

From: [Eddy Ury](#)
To: [Council](#); [Rud Browne](#); [Barry Buchanan](#); [Timothy Ballew](#); [Barbara Brenner](#); [Tyler Byrd](#); [Todd Donovan](#); [Satpal Sidhu](#)
Cc: [Matt Aamot](#); [Tyler Schroeder](#); [Mark Personius](#); [Becky Boxx](#)
Subject: Cherry Point Amendments to Zoning Code
Date: Monday, September 10, 2018 12:23:27 PM
Attachments: [RE Sources letter re Cherry Point 9-10-18 \(3\).pdf](#)

Good Afternoon Councilmembers,

In advance of your Special Committee of the Whole and Executive Session with legal counsel tomorrow, I'm writing to remind you of some context for matters open to question in the course of developing a draft ordinance. Please see the attached letter. I hope to continue to discuss these matters further. As always, thank you for your time and attention on this issue, and for your continuing hard work and diligence in service of our county.

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Eddy Ury

Clean Energy Program Manager
RE Sources for Sustainable Communities
Office: (360) 733-8307 ext. 215
Mobile: (206) 972-2001
re-sources.org | [Facebook](#) | [Blog](#) | [E-News](#)

September 10th, 2018

To: Whatcom County Council
311 Grand Ave
Bellingham, WA 98225

Cc. Whatcom County Planning & Development Services

Subject: Cherry Point Amendments to Comprehensive Plan and Zoning Code

Honorable Councilmembers,

In advance of your Special Committee of the Whole and Executive Session with legal counsel tomorrow, I'm writing to remind you of some context for matters open to question in the course of developing a draft ordinance. Some of what follows is also discussed in the *Reducing Impacts from Fossil Fuel Projects Report to Whatcom County Council* by Cascadia Law Group (CLG Report). RE Sources and our supporters stand in support of action by Council to implement the recommendations of the CLG Report.

SEPA Determination of Significance for all fossil fuel bulk shipment facilities.

As a matter of policy, any major development permit that involves the bulk transport, processing, or storage of fossil fuels should require an environmental impact statement (EIS) with a cumulative impacts analysis. See WAC 197-11-060 (4) (b) :

*In assessing the significance of an impact, a lead agency shall not limit its consideration of a proposal's impacts only to those aspects within its jurisdiction, including local or state boundaries (see WAC **197-11-330**(3) also).*

Any infrastructure that facilitates increased capacity for moving fossil fuels creates unavoidable significant impacts to public health and safety from the shipment themselves, as well as significant pollution that unavoidably arises from the extraction and combustion of the fuels.

Only seven years ago, oil by rail unit trains were non-existent in the United States. Now, approximately one million barrels of crude per week on average is transported through Washington on unit trains ([Crude Oil Movement by Rail and Pipeline Quarterly Reports](#), WA Dept. of Ecology). By granting permits for oil train terminals, Whatcom County is



responsible for introducing significant risk to the safety of residents here, and in other communities all along the rail route through North Dakota, Montana, Idaho, Oregon and Washington including Seattle. As we had feared, in June 2016, an oil train bound for Washington derailed and exploded in Mosier, OR adjacent to the Columbia River and forests. This explosion would not have occurred if local agencies had properly assessed the significance of oil train terminals in their SEPA process.

No state or federal agency has acted to constrain the rapid escalation of oil by rail traffic this decade. However, counties and cities have. The City of Vancouver, WA issued a determination of significance (DS) for the two oil train rail terminals, proposed to transfer oil from trains to barges on the Columbia River, and the hearing examiner upheld the decision after an appeal by the proponent NuStar, which then decided to cancel its application after an EIS was required. Another oil train to barge transfer terminal called Vancouver Energy, proposed as a joint partnership of Tesoro Oil and Savage Industries, was determined significant and sent to Washington State's Energy Facility Site Evaluation Council (EFSEC) for review. In February 2018, EFSEC unanimously rejected the proposal because of its unavoidable significant adverse impacts to public safety.

Shell Puget Sound Refinery applied to build a rail terminal and was initially determined non-significant by Skagit County. After an appeal the Hearing Examiner ruled that the project was significant and required an EIS. The Draft EIS was released in October 2016, and in the same week Shell announced they were withdrawing permit applications and cancelling the project. The Draft EIS showed unavoidable, significant adverse impacts.

