

**RECORD OF PROCEEDINGS OF THE  
WHATCOM COUNTY PLANNING COMMISSION  
September 26, 2019**

Work Session

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1 **Call to Order**

2 The meeting was called to order, by Whatcom County Planning Commission Chair,  
3 Kelvin Barton, in the Whatcom County Council Chambers at 6:30 p.m.

4 **Roll Call**

5 Present: Robert Bartel, Jon Maberry, Kelvin Barton, Atul Deshmane, Dominic Mocerri,  
6 Natalie McClendon, Gary Honcoop, Kimberley Lund, Stephen Jackson

7 **Staff Present**

8 Matt Aamot, Amy Keenan, Mark Personius, Nick Smith, Ashley Ubil

9 **Commissioner Comments**

10 Commissioner Deshmane stated that the previous meeting was exceptional and that  
11 his focus tonight is on the process and trying to figure out how to digest the events in  
12 the previous meeting.

13

14 Commissioner Barton stated that this meeting will not include a public comment for  
15 anything not on the agenda in order to accomplish more. This meeting is a work  
16 session, so there will not be any public testimony, but a Commissioner may  
17 occasionally call on audience members to answer a question that comes up.

18

19 **Department Update**

20 Mark Personius updated the Commission on the following:

21 Cascadia Law firm worked with the County Council to develop the regulations. Planning  
22 and Development Services' role is to facilitate the Commission's review and make  
23 recommendations back to the County Council. One concern that has risen from the  
24 public comments is whether the regulations are preempted by state or federal law, or  
25 if Whatcom County has the right to regulate greenhouse gas emissions. Dennis  
26 McLaren from Cascadia Law Firm is attending to answer any legal related questions.

27

28 **Work Session**

29 **File #PLN2018-00009: Proposed amendments primarily relating to fossil fuel**  
30 **and renewable fuel refineries, storage, transshipment facilities, piers, and**  
31 **other related facilities in industrial zones, including but not limited to**  
32 **industrial zones within the Cherry Point Urban Growth Area.**

33 Dennis McLaren provided an introduction to the work session and his background:

34

35 Cascadia Law Group has been working with the County Council for about two years.  
36 The "white paper" that was completed and submitted to the County Council about a  
37 year ago contains some of the basic legal underpinnings. It identified some of the  
38 options that were put in front of the County Council and address issues like due  
39 process and takings, and dormant commerce clause. Mr. McLaren stated he was a city  
40 planner before going to law school for land use and environmental law and discussed  
41 his extensive background in the public and private sectors. The document that was put  
42 together by Cascadia Law Group, the County Council, and the County Prosecutor's

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1 Office is legally sound and legally defensible. The County Council's intent was to create  
2 a path to ensure that the existing refineries were protected, which is why they are  
3 outright permitted uses under these regulations. The County Council was also clear  
4 that it wanted to have a process for expansions to ensure there was some discretion  
5 and mitigation associated with that; so a conditional use permit is what is required for  
6 new additions to the refineries. A conditional use permit is a very common and  
7 ordinary land use mechanism and has been in Whatcom County Code for many years.  
8 This process creates an opportunity for the county to review what is being proposed.  
9 Some of the concerns that have been expressed by the County Council are safety  
10 concerns, concerns about impacts on fisheries and vessel traffic, and similar issues.  
11 There is language in the regulations that ensure the county is not repeating a process  
12 that is already required elsewhere, such as mitigation. The State Environmental Policy  
13 Act (SEPA) is intended to be a gap filler in the case of an unanticipated circumstance or  
14 an unmitigated impact. There are a number of National Environmental Policy Act  
15 (NEPA) cases that decision makers have sent back because there has not been a  
16 quantification of the greenhouse gas (GHG) emission from projects as they are being  
17 evaluated. The new SEPA portions of the regulations will allow defensible decisions  
18 and show that the SEPA review has addressed the GHG emissions in a way that will  
19 withstand scrutiny down the line after approving a project. Some NEPA cases have  
20 sent decisions back due to not looking at lifecycle emissions of GHG's, so language is  
21 included to that effect in the proposed regulations.

22  
23 Commissioner Deshmane asked about how much time was spent including engineers,  
24 the refineries, or other suitable petroleum process people in the development of the  
25 codes.

26  
27 Mr. McLaren stated that that was not the role of Cascadia Law Group. Their role was to  
28 draft the documents, but to not be engaged at that level. Cascadia Law Group created  
29 the white paper, which analyzed the legal issues and set forth some alternatives.

30 Commissioner Honcoop stated that he would like to hear from an attorney from the  
31 refining industry to get their legal point of view on the ordinance.

32 Andy Murphy came to the stand to speak as a legal representative for Phillips 66.

33 Mr. Murphy stated that he works at Miller, Nash, Graham, and Dunn, a law firm that  
34 represents the Phillips 66 Ferndale Refinery. The firm disagrees with some of the legal  
35 issues that Mr. McLaren was describing. Particularly, there are significant concerns with  
36 the dormant commerce clause. There is a question and disagreement of whether this is  
37 a subject matter that is fit for a county to regulate. A lot of concerns presented  
38 identified impacts that were outside of the county's jurisdiction. This highlights the  
39 issue that this is an inappropriate forum to regulate these particular issues. There are  
40 significant concerns with the dormant commerce clause. The products are subject to  
41 interstate commerce and international commerce and will be frustrated by the code  
42 amendments. He stated that he disagrees with the allegation that expansion will be  
43 allowed simply. The conditional use permit process is onerous, subjective, and vague.  
44 Discouraging expansion of an industry that requires innovation and development will  
45 be a nail in the coffin. The firm also believes that there are significant preemption  
46 issues. These issues have been commented on to the Commission.

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- 1 Commissioner Deshmane asked if Mr. Murphy was referring to federal law when  
2 speaking about the commerce clauses.
- 3 Mr. Murphy stated that he was speaking about the Federal Constitution's Dormant  
4 Commerce Clause.
- 5 Commissioner Deshmane asked if the legal challenge for that argument would be in  
6 federal or state court.
- 7 Mr. Murphy stated that constitutional uses can be raised in state or federal court.
- 8 Commissioner McClendon asked Mr. Murphy to explain the dormant commerce clause  
9 and how it would be violated.
- 10 Mr. Murphy stated that he would refer the Commission to the more developed letters  
11 that were submitted to the Commission. He stated that if there is a good that goes into  
12 interstate commerce, then that is regulated by the federal government and there is an  
13 implied aspect of that regulation that is the dormant commerce clause that prevents  
14 local jurisdictions and state jurisdictions from regulating interstate commerce. Because  
15 the products that are generated in Cherry Point go into interstate commerce, the  
16 proposed regulations would restrict what they are capable of doing, which is a violation  
17 of the dormant commerce clause because there would be a local jurisdiction affecting  
18 interstate commerce.
- 19 Commissioner McClendon asked if Mr. Murphy is saying that anything that is sold  
20 across state lines cannot be regulated locally.
- 21 Mr. Murphy stated that is not what he was saying. He was saying that that is a high  
22 level summary of what is going on. It is a complex area of law and referred the  
23 Commission back to the comment letters that were submitted.
- 24 Commissioner McClendon asked which comment letter he was referring to.
- 25 Mr. Murphy stated the comment letters that were submitted by Phillips 66 on  
26 September 12<sup>th</sup>, September 20<sup>th</sup>, and one in February. He stated that the firm would  
27 be willing to supplement with additional explanation if necessary.
- 28 Mr. McLaren stated that the white paper that was put together explains the dormant  
29 commerce clause and the commerce clause in detail. Typically, there is some  
30 discriminatory effect that favors out-of-state interests over in-state interests or vice  
31 versa. There is an exception for local zoning authorities if concerns arise with  
32 compatibility issues or whether a fair share of impacts have already been accepted. In  
33 this case, zoning authorities could be used to determine whether to allow further  
34 expansions. There is no discriminatory effect.
- 35 Commissioner Deshmane asked if there is an example of this concern regarding the  
36 commerce clause on carbon and other environmental related policy and if it has stood  
37 in court.
- 38 Mr. McLaren stated that there are a number of zoning cases that were attached to the  
39 white paper that show that traditional zoning powers are protected and are not  
40 preempted by the dormant commerce clause.

