LAW OFFICE
of the
PUYALLUP INDIAN TRIBE

December 20, 2019

VIA ELECTRONIC SUBMISSION

US Department of Transportation
Docket Management System
West Building, Ground Floor, Room W12-140
Routing Symbol M-30
1200 New Jersey Ave., SE
Washington, DC 20590-0001

Attention: Docket No. PHMSA–2018–0025 (HM–264)

Dear Sir or Madam:

I am writing to submit comments to the above referenced docket on behalf of the Puyallup Tribe of Indians (Tribe), a sovereign Indian Tribe whose government is recognized by the United States.[1] The Puyallup Tribe is also a signatory to the Treaty of Medicine Creek, under which the United States assumed a responsibility to honor certain obligations to the Tribe. The Tribe is particularly concerned with the potential direct and disparate impacts that the actions authorized by the Pipelines and Hazardous Materials Safety Administration's (PHMSA) proposed rulemaking will have on the Tribe and its members. As further discussed in detail below, the Tribe opposes the proposed rule, for both legal and technical reasons, and respectfully requests that the Pipelines and Hazardous Materials Safety Administration (PHMSA) promptly withdraw the flawed proposed rule and reissue it as an advanced notice of proposed rulemaking to fully develop the record and allow all affected entities the opportunity to appropriately participate in the development of this proposed major federal action.

The Tribe, by and through these comments, demands consultation on the actions including, but not limited to, the proposed rule and related incomplete research, of PHMSA. The actions, as described herein, have direct and significant impacts on the Tribe. PHMSA's characterization that the Tribe is not impacted by this proposal is plainly wrong.

[1] The Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the Federal Railroad Administration (FRA), is proposing changes to the Hazardous Materials Regulations to allow for the bulk transport of Methane, refrigerated liquid, commonly known as liquefied natural gas (LNG), in rail tank cars. The notice of proposed rulemaking published under Docket No. PHMSA-2018-0025(HM-264) on October 24, 2019, 84 FR at 56964 (hereinafter "NPRM") proposes to authorize the transportation of LNG by rail in the DOT-113C120W specification rail tank car.

3009 East Portland Avenue • Tacoma, Washington 98404 • (253) 573-7877 • Fax (253) 680-5998

A. Failure to Comply with the APA

Although PHMSA has styled this action as a proposed rulemaking, the action fails to meet the legal requirements for it to be a proposed rule under the Administrative Procedure Act (APA). The action fails to comply with the APA for the reasons set out below. Until such time as the PHMSA cures these legal deficiencies, PHMSA is obligated to either withdraw the action or re-characterize the action as what it really is: an advance notice of proposed rulemaking (ANPRM).

The first fatal flaw with PHMSA's action is that it does not meet the most basic test under the APA, which requires that agencies propose rules that are based on a complete and technically sufficient administrative record. Here, PHMSA has not supported its proposal, as is evidenced by the NPRM's references to ongoing and currently incomplete studies to determine the safety of the very activity the proposed rule is intended to allow – the transport of LNG by rail in DOT 113 specification tank cars. PHMSA attempts to justify its rush to judgment by noting that President Trump issued an Executive Order directing the agency to promptly issue the proposed LNG by rail rule. However, such executive action does not control PHMSA's obligation to exercise its legislatively delegated authority in accordance with the APA. Executive Order 13868 explicitly acknowledges that "nothing in this order shall be construed to impair or otherwise affect: (i) the authority granted by law to an executive department or agency, or the head thereof" and that the Executive Order "shall be implemented consistent with applicable law." Executive Order 13868 (April 10, 2019). Thus, the APA applies to the NPRM and non-compliant action by PHMSA is arbitrary, capricious and inconsistent with applicable law.

The second fatal flaw in the APA context is that the agency has not complied with its obligation under the NEPA to support its proposed major federal action with a proper review of the environmental consequences associated with implementation of the proposed action. The fact that the moving agency does not have the necessary expertise to perform the analysis or does not have enough information to conduct the necessary studies or analysis is no excuse. The NEPA guidelines promulgated by the Council for Environmental Quality (CEQ) require that PHMSA meet its obligation of full disclosure to the public. Here, the agency – again based on the fast track attempt to meet an artificial timeline – has opted to comply with the Executive Order and ignore its obligation to the public under law. The scope and potential impact of the proposed action requires a careful review of the direct, indirect and cumulative impacts of the proposed rule on the quality of the environment. The failure of PHMSA to conduct such an environmental review in the form of an EIS is evidence that the decision to advance this proposed action is a violation of the APA and of NEPA – as it is arbitrary, capricious, and not consistent with applicable law.

B. Comments on Notice of Proposed Rulemaking, Docket No. PHMSA-2018-0025 (HM-264)

As an initial matter, the Tribe expresses its appreciation to the National Transportation Safety Board (NTSB) for its December 5, 2019, comment letter to PHMSA which describes various shortcomings of the proposal.[2] The Tribe hereby incorporates by reference the NTSB's comments

[2] A copy of the NTSB comment letter is attached as Exhibit A.

submitted in opposition to this rulemaking, including those submitted to PHMSA Docket No. PHMSA-2018-0025 (HM-264). Like the NTSB, the Tribe is greatly concerned by the rushed nature of this proposed rulemaking and the inadequate record upon which it relies. For the reasons set forth below, the Tribe urges PHMSA to re-designate the NPRM as an Advanced Notice of Proposed Rulemaking (ANPRM) and forego promulgating a final rule until such time as the environmental, health, and safety risks associated with transporting LNG tank cars by train have been meaningfully analyzed and are fully understood.

1. **The NPRM's analysis of affected entities erroneously excludes Tribes; PHMSA has failed to satisfy its obligation to conduct government-to-government consultation with affected Indian Tribes.**

PHMSA's Preliminary Regulatory Impact Analysis No. RIN 2137-AF40 (PRIA) for the NPRM states that the following entities are affected by the proposed rule: "rail carriers, LNG operators, LNG shippers, emergency responders, tank car manufacturers, and tank car owners." PRIA at 15. Regarding tribal consultation, the NPRM states:

> This rulemaking was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ('Consultation and Coordination with Indian Tribal Governments'). PHMSA does not anticipate that this rulemaking will have substantial direct tribal implications. Therefore, the funding and consultation requirements of Executive Order 13175 are not expected to apply. However, PHMSA invites Indian tribal governments to comment on any effect that revisions to the HMR relative to LNG transportation may cause.[3]

NPRM at 56970.

As discussed below, the NPRM has significant and disparate impacts for the Puyallup Tribe of Indians, and thus the rulemaking should be subject to the funding and consultation requirements of Executive Order 13175. However, because of the substantial deficiencies of the NPRM, the Tribe is concerned that meaningful government-to-government consultation is not possible at this time in light of the incomplete nature of the administrative record. The Tribe therefore requests that PHMSA engage in government-to-government consultation with the Tribe to discuss these comments and the Tribe's further concerns with the current NPRM. Then, after rescinding the

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[3] *Compare with, California Wilderness Coalition v. Dep't of Energy*, 631 F.3d 1072 (9th Cir. 2011) (duty of consultation requires more than notice-and-comment procedures; it requires a conferral and exchange of ideas and mutual participation in the decision-making process).

