilizer materials; ~~(2) manufacturing fertilizers from sewage or animal waste;~~ (2) manufacturing nitrogenous or phosphatic materials and mixing with other ingredients into fertilizers; ~~(4) mixing ingredients made elsewhere into fertilizers;~~ and (3) formulating and preparing pesticides and other agricultural chemicals.

These definitions and use classifications do not apply to uses that are otherwise defined herein as “major fossil fuel facilities,” or “renewable fuel production facilities.”

This modification ensures that methanol production is included in the petrochemical category. While methanol production can use natural gas as a feedstock, the NAICS classifications treat it as a separate chemical category from other petrochemical manufacturing.

This modification addresses concerns related to potential unintended impacts to TAGRO production. These amendments would limit the definition to the primary areas of concern: nitrogen and phosphorous manufacturing and pesticide production. This would exclude biosolids programs and compost mixing.

This modification addresses concerns that a use prohibited under “major fossil fuel production” could be permitted as “chemical manufacturing.”

➤ **Proposed Amendments to TMC 13.05.010 Conditional Use Permits and Title 19 Chapter 2.1.7.f Shoreline Conditional Use Permits:**

~~*New* 13.05.010.A.23 Chemical Manufacturing, Processing, and Wholesale Distribution. The Hearings Examiner will seek input from the Fire Chief, Tacoma-Pierce County Health Department, Puyallup Tribe of Indians, and any other subject matter experts necessary to determine the potential risks and impacts of the proposed facility, as well as appropriate mitigation measures.~~

- ~~1.— A management plan may be required. The Hearings Examiner may determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, spill prevention, and other factors may be required;~~
- ~~2.— The nature of the materials produced and/or the scale of manufacturing operations may be limited in order to minimize the degree and severity of risks to public health and safety;~~
- ~~3.— Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned.~~
- ~~4.— The lot is located so that large concentrations of people, particularly in residential and commercial areas, are not exposed to unreasonable adverse impacts.~~
- ~~5.— The lot is located, and the use can be appropriately mitigated, to avoid any adverse impacts on HUD funding for affordable housing and community development in adjacent residential and mixed-use areas. The City will consider the methodology for Acceptable Separation Distances as published by the Department of Housing and Urban in determining appropriate separation distances and on-site mitigation measures.~~
- ~~6.— All reasonable steps are taken to avoid and minimize adverse impacts to fish and wildlife, including impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands. All impacts that cannot be avoided can be sufficiently mitigated or compensated so as to achieve no net loss of ecological functions over time;~~
- ~~7.— All reasonable steps are taken to avoid, minimize, and compensate for adverse social and economic impacts, including impacts on recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;~~
- ~~8.— The finished product as packaged for sale or distribution shall be in such a form that product handling and shipment does not constitute a significant public health risk.~~

In addition to the general conditional use criteria, Chemical Manufacturing, Processing, and Wholesaling must demonstrate the following when a conditional use permit is required:

a. Consultation:

- Planning and Development Services staff will seek input from the Fire Department, Tacoma-Pierce County Health Department, Puyallup Tribe of Indians, and any other subject matter expert necessary to determine the potential risks and impacts of the proposed facility, as well as appropriate mitigation measures.

b. Public health and safety:

- The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying this criteria the City shall consider impacts to employee-dense businesses in the Tideflats as well as to detention/correctional facilities and people detained within those facilities.
- The lot is located, or the use can be appropriately mitigated, to avoid any adverse impacts on receipt of federal funding for affordable housing and community development in adjacent residential and mixed-use areas, with particular attention given to Trust Lands of the Puyallup Tribe of Indians. The City will consider the current methodology for Acceptable Separation Distances as published by the Department of Housing and Urban Development in determining appropriate separation distances and on-site mitigation measures for this purpose.
- The Applicant shall submit a management plan. The City will determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, spill prevention, and other factors may be required.
- The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.
- The proposed facility shall meet a minimum 50% reduction in lifecycle GHG per Clean Air Act at the time of occupancy and 80% reduction by 2050;

c. Emergency services and risk management:

- The project shall not result in any increased risk of spill within the waters of Puget Sound and Commencement Bay. Updated spill response and emergency response plans shall be provided with the application, for review by all appropriate agencies;
- Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned;

The following language replaced the prior draft in response to: 1. Technical comments and edits proposed by the Port of Tacoma, 2. Commonality of potential impacts between Chemical Manufacturing and Renewable Fuels, 3. To improve the organization of criteria to group criteria by potential risk and applicability.

