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Mark Personius
 Director

Memorandum

March 3, 2020

TO: The Whatcom County Planning Commission

FROM: Matt Aamot, Senior Planner *MA*

THROUGH: Mark Personius, Director *MP*

RE: Cherry Point Amendments (PLN2018-00009)

The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review. The Planning Commission is holding a series of meetings on the proposed amendments, as shown below.

Meeting	Date	Type of Meeting	Comments
1	9/12/19	Town Hall Meeting	Opportunity for the public to speak on the proposal.
2	9/26/19	Work Session	Included discussion with a representative of Cascadia Law Group. Planning Commission approved a motion requesting the Planning and Development Services Department to meet with industry representatives to obtain input.
3	10/10/19	Work Session	Discussion with industry representatives, environmental group representatives, and the Northwest Clean Air Agency. Planning Commission reached consensus to delete the proposed greenhouse gas (GHG) mitigation requirements for renewable fuel facilities that reduce lifecycle GHG emissions.
4	10/24/19	Work Session	Industry presentation relating to GHG regulations. Planning Commission approved a motion that the conditional use permit requirement should be maintained in the proposal for expansions of existing refineries and transshipment facilities (with further discussion on change of use and exempt/permitted uses at a later date). Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).

5	11/14/19	Work Session	<p>Industry presentation relating to insurance.</p> <p>Planning Commission approved a motion to insert the following language in proposed WCC 22.05.125: "Permit applicant to provide proof of insurance naming Whatcom County as additional insured." The remainder of the insurance language was deleted.</p> <p>Planning Commission approved a motion to retain the term "expansion" of existing refineries and transshipment facilities in the conditional use section and other sections of the code.</p>
6	12/12/19	Work Session	<p>Planning Commission approved a motion to recommend that new fossil fuel refineries be a prohibited use in the Heavy Impact Industrial zone (proposed WCC 20.68.204).</p> <p>Planning Commission approved a motion that new renewable fuel refineries or renewable fuel transshipment facilities be allowed as a permitted use in the Heavy Impact Industrial zone (proposed WCC 20.68.159 in the conditional use section of the code would be deleted and these uses would be moved to the permitted use section).</p>
7	1/16/20	Work Session	<p>Planning Commission approved a motion to move expansion of renewable fuel facilities from conditional use to permitted use, as long as the expansion is for the increased production of renewable fuels.</p> <p>Planning Commission approved motions to amend proposed WCC 20.68.153 relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions define what activities constitute an "expansion" and when a conditional use permit is required.</p>
8	1/30/20	Work Session	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> • Amend proposed WCC 20.68.153 relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions further define what activities constitute an "expansion" that requires a conditional use permit. • Amend proposed WCC 20.68.153 by removing the following from the conditional use permit approval criteria: "Demonstration that the proposal will retain or add living-wage jobs or contribute to the Whatcom County economy." • Add a definition of "Maximum Atmospheric Crude Distillation Capacity" to the Zoning Code (WCC 20.97). • Delete proposed WCC 20.74.110 relating to Change of Use. • Amend proposed WCC 20.68.068 relating to permitted uses in the Heavy Impact Industrial Zone. • Amend proposed WCC 16.08.090, relating to the

			SEPA worksheet for fossil and renewable fuel facilities, by removing the reference to the Climate Impact Advisory Committee.
9	2/27/20	Work Session	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> • Amend proposed WCC 16.08.090 to state that the SEPA Responsible Official will consult with the Planning Commission when preparing or updating the worksheet for fossil and renewable fuel facilities. • Accept the staff proposed changes in Exhibit A (Comprehensive Plan amendments). • Amend Comprehensive Plan Policy 2CC-16 by removing the reference to the Prosecuting Attorney as a person who should give notice to the County Council of fossil or renewable fuel facility applications and documents. • Amend Comprehensive Plan Policy 2CC-17 to "Allow existing operations or maintenance of existing fossil-fuel related facilities operating at levels as of 2020. . .". • Insert a new Policy 2CC-18 allowing the on-going operation, maintenance, repair, certain modifications, safety and environmental improvements, and regulatory compliance projects at existing facilities.
10	3/12/20	Work Session	