Also consider NHPA Section 106 and most notably whether there is an undertaking that could potentially affect historic properties and thus require meaningful consultation with affected Tribes. *See Quechan Tribe v. U.S. DOI*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010) (enjoining federal approval of solar project due to inadequate consultation with Tribe); *Pueblo of Sandia v. United States*, 50 F.3d 856 (10th Cir. 1995) (Forest Service failed to make reasonable good faith effort to identify properties of significance to tribe, dismissing and failing to disclose information provided by the Tribe); *Colorado River Indian Tribe v. Marsh*, 605 F. Supp. 1427 (C.D. Cal 1985) (enjoining Army Corps project for failure to adequately consider impacts to historic property).

current NPRM and reissuing this draft proposal as an ANPRM, the Tribe requests that PHMSA engage in further government-to-government consultation regarding such an ANPRM to better understand the scope of the proposal's substantial direct tribal implications and continue to engage in further government-to-government consultation with the Puyallup Tribe and other concerned tribes as any future rulemaking proceeds regarding this topic.

a. The Proposed Rulemaking has significant implications for the Puyallup Tribe.

Puget Sound Energy is proposing to construct and operate a liquefaction facility on the border of the Tribe's reservation. A map showing the location of the proposed LNG plant is attached as Attachment 1. A significant portion of the Tribe's population and cultural resources are located within the Reservation boundary. The significant, adverse and unavoidable impacts presented by the LNG facility will cause a disproportionately high adverse effect on minority and low-income populations. Indeed, the Tribe has very real concerns that impacts of a worst-case-scenario event at this LNG facility could effectively destroy much of the Tribe's Reservation and Resources.

Trains will need to travel through the Tribe's reservation to reach the Tacoma LNG facility to load LNG, and then again traverse the Tribe's reservation to transport the LNG. Thus, if LNG transported from PSE's Tacoma LNG facility by rail, LNG trains will present risk to both the Tribe's reservation homeland and its members. A map demonstrating locations of rail lines through the Tribe's Reservation is attached as Attachment 2.

The Tribe has concerns regarding this new rail traffic: (1) Safety – because the transport of LNG by rail presents a hazard of releases of a hazardous substance, and the risk of explosive accidents, this proposed rulemaking would increase the health and safety risks to posed by rail traffic to the Tribe's members and increase the likelihood harm to the Tribe's property; (2) Air Quality – because LNG trains run on diesel, an increase in LNG train traffic to/from Tacoma LNG will likely degrade local air quality (including the air within the Reservation boundaries); and (3) Transportation – allowing the transportation of LNG by rail will likely increase the total volume of rail traffic on or adjacent to the Reservation and will have potentially significant impacts on local traffic, which has the potential to adversely impact the Tribe and its interests in myriad ways.

b. The Tribe will be disparately impacted by the proposed rulemaking in contravention of Executive Order 12898 – Environmental Justice.

The purpose of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," is to prevent or reduce the disproportionately high pollution burden on racial minority and low-income populations. Due to the existing high rate of contaminated lands on or adjacent to the Puyallup Reservation, the adjacent siting of an LNG liquefaction facility, and existing rail lines on or adjacent to the Puyallup Reservation, actions authorized by the NPRM would disproportionately exposes the Tribe and its members to health and safety risks. Beyond the increased exposure to health and safety risks, actions authorized by the NPRM will disproportionately expose the Puyallup Tribe to environmental hazards, including the impacts of climate change.

The health impacts occasioned by climate change are numerous and increasing. In recent years, world leaders, medical, public health, and scientific bodies have expressed deep concerns about climate change as a threat to human health and well-being. Physicians for Social Responsibility,[4] the American Public Health Association,[5] and the Union of Concerned scientists (to name a few) have expressed the urgency for attention to the health threats of climate change and are speaking out about these threats with increasing urgency.

Likewise, the recently-released National Climate and Health Assessment describes how human health is already being affected by climate change: "Climate change is a significant threat to the health of the American people. The impacts of human-induced climate change are increasing nationwide. Rising greenhouse gas concentrations result in increases in temperature, changes in precipitation, increases in the frequency and intensity of some extreme weather events, and rising sea levels. These climate change impacts endanger our health by affecting our food and water sources, the air we breathe, the weather we experience, and our interactions with the built and natural environments. As the climate continues to change, the risks to human health continue to grow. Every American is vulnerable to the health impacts associated with climate change."[6]

Because the Tribe's entire homeland and its cultural resource bases are located adjacent to and near the coast (where sea levels are rising and extreme weather events are becoming more frequent because of climate change), the Tribe is uniquely sensitive to and disproportionately impacted by the impacts of climate change. Thus, the Tribe will also be disproportionately affected by actions authorized through the proposed rulemaking, which would directly and indirectly result in a net increase in GHG emissions to the earth's atmosphere.

Further, apart from climate change, the Puyallup Tribe and its members are entitled to the quiet enjoyment of their homeland as provided for by the Treaty of Medicine Creek and as confirmed by the Puyallup Tribe of Indians Settlement Act of 1989. Puyallup Tribe of Indians Settlement Act of 1989, Pub. L. 101-41, 103 Stat. 83 (June 21, 1989). These rights and entitlement would be threatened and violated by the proposed rulemaking. As noted above, the Tribe will be disproportionately impacted due to the fact that, as PHMSA's proposed rulemaking acknowledges, the transportation of rail tank cars filled with LNG would result in air pollution associated with increased use of diesel-powered trains traversing the Tribe's Reservation. The air impacts associated with trains coming and going from PSE Tacoma LNG facility will not be widely dispersed; instead, the majority of those impacts will be suffered by those in close proximity to Tacoma LNG, including the Puyallup Tribe.

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[4] Washington and Oregon Physicians for Social Responsibility, *Position Statement on Crude Oil Transport and Storage to Governors of Washington & Oregon* (2015).

[5] American Public Health Association, Policy on Climate and Health (2015) (online at: http:www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/12/03/15/34/public-health-opportunities-to-address-the-health-effects-of-climate-change).

[6] U.S. Global Change Research Program, *The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment* (2016) (online at: https://health2016.globalchange.gov).

c. The substantial likelihood that the NPRM will have substantial direct and adverse impacts on the Tribe triggers PHMSA's obligation to ensure meaningful government-to-government consultation with the Puyallup Tribe of Indians, and other similarly impacted Indian Tribes.

Executive Order 13175 recognizes the unique legal relationship that the Federal government has with Indian tribes and sets forth the criteria agencies should follow when formulating and implementing policies that have tribal implications. In addition, Executive Order 13175 requires Federal agencies to establish a consultation process for interactions with Indian tribes in the development of regulatory policies that have tribal implications. The USDOT's specific Tribal Consultation Plan is found at:
https://www.transportation.gov/sites/dot.dev/files/docs/DOT_Tribal_Consultation_Plan.pdf.

Further, the USDOT issued Order 5301.1, "Department of Transportation Programs, Policies, and Procedures Affecting American Indians, Alaska Natives, and Tribes" on November 16, 1999. This Order affirms the Department's and the USDOT Modal Administrations' unique legal relationship with Indian tribes, establishes the Department's consultation and coordination process with Indian tribes for any action that may significantly or uniquely affect them, and lists goals for Modal Administrations to meet when carrying out policies, programs, and activities affecting American Indians, Alaska Natives, and tribes. (emphasis added). The requirements established for Modal Administrations under this Order are designed to, *inter alia,* respond to the transportation concerns of Indian tribes related to environmental justice, children's safety and environmental health risks, and environmental matters; and treat correspondence from leaders of Indian tribes in the same manner as Congressional correspondence.

In granting the American Association of Railroads' petition for rulemaking (Docket No. PHMSA-2017-0020) and then determining that neither Indian Tribes or the public were entities affected by the NPRM, PHMSA acted in an arbitrary and capricious manner. Moreover, by publishing the NPRM without input from Tribes affected by the proposed rule, PHMSA has failed to satisfy its obligations under Executive Order 13175 and DOT Order 5301.1.