- Permit applicant to provide proof of insurance naming City of Tacoma as additional insured.
- Any adverse impacts to emergency services or increased demands for emergency services necessary to ensure the health and safety of employees and surrounding communities shall be mitigated concurrently with the proposed use or development.

d. Shoreline Resources and Shorelines of Statewide Significance.

For uses within the shoreline, with a shoreline facility, or that propose to transport products and materials via marine vessel, the following criteria apply, with consideration given to the potential off-site impacts resulting from transport:

- There will be no likely long-term significant adverse impacts to shoreline resources or uses, or shorelines of statewide significance;
- All feasible steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
- All feasible steps are taken to avoid and minimize adverse impacts to fish and wildlife, including impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands. All impacts that cannot be avoided can be sufficiently mitigated or compensated so as to achieve no net loss of ecological functions over time.

Proposed Amendments 5: High Impact Uses

➤ **Proposed Amendments to TMC 13.01 Definitions and Title 19 Shoreline Master Program Chapter 10:**

“High Impact Use”

Means any Type-H Occupancy when the primary use classification is allowed in the base zoning district. ~~where the business activity hazardous materials are present in quantities greater than 2,500 pounds of solids, 275 gallons of liquids, or 1,000 cubic feet of gas at any time, and~~. This use classification does not apply to uses that are otherwise defined herein as “chemical manufacturing,” “major fossil fuel facilities,” or “renewable fuel facilities.”

These modifications do the following: 1. Clarify that the land use trigger is use and development, not business activity, 2. Ensure that there is definitional clarification that this category does not also apply to the identified related uses, 3. Change the trigger for this use classification from set quantities of hazardous materials, to rely on Type-H Occupancy for hazardous materials.

➤ **Proposed Amendments to TMC 13.05.010 Conditional Use Permits and Title 19 Chapter 2.1.7.f Shoreline Conditional Use Permits:**

New High Impact Uses

In addition to the general conditional use criteria, the following apply:

a. ~~The lot is located so that large concentrations of people, particularly in residential and commercial areas, are not exposed to unreasonable adverse impacts.~~ The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying these criteria the City shall consider impacts to Trust Lands of the Puyallup Tribe of Indians, employee-dense businesses in the Tideflats, as well as detention/correctional facilities and people detained within those facilities.

- A management plan may be required. The Hearings Examiner may determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, and other factors may be required;
- The finished product as packaged for sale or distribution shall be in such a form that product handling and shipment does not constitute a significant public health risk; and
- ~~The nature of the materials produced and/or the scale of manufacturing operations may be limited in order to minimize the degree and severity of risks to public health and safety.~~ The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.

These modifications made in response to Port of Tacoma comments.

Proposed Amendments 7: Major Fossil Fuel Facilities and Renewable Fuel Facilities

➤ **Proposed Amendments to TMC 13.01 Definitions and Title 19 Shoreline Master Program Chapter 10:**

"Facility Emissions" means greenhouse gas emissions associated with fossil fuel refineries, processing, or fossil fuel transshipment facilities based upon

the refining and processing of fossil fuels located within the Port of Tacoma Manufacturing and Industrial Center.

“Fossil fuels” include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.

“Fossil-Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by-products. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

“Greenhouse Gas Emissions” means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), state clean air act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

“Lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

“Major fossil fuel facilities” means:

- Fossil fuel refinery;
- Terminals engaged in the bulk movement of fossil fuels (excluding railyards and marine fueling facilities);
- Natural gas processing: any facility which (i) separates natural gas components to recover usable natural gas liquids (i.e., liquefied petroleum or natural gas), or (ii) produces natural gas suitable for transport (i.e., pipeline quality dry natural gas), or (iii) processes natural gas to create methanol or other chemical products.
- Bulk storage and processing of one type of fossil fuel, or a combination of multiple types of fossil fuels, in excess of one million gallons.

“Renewable Fuel” means fuels that are synthesized from renewable energy sources, such as wind and solar, those approved by the US Environmental Protection Agency (EPA) Renewable Fuels Standard Program and hydrogen fuels (when produced with renewable processes), that result in a lifecycle greenhouse gas emission reduction of at least 50% or more under the Federal Clean Air Act, until such time as a state or regional renewable fuel standard is adopted. Upon adoption of a state or regional standard, the state standard most directly scaled to Tacoma will be used to define the use classification. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State Department of Ecology or US EPA.

