

October 2, 2017

City of Tacoma Planning Commission

Chair Wamback, Vice-Chair Petersen and Commissioners Waller, Santhuff, McInnis, Edmonds, Woolley, and Strobel

747 Market Street

Tacoma, WA 98402

Dear City of Tacoma Planning Commissioners Wamback, Peterson, Waller, Santhuff, McInnis, Edmonds, Strobel, and Woolley:

In anticipation of the Commission making a final recommendation on the interim tidelflat regulation, we wanted to ensure that there are findings of fact around why we believe the regulations should focus on the imminent and urgent threat of fossil fuels.

2017 City of Tacoma Resolution 39723 made three requests of the Planning Commission pertaining to land use, asking that the processes for the three actions be consolidated into one process. We are interested in the process under Section 2 of the Resolution, related to the Container Port Element (CPE) of the City's Comprehensive Plan. In the resolution, the Planning Commission is

*“requested to immediately begin discussion regarding, and consideration of the need for interim regulations related to the Container Port Element of the Tideflats Subarea while the Subarea planning process is underway, and prior to the Subarea Plan's finalization.”*

This is a two-part request for the Planning Commission: first, an identification or determination of the need for interim regulations in the container port areas of the Tacoma tideflats during the Subarea planning process, and second, a considered discussion of how to address the need for interim regulations, or recommendations.

#### **Determination of Need for Interim Regulations**

To identify whether there is a need for interim regulations, the Planning Commission should determine whether there are urgent threats to the success of the tideflats. A threat would be a potential land use project that would jeopardize the success of the container port and port related industrial areas. Generally, the success of our community or the port and port related industries can be summarized as the ability of our community to thrive and of the port and related industries to generate economic development, create jobs, and reduce environmental contamination. Presumably, expected or anticipated threats to the success of our community and port would be identified and addressed through the Subarea plan process. In contrast, a known and urgent threat would be if those jeopardizing projects are likely to arise prior to the Subarea plan being complete. If an urgent threat is not addressed, the threatening project may be proposed before the Subarea plan is complete, locking Tacoma into a future with a harmful project it doesn't want.

#### **The Need for Interim Regulations on Fossil Fuel Industry**

The Planning Commission has already received compelling information about the urgent threat fossil fuels pose to the tideflats.

- **Health:** The health impacts of fossil fuels range from direct exposure to coal, oil and gas to air pollution associated with its combustion and off-gassing.
  - Fossil fuel terminals and transport add to the air pollution burden already experienced in Puget Sound. Air pollution, “accounts for the majority of air-toxic cancer risks in the Puget Sound area.” That air pollution is associated with increased cancer rates, lower infant birth weight and increased risk of infant respiratory death, impaired pulmonary development in children and adolescents, increased risk of neurodevelopmental disorders in children, increased risk of asthma diagnosis and hospitalizations, and increased overall risk of disease and mortality.”<sup>1</sup>
  - Leaks at natural gas storage facilities have been linked to headaches, nausea and nosebleeds among nearby residents (reports from 2016 methane leak in CA).<sup>2</sup>
  - “Coal pollutants affect all major body organ systems and contribute to four of the five leading causes of mortality in the U.S.: heart disease, cancer, stroke, and chronic lower respiratory diseases.”<sup>3</sup>
- **Safety:** The threat of oil spills, derailments, gas explosions, and coal dust are real. We only need to look to the 15<sup>4</sup> major oil trains that have derailed across North America since July 6, 2013 when a train killed 47 people in Lac Megantic, Quebec.<sup>5</sup> We can also look, today, to the effects of Hurricane Harvey in Houston where the fossil fuel infrastructure has failed and has created a dangerous mix of pollution across the region.
- **Economy:** Oil and coal facilities hurt job growth in Tacoma; because oil trains preempt the railways, the trains our other industries rely on are slowed down,<sup>6</sup> which means Longshoremen and grain elevator staff lose days of work. According to local longshore workers, they lose 3-4 days of work per month due to oil trains. Additionally, according to a new study released, the impacts of fossil fuel pollution and weather extremes is costing the US \$240 billion in health and safety impacts.<sup>7</sup>
- **Urgency:** The fossil fuel industry is aggressively looking to expand its infrastructure and bring more petrochemicals through Washington. The City of Tacoma is a particularly vulnerable area given the deep water port, rail line, pipeline infrastructure, and vacant land.<sup>8</sup> Already, we see an

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<sup>1</sup> WA and OR PSR, [Position Statement on Crude Oil Transport and Storage](https://www.wpsr.org/oil-position-statement): <https://www.wpsr.org/oil-position-statement>

<sup>2</sup> Physicians for Social Responsibility report, “Too dirty, too dangerous: Why health professionals reject natural gas.