2. **PHMSA has artificially narrowed the scope of the proposed rule's impact.**

PHMSA's PRIA fails to acknowledge the full scope of entities affected by the NPRM, stating:

> [T]he following entities are affected by the proposed rule: rail carriers, LNG operators, LNG shippers, emergency responders, tank car manufacturers, and tank car owners.

PRIA at 15.

Without explanation, PHMSA neglects to mention the communities, cities, and Tribes who would be directly impacted by safety incidents involving LNG transported by rail that might be prevented through a thorough and measured approach to this rulemaking. As a result of this omission,

PHMSA's "analysis" does not address any potential impacts on these important stakeholders. This is a serious flaw that demonstrates the incomplete and premature nature of the NPRM

Further, the NPRM is internally inconsistent and minimizes the presumed impacts of the new rule by assuming only a limited number of railroad companies would be affected. *See* PRIA at 24 (stating that PHMSA estimates that between five and fourteen railroads impacted under the preferred alternative). In fact, the NPRM would authorize all 538 currently-existing railroad companies to transport LNG by rail. *See* PRIA at 16 (noting a total of 538 Class I, II, and III railroads considered to be "impacted entities"). PHMSA's assertion that it estimates only five to fourteen railroads would be impacted under the preferred alternative contradicts the number of affected railroads described in Section 4 of the PRIA. The NPRM and PRIA provide no explanation of the discrepancy between the total number of impacted railroad entities listed in Section 4 of the PRIA and PHMSA's subsequent assertion in Section 6 that only five to fourteen railroads would be impacted. This effort to discount the significant scope of the proposed rule is inconsistent with the stated purpose of the proposed rule, which is to facilitate an increase in the size of the LNG rail fleet to provide for efficient transportation of LNG to end users in the United States in response to the challenges created by the expansion of energy production in the United States. NPRM at 56965; Executive Order 13868.

3. **PHMSA's operational train controls proposal (or lack thereof) is deficient.**

Operational train controls, such as limitations on train length, controls for train composition, speed restrictions, braking requirements, and routing requirements, among many other factors, are important safeguards for protecting the public against rail incidents. Nevertheless, in its proposal, PHMSA does not commit to making these safety measures mandatory and enforceable. Rather than imposing such measures as requirements, PHMSA proposes that they be "voluntary." The proposed action states the following:

> AAR's Circular OT-55 is a detailed protocol establishing recommended railroad operating practices for the transportation of hazardous materials that was developed by the rail industry through the AAR....Circular OT-55 is comprehensive in its reach, applying to all train movements that fit within the terms of the circular. The circular outlines operational controls for trains meeting the industry definition of a "Key Train," including speed restrictions, track requirements, storage requirements, and the designation of "Key Routes."...While PHMSA is not proposing to incorporate by reference Circular OT-55 or to adopt the requirements for "Key Trains" in the HMR in this rulemaking, the railroad industry's voluntary adoption of the circular is an important consideration for PHMSA in assessing what operational controls are necessary.

NPRM at 56968 (emphasis added). And, to further confuse the matter, PHMSA states the following in the PRIA:

> ...Under this alternative, operational controls specified in AAR's Circular OT-55 would be required for any key train transporting LNG in DOT-113 tank cars.

> Specifically, Circular OT-55 defines a "Key Train" and outlines operational controls such as speed restrictions for trains meeting the "Key Train" definition.

PRIA at 24. The NPRM and PRIA are clearly conflicted regarding the applicability of Circular OT-55 – i.e., whether LNG transported under the proposed rule would be subject to voluntary compliance with Circular OT-55 as it states in the NPRM, or mandatory compliance as stated in the PRIA. Due to the importance of operational controls in the context of safe transportation of hazardous substances, the Tribe believes mandatory compliance with Circular OT-55 (or other appropriate LNG-specific operational controls developed based on a complete and informed record) is necessary. Further, the Tribe requests clarification as to whether the NPRM intends adherence to Circular OT-55 be voluntary or mandatory under the NPRM.

4. **PHMSA's request for comments regarding operational controls highlights the premature nature of the NPRM.**

The NPRM describes the operational controls contained within Circular OT-55 as well as speed restrictions and braking requirements applicable to High-Hazard Flammable Trains (HHFTs), and further describes routing requirements applicable to rail traffic transporting certain hazardous materials. NPRM at 56968-69. While acknowledging the availability of these fundamental operational controls in circumstances similar to those hazards presented by LNG shipments by rail, PHMSA and FRA have nevertheless "decided not to propose additional operational controls because there is not sufficient data about the potential movements of LNG by tank car." NPRM at 56969. PHMSA and the FRA's view here is flawed because an absence of data does not justify the absence of necessary regulatory controls to protect the public – regulatory controls are necessary to ensure safety, regardless of the volume of LNG rail traffic.

This purported lack of data regarding the ways that LNG will be moved by rail is not a proper basis for deciding to simply ignore the reality that this new type of rail traffic authorized by the NRPM may well pose new risks to public safety that will not be addressed through the application of established safety controls. PHMSA's NPRM provides no valid reason to: (1) not incorporate the operational controls contained in Circular OT-55; (2) not incorporate the speed restrictions and braking requirements applicable to HHFTs in its regulations regarding LNG rail traffic; (3) not incorporate routing requirements applicable to rail transportation of other hazardous materials presenting similar hazards. This amounts to clear error (and is otherwise totally unacceptable).

The NPRM's request for comments on specific aspects of operational controls such as train length and train composition, speed restrictions, braking requirements, and routing requirements – all important aspects of operational controls – highlights the fact that the NPRM is premature. Further, as a practical matter, PHMSA's requesting that the public provide meaningful comments on these aspects is inappropriate at this time, given the lack of supporting details in the NPRM and PRIA, which absence largely precludes the ability to provide meaningful and informed input.

PHMSA admits its inability to provide any forecasts of the quantity and distribution of the transportation of LNG by rail (which it could have reasonably ascertained had it conducted basic

outreach via surveys to shippers and their customers, for example) while engaging in additional unfounded speculation:

> PHMSA recognizes that there may be other operational controls or combinations of controls to consider and encourages comments on such controls. However, for this rulemaking, PHMSA and FRA decided not to propose additional operational controls because there is not sufficient data about the potential movements of LNG by tank car. While PHMSA expects LNG will initially move in smaller quantities (*i.e.*, a few tank cars) as part of manifest trains, it is uncertain whether LNG will continue to be transported in those quantities or if LNG by rail will shift to be transported using a unit train model of service, and if so, how quickly that shift will occur.

NPRM at 56969 (emphasis added).

This acknowledgment again (and further) demonstrates the prematurity of this proposed rulemaking. PHMSA should re-designate the NRPM as an Advance Notice of Proposed Rulemaking, obtain this information and then, only after receiving and incorporating the information necessary to ensure a proper analysis of the impacts of its proposed rule, propose a rulemaking and solicit public comment thereon (if it believes moving forward with a rulemaking is appropriate).

5. **PHMSA failed to meaningfully consider the health and safety risks of this proposed rulemaking.**

The NPRM is unsupported by quantitative data and analysis regarding the risks presented by LNG rail traffic, the NPRM and PRIA inappropriately downplay the risks of LNG rail traffic, and the discussion of LNG derailment and highway incidents contained in the NPRM and PRIA is misleading.

a. PHMSA failed to meet its obligation to provide adequate quantitative data and analysis regarding the risks associated with implementing this proposed rule.