This modification allow ssome flexibility in applying this definition to account for state or regional fuel standards.

“Renewable Fuel Facilities” means

- A Renewable Fuel Refinery: a facility that processes or produces renewable fuels, excluding Small Fossil or Renewable Storage and Distribution Facilities.
- Shipment and Trassshipment facilities: the process of off-loading of fuel materials, refined or unrefined, refinery feedstocks, products or by products, from one transportation facility and loading it onto another transportation facility for the purposes of transporting such products into or out of the City of Tacoma. Examples of transportation facilities include ship, truck, or freight car.
- Bulk storage of one type of renewable fuel, or a combination of multiple types of renewable fuels, in excess of two one million gallons.

This modification ensures consistency in the volume threshold for bulk storage.

“Small Fossil or Renewable Fuel Storage and Distribution Facilities” means: Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels and/or Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, including facilities for vessel and vehicle fueling, and that does not meet the definition of a fossil or renewable fuel refinery, or fossil or renewable fuel transshipment facilities

This definition deleted as it was not used as a use category in its own right.

➤ **Proposed Amendments to TMC 13.05.010 Conditional Use Permits and Title 19 Chapter 2.1.7.f Shoreline Conditional Use Permits:**

***New* ~~Major Fossil Fuel Facilities and Renewable Fuel Facilities~~**

~~In addition to the general conditional use criteria, new or expansion of Major Fossil Fuel Facilities and Renewable Fuel Facilities must demonstrate the following:~~

- ~~1. There is a demonstrated significant local, state, or national need for the proposed use or activity;~~

- ~~2. There is no reasonable alternative to meet the public need for the proposed use or activity;~~
- ~~3. There will be no likely long-term significant adverse impacts to shoreline resources or uses or state waters;~~
- ~~4. All feasible steps are taken to avoid and minimize adverse environmental impacts.~~
- ~~5. All feasible steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;~~
- ~~6. Compensation is provided to mitigate adverse impacts to shoreline resources or uses;~~
- ~~7. The lot is located so that large concentrations of people, particularly in residential and commercial areas, are not exposed to unreasonable adverse impacts.~~
- ~~8. The project shall not result in any increased risk of spill within the waters of Puget Sound and Commencement Bay. Updated spill response and emergency response plans shall be provided with the application, for review by all appropriate agencies.~~
- ~~9. Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned;~~
- ~~10. The proposed facility shall meet a minimum 50% reduction in lifecycle GHG per Clean Air Act at the time of occupancy and 80% reduction by 2050.~~
- ~~11. Permit applicant to provide proof of insurance naming City of Tacoma as additional insured.~~

In addition to the general conditional use criteria, ~~new or expansion of Major Fossil Fuel Facilities and~~ Renewable Fuel Facilities must demonstrate the following when a conditional use permit is required:

e. Consultation:

- Planning and Development Services staff will seek input from the Fire Department, Tacoma-Pierce County Health Department, Puyallup Tribe of Indians, and any other subject matter expert necessary to determine the potential risks and impacts of the proposed facility, as well as appropriate mitigation measures.

f. Public health and safety:

- The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying this criteria the City shall consider impacts to employee-dense businesses in the Tideflats as well as to detention/correctional facilities and people detained within those facilities.

The Conditional Use criteria for Fossil Fuels and Renewable Fuels were amended to address the following:

1. Technical comments from Port of Tacoma,
2. Concerns that the CUP language allowed expansion of fossil fuel uses, contradicting other code sections,
3. To remove fossil fuels from the applicability and therefore to streamline criteria,
4. To re-organize the criteria according to the potential impact and risk. These changes were made consistent with the proposed amendments to the CUP for chemical uses to ensure consistency.

- The lot is located, or the use can be appropriately mitigated, to avoid any adverse impacts on receipt of federal funding for affordable housing and community development in adjacent residential and mixed-use areas, with particular attention given to Trust Lands of the Puyallup Tribe of Indians. The City will consider the current methodology for Acceptable Separation Distances as published by the Department of Housing and Urban Development in determining appropriate separation distances and on-site mitigation measures for this purpose.
- The Applicant shall submit a management plan. The City will determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, spill prevention, and other factors may be required.
- The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.
- The proposed facility shall meet a minimum 50% reduction in lifecycle GHG per Clean Air Act at the time of occupancy and 80% reduction by 2050;

g. Emergency services and risk management:

- The project shall not result in any increased risk of spill within the waters of Puget Sound and Commencement Bay. Updated spill response and emergency response plans shall be provided with the application, for review by all appropriate agencies;
- Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned;
- Permit applicant to provide proof of insurance naming City of Tacoma as additional insured.
- Any adverse impacts to emergency services or increased demands for emergency services necessary to ensure the health and safety of employees and surrounding communities shall be mitigated concurrently with the proposed use or development.

h. Shoreline Resources and Shorelines of Statewide Significance.

