

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LOCALLY INITIATED AMENDMENT TO THE
TACOMA SHORELINE MASTER PROGRAM**

SMP submittal accepted March 8, 2022, Ordinance No. 28786

Prepared by Department of Ecology June 27, 2022

Use of this Document

Ecology's Findings and Conclusions (presented herein as Attachment A), including reference to *Required and Recommended Changes* (Attachment B), provide the factual basis for Ecology's decision on the City of Tacoma's proposed amendment to their Shoreline Master Program. This document is divided into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process; **Conclusions of Law**; and Ecology's **Decision and Effective Date** of the amendment. Attachment B summarizes Ecology's identified required and recommended changes to the SMP amendment.

Brief Description of Proposed Amendment

The City of Tacoma (City) has submitted a locally initiated amendment of their Shoreline Master Program (SMP) to the Washington State Department of Ecology (Ecology) for final review and approval pursuant to RCW 90.58.090 and WAC 173-26-120. The locally initiated SMP amendment is part of a broader proposal to regulate certain industrial uses in the Port of Tacoma/Tideflats area. The broader proposal includes amendments to the City's Land Use Regulatory Code (Title 13) as well as the SMP (Title 19). The majority of lands affected by the City's broader proposal are located outside of shoreline jurisdiction.

FINDINGS OF FACT

Need for amendment

Tacoma comprehensively updated their SMP in October 2013, completed a limited amendment to their SMP in 2016, and completed their periodic review and amendment in 2019. This current amendment is part of a broader proposal that addresses issues centered on the Port of Tacoma/Tideflats area and includes amendments to both the City's Land Use Regulatory Code (Title 13) and the SMP (Title 19).

Background: Subarea Planning Process and Interim Regulations

In 2017, in response to multiple applications and requests to amend the Comprehensive Plan and Land Use Regulatory Code, including requests for zoning and land use process changes in the Tacoma Tideflats and surrounding area, the City Council initiated a subarea planning process.¹ In addition, the City considered and ultimately adopted Interim Regulations to temporarily halt certain uses and development in the Tideflats while the subarea planning process and associated Environmental Impact Statement (EIS) were underway.² The Interim Regulations were part of the City's Land Use Regulatory

¹ Tideflats Subarea Planning Project:

https://www.cityoftacoma.org/government/city_departments/planning_and_development_services/planning_services/current_initiatives_and_projects/tideflats_subarea_plan

² Tideflats Interim Regulations: <https://www.cityoftacoma.org/cms/one.aspx?pageId=132616>

Code (Title 13) only, which includes zoning regulations that apply outside of shoreline jurisdiction.³ No amendments were proposed to the SMP (Title 19) as part of the Interim Regulations.

The Interim Regulations were adopted in November 2017 for a period of one year. The intent at that time was for the subarea planning process to ultimately inform permanent regulations to replace the Interim Regulations. However the subarea planning process suffered delays and between November 2018 and October 2020 the Interim Regulations were extended every six months. With its October 2020 extension, City Council directed staff and the Planning Commission to review the Interim Regulations and recommend Non-Interim Regulations to City Council for consideration.⁴ The Council limited the scope of work to “those regulatory options reviewed in the public record” and further requested the Commission to “review and assess approaches to regulate the expansion of existing uses, and consider new findings of fact, including any lessons learned from permitting in the time since the regulations were put into effect, and changes to baseline conditions.”⁵ The Council requested the recommendations provide clarity and predictability for industry and the community.⁶

Current Amendment: Non-Interim Regulations

The proposed regulations focus on four topics. The first three topics are addressed in amendments to the Land Use Regulatory Code (Title 13). Only the fourth topic is addressed directly with an SMP amendment and is therefore the subject of Ecology’s review. While the City’s proposed expanded notification requirements identified in Issue #1 are located in Title 13 and are technically not part of the SMP, they do apply to the administration of shoreline permits. Issue #4 is addressed through amendments to both the Land Use Regulatory Code (Title 13) and the SMP (Title 19).

1. Expanded notification for heavy industrial permits and land use amendments
2. Conversion of industrial lands in the Port of Tacoma Manufacturing/Industrial Center
3. Residential encroachment on the Port of Tacoma Manufacturing/Industrial Center
4. **Siting of potentially high risk/high impact heavy industrial uses**

SMP provisions to be changed by the amendment as proposed

Tacoma’s SMP is a standalone document containing goals, policies, and regulations adopted into the Tacoma Municipal Code (TMC) as Title 19 Shoreline Master Program.

Below is a summary of the proposed SMP amendment, as formally submitted pursuant to WAC 173-26-110. The amendment that was adopted and submitted to Ecology for final review and approval has been revised substantially from the version of the amendment submitted to Ecology for initial determination of consistency under the joint local/state review process (WAC 173-26-104). A summary of the amendment submitted for initial determination is provided in Ecology’s Initial Determination of Consistency, dated April 26, 2021. The next section of this document, “Amendment and Review History,” details how the amendment evolved over time in response to public comment. The

³ Title 13 does not assign a zoning designation to areas within Tacoma’s shoreline jurisdiction. Instead, Title 19 (the SMP) divides Tacoma’s shoreline jurisdiction into shoreline districts which are zoning districts. Each district has a shoreline environment designation.