PHMSA has provided no quantitative data regarding the safety risks associated with this proposal – essentially making this LNG by rail opus a large-scale experiment across the country. In fact, while acknowledging that there are several studies underway (and which will not be completed for some time), PHMSA is rushing to allow this "enabling regulation." The studies cited by PHMSA in the RIA Section 2.2, which should be part of the administrative record after they are completed (and validated) and before a rule is proposed, are as follows:

> "FRA is also conducting field experimental research to evaluate the pool fire survivability of a LNG filled portable tank subject to an engulfing pool fire. A new ISO tank is being built for this test, and is expected to be ready before the end of 2019. FRA plans to conduct the full-scale pool fire test of the LNG filled ISO tank before the end in the first quarter of FY2020. FRA is also conducting a full-scale

> tank car impact testing and analysis of two DOT 113 tanks. The test, which began in March 2019 and is expected to conclude in May 2020, evaluates the performance and crashworthiness of DOT 113 specification tank cars. The test project includes developing puncture models and verifying the models with actual testing data.
>
> Another FRA safety research project underway is an LNG tender crashworthiness assessment that is expected to be concluded in December 2020. This project is a modeling to analyze the performance of an ISO tank (LNG tender) in different accident scenarios: head impact, shell impact, bottom impact and top impact.
>
> FRA is also conducting a full-scale LNG tender rail highway crossing impact test. The project began in 2016 and is expected to conclude in December 2020. The test evaluates the survivability of valves and valve housing on an LNG tender constructed per the AAR proposed standards in a rail crash crossing incident scenario as prescribed on the AAR M-1004 standard.
>
> FRA is commencing another project (fall of 2019) evaluating risk assessment of unit trains versus regular merchandize trains transporting hazardous materials, including LNG…." (emphasis added)

It is reasonable to assume that the ongoing studies described above were commissioned to obtain evidence regarding potential hazards related to the transportation of LNG by rail, information that should inform the development of regulations related to such transportation. These ongoing studies are all scheduled to conclude by the end of 2020.[7] What is not clear is why PHMSA is rushing to promulgate a new rule without the information necessary to inform its decisions regarding the new rule, particularly where the PRIA indicates such key information will be available within the next 12 months.[8]

Clearly, with no data on safety and potential risks, and with studies underway, it is premature for PHMSA to advance this proposed rule. Again, PHMSA should (1) re-designate the proposal as an Advance Notice of Proposed Rulemaking and (2) obtain the information it needs to make an informed decision before attempting a final rulemaking.

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[7] Though the PRIA notes three completed PHMSA research projects regarding bulk transportation of LNG, it is important to note that PHMSA "evaluated the completed research projects in the context of the proposed rule, but found them either not directly applicable to the economic analysis or of limited relevance to the specific issue of transporting LNG by rail. PRIA at 12. All LNG safety research and studies listed by PHMSA that specifically address the safety of DOT 113 tank cars remain uncompleted and PHMSA provides no citation to a completed study of the risks presented by transportation of LNG in DOT 113 specification tank cars. PRIA at 12-13.

[8] Compounding the Tribe's cause for concern, the "academic and other studies" noted in the PRIA are all focused on non-rail transportation of LNG. Further, the only completed study noted in the PRIA that is relevant to LNG transportation by rail is the *LNG Safety Assessment Evaluation Methods* report prepared by Sandia National Laboratories, which is an evaluation of published safety assessment methods. This report was not analyzing the risks of LNG by rail, it analyzed the methods of assessing such risk. PRIA at 12-13.

b. The NPRM ignores the significant risks posed by the transportation of LNG by rail.

PHMSA's proposed rulemaking greatly downplays the significant safety risks that LNG trains pose.[9] The Lac-Mégantic rail disaster in 2013 provides a key example on what the impacts of an accident can entail, and thus what PHMSA should be taking into consideration before allowing for the bulk transport of LNG in rail cars. There, an unattended freight train carrying Bakken crude oil derailed in the center of Lac-Mégantic, Québec. This derailment resulted in the fire and explosion of multiple tank cars. Forty-two people were confirmed dead, with five more missing and presumed dead. More than thirty buildings in the town's center were destroyed. Initial newspaper reports described a one-kilometre (0.6 mi) blast radius.

PHMSA looks abroad for examples it believes supports its proposed rulemaking. For example, the PRIA discusses Japan's use of rail to transport LNG by rail since 2000.[10] PRIA at 8-9. To the extent PHMSA's analysis of the potential impacts of the NPRM discounts the Lac-Mégantic disaster on the grounds that it occurred outside the United States, it appears to be inconsistent with PHMSA's willingness to look abroad for information that is favorable to its proposed rule.

Ignoring Lac-Mégantic (and other oil train incidents) is likewise misguided, misleading and unjustifiable. As the National Transportation Safety Board (NTSB) stated in its comments on this NPRM, "[r]ecent history with unit train shipments of ethanol and crude oil demonstrate how unprepared federal regulators were to address the spate of fiery flammable liquids accidents that occurred between 2009 and 2015 until regulations for HHFTs were published." NTSB Chairman Sumwalt's comments on Docket No. PHMSA-2018-0025 (HM-264) at 6 (December 5, 2019).

Natural gas is more volatile than crude oil and, when burned, emits more heat.[11] Thus, had the Lac-Mégantic disaster involved LNG rather than crude oil, the impacts may have been even more destructive. A robust analysis of the safety risks occasioned by allowing pervasive transportation of LNG by rail is needed before PHMSA makes changes to the Hazardous Materials Regulations allowing for the bulk transport of LNG in rail cars.

c. PHMSA's discussion of LNG derailment and highway incidents is misleading and unsupported.

PHMSA's conclusion that "... the proposed transportation of LNG by rail is as safe, or, in some cases, safer than the transportation of similar hazardous materials..." is misleading and unsupported. Most importantly, this statement is not correct.

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[9] For example, PHMSA's proposed rulemaking provides a biased discussion directed at assuaging concerns over safety risks associated with accidents involving LNG trans. *See, e.g.*, 84 Fed. Reg. at 56971.

[10] Notably, unlike the rule described in the NPRM, trains carrying LNG in Japan are required to use modernized braking systems.

[11] https://www.world-nuclear.org/information-library/facts-and-figures/heat-values-of-various-fuels.aspx

Initially, PHMSA admits that there are no historical records for incidents involving LNG transported by rail in tank cars, which admission makes sense because LNG has not previously been shipped in tank cars. *See* PRIA at § 1.3.5. The two special permits to transport LNG by rail granted by PHMSA (one to Alaska Railroad Corporation in 2015 and the other to Florida East Coast Railroad in 2017) are for unique circumstances, which cannot be extrapolated to the entire nation. For example, the Florida special permit allows LNG to be transported in ISO-certified tanks[12] atop flatcars – but that is not the same as transporting LNG in the proposed DOT-113 cars.

Because there is no information specific to incidents involving LNG transported by rail, PHMSA focuses on rail derailment incidents "of similar cryogenic liquids" as well as highway incidents. PRIA at § 1.3.5. For rail, PHMSA discusses two incidents, one involving ethylene and the other involving argon. Argon is not a "similar cryogenic liquid" in terms of risk posed upon release since argon is not flammable.[13] Further, beyond relying on specious comparisons, PHMSA does not provide information on how much cryogenic liquid is transported by rail in the country at present (or the change in that volume due to LNG that would be transported by rail under the NPRM) to allow analysis of incident rates now and in the future.

