Puyallup Tribe of Indians

November 8th, 2021

The Honorable Mayor Victoria Woodards and City Council
City of Tacoma
747 Market Street, Suite 1200
Tacoma, WA 98402

RE: Non-Interim Tideflats and Industrial Land Use Regulations

Honorable Mayor Woodards and Tacoma City Council Members,

The Puyallup Tribe would like to thank you for meeting with the Tribal Council regarding the Non-Interim Regulations. The Tribe believes with continued consultation between the government leaders over land use issues we can further create development expectations that support a traditional way of life where our tribal members can be healthy but also that support businesses of the future that provide our people opportunities for jobs to make a good living. Over the past 4 years the Puyallup Tribe has commented every six months to reiterate that the City of Tacoma take swift action to eliminate existing loopholes for fossil fuel industries which expose our community to environmental and health risks that are inconsistent with our traditional way of life.

Our members exercise treaty rights and live near and around the industrial lands of the Tacoma Tideflats, this makes the Puyallup Tribe one of the most disproportionately affected groups of these types of development. This is an environmental justice issue. Only by addressing it head on can we change the structural systems that have been put in place to disenfranchise us from our lands, clean water, and keeping our people healthy. The Washington State Department of Health has identified the Tacoma Tideflats and surrounding neighborhoods as some of the most exposed areas to environmental health disparities in their criteria. We need to address this now.

While our last letter was very supportive of the regulation framework, the proposed changes presented from the Infrastructure, Planning, and Sustainability Committee ("IPS Committee") have significantly changed the originally proposed regulations and the application of those changes in the proposed code changes attached to the proposed ordinance have led to inconsistencies, results that are contrary to the stated intent of the new Special Use Standards, and provide single application loopholes that continue the development of the same fossil fuels – namely natural gas and LNG – that the regulations and will of the people intended to prohibit. We understand the IPS Committee was created to facilitate an internal process, which involved a variety of community stakeholders. The Tribe, as a sovereign tribal

government is more than a stakeholder so it is not appropriate for the Tribe's leadership to participate in the IPS Committee process. However, it is appropriate for a parallel government-to-government consultation to occur early and often among the full leadership and decisionmakers.

We appreciate Mayor Woodards and Council member Walker's discussion with us on such an important topic, and look forward to opportunities for collaboration in the future. However, as we promised in the November 5th meeting, we are providing comments on, and in some instances suggested changes to, the IPS amendments and the resulting draft code that is the subject of the first reading on November 9, 2021. Please see attached document identifying inconsistencies and requesting clarifying changes we believe are important to the having the new code provisions reflect the goals, purposes, and overall outcomes City Council, the Tribe, and the people of Tacoma intended by making the interim regulations permanent.

We thank you Mayor and Tacoma City Council for being able to collaborate with our shared community on helping develop the regulations. We ask that the Tacoma City Council take bold action as our time to address these issues becomes more challenging by the day.

Sincerely,

Bill Sterud

Chairman Bill Sterud
Puyallup Tribe of Indians

Puyallup Tribe's Comments and Suggested Changes

Proposed Non-Interim Tideflats and Industrial Land Use Regulations

November 8, 2021

I. IPS Committee Amendment Comments

Motion 1 - Incentivizing Projects and Securing Proper Tribal SEPA Protections

It is the Tribe's understanding that this motion is to create a land use category that entails an easier permitting pathway for fuels that possess lower emissions and have less environmental impact than traditional fuels. Fuels that are not part of this category would be classified as a fossil fuel or a chemical use depending on the project and be subject to the conditions of those land use categories. The Planning Commission's original proposal took into account the siting considerations of all these facilities to go through a Conditional Use Permit whether they were a fossil fuel or a cleaner/renewable fuel. All those protections have been removed in this new motion for what is now being called "Expanded SEPA." We are concerned that the size, scope, and siting of a particular project is no longer being considered and relying on past SEPA processes will not always properly function or identify appropriate mitigation of the risks that some projects pose. Additionally, there are some risks affecting the Tribe that cannot be mitigated and we request the specialized SEPA process assess the risks can be considered as part of any proposed project.