<http://www.psr.org/assets/pdfs/too-dirty-too-dangerous.pdf>

<sup>3</sup> Physicians for Social Responsibility report: Coal’s assault on human health. <http://www.psr.org/assets/pdfs/psr-coal-fullreport.pdf>

<sup>4</sup> June 3, 2016 Mosier, Oregon, November 8, 2015 Watertown, WI, July 16, 2015 Culbertson, Montana, May 6, 2015 Heimdal, North Dakota, March 7, 2015: Gogama, Ontario, March 5, 2015 Galena, Illinois, February 17, 2015 Mount Carbon W. Virginia, February 13, 2015 Vandergrift, PA, February 14, 2015 Timmons, Ontario Canada

June 16, 2014 Buhl, Alabama, April 30, 2014 Lynchburg, Virginia, January 7, 2014 Plaster Rock, New Brunswick, December 30, 2013 Casselton, North Dakota, November 8, 2013 Aliceville, Alabama, October 16, 2013 Edmonton, Canada, July 6, 2013 Lac Megantic, Quebec

<sup>5</sup> Article on status of rebuilding in Lac Megantic: <https://globalnews.ca/news/2094045/two-years-later-rebuilding-after-the-lac-megantic-train-derailment/>

<sup>6</sup> <https://www.seattletimes.com/business/oil-trains-crowd-out-grain-shipments-to-nw-ports/>

<sup>7</sup> Sir Robert Watson, Dr. James J McCarthy, and Liliانا Hisas. The Economic Case for Climate Action in the United States. September 2017. Universal Ecological Fund (FEU-US). *Article about the report*: <http://www.reuters.com/article/us-climatechange-usa/weather-extremes-fossil-fuel-pollution-cost-us-240-billion-study-idUSKCN1C22AM>

<sup>8</sup> <http://www.sightline.org/2017/06/20/northwest-targets-communities-threatened-by-fossil-fuels/>

existing facility (US Oil) proposing to expand its facility.<sup>9</sup> For all of these reasons, the Planning Commission should focus the interim regulation on putting an interim ban on new and the expansion of existing fossil fuel facilities. These are the facilities that pose an imminent and urgent threat to the health, safety and welfare of our city.

- **Climate:** Climate change is a legitimate and existential threat to our city and region. The combustion of fossil fuels is exacerbating the impacts on our climate and we must transition away from these damaging sources. By adopting the Environmental Action Plan in 2016, the City of Tacoma recognized this imminent threat and the need to take action. Indeed, through the adoption of the EAP, there was an acknowledgement that, “climate change poses serious threats for life in Tacoma and demands a strong and thorough response.”<sup>10</sup> Allowing an increase in fossil fuel development and expansion of fossil fuel infrastructure within the City is counter to the intent of the EAP and the stated emission goals.

### **Surviving Constitutional Challenge**

The threat of a lawsuit should the City move forward with interim regulations focused on fossil fuels is misguided. While the dormant Commerce Clause of the US Constitution does disallow certain local regulations on economic activity, it is fundamentally about preventing economic protectionism, or favoring local economic interests at the cost of out of state interests. When evaluating a regulation challenged on dormant Commerce Clause grounds, the court evaluates whether the regulation is a protectionist measure or whether it is designed to address legitimate local concerns with only incidental impacts on interstate commerce.

The proposed interim regulations, in so far as they would put a pause on new or expanded fossil fuel facilities, is not about favoring local interests at the expense of out of state interests. New and expanded infrastructure for fossil fuels is an urgent threat and legitimate local concern for the City to regulate, and is absolutely what the City should focus on. Doing so is the best way to proceed on legal grounds. We have included as attachments the recently filed briefs in the Portland case that deal directly with the dormant Commerce Clause as reference, and would direct you to the amicus brief, pages 11-17 for a relevant, concise discussion of this topic.

In conclusion, we urge the City of focus on putting in place, immediately, an interim regulation that bans new fossil fuel infrastructure and the expansion of existing fossil fuel infrastructure in the Tacoma tideflats. There are reasonable and justifiable findings of fact that support this action. By so taking this action, the City will then enable a more thorough and comprehensive Sub-Area Planning process to take place.

Thank you for your time and consideration.

Sincerely,

Center for Sustainable Economy

Citizens for Healthy Bay

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<sup>9</sup><https://aca.accela.com/tacoma/Cap/CapDetail.aspx?Module=Permits&TabName=Permits&capID1=DUB17&capID2=00000&capID3=00BTM&agencyCode=TACOMA&IsToShowInspection>

<sup>10</sup> City of Tacoma Environmental Action Plan. [http://cms.cityoftacoma.org/Sustainability/Tacoma\\_EAP.pdf](http://cms.cityoftacoma.org/Sustainability/Tacoma_EAP.pdf)

Earth Ministry

Fuse

Oregon Physicians for Social Responsibility

Our Wild America

RE Sources for Sustainable Community

Stand.earth

Surfider Foundation, Washington Chapter

Tatoosh Group, Washington State Chapter of the Sierra Club

Washington Environmental Council

Washington Conservation Voters

Washington Physicians for Social Responsibility

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Cc: Mayor Marilyn Strickland

Tacoma City Councilmembers Ibsen, Thoms, Blocker, Campbell, Lonergan, Walker Lee, McCarthy and Mello

Tacoma City Attorney Frosbre

Tacoma Planning Staff