⁴ [Ordinance No. 28696](#), adopted October 20, 2020.

⁵ *Ibid.*

⁶ *Ibid.*

subsequent section, “Summary of Issues Identified by Ecology as Relevant to Our Decision,” summarizes Ecology’s approach to our final review in light of this evolution.

Global

Numbering is revised from stand-alone document format to codified format (e.g. “Chapter 1” to “Chapter 19.01”; “7.6” to “19.07.060”).⁷

Chapter 19.02 Administration

1. 2.3.7 Shoreline Conditional Use Permit
 - a. The phrase “unless otherwise specified” is added to the statement that the Director shall be the final approval authority for shoreline conditional use permits (CUPs) [2.3.7.2]
 - b. Chemical Manufacturing, Processing, and Wholesale Distribution [2.3.7.5.a-b]
Additional requirements and review criteria are added for Chemical Manufacturing CUPs, including: a Hearing Examiner decision; required consultation with an array of agencies; and consideration of public health and safety, emergency services and risk management, and shoreline resources and Shorelines of Statewide Significance.

Chapter 19.07 General Use Policies and Regulations

1. 7.2 Prohibited Uses
Revisions add the following to the list of uses prohibited in all shoreline environments: coal facilities; smelting; petrochemical, explosives, and fertilizer manufacturing; and quarrying.
2. 7.6.2 Port/Industrial Use – Regulations
 - a. A new section titled “Fuel Facilities” is added along with provisions addressing applicability and purpose. A third provision establishes a baseline for refining capacity, storage capacity, and transshipment and transportation facilities based on certain information⁸ available as of November 16, 2021 (the adoption date of the ordinance). [B.1, B.2, B.3]
 - b. Special use standards are added for new facilities or the expansion of existing facilities beyond the baseline established in (a) above. These include a requirement and standards for mitigation for local greenhouse gas impacts from facility emissions; a requirement for annual reporting of vessel transfers of fuel, rail cars and trucks transporting fuel, on-site storage capacity, and facility emissions; and a requirement for proof of financial assurance. [B.4]
 - c. In addition to the standards in (a) and (b) above, new standards are added for “Petroleum Fuel Facilities:” [B.5]
 - i. New facilities are prohibited.

⁷ Note that while the City revised numbering throughout the document for its clean-copy, published version of Title 19, the strike-through/underline version adopted by Council and submitted to Ecology revised only chapter-level numbering. This document therefore uses the stand-alone document format numbering for all sub-chapter references to the SMP.

⁸ The baseline is established using the following sources available as of November 16, 2021: (1) U.S. Energy Information Administration Refinery Capacity Report (June 2020) for crude oil refining capacity, and for other product refining, including liquefied natural gas, the documented capacity in the most recent local permits issued for the facility; (2) For storage baseline capacity, Department of Ecology industrial section permits and oil spill prevention plans; and (3) for transshipment and transportation facility baseline, the most recent spill prevention plans approved by the Department of Ecology, or a local permit documenting such facilities where one has been approved more recently.

- ii. Expansion of and improvements to existing facilities are allowed in limited circumstances, including: to create the maximum capacity already proposed and evaluated under an Environmental Impact Statement and for which the City has accepted full mitigation funds; or when requested in writing by the Department of Defense.
- iii. Certain improvements are prohibited, including new or expanded driveways, private rail sidings, docks, piers, wharves, floats, storage tanks, and refining or processing facilities, except that new infrastructure that supports existing direct-to-vessel fueling may be allowed subject to the established baseline.
- iv. An enhanced SEPA checklist is required for replacement of and improvements to existing petroleum infrastructure.
- v. The City will conduct annual monitoring to ensure compliance with these standards.
- d. In addition to the standards in (a) and (b) above, new standards are added for “Cleaner Fuel Infrastructure:” [B.6]
 - i. New and expanded cleaner fuel infrastructure may be allowed subject to an enhanced SEPA checklist.
 - ii. New cleaner fuel infrastructure may not be used for production, storage, transportation or transshipment of petroleum.
 - iii. Expansion of petroleum storage is limited to 15% above the established baseline.

Chapter 19.09 District-Specific Regulations

1. Table 9-2 Shoreline Use and Development Standards

In the current SMP, the table defines use allowances for industrial development according to three broad categories: Water-dependent, Water-related, and Nonwater-oriented. Nonwater-oriented industrial development requires a conditional use permit (“CU”) in the Port Industrial Area district (S-10) (High Intensity SED) and is prohibited (“N”) in the Marine Waters of the State district (S-13) (Aquatic SED). Water-related industrial development is allowed outright (“P”) in the S-10 district and prohibited (“N”) in the S-13 district. Water-dependent industrial development is allowed outright (“P”) in both districts.