Additionally, the fuels considered under this motion should not function as a new passthrough for conventional everyday fuels to be used. Renewable diesel, natural gas, propane, and E85 fuels should demonstrate benefits to secure access under this permitting pathway, there is also no need to incentivize some of these fuels with the cleaner/renewable fuel label. Proposals should contain demonstrated benefits for fuels under the Clean Fuel Standard in order for the fuels to be allowed through this permitting pathway. In addition, Tacoma should take into consideration the risks of some of those fuels, renewable or not. We hope the following language attempts to secure some of the protections provided in the Planning Commission's recommendations but also ensure that conventional fuels, and their associated risks, are not being held equal to zero emissions fuels. This section should also be reviewed after the rulemaking is complete for the Clean Fuel Standard.

With the above comments in mind, we provide the following proposed language for Motion 1:

MOTION 1 New and Expanded Cleaner Fuel Facilities Permitted

I move to allow through the normal permitting process, including SEPA review where applicable, infrastructure for the production, storage, transportation and transshipment of fuels that are carbon- free and generate no carbon emissions and fuels that are approved by the US Environmental Protection Agency under the federal Renewable Fuel Standard (RFS) program, or under Washington State Law, including credit generating fuels under the Clean Fuel Standard (CFS) program, this includes infrastructure for:

a. Any credit generating fuel under the Washington CFS.

b. Any EPA approved and listed fuel under the RFS.

c. Any credit generating Renewable diesel under the Washington CFS or approved and listed fuel under the RFS ~~meeting Washington State requirements~~.

d. Any credit generating Ethanol and E85 blends under the Washington CFS or approved and listed fuel under the RFS ~~meeting Washington State requirements~~.

e. ~~natural gas, propane,~~ electrolysis-based hydrogen, or carbon free electricity, produced or stored for use as fuels in a motor vehicle that meet California motor vehicle emission standards as described in Washington Statelaw.

Furthermore, this section shall be reviewed for consistency with the Clean Fuel Standard upon final rulemaking.

Definitions

"Cleaner Fuels" shall mean carbon-free fuels that generate no carbon emissions, as demonstrated through a lifecycle analysis, including electrolysis-based hydrogen, any credit generating fuel under the Washington Clean Fuel Standard, any ~~blends of~~ EPA approved and listed fuel under the federal Renewable Fuel Standard, any credit generating Renewable Diesel under the Washington CFS or approved and listed fuel under the RFS ~~meeting the requirements of Washington State law~~, any credit generating Ethanol and E85 blends under the Washington CFS or approved and listed fuel under the RFS ~~meeting the requirements of Washington State law~~, any ~~natural gas, propane,~~ electrolysis-based hydrogen, or carbon free electricity, produced or stored for use as fuels in a motor vehicle that meeting the motor vehicle emission standards for Alternative Fuels in Washington State law. "Cleaner fuels" shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce GHG emissions utilizing accepted methods of the Washington State Department of Ecology, US EPA, or through a lifecycle analysis.

"Enhanced SEPA Review" shall mean additions to the standard SEPA review process and checklist for project proposals governed by this chapter to be promulgated and updated from time by the Director. Such additions to the SEPA review process and checklist shall include but not be limited to;a public meeting for a SEPA application, which occurs after SEPA determination that an application is complete but prior to issuance of a preliminary threshold determination; an expanded Notice Distribution List to include direct mailing to taxpayers and occupants, consistent with Land Use Permits;expanded Public Notification Distance for Direct Mailing to 2500' from the Manufacturing and IndustrialCenter, consistent with Land Use Permits; expanded Notification Period and Comment Period for SEPA to 30 days for Consistency with Land Use Permits, and a supplemental checklist specific to SEPA review of fuel production and or chemical manufacturing. To ensure application of this Enhanced SEPA review, the City of Tacoma shall be SEPA lead agency for all fuel-related projects permitted under this chapter, subject to any future designation of single permitting agency authority by the State of Washington for such fuel production facilities.

"Supplemental checklist specific to SEPA review of fuel production and or chemical manufacturing" shall mean an expert evaluation or Worksheet that provides detailed information required to evaluate impacts to air, land and water during review of a SEPA

environmental checklist. The form of the worksheet shall be prepared and updated as needed by the SEPA Responsible Official in consultation with Planning Director and the City Council. The expert evaluation or Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts arising from:

1. Windborne transport of fossil or renewable fuel emissions across City of Tacoma and across the reservation of the Puyallup Tribe;

2. Lifecycle greenhouse gas emissions for the project's incremental change for renewable facilities and fossil fuel facilities;

3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or interfere with commercial and treaty tribe fishing areas;

4. Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters; and

5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and transport of renewable or fossil fuels or related feedstocks within City of Tacoma and within the Puyallup Tribe reservation.

