

From: [Brady, Pamela](#)
To: [PDS Planning Commission](#)
Subject: BP Comments to Planning Commission Dec 12, 2019
Date: Thursday, December 12, 2019 5:54:17 PM
Attachments: [BP Comment letter_121219.pdf](#)

Good evening,

Attached are comments from BP to the Planning Commission. Please let me know if you have any questions. Thank you.

Pam Brady

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December 12, 2019

VIA EMAIL

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, WA 98226

RE: Whatcom County Comprehensive Plan and County Code Amendments

Dear Planning Commissioners:

The BP Cherry Point Refinery ("Cherry Point") provides these additional comments on the Whatcom County Comprehensive Plan and County Code amendments relating to fossil fuel and renewable fuel refineries, storage, transshipment facilities, piers, and other related facilities within the Cherry Point Urban Growth Area ("Proposed Amendments"). Cherry Point submits these comments after having reviewed the December 3, 2019 Memorandum sent to the Whatcom County Planning Commission ("Planning Commission") that is scheduled to be discussed at tonight's Planning Commission Meeting.

The Proposed Amendments are not yet at the stage where they should be sent to the County Council. The Proposed Amendments will shape the future of Whatcom County, and industry and other stakeholders need adequate time to thoroughly review the Planning Commission's recommended changes to provide reasoned and thoughtful feedback. Critically, it is paramount that industry and other stakeholders have the opportunity to review and comment on the *specific language* of the Proposed Amendments before the Planning Commission's recommendations are sent to the County Council.

I would also like to address the two issues discussed in the December 3, 2019 Memorandum. First, the Planning Department proposes to exclude from the definition of "expansions" a list of 19 different activities. This approach, by itself, is simply unworkable. Projects at refineries often serve multiple purposes. For example, a single project could be classified as being a "safety improvement," "maintenance," and "expansion." The Proposed Amendments do not clearly address how to classify such projects. Furthermore, the Planning Department proposal does not include a minimum

threshold below which a conditional use permit would not be required, thereby requiring burdensome and unnecessary procedures for small projects. For all of these reasons – as well as the reasons set forth in our prior letters – we suggest that the definition of “expansion” should include a threshold so that the Proposed Amendments only apply to projects (not otherwise excluded) that are reasonably expected to result in an increase in annual direct GHG emissions in Whatcom County in excess of that amount. We request an opportunity to propose an appropriate threshold and the method for calculating it at the January, 2020 Planning Commission working session or some other mutually convenient date.

Second, with regard to the “change of use” provisions, the Planning Department acknowledged in its December 3, 2019 Memorandum that this is a complicated issue in the context of existing refineries and recommended that the County Council request Cascadia Law Group to “specifically defin[e] what constitutes a change of use.” We agree that this term is difficult to define and is unworkable in its current form in the Proposed Amendments. If this term is not precisely defined, the Proposed Amendments could have significant unintended effects in Whatcom County. For example, Alternative B discussed in the December 3, 2019 Memorandum would provide that a “change of use” occurs when “a facility is altering its primary operational purpose, deviating from what was described in the original permit and SEPA applications, such that new foreseeable adverse impacts arise.” As applied, this definition would apply to a bevy of facilities and operations in Whatcom County beyond refineries and could be unwieldy for the County to enforce. Given the crucial importance the term “change of use” plays in the Proposed Amendments, the Planning Commission needs to take additional time to consider the effects of including this term in the Proposed Amendments.

Furthermore, the necessity of including a “change of use” requirement at all in the Proposed Amendments is itself highly questionable. Whatcom County’s existing permitting scheme imposes a thorough review of projects, including impacts from development that alter a project’s underlying use. Specifically, Whatcom County’s land use permitting, shoreline permitting, and accompanying environmental review already allow the County ample opportunity to review and scrutinize impacts associated with changes of use. For any activities requiring shoreline permits or other discretionary land use permitting and accompanying environmental review, an additional “change of use” review process would be duplicative and unnecessary, costing the County both time and money.¹

¹ In addition, the Planning Commission should not adopt a “change of use” definition while significant factual inaccuracies remain on the record. Proponents of the “change of use” permitting processes have offered two specific examples of projects at facilities they claim evaded thorough review that would have happened had the County required a change of use permit. Contrary to these assertions, the two projects in question were maintenance activities that did not change the underlying character of the facility operations—meaning they did not “change the use” of the operation. Accordingly, these examples do nothing to support the proponents demand to incorporate to incorporate a duplicative and burdensome new regulatory process.

Finally, as we explained in our prior letters, the County's Proposed Amendments will likely result in adverse environmental consequences including from "carbon leakage." Carbon leakage occurs, for example, when demand for fossil fuels is met by facilities that are less efficient from a GHG emissions standpoint, producing a net increase in GHG emissions and other contaminants. This adverse impact can be exacerbated further to the extent the same fuels will have to travel longer distances or by less efficient means (e.g., ships instead of pipelines) in order to get to market, resulting in a further increase in aggregate GHG emissions, among other issues. BP requests an opportunity to present to the Planning Commission on this issue at the January, 2020 Planning Commission work session or some other mutually convenient date.

Thank you for the opportunity to provide these comments.

Sincerely,



Pam Brady
BP Cherry Point Refinery