The proposed amendment adds the following uses, and allowances by Shoreline District, to the table:

- a. Coal facilities – Prohibited in all Shoreline Districts.
- b. Chemical manufacturing, processing, and wholesale – Primary uses “N” in all Shoreline Districts; supportive water-dependent facilities “P” in the S-10 district and S-13 district. “N” in all other Shoreline Districts. Petrochemical manufacturing, explosives manufacturing, and fertilizer manufacturing “N” in all Shoreline Districts.
- c. Smelting – “N” in all Shoreline Districts.
- d. Petroleum fuel facility – New facilities “N” in all Shoreline Districts; Existing facilities and expansion of existing facilities “P” in the S-10 and S-13 districts, subject to the new standards in 7.6.
- e. Cleaner fuel infrastructure – Primary uses “N” in all Shoreline Districts; Water-dependent facilities and all accessory facilities “P” in the S-10 and S-13 districts.
- f. Quarrying is added to mining and quarrying. No change is made to the allowances (“N” in all Shoreline Districts).

2. Table Notes 34, 35, 36, and 37 are added clarifying allowances and prohibitions consistent with the above.

Chapter 19.10 Definitions

The following terms are added: chemical manufacturing, cleaner fuels, cleaner fuel infrastructure – expanded, cleaner fuel infrastructure – new, coal facilities, Department of Defense, enhanced SEPA review, greenhouse gas emissions, greenhouse gas emissions – facility emissions, greenhouse gas emissions – lifecycle emissions, green hydrogen, mining and quarrying, petroleum, petroleum fuel facility, petroleum – storage capacity, smelting.

Related amendments

As noted above, the proposed Non-Interim Regulations address four topics. The first topic, expanded notification for heavy industrial permits and land use amendments, includes revisions to Title 13 that apply to shoreline permits. The proposed revisions add a new subsection (I) to TMC 13.05.070, Notice process. Under this section, all shoreline permits involving uses classified as “heavy industry” are subject to expanded noticing requirements, including additional notified parties and a notification distance of 2,500 feet from the boundaries of the Port of Tacoma Manufacturing/Industrial Center.

Amendment and Review History

The Tacoma Planning Commission held a Scoping Hearing on the proposal to develop Non-Interim Regulations on December 2, 2020 and developed a Final Scope of Work including a public outreach and engagement plan and proposed timeline for the project.⁹

The City’s existing Tideflats Interim Regulations [website](#)¹⁰ was used to post meeting information and draft documents throughout the amendment process. All public meetings were held virtually using Zoom. The City also created, maintained, and utilized a Tideflats Listserv to keep interested parties informed and engaged.

Joint local/state review

In a series of public workshops between January 6 and February 3, 2021, the Planning Commission met to discuss the proposal and provide staff direction on the amendment language.

The City and Ecology held a joint local/state comment period on the proposed SMP amendment following procedures outlined in WAC 173-26-104. The 30-day comment period began on February 4, 2021 and continued through March 8, 2021. A joint public hearing before the Planning Commission was held on March 3, 2021. Ecology staff attended.

The City provided notice to local interested parties, including separate notice and an invitation for consultation to the Puyallup Tribe of Indians. Ecology distributed notice of the joint comment period to state interested parties on February 4, 2021, including separate notice and an invitation for consultation to the Muckleshoot Indian Tribe, Puyallup Tribe of Indians, Nisqually Indian Tribe, and the Steilacoom Tribe.

⁹ [Final Scope of Work \(12.02.2020\)](#)

¹⁰ <https://www.cityoftacoma.org/cms/one.aspx?pageId=132616>

The record indicates the City completed a SEPA checklist and issued a Preliminary Determination of Non-Significance (DNS) on February 22, 2021 for the proposed amendments to Title 13 and Title 19.

Consideration of public comments

The City accepted public comments on the proposed SMP amendment during the 30-day public comment period. Written and oral comments were received from approximately seventy (70) organizations and individuals, including Sound Transit, the Port of Tacoma, Puget Sound Energy, four local municipal organizations, four environmental groups, and four industry groups. Three organizations also commented on the preliminary DNS. No written comments were received from state agencies or Tribes. The City prepared a report summarizing comments and providing staff responses.

Comments addressed numerous aspects of the proposal including: effects on existing uses; economic impacts; environmental impacts; housing impacts in northeast Tacoma; impacts to health, equity, and sustainability; the limited scope of the proposal; takings issues; and the short timeline for consideration of the non-interim regulations. Many commenters questioned the City's future commitment to the subarea planning process given this proposal.

Specific to the use allowances addressed in both Title 13 and Title 19, numerous commenters were either for or against the use of conditional use permits (CUPs). In particular, commenters including the Port of Tacoma asked about the appropriateness of this requirement for maintenance and repair activities, and expressed concern that a CUP requirement could act as a disincentive for conversion of existing fossil fuel facilities to renewable fuels.