6. Potential land use compatibility issues and impacts to Puyallup Tribal lands.

7. Potential land use compatibility issues and impacts to Treaty Fishing Rights.

In determining whether possible impacts are "significant" and "probable," the Responsible Official shall determine whether the information in the expert evaluation or the Worksheet accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330. Also, as provided in WAC 197-11-794, "the severity of an impact should be weighed along with the likelihood of its occurrence" and "an impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred." The information provided in the expert evaluation or Worksheet required for fossil and renewable fuel facilities shall be considered procedures and criteria added to City of Tacoma's SEPA policies and procedures pursuant to WAC 197-11- 906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may not be required if an environmental impact statement is prepared.

"Expanded Cleaner Fuel Infrastructure" shall mean the expansion of storage infrastructureincluding tankage constructed prior to effective date of this chapter to store petroleum, where the expansion of such petroleum storage infrastructure is for the sole purpose of blending petroleum withbiomass and other cleaner fuels in the production of cleaner fuels.

"New Cleaner Fuel Infrastructure" shall mean new infrastructure for the production, storage, transportation and transshipment of Cleaner Fuels as defined herein, including infrastructure for blending biomass and other cleaner fuels with petroleum. New Cleaner Fuel Infrastructure shall not include new tankage for petroleum storage.

"Petroleum" shall mean crude oil, petroleum products and byproducts, and

gaseoushydrocarbons and byproducts.

"Storage Capacity" shall be defined as gallons of petroleum capable of being stored within theentirety of the applicant's facility for purposes of measuring expansion as allowed herein.

Draft Code

New and Expanded Cleaner Fuel Infrastructure as defined in this chapter shall be allowed through the standard permitting process, subject to an enhanced SEPA checklist to be implemented andupdated from time to time by the Director, and subject to the following requirements.

1. Any New or Expanded Cleaner Fuel Infrastructure permitted through this chapter shall not be repurposed for production, storage, transportation and transshipment of petroleum. Total or partial conversion of permitted Cleaner Fuel Infrastructure shall constitute groundsfor permit revocation and civil enforcement.

Any Expanded Cleaner Fuel Infrastructure permitted through this chapter, in combination with any other expansion of petroleum storage allowed under this chapter, shall not exceed a cumulative total increase of ~~fifteen~~ five percent (~~1~~5%) more storage over the applicant's total petroleum storage on the effective date of this chapter.

Motion 2 - Maintenance Should Not Provide Unintended Capacity Increases

Regular maintenance of fossil fuel facilities is a recognized activity that is essential to the operation and safety of the facility. We recognize that through regular maintenance that storage facilities may be discontinued and constitute different volumes than the facilities being replaced. We provide the following language to ensure that maintenance activities are not attributing to capacity increases through demonstrable hardship and record keeping of those approvals.

MOTION 2

I move to allow through the normal permitting process, including SEPA review where applicable,replacements and improvements to existing petroleum fuel facilities which, maintain, or improve the safety or security of the facility, or allow the facility to meet new regulatory requirements including the State Clean Fuel Standard, including infrastructure which reduces air emissions and storm water runoff. Maintenance activity under this section shall not constitute significant change in storage capacity comparable to the existing equipment being replaced. Hardship should be demonstrated if equipment increases capacity and approval is determined by Director's rule. Nominal changes will be documented and retained for records.