At the March 12, 2020 meeting, the Planning and Development Services (PDS) Department would like to continue discussing Council’s proposed amendments, and suggested changes, shown below and in the attached Exhibits. Specifically, we would like to address:

- Clarifying language relating to new piers, docks, and wharves
- Clarifying language relating to coal-fired power plants
- Clarifying language relating to proof of insurance provisions
- Definition of “value added processing” proposed by industry
- Fossil and Renewable Fuel Facilities Evaluation Worksheet

1. New Piers, Docks, and Wharves

Amend proposed WCC 20.68.070, in the permitted use section of the Heavy Impact Industrial District, as follows:

New renewable fuel refineries or renewable fuel transshipment facilities, except that new piers, docks, or wharves in the Cherry Point Industrial District are prohibited.

Rationale for Proposed Change: The Council’s original proposed amendments would prohibit new piers, docks, or wharves in the Cherry Point Industrial District (proposed WCC 20.68.206 and 20.74.055 – Exhibit C, pp. 19 and 25). However, more recent proposed amendments permit new renewable fuel

refineries *and* transshipment facilities (proposed WCC 20.68.070 – Exhibit C, p. 13). Under the proposed definitions, transshipment facilities include piers (proposed WCC 20.97.160.3 – Exhibit C, p. 31). There is a conflict between these provisions.

This conflict could be rectified by simply modifying proposed WCC 20.68.070 as shown above.

2. Coal-fired Power Plants

Amend existing WCC 20.68.060, in the permitted use section of the Heavy Impact Industrial District, as follows:

Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

Rationale for Proposed Change: The Council’s proposed amendments would prohibit coal fired power plants (proposed WCC 20.68.207 – Exhibit C, p. 19). However, power plants are already permitted in the HII zone (WCC 20.68.060 – Exhibit C, p. 12). PDS recommends modifying WCC 20.68.060 to clarify that permitted power plants do not include coal fired power plants, as shown above.

3. Proof of Insurance

Amend proposed WCC 22.05.125, Proof of insurance for hazards created in the County, as follows:

Permit applicant to provide proof of insurance naming Whatcom County as additional insured for any of the following that require a conditional use permit or major project permit:

(1) Expansion of existing fossil fuel refinery or existing fossil fuel transshipment facility;

(2) Expansion of or new renewable fuel refinery or renewable fuel transshipment facility.

Rationale for Proposed Change: The Planning Commission simplified the insurance language proposed by Council. The insurance provisions were originally intended to apply to fossil fuel and renewable fuel facilities. However, the Planning Commission language appears to have inadvertently deleted the references to fossil and renewable fuel facilities. As such, the language would apply more broadly to a variety of land uses. Therefore, PDS recommends modifying proposed WCC 22.05.125 (Exhibit D, p. 39) as shown above, so that it only applies to fossil and renewable fuel facilities as originally intended.

4. Value Added Processing

The Planning Commission approved motions to amend proposed WCC 20.68.153 (Exhibit C, p. 15) relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions further define what activities constitute an "expansion" that requires a conditional use permit. One of the motions was to require a conditional use permit for development that:

Cumulatively increases fossil fuel storage tank capacity of the facility by more than 200,000 barrels (or 8,400,000 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing.

At that time, it was understood that industry would submit a proposed definition of "value added processing." This proposed definition was submitted in an e-mail from Holli Johnson of the Western States Petroleum Association dated February 18, 2020 (attached).

5. Fossil and Renewable Fuel Facilities Evaluation Worksheet

The County Council's proposed amendments include a "Worksheet for Fossil and Renewable Fuel Facilities" (proposed WCC 16.08.090 – Exhibit B, p. 1). Planning Commissioners have asked about the process for developing the worksheet.

PDS conferred with Cascadia Law Group and the County's Chief Civil Deputy Prosecutor. Cascadia indicated that the Worksheet for Fossil and Renewable Fuel Facilities is an administrative form to be developed by the SEPA Responsible Official. The SEPA Official may consult with advisory committees, stakeholders, and/or governmental agencies when developing the form. However, it is not a legislative action requiring Planning Commission review or County Council approval.

A likely PDS process for developing the worksheet was transmitted to you in an e-mail from Mark Personius on February 12, 2020 (attached).

Thank your review and consideration of these issues. We look forward to discussing them with you.