For uses within the shoreline, with a shoreline facility, or that propose to transport products and materials via marine vessel, the following criteria apply, with consideration given to the potential off-site impacts resulting from transport:

- There will be no likely long-term significant adverse impacts to shoreline resources or uses, or shorelines of statewide significance;
- All feasible steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation,

tourism, navigation, air quality, and recreational, commercial, and tribal fishing;

- All feasible steps are taken to avoid and minimize adverse impacts to fish and wildlife, including impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands. All impacts that cannot be avoided can be sufficiently mitigated or compensated so as to achieve no net loss of ecological functions over time.

➤ **Proposed Amendments to TMC 13.06.080 Special Use Standards and Title 19 Shoreline Master Program Chapter 7:**

***New* Subsection: Major Fossil Fuel Facilities and Renewable Fuel Facilities**

1. Applicability: The following standards apply to ~~all existing or proposed Major Fossil Fuel Facilities and Renewable Fuel Production Facilities where allowed in the base zoning district.~~

2. Purpose: The purpose of these standards is to minimize the risk of spill or discharge of fossil fuels into the Puyallup River or marine waters; to support a reduction in greenhouse gas emissions and a transition to renewable fuel and energy production consistent with Federal, state and local targets; to retain land use flexibility to support core port container activities; to avoid and minimize any impacts to adjacent communities from fire, explosion, or increased air emissions resulting from facility expansion; and to protect and preserve fish and wildlife habitat areas to ensure viable Tribal fisheries consistent with Treaty fishing rights.

3. Use Standards:

a. New major fossil fuel facilities are prohibited.

b. Existing major fossil fuel facilities, legally permitted at the time of adoption of this ordinance shall be considered permitted uses, subject to the following limitations:

(1) Expansion (~~non-capacity~~) of existing facilities. Existing uses may conduct repairs, improvements, maintenance, modifications, remodeling or other changes that do not demonstrably increase facility ~~refining, processing or storage~~ capacity, including but not limited to the following, provided that a conditional use permit is not required:

- Accessory and appurtenant buildings and structures.
- Office space.

- Parking lots.
- Radio communications facilities.
- Security buildings, fire stations, and operation centers.
- Storage buildings.
- Routine maintenance and repair.
- Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local regulations.
- Temporary trailers.
- Heating and cooling systems.
- Cable installation.
- Information technology improvements.
- Continuous emissions monitoring systems or analyzer shelters.
- Wastewater and stormwater treatment facilities.
- Replacement and upgrading of existing equipment.
- Safety upgrades.
- Any other non-capacity project that is necessary to the continued viability of a legally established use.

(2) Improvements requiring a conditional use:

(a) Normal maintenance and repair:

(a) A Conditional Use Permit, 13.05.010.A.25, is required in the following circumstances

- Normal replacement of any storage tank in excess of 1428 barrels (60,000 gallons, the SEPA threshold)
- Modification of any storage tank to change the type of fossil fuel stored in the tank.
- Replacement or other modification of any transshipment or transportation facility.
- In no circumstance shall the normal maintenance and repair activity result in an increase in the storage, processing, or refining capacity of the facility.

(b) Where a Major Fossil Fuel Facility provides direct-to-ship fueling, new development that is necessary to support marine fueling may be allowed subject to a conditional use permit so long as overall facility storage and refining capacity does not increase.

(3) Prohibited improvements:

Marine fueling terminals are not included in the major fossil fuel facility definition, but some major fossil fuel facilities also provide direct to ship fueling. Marine fueling is a core element of maintaining a viable port. As such, this allowance clarifies that major fossil fuel uses can add equipment and facilities that directly support the ability to fuel vessels, while continuing to prohibit expansion of storage and refining.

- New driveways, private rail sidings, docks, piers, wharves and floats;
- Site or facility improvements that would increase the capacity of a driveway, private rail siding, dock, pier, wharf or float;
- ~~or storage tanks.~~
- New storage tanks, refining, or processing equipment and facilities, except for normal maintenance and repair.