Draft Code

Replacement of and improvements to existing petroleum infrastructure shall be allowed through the standard permitting process, subject to an enhanced SEPA checklist to be implemented andupdated from time to time by the Director, for maintenance, for improvement of the safety or security of the infrastructure, decrease air or water emissions, or to allow the infrastructure to meet new regulatory requirements. Any replacement of and improvements to existing petroleum

infrastructure permitted through this chapter, in combination with any other expansion of petroleum storage allowed under this chapter, shall not Maintenance activity under this section shall not constitute significant change in storage capacity comparable to the existing equipment being replaced. Hardship should be demonstrated if equipment increases capacity and approval is determined by Director's rule. Nominal changes will be documented and retained for records. ~~exceed a cumulative total increase of fifteen five percent (15%) more storage over the applicant's total petroleum storage on the effective date of this chapter.~~

Motion 4 – Unnecessary Vestment of PSE LNG Development Rights Does Not Take into Consideration Existing Environment

The Puyallup Tribe of Indians has opposed the siting of the PSE LNG Facility in the Tacoma Tideflats since 2015. The facility is an affront to our traditional way of life and disproportionately exposes tribal members to immitigable risks. If PSE or any other existing business in Tacoma is affected by the proposed regulations and has not vested their project through an application of a building permit after five years, the burden for such delay lies upon the applicant. The current regime of temporary Interim Regulations allows for existing facilities in Tacoma to apply for a permit to vest their development rights. An EIS does not result in a vested right for any building, development or proposal. An EIS from 2016 with data from 2014 does not take into account the changing environment or cumulative impacts that would result from any project in 2021 or later. SEPA has specific standards that must be met for relying on previous environmental documents. This amendment appears to only affect the PSE LNG Facility. It is an unnecessary amendment that protects a future development interest that no other business in the Tideflats will benefit from, and that PSE itself recognized through several public statements to the City of Tacoma and other permitting agencies did not exist. Further explanation of this legal position will be described in the next section.

~~MOTION 4~~

~~I move to allow additions to existing petroleum fuel facilities which would create the maximum proposed capacity of a facility that was the subject of an EIS prepared and published by the City under RCW 43.21C and TMC Ch. 13.12 on or before June 2, 2021 and for which the City has accepted on or before June 2, 2021, all funds that fully mitigate the adverse environmental impacts of the facility's maximum capacity pursuant to a Mitigation Agreement between the City and the facility proponent.~~

~~DRAFT CODE~~

~~Expansion of or addition to existing petroleum fuel facilities is allowed through the normal permitting process when the particular expansion would create the maximum proposed capacity of a facility that was the subject of an Environmental Impact Statement prepared and published by the City under RCW 43.21C and TMC Ch. 13.12 on or before June 2, 2021, and for which the City has accepted onor before June 2, 2021, all funds that fully mitigate the adverse environmental impacts of the facility's maximum capacity pursuant to a Mitigation Agreement between the City and the facility proponent.~~

II. Proposed Code Amendments in both Title 13 Land Use Regulatory Code and Title 19 Shoreline Master Program Comments

a. Definitions

The definition of "cleaner fuels" includes alternative fuels in subpart (e). "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuels include "liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel... ." This is wholly inconsistent with the stated intent of the Special Use Standards, and allows petroleum fuel proposals under the cleaner fuels allowance. This must be clarified, and the petroleum fuels such as liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel or other fuels that are predominantly petroleum based must be specifically excluded from the definition of cleaner fuels.

The definition of "Enhanced SEPA" is ambiguous. While we understand that any enhanced checklist will be forthcoming, the definition does little to ensure that any such review will be sufficient and, therefore, we seek additional details. It at a minimum should not only include those items listed in the proposed definition, but also include analysis as to environmental justice concerns, cumulative impacts from like pollution sources, and include an early inventory on all potential emissions. These types of facilities have this information early in their planning phases, and such information should be shared with the public early in the process. Furthermore, a clarification should be made that the City of Tacoma's holding lead agency status over these types of projects is subject to any changes in permitting processes within the State of Washington that might require comprehensive siting/permitting of these facilities to be done by a state agency or board, including all SEPA review.

b. Proposed Special Use Standards in Title 13, ch. 6 and Fuel Facilities in Title 19, Ch. 7.

It is critical to remember that the overall purpose of the Special Use Standards states:

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

Proposed TMC 13.06.080(2), Proposed TMC 19.07.7.6(B)(2).

First, it is confusing as to where natural gas and LNG fit into permissive and prohibited uses, as discussed above with regard to the definitions. There is confusion because LNG is considered a petroleum fuel and subject to many limitations and outright prohibitions for new facilities, but could be permissible under the definition of Alternative Fuel or Cleaner Fuel. The inclusion under alternative fuel or cleaner fuel makes little sense, since LNG is a dangerously large source of methane, a tremendously potent

greenhouse gas. The definitions lead to significant inconsistencies and are inconsistent the overall goals of the regulatory revisions and additions.