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- 1 Commissioner Honcoop stated that getting a conditional use permit can be very  
2 difficult. The refinery is in a heavy impact industrial zone, which lists an approved use  
3 of refining. Under the proposed ordinance, an approved listed use would then be non-  
4 approved, which requires a conditional use permit. The SEPA rule standpoint makes  
5 the process a practical impossibility, which contradicts WAC 197.11.906.
- 6 Mr. McLaren stated that he would urge the Planning Commission to separate issues of  
7 policy from issues of law, because they are distinct, and there are policy choices to be  
8 made.
- 9 Mr. Murphy stated that an issue to consider is the existing SEPA protections that the  
10 county has in place. Phillips 66 Refinery has a project to create operational flexibility to  
11 produce lower sulfur fuel, which is good for the environment, but is stuck in a SEPA  
12 appeal that will lengthen the process. This situation is already happening under current  
13 code, so there is not a need for the extra considerations.
- 14 Commissioner Lund asked Karen Frakes and Royce Buckingham about their knowledge  
15 and opinions on the dormant commerce clause in this matter.
- 16 Ms. Frakes stated that she agreed with Mr. McLaren. The County Council's primary  
17 intent in adopting the regulations was to address local impacts. She referred the  
18 Commission to the white paper to help explain the issues further.
- 19 Commissioner Honcoop stated that the mitigation related to GHG's is from wherever it  
20 is produced in the world, which means that it is not local. He asked Ms. Frakes to  
21 respond.
- 22 Ms. Frakes stated that the county is a part of the rest of the world.
- 23 Commissioner Honcoop stated that the requirement is specifically written that the  
24 mitigation must take place in Whatcom County.
- 25 Mr. McLaren stated that there are multiple issues at work. One is what is required to  
26 be evaluated. There are an increasing number of cases that indicate that  
27 environmental evaluation is deficient if it does not look at the lifecycle GHG emissions  
28 of a project. The language around the evaluation is intended to take that into account  
29 and ensure that the level of analysis done during the SEPA review include the lifecycle  
30 emissions of the production at the facility. The mitigation issue allows the county to  
31 have some residual authority if there is not mitigation through other agencies. The  
32 county will not duplicate or double mitigation requirements.
- 33 Commissioner McClendon asked Mr. McLaren if he believes there is a legal need or  
34 policy need to mitigate locally.
- 35 Mr. McLaren stated that her concern is more of a policy issue.
- 36 Commissioner Mocerri stated that the regulations were not clear as to how an applicant  
37 would be able to mitigate a project. If they were unable to mitigate, they would have  
38 to pay for mitigate for the tonnage of emissions.
- 39 Mr. McLaren stated that the level of mitigation has to be proportional to the impacts  
40 and cannot be imposed if it has been imposed elsewhere. Whether this is a local or  
41 global issue will need to be discussed with the County Council. There are a lot of

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1 opportunities for mitigation projects, but the question is whether there are enough  
2 opportunities in Whatcom County.

3 Commissioner Honcoop stated his mitigation concern is in regards to GHG emissions. It  
4 is not practical to mitigate emissions for a 747 flight from Seattle to Hong Kong, simply  
5 because the fuel is generated in Whatcom County. The refineries in Whatcom County  
6 have to compete with the refineries in Skagit County, as well as refineries worldwide.  
7 It is not practical for Whatcom County refineries to try to mitigate for other places that  
8 their fuel products go.

9 Mr. McLaren stated that he is not here to debate policy issues, but wanted to point out  
10 that the proposed regulations would only cover emissions that would be generated by  
11 expansions or additions and new projects.

12 Commissioner Barton asked Mr. McLaren to clarify between legal and policy issues  
13 because Cascadia Law Group put the package together.

14 Mr. McLaren stated that the white paper is clear about what the legal issues are, and  
15 the legal framework used to develop land use and environmental regulations. Certain  
16 aspects are policy choices rather than legal decisions, but they can overlap. The policy  
17 issues are for the Commission and the County Council to decide.

18 Commissioner Barton stated that one issue that has been brought up is not being able  
19 to provide all required mitigation in Whatcom County, which becomes a legal issue and  
20 would like guidance on that issue.

21 Mr. McLaren stated that the Commission should address specific issues they are  
22 concerned about so that Cascadia Law Group will have the opportunity to try to  
23 address them.

24 Commissioner Honcoop asked an industry representative to answer what percentage of  
25 growth Whatcom County has had in energy products in the last five years and what the  
26 expected percentage of growth is for the region in the future.

27 Mr. Murphy stated that they do not have that information, and in order to be precise,  
28 they will submit a written comment with that information.

29 Commissioner Honcoop stated that he is trying to figure out the growth percentage  
30 over a decade. He stated that the companies should be viewed as energy companies  
31 rather than oil companies and that the county should be supporting them for their  
32 efficiency and efforts to produce renewable fuels, not trying to implement additional  
33 regulations.

34 Commissioner Lund stated that she appreciates Commissioner Honcoop's comments as  
35 well as the efforts by the industry to produce some of the safest and most efficient  
36 refineries in Whatcom County. She stated that she would also like to be mindful that  
37 Washington state has set greenhouse gas emission targets. The Commission and  
38 County should not make the assumption that mitigation cannot happen locally and  
39 would like to understand the different ways that mitigation can happen within  
40 Whatcom County, with renewables and other potential options.

41 Mr. Verberg from BP Cherry Point refinery stated that when BP was working on the  
42 clean diesel project that Commissioner Honcoop referenced, there was a lot of

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1 regulatory uncertainty around the project, so BP chose to pay an advanced mitigation  
2 fee of about \$4.6 million to Northwest Clean Air Agency to mitigate the additional  
3 greenhouse gases that were estimated ahead of time. When these estimates are  
4 taken, it is often overestimated because the company cannot underestimate their  
5 impacts by law. The procedure to do these estimates are very prescriptive. For this  
6 project, BP paid 20% of the estimated emissions at \$1.60 per ton for 30 years, and  
7 Northwest Clean Air Agency has still not spent all of the money on mitigation efforts. It  
8 is not easy to find qualifying projects locally. There should be a feasibility analysis to  
9 find out if there are enough local mitigation projects. One fundamental problem is that  
10 Washington state is hydropower centric, so the projects yield a small amount of  
11 mitigation.