(4) Projects-Improvements are limited to property owned and occupied by the use as of the effective date of this ordinance.

(5) Change of Use:

(a) An existing Major Fossil Fuel Facility may change use to a Renewable Fuel Production Facility, subject to a Conditional Use Permit.

(b) A change of use of a Renewable Fuel Production Facility ~~Refinery or Renewable Fuel Transshipment Facilities~~ to a Fossil Fuel Facility inside the boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to CUP 13.05.010.A.25. Other changes of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are is prohibited.

This modification ensures consistency between the first and second bullet point and groups storage tanks with refining and processing equipment.

This modification addresses concerns that this allowance opens the door for projects to be permitted as renewable fuel facilities only to later convert to fossil fuel facilities.

***New* Subsection – Proposed**

Renewable Fuel Facilities

1. Renewable Fuel Facilities are allowed, subject to a Conditional Use Permit and the criteria in 13.05.010.A.25:

2. ~~New or expansion of existing Major Fossil Fuel Facilities and “Renewable Fuel Production Facilities”~~ shall meet the following special use standards:

a. Mitigation for local greenhouse gas impacts calculated consistent with the definition of facility emissions in TMC 13.01.060:

(1) Assessment: Greenhouse gas emissions impacts shall be assessed using current valid modeling techniques.

(2) Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset through mitigation projects that provide real and quantifiable greenhouse gas mitigation.

(3) Location: Greenhouse gas emissions offsets for local impacts shall be located in the following order of preference:

i. Within the City of Tacoma;

ii. Within the Puyallup River Watershed;

This Special Use section serves two primary functions: 1. Defining what types of improvements Major Fossil Fuel Facilities are allowed, 2. Defining mitigation and reporting requirements for new or expanded facilities.

The Commission deleted fossil fuel facilities since since the proposal would prohibit expansion. If no expansion of refining or storage is allowed, then the City lacks the permit trigger to apply these standards.

- iii. Within Pierce County;
- iv. Within the Central Puget Sound region, including Pierce County, Kitsap County, Snohomish County, and King County.

b. The applicant shall provide annual reporting of the following:

- The number of vessel transfers of ~~crude oil or other fossil or~~ renewable fuel, both inbound and outbound from the site, the type and quantity of products transferred, and the product destination.
- The number of rail cars transporting ~~crude oil, fossil fuels, or~~ renewable fuels, both to and from the site, including a description of the product, volume, and destination.
- The number of trucks transporting ~~fossil or~~ renewable fuel, both to and from the site, including a description of the product, volume, and destination.
- A description of on-site storage capacity including the number of tanks, tank volumes, and products.
- A description of all facility emissions for previous five years and a three-year forecast.

Planning Commission Modifications made to the Proposed Amendments on April 7, 2021, in response to public comments.

Conditional Use Criteria

23. Chemical Manufacturing, Processing, and Wholesale Distribution

In addition to the general conditional use criteria, Chemical manufacturing, processing, and wholesale distribution must demonstrate the following when a conditional use permit is required:

i. Consultation:

- Planning and Development Services staff will seek input from the Tacoma Fire Department, Tacoma-Pierce County Health Department, Tacoma Community and Economic Development Department, Puyallup Tribe of Indians, and any other subject matter expert necessary to determine the potential risks and impacts of the proposed facility, as well as appropriate mitigation measures.

j. Public health and safety:

- The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying this criteria the City shall consider impacts to employee-dense businesses in the Tideflats as well as to detention/correctional facilities and people detained within those facilities.
- The lot is located, or the use can be appropriately mitigated, to avoid any adverse impacts on receipt or utilization of federal funding for affordable housing and community development in adjacent residential and mixed-use areas, with particular attention given to Trust Lands of the Puyallup Tribe of Indians. The City will consider the current methodology for Acceptable Separation Distances as published by the Department of Housing and Urban Development in determining appropriate separation distances and on-site mitigation measures for this purpose.

These modifications were made in response to comments from Community and Economic Development Department, to ensure the Department is consulted as part of the permit process and to ensure that impacts to utilization of HUD funds are considered.

- The applicant shall submit a management plan. The City will determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, spill prevention, and other factors may be required.
- The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.

k. Emergency services and risk management:

- The project shall not result in any increased risk of spill within the waters of Puget Sound and Commencement Bay. Updated spill response and emergency response plans shall be provided with the application, for review by all appropriate agencies;
- Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned;
- Permit applicant to provide proof of insurance naming City of Tacoma as additional insured.
- Any adverse impacts to emergency services or increased demands for emergency services necessary to ensure the health and safety of employees and surrounding communities shall be mitigated concurrently with the proposed use or development.

l. Shoreline Resources and Shorelines of Statewide Significance.