In response to comments, the City made several revisions to the Public Hearing draft of the SMP amendment, including the following:¹¹

1. Chapter 19.02 Administration – Shoreline Conditional Use Permit
 - a. Chemical Manufacturing, Processing, and Wholesale Distribution (2.3.7.5) – The proposed use-specific CUP criteria were deleted and replaced with new standards, including required consultation with an array of agencies and consideration of public health and safety, emergency services and risk management, and shoreline resources and Shorelines of Statewide Significance.
 - b. High Impact Uses (2.3.7.6) – Revisions were made to the proposed use-specific CUP criteria.
 - c. Renewable Fuels Facilities-Major (2.3.7.7) – This category was renamed from “Major Fossil Fuel Facilities and Renewable Fuel Facilities,” and the proposed use-specific CUP criteria were deleted and replaced with new standards, including required consultation with an array of agencies and consideration of public health and safety, emergency services and risk management, and shoreline resources and Shorelines of Statewide Significance.
2. Chapter 19.07 General Use Policies and Regulations – Port/Industrial Use – Regulations¹²
 - a. Fossil Fuel Facilities and Renewable Fuel Facilities (6.3.2.B) – Revisions separated these two uses into two categories (from “Major Fossil Fuel Facilities and Renewable Fuel Facilities”) and added provisions requiring the establishment of a baseline for existing facilities.

¹¹ Greater detail on the revisions made in response to comments is found in the City's “Tideflats Response to Comments,” dated April 14, 2021.

¹² Numbering is reflective of the draft submitted to Ecology for initial determination of consistency.

- b. Fossil Fuel Facilities-Major (6.3.2.B.4) – Revisions added allowances for maintenance and repair, certain improvements, and certain modifications without a CUP, provided no increase to storage or refining above baseline; and a requirement for annual monitoring of the baseline.
 - c. Renewable Fuel Facilities-Major (6.3.2.B.5) – Revisions added allowances for new facilities and expansion of existing facilities beyond the baseline subject to certain criteria.
3. Chapter 19.10 Definitions
- a. The following terms were revised: petrochemical manufacturing, fertilizer manufacturing, high impact uses, renewable fuel, and renewable fuel facilities.
 - b. The following definition was deleted: small fossil or renewable fuel storage and distribution facilities.

The City issued a revised SEPA DNS with an Addendum on April 14, 2021 to reflect the revised proposal. The revised proposal was then forwarded to City Council with the Planning Commission's recommendation for adoption, and to Ecology for an initial determination of consistency.

Initial Determination of Consistency

Under the joint review process, Ecology is required to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules (WAC 173-26-104(3)(b)). The proposed SMP amendment was received by Ecology on April 14, 2021 for initial state review. The submittal was supplemented on April 15 and 16, 2021 and verified as complete on April 20, 2021. This began Ecology's review and initial determination.

Ecology considered the record and made several findings. Ecology found that the amendment was consistent with WAC 173-26-241 Shoreline Uses. The SMP has established a system of use regulations, ensuring SMP provisions concerning development of property protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife (WAC 173-26-241(2)(a)(ii)), giving preference to water-dependent uses and water-related uses, and defining uses and development that require shoreline conditional use permits.

Ecology found that the SMP Guidelines address industrial uses generally and do not speak to specific types of industrial uses. This specificity is left to the discretion of local government and usually resides in a local zoning code. Ecology found that, in prohibiting or requiring a conditional use permit for certain new or expanded nonwater-oriented industrial uses, including fuel facilities, the City had considered regional and statewide needs for water-dependent and water-related industrial facilities consistent with WAC 173-26-241(3)(f).

RCW 90.58.140(3) provides that local governments shall establish a program, consistent with rule adopted by the department, for the administration and enforcement of shoreline permits. The City of Tacoma's permit administration program is located outside the SMP within Title 13 of the City's municipal code. WAC 173-27 provides the minimum procedural requirements for a local SMP permit administration system, while providing latitude for local governments to establish procedural systems based on local needs and circumstances. Ecology found the proposed amendment to Title 13 expanding notification requirements exceeded the minimum notice of application requirements established by RCW 90.58.140(4) and WAC 173-27. Ecology also found that the City had identified a local circumstance and need for additional noticing requirements exceeding the minimums provide for in RCW 90.58.140(4) and WAC 173-27.

Ecology identified four (4) recommended changes to improve clarity of the proposed amendment and internal consistency of the SMP. All of these focused on removing, revising, or adding code citations to Title 19 and Title 13.

After review of the complete initial record submitted, Ecology determined that the City's proposed amendment was consistent with the policy and standards of RCW 09.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through -251 and -020, Definitions). We further concluded that we anticipated being able to approve the SMP amendment upon formal submittal per WAC 173-26-110.