Change of Use/occupancy provisions

This is one of the most important areas which the County must address. The matter is very briefly addressed in Section 5.4 of the CLG report. Under existing rules, piecemeal upgrades can occur without substantive review of direct or indirect impacts, which can fundamentally alter the operations of the facility over time, while each project is looked at as an insignificant addition to an existing industry.

The county has no discernible procedure or practice in place to address change of use, and as a result has allowed major developments to escape environmental review. For instance, the Petrogas pier structure is non-conforming, under the terms of SMP 23.50.07, and its use has changed substantially. The Pier was constructed in 1965, prior to the existence of SEPA or the SMA. IN 1975, California Liquid Gas Corporation was permitted to construct

and operate a liquid propane (LPG) storage and transfer facility attached to the Intalco wharf and dock. Whatcom County issued a Declaration of Insignificant Impact on July 7, 1975, and a Shoreline Development Permit on July 14th, 1975. The upgrades and modifications to the terminal included piping and installation of a marine unloading arm for LPG. The purpose of the project was explicitly described to be for receiving and unloading gas for use in Whatcom County. No mention of loading gas for export was made in the project documents. Yet since Petrogas acquired the pier in 2014, LPG export volumes out of Ferndale have risen sharply. In 2013, LPG exports averaged only 10 Mb/d, but they increased to 22 Mb/d in 2014, 32 Mb/d in 2015 and 41 Mb/d in 2016. ("Floating Bridge - West Coast Alternatives for Exporting LPG to Asian Markets" RBN Energy. June 21, 2017). The change of use, from unloading propane to exporting propane, should have required a shoreline conditional use permit, as per SMP. 23.50.07 (j).

Last Month, Whatcom County Planning and Development issued a SEPA Determination of Non-significance for a proposal by Petrogas to reconstruct their pier, replacing 40 creosote wood pilings with 8 steel pilings. This is a major construction activity occurring within the Aquatic Reserve, in Usual & Accustomed Fishing Areas, on a Shoreline of Statewide Significance, on a non-conforming facility. Petrogas also has applied for a Shoreline Exemption, decision pending. Records show that similar projects to replace pilings and dolphins at adjacent marine terminals at Cherry Point and March Point in Skagit County required Shoreline Substantial Development Permits, yet the county seems poised to exempt Petrogas once again.

Prohibitions

Prohibitions on non-existing uses, such as coal storage and transfer, may be the least complicated action at hand which legal precedent clearly supports. The alternative to prohibitions is allowing multi-year review processes which can only lead to permit denials if laws are enforced. Though an EIS was never completed on Gateway Pacific, a comparable coal terminal proposed at Longview, Millennium Bulk Terminals, completed an EIS and was subsequently denied permits by Cowlitz County and WA State Dept. of Ecology for its significant, adverse, unmitigable impacts. Now, Millenium is suing the state for denying permits, and lobbying the U.S. congress to intervene. I hope your legal counsel may advise on how this course of events should influence your decision to avoid such a scenario by prohibiting coal storage and transfer outright.

Addressing Types of Crude and Refined Fuels

As your advisor Mr. Rod Brown discussed at the February 27th presentation, the issue of interstate commerce is of greatest concern if county code and procedure are favoring existing industries over new proponents. Conditions should apply equally to all projects. As you know, the fatal explosion from the Olympic Pipeline in 1999 resulted from a leak of 236,000 gallons of gasoline into Whatcom Creek. Public safety risks for transporting refined fuels are not dissimilar from light crude oil. Heavy crude oil, however, has substantially different properties and risks in a spill scenario that should be distinguished. The risk factors for projects will vary based on type of products, method of transport, and quantity. As you know, Whatcom County's residents already face a high level of risk from existing traffic and operations. Cumulative impacts from increased transport of fossil fuels will elevate the risk further. The balance of risk vs benefits to the county does however differ between unrefined and refined product shipments. A uniform standard of review should apply to all projects to protect public health & safety. I hope you receive guidance from legal counsel on this matter.

Conditional Use Criteria

The County has made an important step by proposing to change certain uses from permitted to conditional, but has not yet discussed conditional use criteria. The issue is addressed in Section 4.2 of the CLG Report. I hope you will seek guidance from legal counsel in drafting language for conditions that may safeguard public health and safety from risks and hazards of bulk fossil fuel shipment, and any other explosive material.

As always, thank you for your time and attention on this issue, and for your continuing hard work and diligence in service of our county. I hope that your upcoming meetings regarding the Cherry Point UGA will be productive.

Respectfully,

Eddy Ury
Clean Energy Program Manager
RE Sources for Sustainable Communities