For uses within the shoreline, with a shoreline facility, or that propose to transport products and materials via marine vessel, the following criteria apply, with consideration given to the potential off-site impacts resulting from transport:

- There will be no likely long-term significant adverse impacts to shoreline resources or uses, or shorelines of statewide significance;
- All feasible steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
- All feasible steps are taken to avoid and minimize adverse impacts to fish and wildlife, including impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands. All impacts that cannot be avoided can be sufficiently mitigated or compensated so as to achieve no net loss of ecological functions over time.

24. High Impact Uses

In addition to the general conditional use criteria, the following apply:

a. The lot is located, or the use can be appropriately mitigated, to avoid any adverse impacts on receipt or utilization of federal funding for affordable housing and community development in adjacent residential and mixed-use areas, with particular attention given to Trust Lands of the Puyallup Tribe of Indians. The City will consider the current methodology for Acceptable Separation Distances as published by the Department of Housing and Urban Development in determining appropriate separation distances and on-site mitigation measures for this purpose.

b. The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying these criteria the City shall consider impacts to Trust Lands of the Puyallup Tribe of Indians, employee-dense businesses in the Tideflats, as well as detention/correctional facilities and people detained within those facilities:

- A management plan may be required. The Hearings Examiner may determine the level of detail to be disclosed in the plan based on the probable impacts and/or the

Tideflats and Industrial Land Use Amendments

scale of the effects. Discussion of materials handling and storage, odor control, transportation, and other factors may be required;

- The finished product as packaged for sale or distribution shall be in such a form that product handling and shipment does not constitute a significant public health risk; and
- The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.

25. Renewable Fuel Facilities - Major.

In addition to the general conditional use criteria, Renewable Fuel Facilities must demonstrate the following when a conditional use permit is required:

a. Consultation:

- Planning and Development Services staff will seek input from the Tacoma Fire Department, Tacoma-Pierce County Health Department, City of Tacoma Community and Economic Development Department, Puyallup Tribe of Indians, and any other subject matter expert necessary to determine the potential risks and impacts of the proposed facility, as well as appropriate mitigation measures.

b. Public health and safety:

- The property on which the proposed facility is to be located must not expose large concentrations of people, particularly in residential and commercial areas, to unreasonable adverse impacts. In applying this criteria the City shall consider impacts to employee-dense businesses in the Tideflats as well as to detention/correctional facilities and people detained within those facilities.
- The lot is located, or the use can be appropriately mitigated, to avoid any adverse impacts on receipt and utilization of federal funding for affordable housing and community development in adjacent residential and mixed-use areas, with particular attention given to Trust Lands of the Puyallup Tribe of Indians. The City will consider the current methodology for Acceptable Separation Distances as published by the Department of Housing and Urban Development in determining appropriate separation distances and on-site mitigation measures for this purpose.
- The Applicant shall submit a management plan. The City will determine the level of detail to be disclosed in the plan based on the probable impacts and/or the scale of the effects. Discussion of materials handling and storage, odor control, transportation, spill prevention, and other factors may be required.
- The City may impose conditions of approval limiting the nature of the materials produced and/or the scale of manufacturing operations in order to minimize the degree and severity of risks to public health and safety.
- The proposed facility shall meet a minimum 50% reduction in lifecycle GHG per Clean Air Act at the time of occupancy and 80% reduction by 2050;

c. Emergency services and risk management:

- The project shall not result in any increased risk of spill within the waters of Puget Sound and Commencement Bay. Updated spill response and emergency response plans shall be provided with the application, for review by all appropriate agencies;
- Plans and sufficient, realistic performance bonding for decommissioning and failure incidents are provided to ensure that the site will be rehabilitated after the use or activity is completed, terminated, or abandoned;
- Permit applicant to provide proof of insurance naming City of Tacoma as additional insured.

- Any adverse impacts to emergency services or increased demands for emergency services necessary to ensure the health and safety of employees and surrounding communities shall be mitigated concurrently with the proposed use or development.

d. Shoreline Resources and Shorelines of Statewide Significance.