Based upon this determination, Ecology sent an initial determination of consistency to the City on April 26, 2021. As part of this communication, Ecology advised the City to consider the recommended changes proposed prior to local adoption. However the City proceeded with a public hearing in front of City Council the following day, after which the amendment was sent to a subcommittee for more substantive review and revision (see below). Due to the clerical nature of Ecology's recommended changes, the City did not incorporate them into the evolving draft. Those changes that remain relevant to the final adopted amendment have been included as recommended changes in Attachment B.

Initial City Council Process

City Council held a public hearing on the Planning Commission's recommended draft on April 27, 2021. The City provided notice of the hearing to local interested parties and published notice online in the Tacoma Daily Index. Comments were received from approximately 450 organizations and individuals, including seventy-four (74) oral comments.

Consideration of public comments from City Council Process

Several hundred of the written comments submitted contained identical or repeated language. While some of these, largely from city residents and environmental groups, urged City Council to pass the amendment in the face of climate change, others urged the Council to slow down and consider unintended economic consequences. Several industry groups and the Port of Tacoma expressed concern over the increased reliance on conditional use permits. Comments from military organizations and the City of Lakewood requested exemptions for military operations.

In response to public comments, individual councilmembers developed several separate draft amendments to the proposal. To work through these amendments, and to find a path forward through the polarized public input, the Council forwarded the proposal to the Infrastructure, Planning, and Sustainability (IPS) Committee. With passage of Ordinance No. 28759 on May 18, 2021, Council directed the IPS Committee to develop recommendations by August 31, 2021.¹³ The ordinance also extended the Interim Regulations another six months.¹⁴

Infrastructure, Planning, and Sustainability (IPS) Committee

Between May 25 and August 30, 2021, the IPS Committee held nine publicly noticed meetings to review the proposed Non-Interim Regulations and develop a recommendation for City Council. The Committee provided a dedicated email address to receive written public comments, which were then compiled prior to each meeting. In total approximately 300 written comments were received.

¹³ [Ordinance No. 28759](#), adopted May 18, 2021.

¹⁴ *Ibid.*

Consideration of public comments from IPS Committee process

The majority of the comments contained identical or repeated language. About half of these came from city residents and urged the IPS Committee to retain the proposal's ban on fossil fuel expansion. The other half came from industry groups and workers urging the IPS Committee to reduce the use of conditional use permits in the proposal lest the added regulatory burden drive away jobs. As the IPS Committee drafted and circulated proposed amendments, the Planning Commission submitted a letter cautioning the Committee to avoid deviating from the Findings of Fact originally developed by the Planning Commission. Specifically, the Planning Commission indicated that the IPS Committee's draft allowances for limited expansion of fossil fuel facilities and new and expanded cleaner fuel facilities, and the draft reduction in the use of conditional use permits, were inconsistent with those Findings of Fact.

At the conclusion of their process the IPS Committee proposed several revisions to the Planning Commission recommendation draft of the SMP amendment. These were forwarded to the full Council on August 31, 2021. All of the revisions proposed by the IPS Committee were to Title 13 (Land Use Regulatory Code). City staff then drafted revisions to Title 19 (SMP) consistent with the Committee's Title 13 revisions, summarized below:

1. Chapter 19.02 Administration – Shoreline Conditional Use Permit
 - a. The phrase “unless otherwise specified” was added to statement that the Director shall be the final approval authority for CUPs. (2.3.7.2)
 - b. Chemical Manufacturing, Processing, and Wholesale Distribution (2.3.7.5) – A Hearing Examiner decision was added to the use-specific CUP criteria.
 - c. High Impact Uses – The use-specific CUP criteria were deleted.
 - d. Renewable Fuel Facilities-Major – The use-specific CUP criteria were deleted.
2. Chapter 19.07 General Use Policies and Regulations – Port/Industrial Use – Regulations
 - a. “Fossil Fuel Facilities” and “Renewable Fuel Facilities” renamed/recategorized to “Petroleum Fuel Facilities” and “Cleaner Fuel Infrastructure” (7.6.B)
 - b. Petroleum Fuel Facilities (7.6.B.5) – Revisions increased the types of allowed improvements to existing facilities and removed the requirement for a CUP for such improvements, requiring “enhanced SEPA review” instead. New allowances include:
 - i. Expansion of facilities that have, prior to ordinance adoption, published an Environmental Impact Statement and paid the City for mitigation of the full proposed capacity;¹⁵
 - ii. Expansion when requested in writing by the Department of Defense in support of national defense needs; and
 - iii. Improvements to decrease air or water emissions, or to bring a facility into compliance with new regulatory requirements.
 - c. Cleaner Fuel Infrastructure (7.6.B.6) – Revisions removed the requirement for a CUP for new or expanded facilities, requiring enhanced SEPA review instead. Revisions also added an allowance for expansion of petroleum storage up to a cumulative 15% of baseline.
 - d. New facilities or expansion of existing facilities (7.6.B.4) – Revisions reorganized this section to apply to both cleaner fuel infrastructure and petroleum fuel facilities, in conjunction with the new allowances for expansion of petroleum fuel facilities. Revisions also added a requirement for proof of financial assurance.