PHMSA's description of the ethylene release is limited to the following:

> The first derailment that resulted in breach of an inner tank of a DOT-113 tank car took place in May 2011 in Moran, Kansas. Three DOT-113C120 specification tank cars containing refrigerated liquid ethylene sustained damage. Two of the cars were breached in the derailment and initially caught fire. One of the fires consumed the entire contents of the DOT-113 tank car. The two remaining cars, that is, the one that had been breached in the derailment and the other that had been damaged but not breached, were mechanically breached to expedite the burning and consumption of the contents to expedite removal from the site of the derailment. The total quantity of refrigerated ethylene lost was approximately 45,000 gallons and the total damage estimate was calculated at approximately $231,000 in 2017.

NPRM at 56972.

It is not clear why PHMSA concludes, rather conveniently, that this example proves that risks of derailment are small or manageable. What if, for example, the derailment had occurred in more congested urban areas? What if more cars were derailed, increasing the quantities of ethylene released? PHMSA erroneously assumes that because the three-tank car accident in Moran, Kansas in 2011 was relatively benign, that such luck will hold in any incident involving LNG. The

[12] ISO tanks are much smaller in capacity. As the proposal notes: "[T]he DOT-113 rail car has a nominal water capacity of 33,000 gallons, which allows for a payload of approximately 28,500 to 29,000 gallons of cryogenic ethylene....The volume capacity of ISO tank portable containers varies by manufacturer between 5,000 gallons and 11,000 gallons of liquid."

[13] In most aspects, argon is not an appropriate proxy for LNG when looking at safety concerns due to the fact that it is an inert gas and thus not reactive or flammable.

assumption that accident impacts will always be benign is particularly absurd in light of the fact that, per the NPRM, PHMSA does not intend to establish operational controls on the transport of LNG by rail, such as limits on the length and composition of trains transporting LNG, that could limit the hazards of such transport to the scale of the incidents reviewed. NPRM at 56968-69. PHMSA should know that this risk assessment is improper and that it is illogical to draw such inferences. This absence of meaningful risk analysis invites disaster and loss of human life.

PHMSA's contention that LNG by rail is safer than transportation of LNG by truck is speculative and unsupported. PHMSA provides summary discussion of eight highway incidents involving LNG. However, it is not reasonable to attempt to equate the relatively small quantities of LNG that can be released in any given highway incident with a potential release from multiple railcars in a derailment. No conclusions as to potential comparative risks between highway versus rail events can be (or should be) made in the absence of reliable data.

In sum, PHMSA's conclusion that "… the proposed transportation of LNG by rail is as safe, or, in some cases, safer than the transportation of similar hazardous materials…" is speculative, misleading, and not supported by reliable data.

6. **PHMSA's proposed rule change presents an increased risk of terrorism that has not been analyzed.**

PHMSA's proposed rulemaking fails to look at the security risks of making changes to the Hazardous Materials Regulations to allow for the bulk transport of LNG in rail cars. LNG trains are vulnerable to terrorism. LNG trains can be physically attacked to destroy the LNG they hold in populated areas – and such trains can be hijacked and commandeered for use as weapons against targets located in proximity to rail lines.

Policymakers have recognized these risks in other contexts. For example, a 2007 report by the Government Accountability Office looking at security risks presented by LNG shipping terminals states that, "the ship-based supply chain for energy commodities," specifically including LNG, "remains threatened and vulnerable, and appropriate security throughout the chain is essential to ensure safe and efficient delivery."[14] The potential risks from terrorism to LNG trains may be different than those of larger LNG facilities in ports, but the risks would be more widespread – and thus more difficult to manage and guard against – as LNG trains traveling throughout the country would present risks to more locations than would stationary LNG terminals. PHMSA's proposed rulemaking wholly fails to address whether or how there will be appropriate security throughout the chain to guard against the security risks the proposed rulemaking creates.

[14] Government Accountability Office (GAO). "Maritime Security: Federal Efforts Needed to Address Challenges in Preventing and Responding to Terrorist Attacks on Energy Commodity Tankers," GAO-08-141, December 10, 2007, p.77.

7. **PHMSA has not established that the proposed tank car specification is protective of public safety.**

In its proposal, PHMSA fails to provide a sufficient factual basis to support its assertion that the materials utilized in the fabrication of DOT-113 are appropriate for the transportation of LNG. The NPRM states that:

> [T]he DOT-113 specification cryogenic liquid tank car is built to comply with specifications contained in 49 CFR part 179, subpart F and TC regulation TC14877E, Section 8.6, as well as certain requirements of the rail industry as identified in the AAR Manual of Standards and Recommended Practices, Specifications for Tank Cars (M-1002). These rail tank cars are vacuum-insulated and consist of an inner alloy (stainless) steel tank enclosed with an outer carbon steel jacket shell specifically designed for the transportation of refrigerated liquefied gases, such as liquid hydrogen, oxygen, ethylene, nitrogen, and argon....In this NPRM, PHMSA is proposing to authorize DOT-113C120W tank cars for use in the transportation of LNG by rail. The HMR currently authorize the DOT-113C120W specification tank car for another flammable cryogenic liquid which shares similar chemical and operating characteristics with LNG (*i.e.*, ethylene)....DOT-113 specification rail tank cars are constructed in accordance with the requirements of 49 CFR, part 179, subpart F, "Specification for Cryogenic Liquid Tank Car Tanks and Seamless Steel Tanks." These cars are built to a double pressure vessel design with the commodity tank (inner vessel) constructed of ASTM A 240/A 240M, Type 304 or 304L stainless steel, and the outer jacket shell (outer vessel) typically is constructed of carbon steel.

NPRM at 56967. We note that safe storage of LNG in stationary tanks requires the use of high nickel steels. As one leading manufacturer of such tank materials states:

> LNG is stored at cryogenic temperatures (under -162 [C] degrees). Thus, steel for storage tanks needs to have high fracture resistance and strength under low-temperature conditions. For this reason, the 9% Ni steel (steel containing 9% nickel) that is outstanding in these required characteristics has been used for such situations for over half a century.[15]

Based on the requirements for stationary LNG storage vessels, the Tribe is concerned that insufficient data (or other empirical support) has been presented to support the conclusion that the materials utilized in construction of DOT 113 rail tank cars are compatible with LNG storage.

The specifications for ASTM A240/240M, 304, or 304L steels provide for a range of nickel content that covers the content recommended for stationary LNG tanks, but also extends outside of that range. No evidence is provided that all steels meeting this specification will have the performance

[15] https://www.nipponsteel.com/en/news/20140619_100.html

specifications appropriate for storing LNG that is being transported by rail. As noted above, specific studies regarding the survivability and durability of DOT 113 tanks are ongoing, and PHMSA has not demonstrated that allowing ASTM A240/240M, 304, or 304L steel to be used in LNG tank cars will ensure safe transport of LNG.

Further, while 9% Ni steel may be appropriate for stationary LNG tanks, a stationary tank is not subject to the same range of stresses as a rail tank car.[16] PHMSA notes that studies are underway that may help establish whether this steel standard is appropriate for LNG tank cars. If PHMSA is to utilize this standard, it must establish that all steels meeting the ASTM A240/240M, 304, or 304L standard do not fail when subjected to the specific conditions and stresses presented in the transport of LNG by rail, because if this steel does not meet the necessary performance specification the consequences could be dire.

