

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
October 10, 2019**

Work Session

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1 **Call to Order**

2 The meeting was called to order, by Whatcom County Planning Commission Chair, Kelvin
3 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, Natalie
6 McClendon, Gary Honcoop, Kimberley Lund, Stephen Jackson

7 **Staff Present**

8 Matt Aamot, Mark Personius, Ashley Ubil

9 **Commissioner Comments**

10 Commissioner Deshmane stated that Kent Hartwig is visiting from Iowa and represents the
11 Renewable Energy Group and is a proponent of the clean diesel project. The Commission should
12 try to take advantage of his time here. He invited Kent to introduce himself.

13
14 Kent Hartwig introduced himself as a senior manager in corporate affairs for the Renewable
15 Energy Group and is one of the government affairs individuals that covers Washington State.

16
17 Commissioner Barton stated that he attended the BP community open house and had several
18 conversations with people and organizations regarding being able to communicate information
19 to the Planning Commission.

20
21 Commissioner McClendon stated that she wanted to bring up a procedural thought about the
22 Town Hall meeting. She proposed a different method of gathering public comment names on
23 the sign-up sheet to promote fairness between the two sides, suggesting that there is a pro and
24 con list to sign up under.

25
26 **Department Update**

27 Mark Personius updated the Commission on the following:
28 The PDS Department met with industry representatives on October 8th. The Commission has
29 the option to suggest having extra meetings if more time is needed.

30
31 Commissioner Deshmane asked Mr. Personius which Commissioners attended the meeting

32
33 Mr. Personius stated that Commissioner Bartel was the only Commissioner that attended the
34 meeting. Staff put together an outline of all of the questions proposed by industry, the
35 Commission, and public comment letters. The industry representatives asked what the intent of
36 the resolution from Council is during the meeting.

37 **Work Session**

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

42 Commissioner Barton stated that there are five representatives from different organizations
43 that will be speaking, starting with Eddy Ury from RESources.

44 Mr. Ury stated that he is the clean energy program manager for RESources. A part of his job is
45 to track permitting for the local refineries in Whatcom and Skagit County to serve as an extra

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1 set of eyes when applications come through. He stated that he has become familiar with how
2 zoning codes and SEPA processes work for oil refineries. In fall 2015, he was present during the
3 original Comprehensive Amendment meetings and has been present for the entire Cherry Point
4 process. In regards to the agenda, there are some excellent questions to focus the discussion
5 on. There is broad area agreement over certain aspects of the proposed amendments. One is
6 that the refineries play an essential and important role in the local economy. The intent of the
7 amendments is not to restrict the refineries. There is a broad misconception about the
8 moratorium that it is impacting the refineries. It does not apply to or impact the refineries at
9 all, and does not apply to the consumption of fossil fuels. It applies to transshipment facilities.
10 There is a commonly used definition for transshipment – transferring one thing to another. The
11 refineries have different parcels that sometimes have different owners. These parcels can be
12 sold, which has been seen in the past. The marine and rail terminals are separate parcels that
13 could be sold off and used for a different purpose than what they are used for now. This
14 happened recently with the third pier at BP recently. Currently, there is no public process when
15 a primary change of use happens. Overtime, the County may not be dealing with the same
16 companies. There is very little process of review for major change of use for a major facility.
17 There is concern around that issue. This week, a major methanol facility in Calama is being held
18 up because their GHG analysis was incorrect according to the DOE. These kinds of things
19 happen all the time, which is why this process is very important. There are a few documents I
20 would like to handout tonight for context. I have spent a lot of time requesting public records
21 for these facilities. Since the 1970's, these facilities have been operating under SEPA, the SMA,
22 and the GMA. The facilities were built prior to that, in the 1950's, so essentially their impacts
23 have been grandfathered in. Most of the new permits coming in from these facilities have been
24 given a Determination of Non-significance by Whatcom County PDS staff. Often times, the DOE
25 is not involved at all, it is the county that is the sole lead agency. What is being addressed in
26 the proposed amendments is specifically aimed towards Whatcom County being the lead agency
27 and the DOE is not involved. For an existing facility, that is often the case, and PDS staff may
28 not always be equipped to make these decisions. The goal of the amendments is to have
29 clearer parameters, definitions, and specificity of things that need to be looked at by PDS staff
30 to be considered. It is imperative that the County is able to point to the code to justify their
31 decision. If they are not able to, then industry will likely appeal it and take it to court. The
32 industry has extensive resources to appeal decisions, whereas the watchdogs and citizens
33 typically do not due to the cost of submitting an appeal. By tightening up the code, it will save
34 the county a lot of time and resources by making it clear what the standards and conditions
35 are. SEPA operates under the standards that the County is authorized to reject a project if its
36 impacts are significant, adverse, or immitigable. Cowlitz County rejected a coal port due to ten
37 significant immitigable adverse impacts that they sited. The proponent sued the county. A
38 sample of recent permits has been presented to give the Commission an example of the kinds
39 of refinery permits that come through over the last couple of years. The next document is a list
40 of environmental impact statements (EIS) that have occurred; there are about 40 items. This is
41 based on the memory of planning staff because there is not a tracking system for the EIS's.
42 This would include things like installations at the airport, condominiums in Birch Bay, golf
43 courses, and the marina. There are two projects at the Cherry Point UGA that were permitted,
44 one was a dredging and dock reconstruction project and the other was a cogeneration power
45 plant, which is now owned by PSE. Examples of CUP's are also provided; these are Hearing
46 Examiner decisions from Skagit County. These were two permits from refineries. Both refineries
47 had to go through CUP's in 2018. Both permits went through smooth, quick processes and were
48 granted two weeks after they were presented in front of the Hearing Examiner, despite some
49 concerns about the projects. There was no appeal of these permits. Permits are required for
50 any building taller than 50 feet per code. After speaking with managers at the Shaw Refineries,
51 there has not been any concern about this code requirement. The CUP itself is not a barrier.
52 The question is, are the conditions unreasonable? There are flaws in the current language for