Second, the Special Use Standards in Title 13 and the Port/Industrial Fuel Facilities Standard in Title 19, create a loophole for expansion of fossil fuel facilities that have already undergone an environmental review, which the City has openly admitted is only applicable to the expansion of production at Puget Sound Energy's Tacoma LNG Plant from 250,000 gpd to 500,000 gpd. Proposed TMC 13.06.080 (5)(b)(3) and Proposed TMC 19.07.7.6(B)(3) state:

> (3) Expansion of or addition to existing petroleum fuel facilities is allowed through the normal permitting process when the particular expansion would create the maximum proposed capacity of a facility that was the subject of an Environmental Impact Statement prepared and published by the City under RCW 43.21C and TMC Ch. 13.12 as of November , 2021 (the adoption date of this ordinance) and for which the City has accepted on or before November , 2021 (the adoption date of this ordinance) all funds that fully mitigate the adverse environmental impacts of the facility's maximum capacity pursuant to a Mitigation Agreement between the City and the facility proponent.

The City has explained that the PSE Loophole is necessary because the original EIS addressed the larger production amount, analyzing the impacts and mitigating any significant environmental impacts, and PSE holds a vested right to develop and expand the production at the facility up to the amount discussed in the EIS that was finalized 5 years and several other permits ago. This is incorrect.

Washington courts have been clear that SEPA review does not create any vested rights. SEPA was designed to be a review of information to identify environmental impacts of a proposal and inform decisionmakers on whether to issue any permit or authorization or "right" to develop and, if they do give such a permit or authorization, what mitigation is necessary to do so. SEPA review itself does not create any right to develop or implement any specific proposal. *See Norway Hill Preserv. & Prot. Ass'n v. King Cnty. Council*, 87 Wn.2d 267, 272 (1976); WAC 197-11-400. "The primary function of an EIS is to identify adverse impacts to enable the decision-maker to ascertain whether they require either mitigation or denial of the proposal." *Victoria Tower P'ship v. City of Seattle*, 59 Wn. App. 592, 601 (1990); WAC 197-11-400(2).

However, preparation of an environmental review document that evaluates a project expansion scenario does not create any vested rights that would allow a developer to use its property in accordance with the project evaluated in a SEPA review document. The Court of Appeals resoundingly rejected this argument, finding that SEPA review does not create any vested rights to develop. *Deer Creek Devs., LLC v. Spokane Cty.*, 157 Wn. App. 1, 12 (2010) ("Deer Creek's arguments that the vested rights doctrine should be expanded to include site plan applications or a SEPA report for a multipermit project are unpersuasive."). Therefore, the City cannot hide behind an argument that their 2016 EIS provides any vested right to increase capacity today in 2021 or anytime thereafter.

Furthermore, SEPA requires up to date information for any environmental review, and environmental review documents are subject to change with additional evaluation of impacts upon new information or new science being discovered or developed. WAC 197-11-600. Even where permits are

issued and before all the permits for the initial facility are complete, if new or changed information comes to light, or the need for a more thorough review is realized, a revised or supplemental environmental document could be necessary. *Id.* Where significant time has passed between an EIS and the actual development, the environmental review must be updated to include new information, new science, and account for what are always new cumulative impacts. It is hard to imagine an area of energy and technology with more new and changing evaluation techniques than fossil fuels, particularly a heavy methane producer such as LNG. Even as recent as November 2, 2022, President Biden recognized the need to do better in the United States to limit, evaluate and improve upon natural gas extraction and transmissions to address the growing need to address climate change. In just the 5 years since the original environmental review, and two years since a supplemental review by PSCAA, the science of greenhouse gas analysis has changed.