12 Commissioner Honcoop asked how many tons of carbon are in a barrel.

13 Commissioner Deshmane stated there are 22 pounds per gallon.

14 Commissioner Honcoop asked if that is a gallon of crude or a gallon of refined product.

15 Commissioner Deshmane stated that it is when you burn it, on average.

16 Commissioner Honcoop asked if that is the finished product.

17 Commissioner Deshmane stated that yes, that is the finished project.

18 Commissioner Honcoop stated that he is trying to get an idea of the number of tons or  
19 potential tons in a barrel.

20 Commissioner Deshmane stated that it is the average gas diesel amount.

21 Commissioner Honcoop stated that his point is that he does not know how much the  
22 industry refines daily.

23 Mr. Verberg stated that their facility refines over 200,000 barrels per day.

24 Commissioner Honcoop stated that using the estimate of 200,000 per day would create  
25 an extremely large number that the refineries will have to try to mitigate.

26 Mr. Verberg stated that with an estimate of direct emissions at their facility of 2 million  
27 metric tons per year at \$60 per ton, that would equal \$6 million in mitigation efforts,  
28 which is a big number for them to mitigate.

29 Commissioner Jackson stated that there is a lack of a definition section in the proposed  
30 code amendments. "Provide expert evaluation" is a specific phrase in the  
31 recommended changes that has no definition.

32 Mr. McLaren stated that many of the key terms are defined and that there are  
33 definitions provided. If there are additional terms that the Commission would like to  
34 have defined, that is an issue that can be raised. Regarding the term "expert  
35 evaluation", that was likely a term staff put in as an alternate that would allow them to  
36 seek outside assistance to quantify and bring some expertise.

37 Commissioner Jackson stated that he started creating his own definition section and is  
38 trying to figure out if these are defined anywhere in the state. There are a lot of ill-  
39 defined terms in the packet and the Commission could spend a lot of time dealing with  
40 them. These ill-defined terms could set the county up for litigation issues.

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1 Commissioner Deshmane stated that carbon is something that is being effectively  
2 regulated based off of his prior work experience. He asked Mr. McLaren about the  
3 insurance requirements and whether other communities have put special insurance  
4 requirements in place, how they have been challenged, and what the case level is on  
5 that issue.

6 Mr. McLaren stated that Cascadia Law Group retained an independent insurance expert  
7 that they have used in the environmental insurance field in the past. The expert stated  
8 that there are petroleum marine terminals in Alaska that have a similar type of  
9 coverage. Cascadia Law Group recommends that the Planning Department should  
10 determine the scope of the insurance coverage and what would determine an  
11 appropriate level of coverage when an application comes in. There is also language  
12 included that goes beyond insurance and proposes things like financial assurance that  
13 would be acceptable to the County prosecutor for an individual instance. It might not  
14 be a conventional insurance policy, it could be a letter of credit or some other form of  
15 financial assurance, which is common.

16 Commissioner Deshmane stated that he would like further clarification regarding other  
17 communities that have done something like that and the risk level for the person who  
18 determines the scope of insurance.

19 Mr. McLaren stated that he believes there are states that have done this but does not  
20 know of specific local communities that have, although it is relatively common for  
21 governments to require insurance or financial assurance against the risks that are  
22 created by high risk operations, or operations that are considered to have community  
23 exposures. If there are more questions about it, Cascadia Law Group can contact the  
24 insurance expert to help.

25 Commissioner Mocerri stated that it would be helpful for the insurance expert to find  
26 examples of similar situations for the Commission to see to ensure that they are  
27 commercially available.

28 Commissioner Honcoop stated that the code amendments state that policy limits shall  
29 be no less than \$100 million for each loss, total of all losses, which is pretty strict.

30 Ms. Frakes stated that Mr. McLaren recommended that the policy limit statement  
31 should have been changed as staff proposed in the memo provided, but that it got  
32 overlooked. The Prosecuting Office recommends language that gives the County  
33 discretion to evaluate the risks of a particular project and require insurance that is  
34 commensurate with that risk.

35 Commissioner Honcoop stated that the ambiguity and the subjective-ness is the issue.  
36 There should be some connection that is predictable for the industry. He asked if there  
37 will be a new permit process for situations like these. Rather than implementing new  
38 regulations, the County should be giving the refineries the ability to produce at their  
39 five-star efficient refineries; otherwise it will be produced elsewhere with less stringent  
40 requirements. The County should participate both from the low carbon fuel standard  
41 and the renewable energy standpoint. He asked Mr. Personius if the renewable fuel  
42 project will be vested or if they will be subject to the new requirements.

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- 1 Mr. Personius stated that the facility has not applied for a permit yet so they would not  
2 be vested.
- 3 Commissioner Honcoop stated that if these code amendments are passed, they will be  
4 fully subject to the requirements, which would likely cause the project to not be built.
- 5 Commissioner Maberry stated that there are a lot of comments being made about the  
6 amendments being counterproductive from a greenhouse gas emission or global  
7 greenhouse gas emission standard. He asked why there has not been an  
8 environmental impact study done for the proposed amendments to see if the goals  
9 that the County is setting out towards are actually going to be met.
- 10 Mr. Personius stated that a DNS (Determination of Non-Significance) was issued  
11 through the SEPA process and that there were a lot of comments from the public and  
12 the industry, so it was withdrawn. The PDS department has not been able to get  
13 through all of the comment letters which is why it was withdrawn.
- 14 Commissioner Mocerri stated that it would be beneficial to have something that  
15 describes the impacts on both sides, either good or bad. He asked what impacts this  
16 would have on the project being talked about at Phillips 66.
- 17 TJ Lee, the process integration manager for the Green Apple project at Phillips 66,  
18 stated that there is a lot of concern regarding the proposed amendments and the  
19 Green Apple project. The Ferndale refinery is the most efficient refinery that Phillips 66  
20 has, which made it a good fit for the Green Apple project. If this project was completed  
21 somewhere else, it would be less efficient and more carbon dioxide would be released.
- 22 Commissioner McClendon asked why a project would be less efficient if it was built  
23 somewhere else but was engineered to be efficient.
- 24 Mr. Lee stated that that is a complicated answer. Hydropower in Washington State  
25 allows for a low carbon footprint, which is an advantage. The particular integration with  
26 Ferndale allows the refinery to accept a lot of the steam and to recover more of the  
27 heat and integrate it in a way that makes it significantly more efficient. The proximity  
28 to the feedstock and proximity to markets lowers the transportation and the amount of  
29 emissions from point A to point B in the handling. So, less handling, more efficient  
30 processing, which is pretty significant.
- 31 Commissioner Lund stated that she is interested in seeing specific language about how  
32 to work within the frameworks to ensure confidence in the Green Apple project.
- 33 Mr. Lee stated that he would like to have the opportunity to help with that.
- 34 Commissioner Honcoop stated the current proposal does not allow for construction of  
35 new tanks and asked how this would impact the industry.
- 36 Mr. Lee stated that they will need tanks for their feedstock and product. They have  
37 made major efforts to minimize vessel traffic. The current proposal is concerning  
38 because they need reasonable size tanks in order to receive the products to minimize  
39 the vessel traffic.
- 40 Commissioner Deshmane asked if Mr. Lee has thoughts on the insurance issue. He also  
41 asked the prosecuting office about the methodology for calculating insurance liability.