For uses within the shoreline, with a shoreline facility, or that propose to transport products and materials via marine vessel, the following criteria apply, with consideration given to the potential off-site impacts resulting from transport:

- There will be no likely long-term significant adverse impacts to shoreline resources or uses, or shorelines of statewide significance;
- All feasible steps are taken to avoid and minimize adverse social and economic impacts, including impacts on aquaculture, recreation, tourism, navigation, air quality, and recreational, commercial, and tribal fishing;
- All feasible steps are taken to avoid and minimize adverse impacts to fish and wildlife, including impacts on migration routes and habitat areas of species listed as endangered or threatened, environmentally critical and sensitive habitats such as breeding, spawning, nursery, foraging areas and wetlands. All impacts that cannot be avoided can be sufficiently mitigated or compensated so as to achieve no net loss of ecological functions over time.

26. Non-Industrial Uses in the Port of Tacoma Manufacturing and Industrial Center

In addition to the general conditional use criteria in TMC 13.05.010.A, non-industrial conditional uses in the Port of Tacoma Manufacturing and Industrial Center shall meet the following criteria. In considering conditional use permit applications, the City will consult with the Puyallup Tribe of Indians and Port of Tacoma to determine potential off-site impacts on port/industrial facilities and operations, and to identify appropriate mitigation measures.

- The location will not significantly interfere with container shipping facilities. Mitigation may be required to avoid and minimize disruptions to nearby industrial activity.
- The location is buffered from potentially high-impact industrial facilities.
- The use will incorporate design elements to reduce impact on employees and customers from adjacent or nearby industrial activities.

G. Major Fossil Fuel Facilities and Renewable Fuel Facilities .^[1]

1. Applicability: The following standards apply to all “Fossil Fuel Facilities - Major” and “Renewable Fuel Facilities – Major.”

2. Purpose: The purpose of these standards is to minimize the risk of spill or discharge of fuels into the Puyallup River or marine waters; to support a reduction in greenhouse gas emissions and a transition to renewable fuel and energy production consistent with Federal, state and local targets; to avoid and minimize any impacts to adjacent communities from fire, explosion, or increased air emissions resulting from facility expansion; and to protect and preserve fish and wildlife habitat areas to ensure viable Tribal fisheries consistent with Treaty fishing rights.

3. Baseline established.

a. The baseline for refining, storage, transportation, and transshipment facilities is established by the following information available prior to June 2, 2021:

(1) Crude oil refining baseline capacity shall be established in the June 2020 U.S. Energy Information Administration Refinery Capacity Report as measured in atmospheric crude distillation barrels per day (<https://www.eia.gov/petroleum/refinerycapacity/>) or comparable.

^[1] Code Reviser’s note: Previously codified as 13.06.580 (Interim Industrial Use Restrictions); relocated to 13.06.080 per Ord. 28613 Ex. G; passed Sept. 24, 2019. Prior legislation: Ord. 28470 Ex. D; passed Nov. 21, 2017.

The baseline for other product refining, including liquefied natural gas, shall be based on the documented refining capacity in the most recent local permits issued for the facility.

(2) Storage baseline capacity shall be established using Washington Department of Ecology industrial section permits and oil spill prevention plans.

(3) Transshipment and transportation facility baseline is established through the most recent spill prevention plans approved by the Department of Ecology or where a local permit documenting such facilities has been approved more recently.

(4) If an existing facility does not have an established refining or storage baseline from a past industrial section permit or spill prevention plan, the baseline must be established as part of a permit application.

4. Fossil Fuel Facilities - Major

a. New “Fossil Fuel Facilities – Major” are prohibited.

b. Existing facilities, legally permitted at the time of adoption of this ordinance, shall be considered permitted uses, subject to the following limitations:

(1) Existing facilities shall not exceed the established baseline as of June 2, 2021.

(2) Prohibited improvements:

- New driveways, private rail sidings, docks, piers, wharves and floats.
- Site or facility improvements that would increase the capacity of a driveway, private rail siding, dock, pier, wharf or float.
- New storage tanks, refining or processing equipment and facilities.

(3) Expansion of existing facilities. Except for those improvements prohibited in Subsection G.4.b.(1) above, existing uses may address existing deficiencies, conduct repairs, improvements, maintenance, modifications, and remodeling, or other changes that do not demonstrably increase facility refining, processing or storage capacity, including changes to fuel products stored or refined on-site, provided that a conditional use permit is not otherwise required and that the improvements do not increase storage or refining in excess of the established baseline.

