

From: [Brady, Pamela](#)
To: [Mark Personius](#); [Matt Aamot](#); [Ashley Ubil](#)
Cc: [Verburg, James E](#); [Chalfant, Jeff](#)
Subject: bp comment letter
Date: Tuesday, July 07, 2020 11:39:30 AM
Attachments: [Whatcom Co Planning Commission bp comment 070720.docx](#)

Good morning,

As we discussed yesterday, bp has a few additional concerns that we would like staff and the Planning Commission to consider in preparation for Thursday's meeting. As you'll see in the attached comments, we offered suggested revisions for each area of concern. We would be happy to jump on a call to clarify or answer questions you may have.

Thanks for considering,

Pam



Pam Brady
Director
Government and Public Affairs

bp America, Inc.
4519 Grandview RD
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July 7, 2020

Whatcom County Planning Commission
5208 Northwest Drive
Bellingham, WA 98226

Re: Cherry Point Amendments

Dear Planning Commissioners:

On behalf of bp Cherry Point Refinery (“Cherry Point”), I write to provide comments on the proposed Whatcom County Comprehensive Plan and County Code Amendments relating to fossil fuel and renewable fuel refineries, storage, transshipment facilities, piers and other related facilities in the Cherry Point Urban Growth Area (“Cherry Point Amendments”). Cherry Point appreciates the opportunity to provide comments on the Amendments and applauds the Planning Commission for the robust public comment process and for carefully considering the feedback of all stakeholders over the past nearly eleven months.

bp is an integrated energy business with global operations. In Whatcom County, our business is focused on refining operations and bringing transportation fuels to market. bp recognizes the urgency of the climate challenge and seeks to drive a transition to lower carbon world. In February 2020, our new chief executive Bernard Looney introduced our ambition to become a net zero company by 2050 or sooner, and to help the world reach net zero. We have 10 aims underpinning this ambition; the first three include: becoming net zero across our entire operations on an absolute basis, becoming net zero on an absolute basis across the carbon in our upstream oil and gas production, and halving the carbon intensity of the products we sell – all by 2050 or sooner. In order to underpin this transition, bp believes there will be a need for a well-designed price on carbon, and we are working to engage governments here and elsewhere to develop policies that create efficient economy-wide carbon reductions.

This letter provides comments on the revised version of the Cherry Point Amendments adopted by the Planning Commission at its June 25, 2020 meeting. Specifically, Cherry Point believes that there are *four critical areas* in which additional—relatively minor—clarifications are necessary in order to ensure that the final Amendments will provide regulatory clarity to the affected industries of Whatcom County; encourage capital projects that will result in improved, more efficient products; and safeguard public health and safety.

The four critical areas are the following: (1) a clear definition of the term “value added processing” in the context of facility expansions; (2) a clarification that renewable fuel co-processing facilities are permitted uses; (3) a clarification that pipelines are permitted uses; and (4) further clarification of the permitting process

with regard to projects that will require federal and state permits as well as a County permit.

In order to facilitate your consideration of these important issues, this letter also provides specific, concrete recommendations on how the Planning Commission could revise the Cherry Point Amendments to provide these clarifications. That said, we are very open to further dialogue with the Planning Commission to explore alternative solutions that would work for all.

Cherry Point submits these comments in the spirit of cooperation. It is our hope to be able to strongly support the Cherry Point Amendments when they are returned to the Whatcom County Council for further public hearings and potential enactment.

I. The Cherry Point Amendments should define the term “value added processing.”

Cherry Point respectfully requests that the Planning Commission revisit providing an exclusion of legitimate “value added processing” as part of the definition of “expansion,” Proposed WCC § 20.68.153. This clarification is necessary to allow current operations to continue without inadvertently running afoul of the County’s proposed Amendments.

As you know, at the request of the Planning Commission, industry previously submitted a proposed definition of this term in February 2020.¹ We understand that some of the Planning Commissioners and environmental interest groups were concerned that this definition may be too broad. We believe the following revisions to the prior proposal would alleviate these concerns:

¹ See Email from Holli Johnson to Mark Personius and Matt Aamot re: Cherry Point - Definition of Value Added Processing (Feb. 18, 2020), <http://whatcomcounty.us/DocumentCenter/View/48271/10e-Industry-Definition-of-Value-Added-Processing>.

“Value added processing” is the modification of material through alteration of physical or chemical properties or conditions by:

1. Processing to meet product specifications and/or local, regional, national, or international standards and regulations including but not limited to removal of impurities;

2. Processing to meet shipment or pipeline specifications, standards and regulations including but not limited to removal of impurities;

~~3. Alteration of physical or chemical properties;~~

~~4. Removal of impurities;~~

~~5. 3. Blending;~~

~~6. 4. Refining; or~~

~~7. Vapor pressure control or adjustment; or~~

~~8. Other similar modifications of material;~~

Provided, however, value added processing does not include export of unrefined crude oil which is not processed or consumed at Cherry Point.

If the Planning Commission cannot accept this revised definition, we hope the Planning Commission would consider convening a working session to quickly facilitate an agreeable solution to this important issue.

II. The Cherry Point Amendments should clarify that renewable fuel co-processing facilities are permitted uses.

Cherry Point appreciates that the Planning Commission revised the Cherry Point Amendments to treat renewable fuel refineries and transshipment facilities as permitted uses. We interpret the definition of “renewable fuel refinery” to include facilities dedicated to co-processing only renewable fuels. However, based on the recent June 25, 2020 meeting, we recognize that there may be some uncertainty about treatment of renewable fuel co-processing facilities under the current Cherry Point Amendments.