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- 1 Mr. Lee stated that he is a process engineer and does not comment if he is outside of  
2 his expertise.
- 3 Mr. Buckingham stated that he does not have an answer. The proposal stated that  
4 each project would be looked at individually. The risk would be determined when the  
5 project came along and then insurance would be required accordingly. There is no way  
6 that he could tell the Commission what the Green Apple project's insurance  
7 requirements would be.
- 8 Commissioner Deshmane asked if Mr. Buckingham if they have any idea how the  
9 County would determine risk.
- 10 Mr. Buckingham stated no. The County would have to get an expert to do that. The  
11 County would have to take the industry expert's word for it or would have to hire their  
12 own expert to figure out what the insurance requirement would be. This would fall on  
13 the Planning Department, and they don't have someone there that is able to do an  
14 insurance evaluation of what a project at the refinery will need for insurance.
- 15 Mr. Personius stated that in the first section of Exhibit B on SEPA where it talks about  
16 the evaluation worksheet, risk assessment of spills, explosions, loss of life, and  
17 damage to property, is one of the five requirements that needs to be filled out. This  
18 form is where the information would come from, which would then be translated to  
19 dollar figures for the contract, which is why the expert evaluation language is in the  
20 amendments.
- 21 Mr. Buckingham stated that this is already done at various levels. For example, if an  
22 applicant has property with a wetland, the County asks them to hire an expert. The  
23 expert then sends in a wetland evaluation and trained County staff looks at the  
24 evaluation. The risk at a refinery is on a different level, which is why the County would  
25 hire someone to do that work.
- 26 Commissioner Barton stated that the Commission should start working at coming up  
27 with a definition for "expert evaluation" or the process that would take place.
- 28 Mr. Personius stated that there are qualifications or state rules for those deemed  
29 qualified experts. When that isn't an option, the department puts together a  
30 qualifications list, or an RFQ, looking at what kind of expertise is needed to do the  
31 work.
- 32 Commissioner McClendon asked if there are any industry standards or organizations of  
33 professionals who set any guidelines for risk management that could be referred to in  
34 the text.
- 35 Mr. Personius stated that the County can look into that.
- 36 Commissioner McClendon asked if replacement of old towers will be permitted under  
37 the proposed amendments or if the facility could only repair the equipment.
- 38 Mr. Personius stated that there are four categories: outright permitted (for existing  
39 refineries and transshipment facilities), prohibited (new facilities), expansions  
40 (authorized by a Conditional Use Permit or CUP), and improvements (section 802  
41 maintenance facility replacement). The section 802 improvements are outright  
42 permitted, just as they would be now under the current zoning code. There would only

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1 be a building permit or land disturbance permit for those uses. The County would like  
2 to point out that there is no definition of expansion per se in the regulations. As  
3 written, without that definition, everything in Section 802 is an outright permitted use  
4 and if it doesn't fit under 802, then it is an expansion, which will require looking at the  
5 code. Depending on the type of project, the County would have to consult with the  
6 industry and determine where their project fits within County Code. If it is an  
7 expansion, then the project will require a CUP.

8 Commissioner McClendon stated that her question was not answered.

9 Mr. Personius stated that because the terms are not explicitly defined, the County  
10 would have to take things on a permit by permit basis and evaluate exactly what the  
11 proposal is. He cannot say for sure which category this would fall under because  
12 projects can fall into several different categories.

13 Commissioner Honcoop stated that this is a land use ordinance and that is what it  
14 should be about. He asked why there is a living wage jobs statement within a land use  
15 ordinance. He stated that there are things that can be done that are outright permitted  
16 under the non-capacity maintenance safety environmental improvements, but those  
17 are not exclusive of themselves on a typical project. Everything works together. When  
18 an upgrade is being done on a tower, efficiency is increased, emissions are lowered,  
19 but it also typically increases production which is capped based on a three-year  
20 average, which is a problem in the proposed amendments. For example, there is a  
21 project BP wants to do that they have the majority of permits for. They are waiting on  
22 a permit that has been appealed for land disturbance through Whatcom County. It is  
23 not a CUP, but was brought up during public testimony. The permit has to do with  
24 unloading of oil tankers that come in and an oil tanker coming into the dock. The tank  
25 can only be partially unloaded and returns to the Salish Sea half full. BP is trying to  
26 build an additional tank to have the capability to unload the full ship. This permit is  
27 most likely vested so the proposed amendments will not impact this project, but these  
28 are the kinds of things that the County should not want to impede on.

29 Commissioner Lund stated that she is hoping that smart projects like the one  
30 Commissioner Honcoop referred to are able to move forward under the proposed  
31 amendments. She asked what the differences are between what is being proposed in  
32 Whatcom County versus the refineries operating in Skagit County under the CUP  
33 process.

34 Mr. Personius stated that the March Point refineries in Skagit County operates under  
35 the Skagit County Zoning Code which states that if any improvement or project  
36 exceeds 50 feet in height, it is subject to a CUP. Regarding Commissioner Honcoop's  
37 comments on the earlier example, it is the County Council's clear intent to allow the  
38 refineries to continue doing what they are doing. Regardless the particular project, if  
39 something increases the capacity of the refinery, it has to be decided if it is an  
40 expansion requiring a CUP or if it is subject to 802 and is actually a safety  
41 improvement. Without definitions, it makes it harder for staff to make a decision.

42 Commissioner Barton asked a member of the audience to answer the question about  
43 the differences in Skagit and Whatcom County.

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- 1 Andy Murphy, with Miller, Nash, Graham, and Dunn representing the Phillips 66  
2 Ferndale, stated that he looked into this issue because of the comments made during  
3 the public hearing. Mr. Personius is correct about the Skagit CUP process for buildings  
4 with a height over 50 feet. Skagit County code also allows industrial processing and  
5 shipping terminal uses as outright permitted. Skagit County also has a process called a  
6 special permit for every zone other than where the refineries are located. It is the  
7 exact opposite of what is happening in Whatcom County, where the proposed  
8 amendments only apply the CUP process for zoning where the refineries are located.  
9 They are not comparable.
- 10 Commissioner Lund stated that it would be helpful for the industry to provide specific  
11 language and definitions that they would like to see on the list.
- 12 Mr. Aamot stated that proposed 20.68.802.1 would not require greenhouse gas  
13 mitigation and 802.2 would. They are both permitted uses, but there is that distinction  
14 between the two.
- 15 Commissioner Jackson stated that section 802 is where he noticed a lack of definitions.  
16 One example is the term "environmental improvements". A clear definition of all of  
17 these terms should be provided to the Commission before moving forward.
- 18 Commissioner Dushman stated that a more focused work session with engineers from  
19 the refineries would be beneficial to discuss the potential unintended consequences  
20 from the tank project that was previously discussed.
- 21 Commissioner Mocerri asked that if something is not in Section 802, the interpretation  
22 of this section would make it an expansion, even if it does not increase production or  
23 storage. There was a list of items in one of the written comments that the industry  
24 wanted added to the section, but those that fall outside of the list and may not  
25 increase production or storage could still fall in the category of expansion according to  
26 the County's understanding.
- 27 Mr. Personius stated that that is a complicated answer that an engineer could discuss  
28 further. A definition section would help determine what falls under each category, but  
29 how precise each definition is will be hard to determine.
- 30 Mr. Aamot stated that in 802.1, "other similar structures and activities" adds an  
31 exemption.
- 32 Mr. Personius stated that one of the comment letters did specify additional uses under  
33 802.1 like parking lots, road expansions, cables, and things that do not increase  
34 capacity or throughput. The uses in 802.2 are more problematic for staff to figure out.
- 35 Commissioner Honcoop stated that 802 has an ambiguous statement of "replacement,  
36 safety upgrades, and environmental improvements are outright permitted uses but  
37 shall mitigate greenhouse gas emissions if required". He asked what would trigger the  
38 requirement of mitigating greenhouse gas emissions.
- 39 Mr. Aamot stated that there are two things happening under section 802. One is  
40 whether something is a permitted or a conditional use, and the other is whether  
41 mitigation is required for either a permitted or a conditional use. Mitigation is required  
42 under proposed WCC 20.68.801. There is a baseline calculation listing facility