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1 GHG's. This is an important task to be working on and reviewing right now. If the Commission
2 and County Council take the advice from Northwest Clean Air Agency as well as REG, some of
3 these issues could be resolved pretty simply. There are some questions about a baseline
4 calculation and the best way to go about that. There is substantial criticism coming from the
5 industry about this. They are invited to propose an alternative that could be workable as a way
6 to mitigate GHG's, granted that refineries do have to mitigate their climate footprint in other
7 places like British Columbia and California. This is not yet the case in Skagit County, although
8 there have been some projects that have proposed mitigation plans for GHG's even though it
9 was not required. There is also confusion about what the \$60 per ton fee is. This is based off of
10 the social cost of carbon (SCC). Washington State is going through a rule making right now
11 through the Clean Energy Transformation Act, which utility companies will have to abide by.
12 Washington State is proposing \$74 per ton for the SCC in 2020. The \$60 per ton was based off
13 of a 2010 figure as a common cost, factoring in both the benefits and the cost of climate
14 change. The idea behind the fee being in the proposed amendments is that it would never
15 actually be used, but is there to encourage mitigation projects. There is nothing that says the
16 industry cannot make money off of the mitigation projects either directly or partnering with
17 another business to build infrastructure that could offset GHG's by reducing consumption of
18 fossil fuels elsewhere. It has also been stated that it would not be possible or feasible to do
19 locally. Changing the wording to regional could be a solution to that concern. The only loss to
20 doing that is that it would not ensure that Whatcom County would have direct local benefits.
21 There are many projects that could be done locally, like clean energy power generation or
22 storage. Cherry Point and Phillips 66 both have unused land that could be utilized. There could
23 also be direct investment towards the efficiency of the refineries themselves. Any upgrades that
24 the refineries are doing will likely be driven by regulation, requiring them to reduce pollution.
25 The mitigation requirements would only kick in if no other agency was already requiring
26 mitigation. The Clean Air Act only applies to stationary sources of pollution and does not cover
27 the pollution from ships, trains, or traffic. That is an area where zoning code and SEPA
28 intersect. Another document to present is a certificate of insurance for the Trans Mountain
29 Pipeline that runs through Bellingham and supplies 30% of the oil refined in Whatcom and
30 Skagit County. This is a \$110 million insurance plan that is required by the franchise ordinance
31 of Bellingham. These kinds of insurance policies do broadly exist. Many of the facilities at the
32 refineries likely already have insurance policies. The appropriate amount of insurance depends
33 on the project and the level of risk that it poses. A pipeline leak that happened in Michigan in
34 2010 had about a \$1.2 million direct cleanup cost, not including the economic losses resulting
35 from it. That was a tar sands pipeline leak that got into the Kalamazoo River, similar to the
36 pipeline that runs through Whatcom County. What is listed in the criteria in the proposed
37 amendments, other than the GHG requirements, is verifiably doable and already standard
38 practice for projects that are permitted. The proposed required conditions are not unusual. The
39 GHG mitigation is a matter of concern that should be addressed. I would encourage you to take
40 the advice of the Northwest Clean Air Agency, REG, and PDS staff, and their recommendations
41 to refine this. The final editing stage is also a good time to address the definitions section and
42 whether that needs expansion. The existing code also has a lot of ambiguity in the definitions
43 and that is often the case with code, but providing clarity would be helpful. Regarding
44 renewable fuels in the proposed amendments, there is a prohibition for new fossil fuel facilities,
45 which is the greatest concern for renewable fuel facilities. It has happened in other parts of the
46 northwest, where a renewable facility has been built and is converted into a shipping facility for
47 fossil fuels. This is not a major concern under these amendments. The CUP requirements for
48 renewable facilities are to create fairness and to avoid the appearance of favoring one industry
49 over another. Regarding the GHG mitigation, if it is a matter of lifecycle emissions, a renewable
50 fuel facility is going to be essentially its own project for mitigation. If the lifecycle emissions
51 offset their facility emissions, then they would not have to be required to do further mitigation
52 as far as the interpretation of the code currently. This could be clarified with more explicit

