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Tesoro Savage CBR  
Scoping Comment  
#217

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WASH. UT. & TP. COMM

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October 30, 2013

**E-MAIL & CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Stephen Posner  
Interim EFSEC Manager  
Energy Facility Site Evaluation Council  
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ENERGY FACILITY SITE  
EVALUATION COUNCIL

**Re: Determination of Significance Scoping Notice  
Tesoro Savage Vancouver Energy Distribution Terminal  
Application No. 2013-01  
Docket No. EF-131590**

Dear Mr. Posner:

This letter constitutes comment to the above-referenced determination, submitted to influence the outcome of decision, and to perfect the record for review.

We submit that any evaluation of impacts to global climate which are alleged to result from the eventual combustion or other use of fuels transported through the proposed facility is both contrary to law and unconstitutional. Under the *State Environmental Policy Act*,<sup>1</sup> cumulative impacts should not be considered which are merely speculative in nature.<sup>2</sup> Where quantification of impacts is limited by unknown factors, consideration “would be speculative and could lead to a substantially inaccurate evaluation of environmental effects.”<sup>3</sup> While “climate change” is decried as a *known fact* in political forums, there is no basis to *quantify* speculative impacts of eventual fuel combustion or use upon the *globe* or any portion thereof.

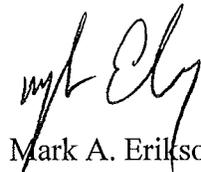
<sup>1</sup>Chapter 43.21C.010 RCW.

<sup>2</sup>*Boehm v. City of Vancouver*, 111 Wash.App. 711, 720, 47 P.3d 137, 142 (2002); citing WAC 197-11-060(4)(a) (SEPA “require[s] the consideration of ‘environmental’ impacts . . . with attention to impacts that are likely, not merely speculative.”); see also *Tugwell v. Kittitas County*, 90 Wash.App. 1, 12, 951 P.2d 272 (1997).

<sup>3</sup>*City of Des Moines v. Puget Sound Reg'l Council*, 98 Wash.App. 23, 108 Wash.App. 836, 854, 988 P.2d 27, 37 (1999), review denied, 140 Wash.2d 1027, 10 P.3d 403 (2000).

The imposition of conditions intended to mitigate speculative impacts upon global climate would deprive the applicants of their rights to substantive due process, and compensation for property taken in the public interest.<sup>4</sup> The Washington Supreme Court holds that permit denial violates substantive due process if the denial is arbitrary and capricious.<sup>5</sup> Moreover, conditions are unconstitutional which are “unduly oppressive on the land owner.”<sup>6</sup> We submit that even a requirement to *study* unquantifiable global impacts is both arbitrary and capricious, and unduly burdensome upon the applicant. A condition requiring mitigation would be facially unconstitutional.

Sincerely,



Mark A. Erikson<sup>7</sup>  
Attorney at Law

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<sup>4</sup>Protected by the 5<sup>th</sup> and 14<sup>th</sup> amendments to the U.S. Constitution, and article 1, sections 3 and 16 of the Washington State Constitution.

<sup>5</sup>*Lutheran Day Care v. Snohomish County*, 119 Wash.2d 91, 125, 829 P.2d 746, 763 (1992); citing *R/L Associates, Inc. v. Seattle*, 113 Wash.2d 402, 412, 780 P.2d 838 (1989).

<sup>6</sup>*Presbytery of Seattle v. King County*, 114 Wash.2d 320, 330, 787 P.2d 907, 913 (1990).

<sup>7</sup>Neither Mark A. Erikson nor Erikson & Associates, PLLC, have any relation to the applicants.