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- 1 emissions over a three year period, then you calculate the emissions from a new  
2 project, and any emissions above the baseline would have to be mitigated either by a  
3 local project or the \$60 per ton annual fee.
- 4 Mr. Personius stated that this is not any different than what happens currently if a  
5 replacement or safety upgrade comes in for a building permit. Unless they are exempt,  
6 they are subject to SEPA. The SEPA review may include a Northwest Clean Air permit.  
7 It could require a Prevention of Significant Deterioration (PSD) permit from the  
8 Department of Ecology. PDS would analyze the potential GHG emissions through the  
9 SEPA process. What would change with this is that section 801 would include the  
10 mitigation piece that is not mandatory right now.
- 11 Commissioner Honcoop stated that Whatcom County would be getting the check  
12 instead and Northwest Clean Air would get the first part because they have a lower  
13 fee.
- 14 Commissioner Lund asked Mr. Personius to clarify Commissioner Honcoop's statement.
- 15 Commissioner McClendon asked if it is true that the County will not double dip in  
16 mitigation fees.
- 17 Mr. Personius stated that the code would not allow the County to double dip. There is a  
18 consultation process through SEPA where the County would consult with Northwest  
19 Clean Air and the Department of Ecology (DOE). If mitigation is required, the  
20 consultation would determine which permit the mitigation would fall under.
- 21 Commissioner Honcoop asked if Whatcom County charges \$60 per ton and Northwest  
22 Clean Air charges \$2 per ton, would Whatcom County collect the \$58 difference.
- 23 Mr. Personius directed the question to Mr. McLaren.
- 24 Mr. McLaren stated that if the mitigation is coming from Northwest Clean Air Agency,  
25 then Whatcom County would not do any mitigation. The \$60 per ton is only an  
26 alternative. The applicant can do direct mitigation, projects, or pay a fee, but that only  
27 comes into play if it is not mitigated by the DOE or Northwest Clean Air Agency. It is  
28 not the intention to put the County in the position of doing mitigation if it is already  
29 being mitigated by one of the other agencies.
- 30 Commissioner Lund asked if the proposed amendments would allow a combination of  
31 projects that would offset GHG emissions and a fee, or if it is either or.
- 32 Mr. McLaren stated that it is not specified but the Commission could propose that, and  
33 the County staff would likely find that acceptable.
- 34 Commissioner Barton asked how mitigation would be figured out if the product was  
35 sold to another state and used the Portland Airport as an example.
- 36 Mr. McLaren stated that all agencies are subject to limits in terms of what is allowed,  
37 and they are legally not allowed to double require mitigation.
- 38 Commissioner Barton asked how agencies would know if Portland required mitigation.
- 39 Mr. McLaren stated that Portland certainly has a low carbon fuel standard in place and  
40 those are known. Under the language in the proposed amendments, double mitigation  
41 is avoided.

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- 1 Commissioner Deshmane stated that state law requires that fuels with manufacturers  
2 have to report across state lines. Data is kept for all of the fuel that is shipped outside  
3 of the jurisdiction.
- 4 Commissioner Maberry asked what time window would be used when measuring the  
5 three-year average, if it will be daily, monthly or yearly.
- 6 Mr. Personius stated that the refineries would report their GHG emissions to the DOE  
7 and the EPA annually, which would be in public documents. The first expansion project  
8 or first project that would require mitigation under section 801, the change in  
9 emissions for the project would be calculated and then compared against the previous  
10 three-year baseline.
- 11 Commissioner Lund asked if the three-year baseline was coming from similar measures  
12 elsewhere or if it was council driven.
- 13 Mr. McLaren stated that the basic intent behind the baseline was to give some room for  
14 averaging because refineries have different operations, feedstocks, and numbers year  
15 to year. This was an attempt to establish a baseline that was not any particular year,  
16 but gave some room for averaging.
- 17 Commissioner Honcoop stated that three years is a very short period of time. Market  
18 factors drive the refinery numbers, but there are also partial or complete shutdowns  
19 during turnarounds. Phillips 66 shuts down completely every five years, so their  
20 average would go down during that period, which would cap their output. He asked  
21 how the average works during ups and downs.
- 22 Mr. McLaren stated that there is a methodology that is standardized with the EPA and  
23 the DOE on GHG emission reporting. The period of years is an iterative process and  
24 there have been some comments on this issue from industry. It would be helpful for  
25 the industry to provide input on what they believe is a fair baseline.
- 26 Mr. Aamot stated that maybe there should be some discussion about the issue. He  
27 asked if the baseline is critical for mitigation or if GHG emissions could be calculated  
28 from the project and mitigate that independently from the baseline.
- 29 Mr. McLaren stated that for the purposes of SEPA, evaluation needs to be done on a  
30 project by project basis and needs to be disclosed. For purposes of mitigation, the  
31 specific impacts of an individual project would be looked at, so the baseline is not  
32 necessarily very relevant to the mitigation required for a project that would be an  
33 expansion project or a CUP project.
- 34 Commissioner Deshmane stated that a representative from BP would like to speak and  
35 called him to the podium, as well as inviting a representative from Phillips 66 to speak  
36 about the baseline.
- 37 Jim Verberg, representing BP, stated that the baseline data is an issue. He stated that  
38 the industry was not consulted because they do not permit their projects the way it is  
39 described in the code. They do not report to the EPA or the DOE for their products or  
40 for their direct emissions from the refinery, the way the code prescribes. The GREET  
41 Model is not used, and upstream and downstream emissions are not tracked. That  
42 adds a layer of complexity to the issue. It will not be a simple exercise for PDS staff or

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1 for the permitting and will only introduce uncertainty. Depending on if it is based on  
2 actual emissions, pre-project emissions, or advanced mitigation, the permit pathway  
3 would be different. Typically the GREET Model is used to assign a carbon pathway or  
4 for low carbon fuel standards and is a one-time analysis. The process is complicated.