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1 terms. It has been stated with no evidence that facilities in other parts of the world are dirtier
2 and more dangerous, but there has not been any data to support that claim. Depending on
3 which country and which facility is being discussed, the comparisons are nuanced. The idea of
4 the facilities here, which are at a prime and favorable geographic location and existing
5 infrastructure, that have some of the lowest operating costs, and shipping locations, they have
6 a comparative advantage with many facilities already. It is unlikely that they would be
7 disadvantaged by the proposed amendments and would be difficult to prove. Countries like
8 India and China have already enacted laws that will ban internal combustion engines by 2030
9 or 2040 and are continually progressing their environmental regulations and restrictions. If
10 there are any questions related to what was said, please let me know.

11 Commissioner Honcoop asked Mr. Ury if he would favor replacing the proposed CUP language
12 with identical language from Skagit County.

13 Mr. Ury stated no. The CUP requirement in Skagit County is arbitrary and is based on
14 construction over 50 feet, which is a City of Anacortes zoning rule. The point of bringing it up
15 was to illustrate that the CUP itself is not a barrier to getting projects done. The question is
16 what conditions are being required, so what is being proposed is different than what is in Skagit
17 County, but hopefully by looking at the examples, the Hearing Examiner could get an idea of
18 what that permit process looks like.

19 Commissioner Honcoop stated that there is no comparison between the two CUP requirements
20 whatsoever. Skagit County has very minor requirements. What is proposed here has to do with
21 many other factors that are not addressed at all in Skagit. It is misleading to say that it is easy
22 to go through the CUP process in Whatcom County compared to Skagit County. There is no
23 predictability in the outcome of the CUP.

24 Mr. Ury stated that the point of bringing it up was to show that the CUP itself is not a barrier; it
25 is the conditions associated with the permit. The only ones that have been cited as problematic
26 were the insurance requirement and the GHG mitigation, with the simple change to not set a
27 dollar figure on insurance. The GHG mitigation is an area that should be carefully looked at and
28 does need working improvement before final passage. The GHG mitigation is the only condition
29 which in itself is unreasonable to meet, barring any other objections that is the focus of the
30 work, making sure that there is a policy that is supportive of refineries continuing to expand,
31 upgrade, become more efficient, and be a service to our local economy. That is the goal of the
32 policy and the overall zoning code. If an applicant knows what the conditions will be, they can
33 prepare their project and submit the information needed to show the County that those will be
34 satisfied.

35 Commissioner Honcoop asked PDS staff if it is possible for refineries to do on site mitigation
36 through facility improvements.

37 Mr. Personius stated that that part of the code is somewhat vague as to what falls under local
38 mitigation. It is left to the PDS department, which would require some guidance. Mark
39 Beauford, the Executive Director of the Northwest Clean Air Agency, is on the agenda tonight
40 and will specifically address the kinds of emission control that they apply as a part of their
41 permits and what the DOE applies to reduce GHG emissions.