¹⁵ This provision was intended to accommodate, and effectively applies only to, the Puget Sound Energy Tacoma Liquefied Natural Gas Plant.

3. Chapter 19.09 District-Specific Regulations – Table 9-1. Shoreline Use and Development Standards
 - a. Chemical Manufacturing, Processing, and Wholesale
Revisions changed permit requirements in the Port Industrial Area (S-10) and Marine Waters of the State (S-13) districts from “CU” (conditional use permit required) to “P” (substantial development permit or exemption required) for supportive water-dependent facilities.
 - b. Fossil Fuel Facility-Major – Changed to Petroleum Fuel Facility
 - c. Renewable Fuel Facility-Major – Changed to Cleaner Fuel Infrastructure
Revisions changed permit requirements in the S-10 and S-13 districts from “CU” to “P” for water-dependent and accessory facilities.
 - d. High Impact Uses – Revisions removed this use from the table.
4. Chapter 19.10 Definitions
 - a. The following terms were deleted: fossil fuels, fossil fuel refinery, fossil fuel facility-major, high impact use, renewable fuel, renewable fuel facilities-major.
 - b. The following definitions were added: cleaner fuels, cleaner fuel infrastructure-expanded, cleaner fuel infrastructure-new, Department of Defense, enhanced SEPA review, green hydrogen, petroleum, petroleum fuel facility, petroleum – storage capacity

The City issued a revised SEPA DNS with an Addendum on September 17, 2021 to reflect the revised proposal.

Final City Council process and Tribal engagement

City Council held a public hearing on the IPS Committee’s recommended draft on October 5, 2021. The City provided notice of the hearing to local interested parties and published notice online in the Tacoma Daily Index. Comments were received from approximately one hundred thirty (130) organizations and individuals, including fifty-two (52) oral comments.

City Council met with the Puyallup Tribe of Indians (Tribe) on November 5, 2021 to discuss the proposed Non-Interim Regulations. The Tribe provided a letter to City Council on November 8, 2021 containing input on the proposal.

Consideration of public comments and Tribal input

The majority of written comments contained identical or repeated language. Approximately two thirds of all written comments expressed concern over the new allowances for fossil fuel industry proposed by the IPS Committee and urged Council to adopt the Planning Commission’s recommendation draft and ban all expansion of fossil fuel facilities. Comments came from residents, environmental groups, and the Sustainable Tacoma Commission. Approximately one third of written comments expressed concern over unintended economic consequences of the Non-Interim Regulations in general, urging Council to hold off on adoption of any proposal rather than create a climate unfriendly to industry. Four (4) written comments, including from the U.S. Oil and Refining Corporation, the Western States Petroleum Association, and the Port of Tacoma, expressed support for the IPS Committee’s recommended draft.

The letter from the Tribe expressed concern over the IPS Committee’s recommendations. While the Tribe supported the Planning Commission’s recommendation draft, the Tribe felt that the IPS draft made significant changes that introduced inconsistencies and would lead to results contrary to the stated intent of the Non-Interim Regulations, including loopholes for continued development of fossil fuels. The letter proposed several revisions to the draft, including specific requirements of the enhanced

SEPA review process to ensure evaluation of potential impacts of fuel facility development and operation to treaty fishing areas and aquatic resources.

In response to comments, City Council made the following changes:

1. Clarified that proposed expansions to existing petroleum fuel facilities that have published an Environmental Impact Statement and paid the City for mitigation of the full proposed capacity are still subject to the full permit process, including environmental review, as applicable (19.07(7.6.B.5)); and
2. Revised the definition of “Cleaner Fuels” to clarify that alternative fuels are subject to the restrictions applicable to all other types of petroleum fuels.

City Council provided a letter in response to the Tribe on November 16, 2021, summarizing these changes and committing to engage with the Tribe on the subarea plan process.

Final Submittal

City Council passed Ordinance No. 28786 on November 16, 2021, adopting amendments to both Title 13 and Title 19. City staff submitted the final amendment package to Ecology on March 3, 2022. Ecology verified the submittal as complete on March 8, 2022.

At the conclusion of our formal review, Ecology’s Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4), and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with Applicable Guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable SMP Guidelines (WAC 173-26-171 through -251 and -020, Definitions). This includes review specifically for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c).

Consistency with Applicable Shoreline Permit Administration Provisions (Chapter 173-27 WAC)

The proposed amendment has been reviewed for compliance with the requirements of WAC 173-27.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and Preliminary Determination of Non-Significance (DNS) issued on February 22, 2021; a revised DNS issued on April 14, 2021; and a SEPA Addendum and revised DNS issued on September 17, 2021.