Notably, throughout the permitting of this facility, PSE was stating it was a small facility and would be limited to 250,000 gallons per day to avoid stronger permitting requirements. By the time PSE applied for its air permit, it formally applied only for 250,000 gallons per day. *See Notice of Construction Application Supporting Information Report Tacoma Liquefied Natural Gas Facility,* prepared by Landau Associates, at *pscleanair.gov/DocumentCenter/View/2684/PSE-TacomaLNG-NOCApplication?bidId=*, at Section 2.0.[1] If it had applied for the larger production capacity of 500,000 gallons per day, it would have most likely triggered what is called a major source review, which would have required more stringent review by the EPA, a hard look at environmental justice concerns that were completely absent in the original EIS, and, a closer look at the larger capacity environmental analysis by the EPA, an agency with air expertise. By applying only for a the production of 250,000 gallons per day, PSE avoided a close look, by EPA, of the toxic air emissions involved with the higher production level and two LNG liquefaction trains that would impact the communities surrounding the plant. Clearly, PSE wished to avoid that, and did so by limiting its application to PSCAA to 250,000 gallons per day.[2]

PSE has repeatedly reduced the project's scope and production capacity with promises that any return to the original scope of the project would require all new permits and review. It did so in its shoreline permitting to remove the controversial bunkering facility on the Hylebos Waterway claiming any additional fueling facility would require additional permits and environmental analysis. PSE reduced its production capacity when applying for its air permits to avoid the stricter scrutiny associated with a production level at 500,000 gallons per day. PSE understands, due to the condition in its existing permits from PSCAA limiting it to 250,000 gallons per day that any increase will require new permits. Now, Tacoma is poised to give PSE a fictitious vested right that even PSE recognized for years it did not in fact hold.

It is notable that other expansion or infrastructure development in the new Special Use Standards would be subject to an enhanced SEPA review that would, presumably, address climate change and

[1] The permit application documents submitted to the Puget Sound Clean Air Agency were clear that the application was only for "up to 250,000 gallons per day."

[2] In its explanation to the Tribe, City staff have also said that the Supplemental EIS completed by PSCAA analyzed the expansion from 250,000 gallons per day to 500,000 gallons per day. This is only partly correct. PSCAA analyzed the greenhouse gas emissions for the lifecycle of the fuel in both production scenarios. PSCAA's analysis did not address toxics air emissions at the site for either production scenario, and PSCAA's permit analysis other than for the lifecycle analysis was ONLY for the 250,000 gallons per day due to PSE's application was limited to that production amount.

pollution hazards in a more robust manner to implement the purpose of the Special Use Standards. First and foremost we need to fully understand the scope and content of any enhanced SEPA. This is in furtherance of all the stated goals for the interim regulations that have proceeded these non-interim Special Use Standards. The details of the enhanced SEPA should be identified with more detail and put into the code. However, in spite of its ambiguity on what enhanced SEPA means, the City is poised to continue to give the Tacoma LNG Plant a pass on the appropriate level of environmental review, and turn a blind eye to one of the largest sources of greenhouse gases and toxic air pollutants to be permitted in the region and the State of Washington in the last 5 years. Tacoma is continuing to move in the wrong direction.

By enacting the PSE Loophole provision, Tacoma is choosing to remain in a downward spiral with regard to greenhouse gas emissions and toxic air pollution by allowing such special interest carveouts in otherwise progressive regulatory reform. The Tribe demands that Tacoma remove this special exception for PSE's LNG Plant. If the Council chooses to enact the PSE loophole, then it must ensure future compliance with SEPA by clarifying:

a. That ANY permits for expansion from 250,000 gallons per day to 500,000 gallons per day will be subject to the Enhanced SEPA analysis, and will require SEPA compliance. If Tacoma wishes to utilize an existing environmental document such as the 5 year old outdated EIS for the plant as part of the SEPA process, it must comply with the SEPA standard for use of previous documents; and
b. The City should further put a limit on the timeframe for which the Tacoma LNG facility may expand. Allowing an unlimited timeframe for expansion of a fossil fuel facility puts Tacoma in the position of supporting further growth of fossil fuels while the region, state, nation and even the entire world is working to reduce use of fossil fuels to combat climate change.

In addition to the PSE loophole, the following proposed provision is also of concern:

> TMC 13.06.080 (5)(b)(6)
>
> (6) Where a "Petroleum Fuel Facility" provides direct-to-vessel fueling, new infrastructure that is necessary to support vessel fueling may be allowed so long as overall facility storage and refining does not exceed the established baseline.

It is unclear if this includes new infrastructure or just maintaining existing infrastructure, and whether new berths are permitted by this provision. New terminals or new berths should be prohibited. If they are permitted all additional fuel berths must receive the enhanced SEPA analysis.