5 Commissioner Deshmane stated that there are engineers in California, British  
6 Columbia, and Oregon that do comply with their jurisdiction's requirements and that  
7 he has personally done those calculations in a previous job and it was not very hard.

8 Mr. Verberg stated that he would like to see how this will work in practice.

9 Mr. McLaren stated that he represents clients that are in the SEPA process now that  
10 are going through the life cycle analysis process and they are using the GREET Model  
11 and GH Genius for calculating upstream emissions. Lifecycle analysis is pretty well  
12 defined now and is not that difficult to do.

13 Commissioner McClendon stated that adding language to the three-year period that  
14 excludes when the refinery is shut down would be a fix to the issue.

15 Mr. Aamot stated that industry should be spoken to about the issue and asked if a  
16 baseline calculation is needed to require mitigation.

17 Erin Sterling, an environmental specialist for Phillips 66, stated that she works with air  
18 quality. The GHG emissions that are reported on an annual basis are not lifecycle  
19 emissions. There is not historic baseline data available so this would be a new  
20 calculation in this jurisdiction. It is very complex for refineries to calculate GHG  
21 lifecycle emissions. She stated that if a project triggers a permit under their land use  
22 nexus or an air quality nexus and it requires a permit, it will also require a SEPA  
23 checklist. The SEPA checklist looks at a lot of factors including mitigation. Routine  
24 maintenance, repair, and replacement does not trigger a permit today.

25 Mr. McLaren stated that there are two different issues present, greenhouse gas  
26 reporting and SEPA review. GHG reporting does not have a lifecycle analysis, but it can  
27 be required under SEPA review. Many NEPA cases are requiring lifecycle analysis.  
28 Under the proposed code, Cascadia Law Group and the County Council are trying to  
29 carve out exceptions for maintenance and repair that would not trigger SEPA or a CUP  
30 and would be outright permitted uses that could be done quickly and efficiently.

31 Commissioner Honcoop stated that there is an entirely new permit process at this  
32 level. The five areas in SEPA that are added cannot determine what a project is until  
33 there is a determination. The ability to appeal SEPA for roughly 15 days after the  
34 determination is issued is fraught.

35 Mr. McLaren stated that the maintenance and safety improvement list is intended to  
36 not trigger SEPA and not trigger a permitting process.

37 Commissioner Honcoop asked how this would be defined. Based off of previous  
38 experiences with PDS, the department will rule on the side of safety for themselves.  
39 PDS staff are putting themselves on the line to approve certain permits, like the tank  
40 example, because they know it is not allowed. The MDNS or DNS are both appealable  
41 and the watchdogs are going to appeal it. Unless a project is clear and concise about  
42 falling into an exempt category, it is not going to be.

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- 1 Mr. McLaren stated that there is opportunity to create more clarity in that, but that it is  
2 the job of the zoning administrators and is something they do all the time.
- 3 Commissioner Honcoop stated that there is nobody qualified in the office to understand  
4 the processing and operations of a refinery. He asked if the cost of hiring an expert  
5 would be added to the permit fee or cause a delay. Clarity needs to be provided on this  
6 process for both Whatcom County staff and the industry so better decisions can be  
7 made.
- 8 Commissioner Mocerri requested that the industry submits written recommendations  
9 about baselines. He asked what would happen if the refineries go over their baselines.
- 10 Mr. Personius stated that the department would look at the three-year baseline and  
11 determine if the proposed project would require GHG analysis and if the project would  
12 cause a net increase, decrease, or no change.
- 13 Commissioner Mocerri asked if that would potentially set the refineries up for a lawsuit.  
14 He stated that someone could see that through reporting, regardless of whether  
15 another permit was applied for.
- 16 Mr. Personius stated that right now this determination is done through the SEPA  
17 process. Air quality and GHG emissions would be looked at on the specific project level  
18 through the SEPA checklist.
- 19 Commissioner Lund asked Commissioner Mocerri if his question was regarding  
20 emissions going above the three-year baseline during normal operations.
- 21 Commissioner Mocerri stated yes.
- 22 Mr. Personius stated that if the emissions of a particular permit caused an increase in  
23 production capacity or throughput of the refinery, then the net increase would be  
24 subject to mitigation.
- 25 Commissioner Mocerri asked what would happen if the refinery went over its baseline  
26 separate from applying for new permits.
- 27 Mr. Personius stated that the following year the refineries would report their new  
28 annual number to the DOE and that would be the new three-year average. It is a  
29 rolling average so it would change every year.
- 30 Commissioner Honcoop stated that the document is not written in the way Mr.  
31 Personius is describing it. The refinery would have to go through this process on their  
32 first project.
- 33 Mr. Personius stated yes, that is how baseline is established.
- 34 Commissioner Honcoop stated that the first project is used to establish baseline, and  
35 anything after that would be subject to mitigation or a fee.
- 36 Mr. Personius stated that if the refinery comes in for a new permit a year later, the  
37 three-year baseline changes because it would be the average of the previous three  
38 years.
- 39 Commissioner Honcoop stated that if the refinery's emissions decreased, then they are  
40 subject to the lower level.

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1 Mr. Personius stated that is correct.

2 Commissioner Honcoop stated that as the refineries make efficiency improvements,  
3 their baseline will continuously decrease.

4 Mr. Personius stated that that would depend on their production capacity as well. If  
5 they are producing and processing more then they would be creating more GHG  
6 emissions and the baseline could go up or down. It is based on the production.

7 Commissioner Honcoop stated that there are so many things that are unclear within  
8 the document. The ambiguity makes the document subjective and can have a big  
9 economic impact on Whatcom County. Whatcom County staff comes and goes, and  
10 each staff member can interpret the document differently. The document has  
11 significant penalties in it with the SEPA requirements that are fully appealable. The  
12 less clarity in the document, the higher likelihood that it will be appealed and less  
13 defensible the decision is because the decision will be subjective rather than objective.  
14 This document is not ready. Industry has not had a seat at the table at all. These  
15 proposed amendments will set the future of Whatcom County significantly from an  
16 economic standpoint. The industry should be applauded for being the top in the nation  
17 with efficiency and for their efforts in renewable resource production of diesel fuel. The  
18 renewable diesel is a 50-60% lifecycle GHG reduction, which is significant and helps  
19 our area. A comment from industry states, "These comments are presented in the  
20 spirit of cooperation. Cherry Point's goal is to engage with the Planning Commission  
21 and mutual efforts to develop public health, safety, and environmental policy that are  
22 responsive to the County's concerns. But they are also practical, effective, and fully  
23 consistent with existing federal and state law. To that end, Cherry Point has repeatedly  
24 expressed concern about and provided input on the proposed amendments, but the  
25 County has declined to acknowledge Cherry Point's feedback in a meaningful way. We  
26 reiterate Cherry Point's desire to meet with the Planning Commission. The County  
27 discussed these concerns for the current proposal amendments as well as to discuss  
28 constructive alternatives".