8. **The proposed rulemaking is a major federal action that requires the preparation of a full Environmental Impact Statement.**

The following NPRM excerpts (formatted in *italic* for easy identification with emphasis added via underline) are examples of the many speculative or unfounded statements included in PHMSA's environmental analysis. CEQ regulations define whether impacts are "significant" enough to warrant a full EIS, requiring consideration of both "context" (i.e., the various scales, regions, and interests affected by the action) and "intensity" (i.e., the "severity of the impact"). 40 C.F.R. § 1508.27. At the outset, it is important to note that PHMSA did not consult with any competent environmental agency/agencies in connection with its environmental analysis. It is also important to note that PHMSA's "analysis" is entirely qualitative.

> *"PHMSA understands that authorizing the rail transportation of LNG would reduce greenhouse gas emissions by requiring fewer trips to transport the same amount of material currently being transported by highway. Furthermore, fewer trips are anticipated to result in fewer accidents and spills of LNG during transportation."* NPRM at 56972 (emphasis added).

The underlined language in the preceding quotation from the NPRM indicates the speculative, unripe nature of key aspects of the analysis contained within the NPRM. PHMSA provides no indication of what information or analysis this "understanding" regarding the reduction of greenhouse gas emissions is based upon, nor does make clear the basis for its "fewer trips" conclusion.[17] In fact, allowing transportation of LNG by rail may result in an overall increase in demand and utilization of LNG (indeed, the NPRM identifies that as one of its purposes) and thus an increase in total trips transporting LNG. Further, as noted elsewhere, due to the current restrictions on transporting LNG by rail and PHMSA's lack of data regarding the anticipated scope

[16] For example, rail tank cars will be subjected to comparatively more piercing scenarios than will be a stationary tank at an LNG facility, particularly so in the event of a rollover accident or collision.

[17] Notably, the NPRM will not be doing away with LNG transportation by truck.

of LNG that would be transported by rail under the NPRM, any predictions regarding future accidents and spills are unreliable and speculative.

> *"Though rare, derailments involving DOT-113 tank cars can result in large quantities of hazardous materials released, which can result from venting or breach of the inner tank shell. These releases can be considerably larger than releases from a CTMV that travels by highway. Nonetheless, considering that the DOT-113 tank car has a 50-year service history and with the understanding it is possible there are unreported incidents from years past, the safety history is noteworthy. It is difficult to estimate the failure rate of the DOT-113 tank car in derailments because railroads are not required to report incidents to PHMSA or FRA unless they meet a baseline threshold. 49 CFR 171.16 and 225.19. Incident data suggests that incidents involving rail tank cars can lead to higher consequence incidents; however, PHMSA believes that rail transportation is advantageous considering the quantity transported compared to miles traveled."* NPRM at 56972 (emphasis added).

The underlined language in the quotation above from the NPRM demonstrates the speculative, unripe nature of key aspects of the NPRM. It also shows PHMSA lacks information and data that is material to significant aspects of the NPRM. PHMSA acknowledges that "incident data suggests that incidents involving rail tank cars can lead to higher consequence incidents" but without quantifying or qualifying what those higher consequence incidents entail, dismisses them in coming to its belief that rail transportation is advantageous.

> *"The distance over which an LNG vapor cloud remains flammable is difficult to predict; local weather conditions (wind speed, atmospheric stability or turbulence), terrain, surface cover (i.e., vegetation, trees, and buildings) will influence how a vapor cloud disperses, and how rapidly it dilutes."* NPRM at 56972 (emphasis added).

With regard to the quotation from the NPRM directly above – respectfully, the inherent difficulty of predicting the extent of a flammable LNG vapor cloud is not a justification for providing no study or analysis whatsoever of the risks presented by releases of LNG transported by rail. If anything, this difficulty and related uncertainty warrants additional operational controls on the transport of LNG by rail.

> *"...In the event of a DOT-113 specification tank car derailment causing only breach of the outer shell, the breach would cause the loss of the insulating vacuum between the inner and outer tank, allowing the inner tank and material to warm and build pressure. The resulting pressure build would lead to the activation of the pressure relief systems on the car and the controlled venting of LNG vapor. While this scenario is concerning, the controlled venting of LNG vapor involves less risk than the uncontrolled release of an entire LNG lading. Additionally, it is highly unlikely that damage to the tank car involved in a derailment would result in explosion due to a boiling liquid expanding vapor explosion (BLEVE). This event*

> *is highly unlikely due to the loading pressure requirements for cryogenic materials, and due to the mandated requirements for redundant pressure relief systems (valves and safety vents) that are built into each car. This rulemaking proposes a 15 psig maximum loading pressure when LNG is offered for transportation in the DOT-113C120W tank car. This loading pressure, along with other safety requirements and operational controls reduce the potential of a BLEVE."* NPRM at 56973-74 (emphasis added).

With regard to the quote directly above, PHMSA's indication that building pressure would lead to the activation of the pressure relief systems on the car and the controlled venting of LNG vapor relies on an assumption of complete and consistent effectiveness of the pressure relief devices. This assumption is unsupported, and thus PHMSA's assertion that venting will always be "controlled" is speculative and not supported by data. The PRIA notes that ongoing studies are reviewing "full-scale tank car impact testing and analysis" of DOT 113 tanks, and "a full scale LNG tender rail highway crossing impact test", which will evaluate the survivability of valves and valve housing on an LNG tender constructed per the proposed standards in a rail cross crossing incident scenario. Based on PHMSA's acknowledgement that studies analyzing the performance of valves and valve housings on a DOT 113 specification tank car have not been completed, PHMSA's assumption that pressure relief systems would activate and ensure a controlled release of LNG is unsupported and premature.

> *"...the impact of radiant heat from a fire on occupied structures will be influenced by local building codes that govern building setback requirements from railroad right-of- way. Depending on the jurisdiction, setbacks for occupied structures could be within fifty (50) feet of either side of a railroad track."* NPRM at 56974 (emphasis added).

The underlined language in the quote from the NPRM directly above, indicates the speculative, unripe mature of key aspects of the NPRM. Analysis of the extent of a flammable vapor cloud of LNG has not been conducted, and thus the NPRM provides no substantive information as to the impact of radiant heat from a fire- one of the significant concerns shared by the Tribe and rail-adjacent communities.

> *"...The special design of the DOT-113 tank car reduces the probability of cascading failures of other undamaged DOT-113 specification tank cars being transported in a block or unit train configuration."* NPRM at 56974 (emphasis added).

The underlined language in the quote from the NPRM directly above, indicates the speculative, unripe nature of key aspects of the NPRM. Not only is this statement regarding a purported reduction of the probability of cascading failures speculative, it has no regulatory meaning. This assertion that the probability of cascading failures is "reduced" by an unquantified amount from an unquantified baseline provides no assurance that the NPRM's course of action is sufficiently safe to be sound policy.

> *"As stated previously, this scenario would result in the controlled venting of LNG vapor to the environment. Ignition of these vapors could occur if an ignition source is present, but would be contained to the proximity of the release point of the vapors from the tank car. Additionally, as stated previously, it is highly unlikely that an undamaged DOT-113 tank car involved in a derailment would result in explosion due to a BLEVE. This event is highly unlikely due to the design of the tank car, the loading pressure requirements for cryogenic materials, the mandated requirements for redundant pressure relief systems (valves and safety vents) and insulation systems that are built into each car. It is not possible to state with certainty whether a BLEVE is possible in the case of a LNG tank car derailment, and what conditions need to be present for such an event to occur. However, a recent full-scale test with a double walled portable cryogenic tank filled with liquid nitrogen (and PRDs operated as designed) and exposed to a greater than 200-minute engulfing propane pool fire was neither destroyed nor did a BLEVE occur. The number of cars that could be impacted by this type of exposure would be dependent on multiple factors. Some of these include, but are not limited to: The number or LNG cars in the consist, the locations of those tank cars, type of fire, exposure distance, and defensive actions of responders. Exposure to radiant heat from an LNG pool fire or being caught within the flash vapor fire could result in fatalities, serious injuries, and property damage. These risks also exist in the transportation of LNG via highway, existing rail transportation, and pipeline. However, given the safety history of the DOT-113C120W tank cars, it is expected that the risk of tank car failure and ignition is low."* NPRM at 56974 (emphasis added).