Other Studies or Analyses Supporting the SMP Amendment

Ecology also reviewed documents prepared by the City in support of the SMP amendment. These documents included staff reports; public meeting materials, recordings, and minutes; and comment-response reports.

Summary of Issues Identified by Ecology as Relevant to Our Decision

Ecology is required to review all SMP amendments to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendment to the SMP for consistency with applicable SMP Guidelines requirements and the SMA, and consideration of supporting materials in the record submitted by the City, Ecology has identified issues relevant to its decision. These are summarized below and in Attachment B.

Process for amending/approving shoreline master programs

RCW 90.58.130 requires that, in developing, amending, and implementing SMPs, local governments make all reasonable efforts to inform, fully involve, and encourage the participation of all interested persons and private entities, tribes, and public agencies. These requirements are further articulated in WAC 173-26-201(3)(b), which requires communication with state agencies and affected tribes “prior to undertaking substantial work” (WAC 173-26-201(3)(b)(iii)). To meet these requirements, local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104.

The City elected to use the joint review process and held a joint local/state comment period and public hearing prior to submitting the draft SMP amendment to Ecology for an initial determination of consistency. The record shows early and continuous public participation as well as engagement of the Puyallup Tribe of Indians (Tribe) in the Planning Commission process. However, following Ecology’s initial determination of consistency, the City forwarded the proposal to the IPS Committee for additional review. The IPS Committee’s recommendations, as implemented in Title 19 by City staff, resulted in significant changes to the proposed SMP amendment. Ecology must now review and make our final decision on an SMP amendment that differs from the amendment considered during the state comment period and public hearing. As part of this review, Ecology must evaluate whether the City provided opportunities for public participation consistent with RCW 90.58.130 and WAC 173-26-201(3)(b) during development of the final proposed amendment.

The record shows that the IPS Committee process was conducted exclusively through a series of publicly noticed public meetings, wherein written public comments were considered. Ecology finds that adequate opportunity to review and provide input on the SMP amendment was provided through this process, and therefore concludes that no additional state comment period is necessary to inform our review and final decision.

The record also shows that the Tribe did not participate in the IPS Committee process, and instead met with City Council following the conclusion of that process. The Tribe’s written comments were provided only eight days prior to local adoption, and only minor changes were made by Council in response to those comments. To inform our evaluation of the adequacy of the City’s Tribal engagement process and to better understand the Tribe’s concerns, Ecology spoke with the Tribe’s Director of Planning and Land Use on March 28, 2021. During that conversation the Tribe indicated that absence from the IPS Committee process was the Tribe’s decision, given their preference for government-to-government

consultation with the full City Council. The Tribe expressed dissatisfaction with the final proposed amendment but stated an intent to focus future engagement on the Tideflats subarea planning process rather than the Non-Interim Regulations – an intent that was expressed to City Council in its meeting with the Tribe prior to local adoption. The Tribe also expressed support for review processes that provide opportunity for tribal engagement in the local permit process. Ecology appreciates the Tribe’s comments and acknowledges that their comments brought forth legitimate questions and concerns which enhanced Ecology’s consistency analysis and resulted in modifications and clarifications that benefit the SMP.

Finding. Ecology finds that the City has complied with the requirements of WAC 173-26-090 and 173-26-104 regarding public and agency involvement in the SMP review and amendment process, and has insured full opportunity for involvement in development of the proposed SMP amendment consistent with RCW 90.58.130.

Finding. Ecology has reviewed the comments received along with the City’s responses. Ecology finds the City’s responses are consistent with statutory and rule obligations required of SMP amendments. Ecology finds that the City considered comments and incorporated additional amendments to address issues raised during the joint local/state comment period and subsequent public participation opportunities.

Permitting of chemical manufacturing, processing, and wholesale distribution

The proposed amendment adds conditional use criteria specific to chemical manufacturing, processing, and wholesale distribution. These are located in Chapter 19.02, Administration, under a section titled “Shoreline Conditional Use Permit,” to be used in evaluating permit applications. This indicates an intent to require a CUP for this use; however the proposed amendment to Table 9-1, Shoreline Use and Development Standards, adds a “P” (permitted via a Shoreline Substantial Development Permit (SSDP) or Shoreline Exemption) for supportive water-dependent facilities in the S-10 and S-13 districts and an “N” (prohibited) in all other districts. WAC 173-26-191(2)(a)(ii)(A) requires that SMP regulations be “sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies.” As drafted, the SMP does not provide sufficient scope and detail to ensure consistent project review for chemical manufacturing, processing, and wholesale distribution uses.

Finding. Ecology finds that the amended provisions related to the permitting of chemical manufacturing, processing, and wholesale distribution create an internal conflict. Ecology has identified two required changes necessary for consistency with WAC 173-26-191(2)(a)(ii)(A) [Attachment B, items Req-1 and Req-2].