42 Commissioner Honcoop stated that this is a matter of policy and asked if the facility can apply
43 for a permit to make improvements to their facility, and if the project reduces GHGs, it could
44 become part of their mitigation rather than just a reduction in emissions. This is something that
45 should be clear in the proposed amendments.

46 Jeff Chalfant, from BP Cherry Point, stated that he was a participant in the industry work
47 session earlier in the week. He stated he wanted to thank the Planning Commission for giving
48 industry the opportunity to weigh in on the process and provide their concerns related to code

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1 development and the Comprehensive Plan amendments. A team of industry representatives,
2 county staff, Royce Buckingham, and Commissioner Barton participated in a work session to
3 work through understanding and establishing common ground on what the problem statement
4 is that is being sorted out. The intent is to ensure that there is a systematic process for
5 providing industry concerns and collaborating with the Planning Commission and the
6 stakeholders in the community. During the session, the "whereas" statements in the County
7 Council Resolution were worked through. This was necessary to understand where changes in
8 the county code were appropriate. Industry's vision is to then do a regulatory analysis that
9 would be useful for both the industry companies and Whatcom County Planning staff to
10 understand the layers of the different regulatory mechanisms. The regulations can be
11 interpreted in different ways, so it would be helpful to create something that can be transparent
12 to everyone. It is encouraging to have the opportunity to engage with PDS staff,
13 Commissioners, and offer feedback to them. One of the other things that came up is the variety
14 of terms that were used interchangeably. There is a need to define those terms and show
15 where those terms cause confusion. There is a desire for foundational information on how the
16 refineries work in regards to regulatory framework and how GHG emissions are currently
17 documented and mitigated. Industry wants to provide that information because it will be very
18 important that staff understands this information. He suggested that regulatory agencies should
19 be invited in to communicate with staff about how the regulations work and how compliance
20 works. The GHG provisions is where industry would like to start the discussion, and how
21 existing projects work through the current permitting process at the federal, state, regional,
22 and local levels. Thank you for the opportunity to comment.

23 Commissioner Mocerri asked how long it would take for industry to produce this information for
24 the Planning Commission.

25 Mr. Chalfant stated that some of the information could be pulled together rapidly, but some of
26 the information may take more time.

27 Commissioner Deshmane asked if the carbon loading reporting is based on actuals. Federal EPA
28 reporting is typically volumetric and hazardous material related. He asked Mr. Chalfant to
29 clarify.

30 Mr. Chalfant introduced Jim Verburg to address this question.

31 Mr. Verburg stated that he works for BP Cherry Point Refinery. He asked Commissioner
32 Deshmane if his question was pertaining to the GHG reporting that BP Cherry Point does
33 through the state for emissions.

34 Commissioner Deshmane stated yes.

35 Mr. Verburg stated that the company reports through Federal EPA Part 98. For direct emissions,
36 they report all of the emissions from the heaters, boilers, insularly sources such as the
37 wastewater treatment plant. It is very prescriptive methodologies as to how to calculate those.
38 It is very quantitative. On the fuel side, the company reports under what is called "Sub-part
39 MM". That is basically everything that is produced from the refinery that is product with carbon
40 in it. Some of those numbers are based on volumes that are held as confidential business
41 information by both the Department of Ecology and the EPA. The numbers reported to the DOE
42 are the same as the numbers reported to the EPA. When the DOE did the rulemaking in 2010,
43 they chose to adopt the Part 98 rules. The fuel reporting is slightly different. They use the
44 Department of Licensing tax returns to generate the reports for the fuel side.

45 Commissioner Deshmane asked how to get public oversight for process improvement in that
46 area while at the same time maintaining some degree of proprietary attributes. Where does
47 that show up in these code amendments?

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1 Mr. Verburg stated that he is unsure if the amendments have enough definitions in it to address
2 that. That is one of the issues that need to be addressed. Where does the proprietary
3 information come into play surrounding reporting requirements? He stated he is not the subject
4 matter expert on some of the reporting models, such as the GREET Model, that has been
5 discussed. He stated he is the subject matter expert on the direct emissions.