The underlined language in the quote from the NPRM directly above, indicates the speculative, unripe nature of key aspects of the NPRM. The PRIA notes that LNG rail transport studies, including one regarding the pool fire survivability of an LNG filled portable tank subject to an engulfing pool fire are scheduled for early 2020. Any attempt to move forward with this NPRM prior to conclusion and review of the proposed rule in the context of this new information is inappropriate.

> *"In a scenario involving cryogenic temperature exposure, the risk to an undamaged DOT-113 specification tank car is the embrittlement of the car's steel due to exposure to the extremely cold temperatures of the material. This type of exposure could lead to the failure of the tank car's outer carbon steel tank, but not the inner stainless steel tank."* NPRM at 59675 (emphasis added).

With regard to the quoted portion of the NPRM directly above, PHMSA's assertion regarding the effects of extreme cold on the internal versus outer tanks is speculative as PHMSA has not supported its assertion that the steel specification utilized in the NPRM for use in DOT 113 tank cars meets the standards for equivalent stationary LNG tanks. Further, as discussed at Section 7 above, the ongoing studies regarding the performance of DOT 113 specification tank cars for transportation of LNG have not been completed, and thus the record does not support PHMSA's assumption that the steel specification set forth in the NPRM can withstand both the extreme temperatures and operational stresses that would be experienced during transportation of LNG.

> *"The failure of one or more DOT-113C120W tank cars filled with LNG would release a large amount of either burned methane or unburned methane hydrocarbons into the atmosphere. Unburned methane hydrocarbons are a potent GHG and a pollutant. However, as described above, the likelihood of such a failure is very low, given the safety record of DOT-113C120W tank cars."* NPRM at 56975 (emphasis added).

With regard to the quoted portion of the NPRM directly above, PHMSA's determination on the "very low" likelihood of the failure of a DOT 113 tank car filled with LNG is unsupported. As noted above, the PRIA describes a number of ongoing studies that appear to bear on the likelihood and consequences of such a failure. Accordingly, this assertion is premature and speculative.

> *"As a regulator of hazardous materials packaging safety, PHMSA lacks the expertise to perform a quantitative prediction of how this rulemaking could affect GHG emissions."* NPRM at 56975 (emphasis added).

With regard to the quoted portion of the NPRM directly above, PHMSA's failure to perform any quantitative analysis of how the rulemaking could affect GHG emissions is not excused by their lack of expertise. PHMSA could have consulted with proper experts or relied on its partner-agencies' expertise in this context prior to proposing this rule. PHMSA provides no explanation as to why it did not do so. Further, this acknowledgement by PHMSA that it lacks the expertise to perform a quantitative analysis of GHG emissions indicates that PHMSA does not have the proper expertise to provide the qualitative statements regarding GHG emissions contained within the NPRM (which statements are speculative and unreliable).

In making a determination as to the extent of environmental analysis required in regards to a federal action, CEQ regulations define whether impacts are "significant" enough to warrant a full EIS, requiring consideration of both "context" and "intensity." 40 C.F.R. § 1508.27. An honest analysis of the context and intensity of the actions authorized by the NPRM shows that the potential impacts of the NPRM are significant. Under NEPA, PHMSA failed to fully consider the significant and harmful environmental impacts of the NPRM in a complete and transparent EIS. Instead, the Corps completed a limited Environmental Assessment ("EA") and made a Finding of No Significant Impact ("FONSI").

PHMSA did not analyze or discuss upstream induced effects of fracked methane gas extraction, and its analysis of the health and safety issues raised by the NPRM is woefully inadequate. In so doing, PHMSA has acted arbitrarily, capriciously, and contrary to the evidence before it, in violation of NEPA and CEQ regulations, and contrary to the APA, 5 U.S.C. § 706(2)(A), in failing to prepare a full EIS on this NPRM having significant impacts on a national scale.

Given the pervasiveness and significance of the impacts occasioned by this proposed rulemaking, there can be no serious question as to whether an environmental impact statement is required –

one is. A nationwide programmatic EIS needs to be performed before this proposed rulemaking proceeds forward.

C. CONCLUSION

The Tribe is disappointed that PHMSA has failed to properly exercise its public trust obligation to the community and its special government-to-government relationship with the Puyallup Tribe of Indians. Nevertheless, the Tribe remains hopeful that PHMSA will reconsider its actions and omissions to date, and then take steps to protect the Tribe (and the public at large) from the significant and unique threats that this NPRM poses to public safety, to the air we breathe, and to the Tribe's continued existence and well-being.

Presently, current regulations should remain in place, with no new enabling provisions added, until such time as the required scientific research, study, analysis and detailed Quantitative Risk Analyses for proposed rail transportation routes to support the unprecedented transport of LNG by proposed by this NPRM have been completed, and the risks associated with transporting LNG tank cars by train are better understood. The policy issues, technical problems and legal concerns identified above are substantial and deserve PHMSA's full and fair consideration. PHMSA has the ability to address the Tribe's concerns in a straightforward and purposeful manner and the Tribe respectfully requests that the PHMSA take the following actions in the exercise of its authority.

First, the Tribe requests that PHMSA re-designate the NPRM as an ANPRM due to the woefully inadequate record that presently exists. The rushed and incomplete nature of this NPRM is wholly inappropriate, is clearly more appropriately a ANPRM, and is arbitrary, capricious, and contrary to law.

Second, a full EIS is required under NEPA and should be prepared before PHMSA makes a final determination on its proposed rule.

Third, the Tribe demands a government-to-government consultation to discuss the Tribe's comments and concerns regarding the current NPRM. The Proposed Rulemaking has significant implications for the Puyallup Tribe due to the LNG facility being sited on the border of its Reservation. Further, once the relevant safety studies have been completed and the administrative record has been fully developed, but before the rule is re-proposed, PHMSA should continue to engage in meaningful consultation with the Tribe. The purpose of this consultation, which would be ongoing, would be to further inform PHMSA of the concerns identified above and to permit the Tribe and PHMSA to engage in the type of meaningful and mutually informative government-to-government communication required by applicable federal law.