- ~~• Accessory and appurtenant buildings and structures.~~
- ~~• Office space.~~
- ~~• Parking lots.~~
- ~~• Radio communications facilities.~~
- ~~• Security buildings, fire stations, and operation centers.~~
- ~~• Storage buildings.~~
- ~~• Routine maintenance and repair.~~
- ~~• Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local regulations.~~
- ~~• Temporary trailers.~~
- ~~• Heating and cooling systems.~~
- ~~• Cable installation.~~
- ~~• Information technology improvements.~~
- ~~• Continuous emissions monitoring systems or analyzer shelters.~~
- ~~• Wastewater and stormwater treatment facilities.~~
- ~~• Replacement and upgrading of existing equipment.~~

Modifications to the special use standards were made in response to the following concerns: 1. That requiring a Conditional Use Permit for maintenance and repair could cause detrimental impacts or result in disinvestment, 2. That a conditional use for shifting existing facilities from a fossil fuel to renewable fuel could cause a barrier to transitioning to renewable fuels.

- ~~Safety upgrades.~~
- ~~Any other non capacity project that is necessary to the continued viability of a legally established use.~~

~~(3) Improvements requiring a conditional use permit (subject to the general conditional use permit criteria in TMC 13.05.010):~~

~~(a) Normal maintenance and repair:~~

- ~~Normal replacement of any storage tank in excess of 1428 barrels (60,000 gallons, the SEPA threshold),~~
- ~~Modification of any storage tank to change the type of fuel stored in the tank.~~
- ~~Replacement or other modification of any transshipment or transportation facility.~~
- ~~In no circumstance shall the normal maintenance or repair activity result in an increase in the storage, processing, or refining capacity of the facility.~~

~~(3) Where a “Fossil Fuel Facility – Major” provides direct-to-vessel fueling, new development that is necessary to support vessel fueling may be allowed subject to a conditional use permit (TMC 13.05.010.A General Criteria) so long as overall facility storage and refining does not exceed the established baseline.~~

~~(4) Projects Improvements are limited to property owned and or occupied by the use as of the adoption of this ordinance.~~

~~(5) Change of Use:~~

~~(a) An existing “Fossil Fuel Facility – Major” may change use to a “Renewable Fuel Facility – Major,” subject to a Conditional Use Permit and the general criteria in TMC 13.05.010.A~~

~~(a) The addition of renewable fuel refining or storage facilities to an existing “Fossil Fuel Facility – Major” that exceeds the established fuel baseline shall be permitted as a new “Renewable Fuel Facility – Major” per the requirements of Subsection G.5 Renewable Fuel Facility – Major.~~

~~(b) A change of use of a “Renewable Fuel Facility – Major” to a “Fossil Fuel Facility – Major” is prohibited.~~

~~(5) Baseline monitoring. On an annual basis, Planning and Development Services will evaluate information from the U.S. Energy Information Administration, WA Department of Ecology, Puget Sound Clean Air Agency, as well as from local permits, to ensure compliance with the requirements herein.~~

~~5. Renewable Fuel Facility – Major.~~

~~a. “Renewable Fuel Facilities – Major” are allowed, subject to a Conditional Use Permit and the criteria in 13.05.010.A.25.~~

~~b. New facilities or expansion of existing Renewable Fuel Facilities beyond the established baseline shall meet the following special use standards:~~

~~(1) Mitigation for local greenhouse gas impacts calculated consistent with the definition of facility emissions in TMC 13.01.060:~~

~~i. Assessment: Greenhouse gas emissions impacts shall be assessed using current valid modeling techniques.~~

~~ii. Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset through mitigation projects that provide real and quantifiable greenhouse gas mitigation.~~

~~iii. Location: Greenhouse gas emissions offsets for local impacts shall be located in the following order of preference:~~

Tideflats and Industrial Land Use Amendments

- Within the City of Tacoma;
- Within the Puyallup River Watershed;
- Within Pierce County;
- Within the Central Puget Sound region, including Pierce County, Kitsap County, Snohomish County, and King County.

(2) The applicant shall provide annual reporting of the following:

- The number of vessel transfers of renewable fuel, both inbound and outbound from the site, the type and quantity of products transferred, and the product destination.
- The number of rail cars transporting renewable fuels, both to and from the site, including a description of the product, volume, and destination.
- The number of trucks transporting renewable fuel, both to and from the site, including a description of the product, volume, and destination.
- A description of on-site storage capacity including the number of tanks, tank volumes, and products.
- A description of all facility emissions for previous five years and a three year forecast.