City of Tacoma
Office of the City Attorney

June 21, 2018

Barbara J. Church
Sent via email: jbchurch2@gmail.com

Norma Ramirez
Sent via email: norma137carr@gmail.com

Oneida F. Arnold
Sent via email: oneida226@rainierconnect.com

Lester C. Pogue Jr.
Sent via email: lespoguejr@gmail.com

Re: FEIS - SEP2014-40000230810

Dear Ms. Church, Ramirez, Arnold, and Mr. Pogue,

I am legal counsel to the City of Tacoma's Planning and Development Services Department. Because your email of June 12, 2018, raises legal questions, I was asked to respond. I understand that you are requesting that Tacoma require a Supplemental Environmental Impact Statement (SEIS) for the Puget Sound Energy (PSE) LNG facility in the Port of Tacoma.

Initially, I will address your assertion that the City did not consult with the Puyallup Tribe. Under the 1990 Land Claims Settlement, the Puyallup Tribe and the City of Tacoma are to consult regarding issues that may affect their respective jurisdictions. The Settlement does not stipulate a particular consultation process. Since 1990, both the Puyallup Tribe and Tacoma have consulted on potential land development projects by providing notification to the other's land use planning and permitting staff. Such notifications are typically followed by phone calls between respective staff members, and meetings as necessary.

This established process was followed for the PSE LNG plant application in 2015. Initial notification was sent to the Puyallup Tribal staff, and both a staff meeting, and a meeting including Tribal and Tacoma elected officials regarding the project were held. The Tribe requested reconsideration of Tacoma's shoreline decision regarding the LNG plant, and as a result of that request, Tacoma made changes to the shoreline permit decision. In addition, the Tribe sent two comment letters on the draft Environmental Impact Statement (EIS) and those comments were addressed in the final EIS.

Tacoma greatly values its relationship with the Puyallup Tribe, and as a result of concerns subsequently expressed regarding the PSE LNG plant, Tacoma changed the mutual practice of 25 years, and now sends letters requesting consultation to the Tribal Council via the Council Chair. Regarding the PSE LNG plant, Tacoma followed the then long-established process for consultation, including meeting with the Tribe. The consultation was proper. I further note that overall, all legally required public notice processes were followed by the City with respect to the PSE project.

Regarding requests for an SEIS, it is essential to understand that a decision to require an SEIS is solely an administrative decision of the permitting agency, in conformance with the applicable law. No State law, or reported decision of Washington courts creates a right to request an SEIS, and receive an appealable decision on that demand from the permitting agency. If in its judgment the permitting agency requires an SEIS, that decision, and the SEIS when completed, are both appealable.

As a matter of law, such an agency determination is triggered only by either actual data showing substantial changes to a proposal such that the proposal is likely to have significant additional adverse environmental impacts, or by new factual information indicating a proposal's probable newly discovered significant adverse environmental impacts. The actual data showing substantial changes, and/or the new factual information about newly discovered impacts must be completely new, and the newly discovered or identified environmental impacts must not be within the range of alternatives and impacts already analyzed in the existing Final Environmental Impact Statement (FEIS). (WAC 197-11-600 (3)(b) and 197-11-620).

The City and the Washington State Department of Ecology are monitoring construction, and to date the City has received no actual data showing substantial changes to the PSE proposal that would result in additional impacts, nor has the City received any new information regarding impacts that were not within the range of impacts already analyzed within the scope of the previously prepared FEIS. Arguments, concerns, and criticisms, however sincerely held and expressed, do not constitute actual data on changes, or new factual information on newly discovered and unanalyzed impacts.

Requests for an SEIS to date rely on critiques of the adequacy of the existing FEIS, which is legally adequate under the applicable standard:

> An environmental impact statement is adequate under the rule of reason if it presents a reasonably thorough discussion of the significant aspects of the probable environmental consequences of the proposed development. An environmental impact statement is not a compendium of every conceivable effect or alternative to a proposed project but is, simply, an aid to the decision-making process. The environmental impact statement need include only information sufficiently beneficial to the decision-making process to justify the cost of its inclusion. Impacts or alternatives having an insufficient causal relationship, likelihood, or reliability to influence decision makers are "remote" or "speculative" and may be excluded from the impact statement. *Preserve our Islands et al., Appellants, v. The Shorelines Hearings Board*, et al, 133 Wn. App. 503 (2006).

The existing FEIS was never timely appealed. To date, Tacoma has no actual data showing any substantial changes causing increased impacts regarding the PSE proposal since the date of the FEIS, nor any new information showing probable new environmental impacts not already analyzed within the scope of the existing FEIS. Should information meeting the legal test develop, the City will consider an SEIS.

In addition, I note that concerns and questions raised in the requests for an SEIS that we have received to date essentially align with the matters that were at issue in the appeal of the Shoreline Substantial Development Permit for the PSE project which was rejected both the State Shoreline Hearings Board, and by Division I of the Washington State Court of Appeals. To attempt to open an additional appeal over the same issues and FEIS would be inconsistent with State law. When notice of action like an FEIS is given, project opponents must legally challenge the FEIS within twenty-one days. They cannot wait to challenge the FEIS based on a subsequent governmental action on the same subject. This is to ensure that land use challenges are addressed in an efficient manner with legal uncertainties promptly resolved and land development not unnecessarily slowed or defeated by litigation-based delays. *Summit-Waller v. Pierce County*, 77 Wn. App. 384, 394 (1995).

I hope you find this information helpful. I have additionally attached a Q&A based on questions we have received regarding the project. Please contact me should

you have any additional questions. I can be reached at (253) 591-5638.

Sincerely,

Steve Victor
Deputy City Attorney

SV/ak
cc: City Manager
Planning Director