New and expanded nonwater-oriented uses

In the existing SMP, new and expanded nonwater-oriented industrial uses require a CUP in the S-10 district. Nonwater-dependent industrial uses are prohibited in the S-13 district (waterward of the ordinary high water mark). These restrictions are supported in the SMP by the port/industrial regulations (SMP 19.07.060) and the management policies for the High Intensity and Aquatic SEDs (SMP 19.05.050(B)(4) and (E)(4), respectively), and in the SMP Guidelines by WAC 173-26-241(3)(f) and WAC 173-26-211(5)(c)(ii). The allowances and permit requirements in the existing SMP were analyzed as part of the required Cumulative Impacts Analysis (CIA) during the City’s comprehensive SMP update and were demonstrated to be consistent with the policy goals of the SMA (RCW 90.58.020).

The proposed amendment adds an allowance for new and expanded fuel facilities in the S-13 and S-10 districts with an SSDP, including expansion of existing petroleum fuel facilities and new and expanded accessory uses for cleaner fuel infrastructure. While these uses may have water-oriented components, they are not water-oriented industries and do not require a location on the shoreline. The record indicates that the rationale for this change is to prevent regulatory and economic barriers to industry locating, expanding, and/or improving existing operations in Tacoma's Tideflats Manufacturing/Industrial Center, including by converting to cleaner technologies. However the amendments must also be evaluated against the policy goals of the SMA.

WAC 173-26-201(2)(d) directs local governments to first reserve shoreline areas for water-dependent, water-related, and water-enjoyment uses and to limit nonwater-oriented uses to those locations where water-oriented uses are inappropriate or where they demonstrably contribute to the objectives of the SMA. Ecology finds that the amendment record does not address how the proposal to increase allowances for new and expanded nonwater-oriented industrial uses is consistent with this directive.

WAC 173-26-201(2)(c) requires that SMPs assure no net loss of ecological functions while accommodating appropriate and necessary shoreline uses and development. The amendment record includes comments from the Puyallup Indian Tribe raising substantive concerns regarding the potential for significant adverse impacts to shoreline resources resulting from siting these industries in shoreline jurisdiction. Ecology finds that the amendment record does not adequately address these concerns or demonstrate how the SMP will assure no net loss of ecological functions while increasing allowances for new and expanded nonwater-oriented industrial uses.

Finding. Ecology finds that the proposed increased allowance for nonwater-oriented industrial uses in the S-10 and S-13 districts is inconsistent with the policy goals of the SMA. Ecology has identified three changes necessary to ensure consistency with WAC 173-26-201(2)(c) and (d) and WAC 173-26-191(2)(a)(ii)(A) [Attachment B, Req-3 through Req-5]. The required changes modify the SMP amendment to retain the restrictions in the existing SMP for nonwater-oriented industrial development or, where new allowances are proposed, to require a CUP to ensure a higher level of scrutiny, including an analysis of cumulative impacts on a project-by-project basis.

Ecology recommended changes

Ecology has identified recommended changes to the SMP amendment for consideration by the City. Recommended changes are not required for consistency with the SMP or applicable guidelines, but are proposed to improve implementation. In this case, the changes identified by Ecology are related to errors with cross-references and citations as well as consistency with terminology. These can be found in Attachment B, items Rec-1 through Rec-4.

Finding. Ecology finds that the recommended changes, set forth in Attachment B, Rec-1 through Rec-4, would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines if implemented.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment, with incorporation of Ecology's required changes itemized in Attachment B, can be considered consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through -251 and -020, Definitions).

Ecology concludes that the proposed amendment with acceptance of Ecology's required changes satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i)) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and 173-26-186(8)).

Ecology also concludes that a separate set of recommended changes to the proposed amendment, identified during the review process and itemized in Attachment B, would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required but have been reviewed for consistency and can, if accepted by the City, be included in Ecology's approved SMP amendment.

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting a public hearing, providing notice, consultation with parties of interest, and solicitation of comments from tribes, government agencies, and Ecology.

Ecology concludes that the City has complied with the requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, 173-26-104, and 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, 173-26-110, and 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment to the City's SMP is consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules, once required changes set forth in Attachment B are accepted by the City. Ecology has also determined that the SMP could benefit from incorporation of the recommended changes identified in Attachment B. The City may choose to adopt some or all of the recommended changes. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of the recommended changes.

As provided in RCW 90.58.090(2)(e)(ii), the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then we shall approve the alternative proposal and that action shall be the final action.

Attachment A: Findings and Conclusions
Locally Initiated Amendment to the Tacoma Shoreline Master Program

Upon written receipt of the City's acceptance of Ecology's required changes and decision to include, propose alternative language to, or reject Ecology's recommended changes, Ecology will take final action on this SMP amendment. Ecology's approval of the proposed amendment, with required changes or approved alternatives, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying receipt of written notice that the City has agreed to the required and recommended changes identified in Attachment B or approval of proposed alternative language.