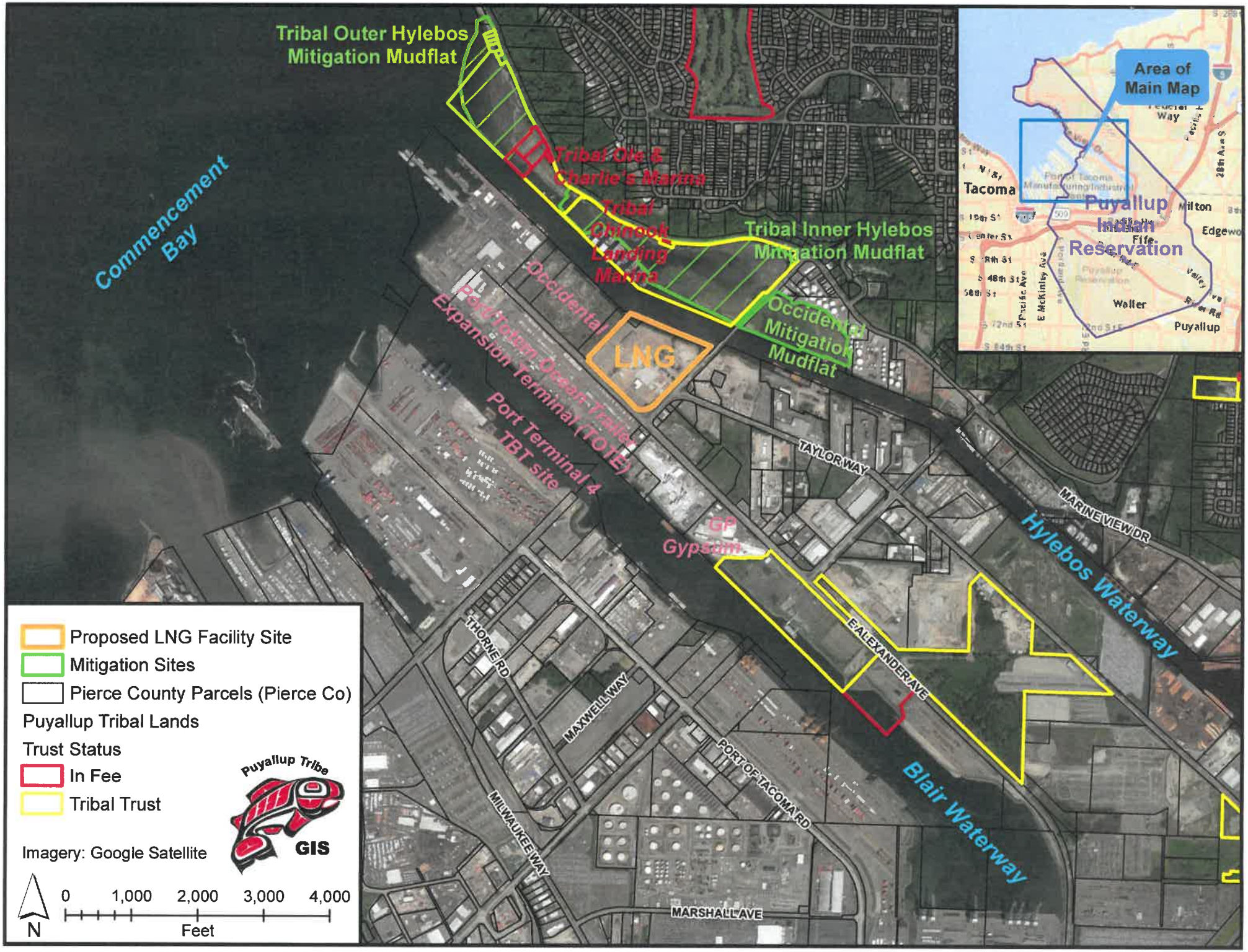
Fourth, as required by Executive Order 12898, PHMSA needs to consider the environmental justice implications of its proposed rule before making a final decision thereon.

Please contact me at (253) 573-7852 or at Lisa.Anderson@PuyallupTribe-nsn.gov to schedule consultation at your earliest convenience.

Sincerely,

Lisa A.H. Anderson
Tribal Environmental Counsel

ATTACHMENT 1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Tribal Ole & Charlie's Marina
Tribal Chinook Landing Marina
Tribal Inner Hylebos Mitigation Mudflat
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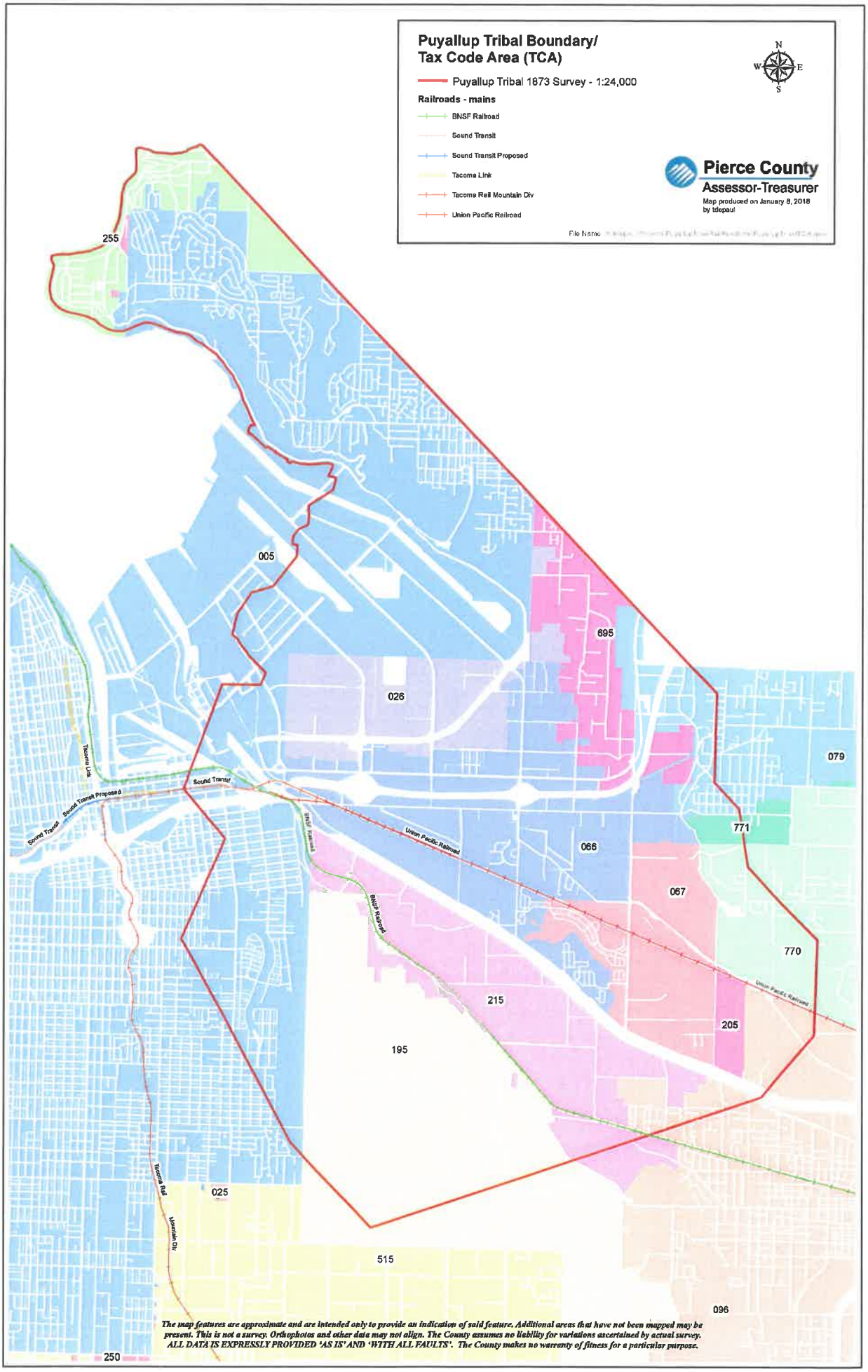
ATTACHMENT 2


Puyallup Tribal Boundary/
Tax Code Area (TCA)
Puyallup Tribal 1873 Survey - 1:24,000
Railroads - mains
BNSF Railroad
Sound Transit
Sound Transit Proposed
Tacoma Link
Tacoma Rail Mountain Div
Union Pacific Railroad
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Pierce County
Assessor-Treasurer
Map produced on January 8, 2018
by tdepaul
File Name
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Union Pacific Railroad
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Mountain Dr
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