6 Commissioner Deshmane asked if those are actual emissions.

7 Mr. Verburg stated yes. Some of the calculations methodologies are more tried and true. For
8 example, there are three continuous emission monitors for CO2 at the BP Cherry Point Refinery.
9 For fuel based calculations, we measure the amount of fuel being sent to the heaters and that
10 is quantitative. For the carbon content of the fuel, it is based on the amount of fuel being sent
11 to the heater, so it should produce a reasonably accurate number. It is some of the best written
12 regulations come from the Part 98 Federal regulations.

13 Commissioner Barton asked if there is a member from the Cherry Point Aquatic Reserve Citizen
14 Stewardship Committee that would like to speak.

15 Rick Hahn, a representative from the Cherry Point Aquatic Reserve Citizen Stewardship
16 Committee, stated that because of its unique aquatic ecosystem and its challenges, the Cherry
17 Point Aquatic Reserve was designated by Washington State in 2010. It's one of only 8 areas
18 within the state with the Aquatic Reserve designation. Our reserve stretches from the boat
19 launch at Birch Bay State Park to the Lummi Indian Reservation. It encompasses 3,050 acres.
20 This includes tidelands and bed lands to the depth of 70 feet from the shore. The major dock
21 areas at Cherry Point are exempt from the reserve designation. This committee was chartered
22 in 2010 and works to track activities that may impact the reserve shoreline and habitat, such as
23 local land use laws and proposed developments. The committee also provides recommendations
24 to the appropriate government agencies. There are three main categories of regulatory tools
25 that the committee looks to comment on: land use management programs, development
26 construction permits, and guiding environmental laws. The mission is to conserve the unique
27 habitats, plants, and animals of the Cherry Point Aquatic Reserve through citizen science,
28 community education, local stewardship, and cooperation with both government and non-
29 government agencies. Stewards meet once a month and actively participate in citizen science,
30 such as bird counts and intertidal species counts. The committee also sponsors a yearly science
31 forum where scientists present study results to any interested citizen. The committee also co-
32 sponsors a yearly low tide educational event at the Point Whitehorn county park. Members of
33 the Cherry Point Aquatic Reserve Implementation Committee meet twice a year and brings
34 together state, local, and tribal government agencies, Cherry Point Industry representatives,
35 and concerned citizens to discuss projects and challenges that affect the aquatic reserve. The
36 ecosystems within the aquatic reserves are directly impacted by what happens in the
37 surrounding uplands. Wastewater, effluents, air pollution, light pollution, manufacturing noise,
38 groundwater runoff, and boat traffic are some of the activities which have potentially negative
39 cumulative effects. For example, there has been a 90% decline in herring spawn in the past 30
40 plus years. The loss of this unique feeder stock has had a ripple effect throughout the
41 ecosystem. The lack of Chinook fry has contributed to the woes of the resident orca whales. We
42 cannot afford to ignore the damage that has been done, is being done, and without action, will
43 continue to be done throughout the Salish Sea. The Committee is particularly interested in the
44 code amendments being as strong of a protection as they can be. The proposed code
45 amendments is a major step forward in upping the oversight of industrial projects at Cherry
46 Point and shielding the aquatic reserve ecosystems. Thank you for your help with reforming our
47 County code so that Whatcom County is empowered to hold existing industries accountable for
48 not increasing hazards and to encourage industries to invest in upgrades that reduce pollution
49 and risk, while creating good paying jobs. There is no doubt that the dual goals of reducing
50 pollution and keeping good paying jobs are both doable. Thank you for your time.

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1 Commissioner Deshmane asked which pieces of the proposal are most significant from Mr.
2 Hahn's perspective.

3 Mr. Hahn stated that the parts of the amendments that address public input on permit
4 applications are the most significant. There have been projects in and around the Cherry Point
5 area where there was no public input and no EIS for a project that has many potential
6 implications.

7 Commissioner Deshmane asked Mr. Hahn for an example.

8 Mr. Hahn stated that the rail upgrade project at BP was issued a Determination of Non-
9 Significance (DNS). There was a restriction that BP could only have a specific number of trains
10 per day, based on a yearly average, but the plans that were built, gave them the ability to
11 enlarge that number. That was missed on the county level. If there had been more public input,
12 there would have been a chance to catch that and study the implications of the project.

