

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>

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		<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>

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	<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).

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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>

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	<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>	

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	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.	

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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>

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	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>

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	<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>

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	<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>

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	<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>

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	<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>

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	<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>	

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	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>

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	<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>

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	<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>

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	<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>

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	<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>

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	<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.

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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>