29 **Commissioner Honcoop motioned that the proposed ordinance has been**  
30 **heavily influenced by special interests, environmental groups and the**  
31 **Cascadia Law Firm with unprecedented access to the Whatcom County Council**  
32 **and planning department staff, with the intent to create a binding ordinance**  
33 **which will heavily regulate and impact only local refineries with little**  
34 **understanding of how those refineries operate or if the proposed ordinance**  
35 **has contradictory language with state and or federal requirements. The**  
36 **refining industry has not had the opportunity for equal access to the County**  
37 **Council or staff and has not had true input. The refining industry deserves a**  
38 **seat at the table. The refinery industry shall have an opportunity to have**  
39 **meaningful input into this ordinance through meetings with PDS staff and**  
40 **open work sessions, meetings with the Planning Commission, working**  
41 **collaboratively to review this proposed ordinance to craft an ordinance that**  
42 **would be workable, that does not conflict with state and federal laws, and**  
43 **other compliance requirements. That is not contradictory to such laws and**  
44 **regulation that provides objective requirements and predictability and the**  
45 **permitting process and outcomes. These meetings to take place as scheduled**



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1 **by Whatcom County PDS. Public notice may be required upon conclusion of**  
2 **said meetings, the resulting proposed ordinance to be forwarded to the**  
3 **Planning Commission for PC work session followed by a PC public hearing and**  
4 **additional PC work sessions as necessary to reach a recommendation to**  
5 **Whatcom County Council. Until such time this current proposed ordinance is**  
6 **tabled.**

7  
8 **Commissioner Bartel seconded.**

9  
10 Commissioner McClendon asked Commissioner Honcoop to clarify if his motion was a  
11 motion to table. She wanted to make it clear that a motion to table is basically a  
12 motion to kill the entire proposal.

13  
14 Commissioner Honcoop stated that he would accept a friendly amendment unless he  
15 can make one himself.

16  
17 **Commissioner Honcoop amended his motion to state that the current**  
18 **proposed ordinance is postponed.**

19  
20 Commissioner Honcoop stated that the ordinance was originally related to the export  
21 of unrefined product and this was back in spring of 2016. It has morphed into the  
22 current document and has little resemblance of what the original document looked like.  
23 This ordinance has very significant impacts. None of the Commissioners are qualified to  
24 weave the document into something that's workable. He stated that he does not  
25 believe that anyone is opposed to lower emissions at the refinery, more efficiency, or  
26 the replacement of fuel stocks. The document should be crafted in such a way that that  
27 encourages this to happen; create an incentive rather than a penalty.

28  
29 Commissioner Jackson stated that he agrees with Commissioner Honcoop about  
30 allowing all parties to voice their concerns with respect to the debate and the Planning  
31 Commission should be a neutral party. He stated that he is concerned that the County  
32 will be opening themselves up for litigation for the next decade. The Commissioners  
33 are not experts in this field and many of the experts have advised the Commissioners  
34 and brought up very relevant points. The way the document is written is concerning  
35 because it allows for vague terms and lawsuits. He stated that he is in support of  
36 Commissioner Honcoop's motion.

37  
38 Commissioner Mocerri asked what the ramifications of postponing the proposed  
39 amendments would be.

40 **Commissioner Honcoop restated his motion: The refinery industry shall have**  
41 **an opportunity to have meaningful input into this ordinance through meetings**  
42 **with PDS staff and open work session meetings with the Planning**  
43 **Commission. Working collaboratively to review this proposed ordinance to**  
44 **craft an ordinance that would be workable. It does not conflict with state and**  
45 **federal law and other compliance requirements that is not contradictory to**  
46 **such laws and regulations.**

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- 1 Commissioner Honcoop stated that industry would provide objective requirements and  
2 predictability in the permitting process and outcomes. The industry and the PDS  
3 department would work together and bring forth a workable document for the Planning  
4 Commission.
- 5 Commissioner Deshmane stated that the idea of additional work sessions makes sense,  
6 but that Commissioner Honcoop's motion to table or postpone is counterproductive. He  
7 stated that Commissioner Honcoop's motion included his particular view and cannot  
8 support his motion.
- 9 Commissioner Mocerri stated that he would agree that there is a lack of due diligence  
10 done on the document and that an outside session with staff and industry would be  
11 beneficial to create a better document that can be presented to the Planning  
12 Commission. The document is daunting to work through at the level it is at currently.
- 13 Commissioner Lund stated that she feels similar to Commissioner Deshmane and that  
14 she is willing to do the work. She stated that she would like to come up with  
15 something that is workable for the citizens of the County, the County Council, and to  
16 support the good industry that the County has at Cherry Point today. She stated that  
17 she is uncomfortable with the introductory language in Commissioner Honcoop's  
18 motion.
- 19 Commissioner McClendon stated that there is a strong majority within the Commission  
20 to spend the time to work through the document and speak with people at the two  
21 refineries. She stated that Commissioner Deshmane and herself were invited to Phillips  
22 66 a few days before the meeting and that there were great conversations that took  
23 place with some of the engineers. The resolution that is written is unnecessarily  
24 judgmental. Another concern is postponing. The Commission can set their agenda to  
25 what they think is best.
- 26 Commissioner Honcoop stated that he has considered different options to help move  
27 the document along. One idea was a subcommittee within the Commission. He stated  
28 that he wrote the introductory language for his motion to emphasize and create the  
29 framework for the motion.
- 30 Commissioner Barton stated that it would be easier to support the motion without the  
31 preamble. He asked staff what the timeframe is for passing these amendments and if  
32 there is a framework to come back to the amendments in a few weeks. It is something  
33 that is going to take more than one or two meetings.
- 34 Mr. Personius asked if it is the Commission's intent to cancel the next meeting on  
35 October 10<sup>th</sup> so that staff and industry can meet in depth and come back with an  
36 alternative proposal on the October 24<sup>th</sup> meeting.
- 37 Commissioner Barton stated that the Commission would like PDS staff to come back  
38 with something that is a lot closer to a workable framework.
- 39 Mr. Personius stated that he is encouraged by tonight's meeting and the dialogue and  
40 discussion that took place and does not want the Commission to lose their momentum.
- 41 Commissioner Bartel stated that he feels like there is a lot of ambiguity and  
42 uncertainty for what is currently in the document to be able to make a choice today.