13 Commissioner Barton called on Kent Hartwig to speak about the Green Apple project.

14 Mr. Hartwig stated that he was not planning on presenting this evening and apologized for the
15 looseness of his comments. He stated that he submitted written comments for the record. REG
16 is North America's largest producer of biomass base diesel. REG has a plant in Grays Harbor,
17 WA, which is the largest biodiesel plant on the west coast. The plant uses canola oil and turns it
18 into a biodiesel. REG is in the process of having a 50/50 joint venture partnership with Phillips
19 66 to build a 250 million gallon renewable diesel plant. This is a different process than the
20 biodiesel facility, but it uses the same renewable oils to create a renewable fuel. These fuels are
21 very sought after throughout the west coast. Neighbors to the north and neighbors to the south
22 both have carbon markets that are incentivizing fuels and spurring these kinds of investments.
23 This process that has been undertaken with Phillips 66 has been a robust conversation. It has
24 been about 18 months to 2 years in the making. We are now at the process where we are
25 engaging with Whatcom County, the Department of Ecology, and Northwest Clean Air Agency,
26 to look at the plans, how it will impact the environment, and how to go about permitting it. It
27 has been a robust process. Working with Mr. Personius and the DOE, we will be going through
28 multiple opportunities for public comment. The main issue lies in local mitigation for GHG
29 emissions. Because of the carbon markets in the west coast, we are very familiar with the
30 carbon intensity of our fuels. That relates to the type of feedstock that is used, the process, the
31 transportation, and the ultimate location of where that fuel is utilized. We acknowledge under
32 the renewable fuel standards at the federal level and the low carbon fuel programs in the west
33 coast, that all of our fuels are 50% lower in GHG emissions than conventional fuels. When
34 looking at the permitting processes and restrictions on local GHG mitigation, we get very
35 concerned if they don't take into account the entire lifecycle of the process. That is
36 unfortunately what these code amendments are doing. They are taking transportation of
37 feedstock to the facility, processing of the feedstock at a facility, and then not taking into
38 account the benefits of those fuels in the market place. We strongly encourage the Commission
39 to take into consideration the entire lifecycle of the fuels. Our recommendation in the report
40 would be to exempt renewable fuels from the local GHG emissions. Climate change is a global
41 issue. Local mitigation here is no more impactful than local mitigation in California, Oregon, or
42 British Columbia. If that is not possible, we have other opportunities for expanding that
43 mitigation opportunity into markets where we have the ability to sell our fuels. Currently, that
44 is not Washington State; it is California, Oregon, and British Columbia. One of the other
45 concerns is that the County would be getting into the determination of feedstock applicability.
46 There are multiple agencies up and down the west coast and in Washington D.C. that have
47 multiple staff members with significant understanding of programs that will determine new
48 feedstocks. To place that responsibility on the County is not necessarily well suited. Our
49 recommendation would be to utilize existing programs for new and upcoming feedstocks. Five