Co-processing generally refers to the simultaneous processing of biomass feedstocks with petroleum products in the refining process to produce renewable fuels, such as renewable diesel.² Co-processing is a critical component of Cherry Points’ efforts to support the increased availability of lower-carbon fuels because co-processed renewable fuels can be refined, transported, and stored using existing refinery infrastructure. For example, Cherry Point may seek to utilize renewable fuel co-processing facilities to produce greater quantities of renewable diesel blends (e.g., R10 and R15), which are recognized as lower-carbon renewable fuels for purposes of both federal and California programs.

² As explained by the California Air Resources Board (CARB), “[c]o-processing refers to the simultaneous transformation of biogenic feedstocks and intermediate petroleum distillates such as vacuum gas oil (VGO) in existing petroleum refinery process units to produce renewable hydrocarbon fuels. Co-processing has recently received attention due to its potential to provide low carbon renewable fuels at economically competitive prices by utilizing existing refining, transport and storage infrastructure.” California Air Resources Board, *Co-processing of biogenic feedstocks in petroleum refineries* (Feb. 3, 2017), https://ww3.arb.ca.gov/fuels/lcfs/lcfs_meetings/020717_staffdiscussionpaper.pdf.

To resolve this potential uncertainty, we request that the Planning Commission revise the definition of “renewable fuel refinery” at Proposed WCC § 20.97.350.3 to clarify that those portions of renewable fuels “co-processing” projects that are dedicated to the production of renewable fuels as follows:

A ‘Renewable Fuel Refinery’ means a facility that processes, co-processes, or produces renewable fuels; provided, however, that only the components of co-processing projects that are 100% dedicated to the production of renewable fuels shall be covered under this definition.

III. The Cherry Point Amendments should clarify that pipelines are permitted uses.

Cherry Point respectfully requests that the Planning Commission clarify that pipelines are permitted uses. The term “pipelines” is deleted from the permitted uses at Proposed WCC § 20.68.059, which creates uncertainty about the permitting requirements for pipelines. As noted in our September 12, 2019 letter to the Planning Commission, the County is prohibited from regulating interstate pipelines by federal law.³ Accordingly, pipelines should be retained as a “permitted use.” We request that the Planning Commission make clear that pipelines are permitted uses, and propose the following changes to Proposed WCC § 20.68.059 as an option for doing so:

Bulk commodity storage facilities, pipelines, and truck, rail, vessel, and transshipment terminals and facilities except for fossil fuel facilities or fossil fuel transshipment facilities.

IV. The Cherry Point Amendments should not impede the County’s ability to conduct permitting concurring with federal or state authorities.

At the June 25, 2020 Planning Commission meeting, the Commissioners discussed a number of provisions in the Cherry Point Amendments that address the relationship between the Whatcom County Code and other federal, state, and local requirements. We note that this issue is addressed in both the conditional use permit criteria for expansions⁴ and the major project permit criteria.⁵ Cherry Point appreciates that the Planning Commission revised Proposed WCC § 20.88.130(3) to clarify that applicants need not obtain other federal and state permits before the County issues its permits. This revision is consistent with the County Council’s

³ See Letter from Brian D. Israel to Whatcom County Planning Commission re: Whatcom County Comprehensive Plan and County Code Amendments (Sept. 12, 2019), at 41-43; see also Cascadia Law Group and BERK Consulting, Inc., Whatcom County Fossil Fuel Industrial Uses: Potential Code Amendments (Aug. 5, 2019), at 2 (noting that pipelines are “[n]ot addressed [in the Cherry Point Amendments] per Cascadia Law Group report to the County Council: Reducing Impacts from Fossil Fuel Projects Report to the Whatcom County Council February 23, 2018”).

⁴ See Proposed WCC § 20.68.153(2), (8), (9).

⁵ See Proposed WCC § 20.88.130(3).

instruction to the Planning Commission to “NOT cause” any “‘Catch 22’s” where the County withholds permits until other agencies have issued theirs, such as the Army Cor[ps] of Engineers which will traditionally refuse to issue a permit until the local government has approved the project.”⁶

Cherry Point acknowledges the benefits of coordinated permit reviews, so that the County can benefit from the analysis conducted by expert agencies, can avoid duplicating requirements, and ensure that applicants comply with necessary permitting and consultation requirements. The Planning Commission’s edits have improved the language in this regard, but do not fully resolve the problem. Specifically, these sections could be interpreted to require the County to refrain from reviewing an application for a conditional use permit or major project permit *until* all other state or federal permits have been obtained. Such an outcome could cause unnecessary and significant delays for Whatcom County businesses.

Accordingly, we request the Planning Commission make the following edits to the Cherry Point Amendments to ensure that both the County and industry benefit from a coordinated, predictable review process:

⁶ Resolution 2019-037 (Aug. 7, 2019); Resolution 2019-004 (Jan. 29, 2019).

20.68.153(9) ~~The applicant will seek~~Prior to commencement of any site preparation or construction activities, all necessary state leases ~~shall be acquired~~ for any piers or aquatic lands improvements, and ~~it shall be demonstrated to the satisfaction of the zoning administrator that the project applicant has will~~ meet any all necessary federal or state permit or consultation requirements, including properly addressing tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions. The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal or state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition.;

20.88.130(3) Will seek, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the “Magnuson Amendment” under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, prior to ~~issuance~~ undertaking of any site preparation or construction ~~permits activities~~ necessary to construct a facility authorized under a major project permit. The County decision maker may approve a major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it has fulfilled that condition

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As stated above, Cherry Point very much appreciates the efforts undertaken by the Planning Commission to revise the Cherry Point Amendments and the Planning Commission’s involvement of all stakeholders in this important process. We would welcome the opportunity to meet with the County and other interested stakeholders to discuss these remaining concerns in greater detail. Please feel free to contact me at Pamela.Brady@bp.com or 360-920-1171 to discuss further.

Sincerely,



Pam Brady
bp America