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- 1 Commissioner Honcoop's motion to postpone would be helpful to pull all of the  
2 necessary information together. He stated that it would be good to find a way to  
3 incentivize industry rather than penalize them, so it makes it worthwhile for them to  
4 invest.
- 5 Commissioner Deshmane stated that he would like to propose something along the  
6 lines of a subcommittee to get through the details of the proposed amendments. He  
7 called to question.
- 8 Commissioner Mocerri stated that he is unsure if there is even a need to create a  
9 subcommittee. He asked if the lawyers could send written response to the list in the  
10 WSPA about legal issues. He requested that a copy of the white paper should be sent  
11 to all of the Commissioners.
- 12 Commissioner McClendon stated that the white paper was in the original packet from  
13 last month.
- 14 Commissioner Mocerri stated that he read through that and it would be helpful to have  
15 guidance on the packets rather than having to go back and forth. He stated he does  
16 not think the Commission needs to miss more than one meeting to get the information  
17 they are requesting.
- 18 Commissioner Honcoop stated that he thinks that the Commission will miss one  
19 meeting at minimum because of the time requirements for the packets. It took two  
20 years to get to where the document is at currently and he does not think it should be  
21 rushed.
- 22 Commissioner Barton stated that it would be appropriate to not have the next meeting,  
23 so staff has time to meet with industry and come up with an alternative packet.
- 24 Mr. Personius asked if the target would be for staff to come back with a  
25 recommendation from the industry in code format by October 24<sup>th</sup>.
- 26 Commissioner McClendon stated that she does not understand why the next meeting  
27 cannot be a meeting with industry representatives in public. One of the criticisms that  
28 have been noted is that there are meetings happening outside of the public eye.
- 29 Commissioner Jackson asked if the proposed timeframe is doable and that it seems  
30 like a tough deadline.
- 31 Mr. Personius stated that he would like to be careful of the role of the PDS department  
32 and the Commission, and that it would be viewed as facilitating the engagement of  
33 industry on the code specifics and their recommendations and if they had alternative  
34 language.
- 35 Commissioner Jackson stated that it is not the role of the Commission to write code.
- 36 Mr. Personius stated that the department's role is to facilitate the process and not get  
37 into the policy inputs. That is between the County Council and the Planning  
38 Commission. He asked if the intent is for the PDS department to facilitate the  
39 industry's viewpoints specifically on the code language to see if they have alternative  
40 language, and for staff to come back with the industry's proposed language.

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- 1 Commissioner Barton stated that it is not the code language that they would like  
2 industry's input on, rather the timeframes and cycles that the refinery's processes go  
3 through. He stated that he understands from the comments that have been submitted  
4 is that the industry does not want to have to get a brand-new permit for modernizing  
5 the facility to be more productive. The Commission does not know what the industry  
6 does as far as upgrades and changes within the process.
- 7 Mr. Personius stated that Commissioner Barton's comments are helpful. Any clarity the  
8 Commission can provide on maintaining or meeting the Council's intent, but in a  
9 different way than what is proposed currently. He asked if there are particular sections  
10 of the code that are too onerous or need to be rewritten or removed.
- 11 Commissioner Honcoop stated that Mr. Personius made a comment about the new  
12 packet being an industry-proposed ordinance. He is not suggesting that this would be  
13 an industry-proposed ordinance, just to give them a seat at the table and the  
14 opportunity to provide input. He stated that the meetings with industry can be  
15 communicated to the Commission via email and those who would like to attend can, as  
16 long as there is not a quorum.
- 17 Commissioner Lund stated that there is a desire from a quorum of Commissioners to  
18 attend these meetings. She stated she does not favor the idea of meetings that do not  
19 allow the majority Commission to attend.
- 20 Commissioner Deshmane stated that it is not the PDS department to write policy, that  
21 is the job of the County Council. The job of the Planning Commission's job is to meet  
22 policy.
- 23 **Commissioner Honcoop restated his motion: The refinery industry shall have**  
24 **an opportunity to have meaningful input into this ordinance through meetings**  
25 **with PDS staff and open work session meetings with the Planning**  
26 **Commission. Working collaboratively to review this proposed ordinance to**  
27 **craft an ordinance that would be workable. It does not conflict with state and**  
28 **federal law and other compliance requirements that is not contradictory to**  
29 **such laws and regulations. Aye – 5 Nay – 4 Abstain – 0 (Passed)**
- 30 Commissioner McClendon asked if the motion that just passed simply says that the  
31 Commission postpones until sometime. She asked what the Commission is going to do.
- 32 Commissioner Honcoop stated that the motion states that the PDS department has the  
33 ability to schedule the meetings.
- 34 Mr. Personius stated that the direction of staff is to talk to the industry and schedule a  
35 meeting with them and go through the ordinance and identify particular issues or  
36 problems they have, try to find solutions to the problems, and bring them back to the  
37 Commission.
- 38 Commissioner Deshmane stated that he would like to be notified of the meetings.
- 39 Mr. Personius asked if the Commissioners would like to be invited to the meeting,  
40 understanding that there cannot be a quorum present.
- 41 Commissioner Deshmane stated yes.

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- 1 Mr. Personius stated that he anticipates that there will be issues. Staff will likely not  
2 have precise language alternatives or revisions for everything, but the Commission can  
3 pass those recommendations along to the Council to address. The Council can then  
4 work with Cascadia Law Group to resolve the issues. He anticipates that staff will likely  
5 return with some specific code changes, but he is anticipating that more of them might  
6 be in the form of a motion to recommend changes to Council.
- 7 Commissioner Mocerri stated that it sounds like the Commission is trying to not do their  
8 job. He was hoping that the Commission could get guidance on some of the specific  
9 issues. He stated that he has an issue that only some of the Commissioners would be  
10 able to attend the meetings with industry.
- 11 Mr. Aamot stated that this may be an interactive process. Staff may have to meet with  
12 industry multiple times.
- 13 Commissioner Barton asked if there were any more comments.
- 14 Commissioner Jackson stated that he would like to keep the October 10<sup>th</sup> meeting and  
15 that the Commission has a lot to talk about.
- 16 Commissioner McClendon stated that she thinks it is better to postpone and move  
17 forward with other docketed items if they are prepared.
- 18 Mr. Personius stated that he cannot guarantee that the department would have other  
19 docketed item documents ready to go.
- 20 **Commissioner Deshmane motioned to keep the October 10<sup>th</sup> meeting as an**  
21 **open public work session on the current document and to not preclude the**  
22 **parallel efforts of staff to prepare getting input as well from the industry.**
- 23 **Commissioner Jackson seconded.**
- 24 Commissioner Honcoop stated that he would like to let the process work by giving staff  
25 the opportunity to work with industry and get their input.
- 26 Commissioner Jackson stated that his desire to keep the next meeting is based on staff  
27 being able to update the Commission on the information they have gathered. He  
28 stated that a different room would be helpful, possibly back at the Northwest Annex.
- 29 Commissioner Deshmane stated that there are better rooms than the Council  
30 Chambers for a circular setup.
- 31 Commissioner Mocerri stated that he likes the idea of having the next meeting and that  
32 it could be a regular length meeting.
- 33 Commissioner Lund stated that she seconds what Commissioner Mocerri stated, and  
34 that it could be an opportunity to learn more about the three-year baseline and why it  
35 is problematic.
- 36 **Commissioner Deshmane restated his motion: Keep the October 10<sup>th</sup> meeting**  
37 **as an open public work session on the current document and to not preclude**  
38 **the parallel efforts of staff to prepare getting input as well from the industry.**  
39 **Aye – 9 Nay – 0 Abstain – 0 (Passed)**
- 40 The meeting was adjourned at 11:55 p.m.

**RECORD OF PROCEEDINGS OF THE  
WHATCOM COUNTY PLANNING COMMISSION  
September 26, 2019**

Work Session

22

1 Minutes prepared by Ashley Ubil.

2 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

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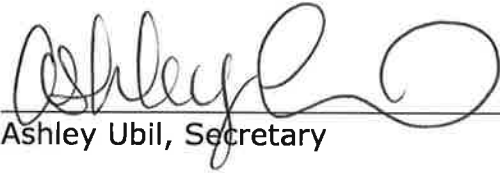
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Kelvin Barton, Chair



Ashley Ubil, Secretary