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- 1 years ago, nobody knew that corn oil would be a very viable feedstock for fuels. We have no
2 idea what the next "corn oil" will be, and we do not think it should fall on Whatcom County
3 Planning staff to make those determinations.
- 4 Commissioner Honcoop asked Mr. Hartwig to expand on feedstocks. He asked how the county
5 would regulate the feedstock that the company would be using.
- 6 Mr. Hartwig stated that the amendments have a list of the approved biomass feedstocks. As the
7 process moves forward and new feedstocks are utilized, we have no idea whether something
8 that is new and approved at the federal level would then be approved by the local officials. It is
9 another layer of uncertainty, especially when the investment for the renewable facility is
10 significant. We want to make sure that we have feedstocks to grow with expanded demand and
11 that there is not a bottleneck at the County level. If it is approved federally, it should be
12 approved locally.
- 13 Commissioner Honcoop asked Mr. Hartwig if the facility is using canola oil right now.
- 14 Mr. Hartwig stated that the facility in Grays Harbor utilized canola oil as the predominant
15 feedstock.
- 16 Commissioner Honcoop stated that the feedstock comes in on a supply availability basis. He
17 asked Mr. Hartwig if several feedstocks will be used at the Green Apple facility.
- 18 Mr. Hartwig stated that there is a large list of available feedstocks that are approved both at the
19 federal level in the Renewable Fuel Standard and would have specific pathways for the Low
20 Carbon Fuel Standards in California, Oregon, and British Columbia. Canola oil would be a
21 component of this facility, but animal fats, used cooking oil, and probably any fat or oil that
22 could be utilized under the RFS would be a potential feedstock for the Green Apple facility.
- 23 Commissioner Dешmane asked Mr. Hartwig to expand on the subject of what acceptable
24 feedstocks fall under the RFS and what kind of oversight happens to get these feedstocks
25 approved because the public may not be aware of that.
- 26 Mr. Hartwig stated that REG generally operates under two programs, one under the federal
27 level and the other under the carbon market on the west coast. At the federal level, palm oil is
28 not considered a viable feedstock under the RFS. It is also a deficit generator. As far as
29 procurement, there is a pretty strict regimen for identifying new feedstock providers. They sign
30 affidavits that their feedstocks are going to meet the RFS obligations and the definition of
31 biomass based diesel. There is a lengthy process of background checks and credit applications
32 as well. Also, third party verifications take place, sometimes there can be over 4,000 different
33 types of checks. It is a very robust way for us to determine that we are purchasing feedstocks
34 from a legitimate supplier that is supplying us with a high quality feedstock that we can then
35 provide to the marketplace.
- 36 Commissioner Dешmane asked if having a different approval process at the county level
37 creates issues and asked Mr. Hartwig to expand on his experience with different laws in
38 California. He stated that there were issues with California taking an extended amount of time
39 to approve certain feedstocks.
- 40 Mr. Hartwig stated that he believes the approval of feedstocks is an area that the County should
41 not be a part of.
- 42 Commissioner Dешmane asked if a renewable diesel plant would automatically qualify as
43 locally mitigating for the project.
- 44 Mr. Hartwig stated that the current language does not allow for that. Because Washington State
45 does not have a low carbon fuel standard, the fuels produced are designated for other
46 jurisdictions and those are not in Washington State. The fuel will go to California, Oregon, or

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- 1 British Columbia, but it is not indicated if those are considered local. The fuel is unlikely to stay
2 here, so the GHG benefits of the fuel will not be used locally.
- 3 Commissioner Deshmane asked if the fuel at the Grays Harbor facility stays in state or mainly
4 goes out of state.
- 5 Mr. Hartwig stated that approximately 10% of the fuel stays in the state.
- 6 Commissioner Deshmane asked Mr. Hartwig to clarify comments made about the duplication of
7 compliance between county, state, and federal regulations.
- 8 Mr. Hartwig stated that his experience with the permitting process seems to be overlap
9 between the CUP requirements and the current requirements.
- 10 Commissioner Deshmane asked for clarification from an engineer from Phillips 66.
- 11 Mr. Hartwig stated that there is not a representative present at the moment, but he would be
12 happy to provide additional information later.
- 13 Commissioner Maberry asked Mr. Hartig to explain how the current carbon marketplaces work
14 and how REG's role interacts with the marketplace.
- 15 Mr. Hartwig stated that the way the carbon market works is the jurisdiction of record will set a
16 threshold for reduction. It will be based off of a moment in time. For example, the emissions in
17 the year 2000 could be used and the goal would be to reduce emissions by 10% of that number
18 over the next 10 years. That would be the benchmark. This would be a jurisdiction like
19 California, Oregon, or British Columbia. Gasoline, ethanol, diesel, renewable diesel, and
20 different feedstocks would all have a different level of emission reductions. Each fuel would
21 have a corresponding carbon intensity. A used cooking oil biodiesel would have a lower carbon
22 intensity than a soy oil biodiesel and that is based on different properties of those feedstocks.
23 When utilizing a fuel as a blended product, a company would receive credits for those fuels,
24 which then have a value that could be retired or monetized in a traded market.
- 25 Commissioner Lund asked Mr. Hartwig to explain if the Green Apple project would supplement
26 the existing capacity and production at Phillips 66, or will there be a transition to renewable,
27 lower carbon fuels through the Green Apple project.
- 28 Mr. Hartwig stated that the Green Apple project is a separate stand-alone facility that will
29 operate strictly in its own capacity to create renewable diesel. It has no impact on the Ferndale
30 Phillips 66 refinery and their capacity.
- 31 Commissioner Honcoop asked if tanks will need to be built.
- 32 Mr. Hartwig stated that there is existing capacity for tankage that will be utilized. He stated that
33 there will also likely be additional tanks because there needs to be a way to store the feedstock,
34 process it, and hold finished product. Segregation of the product is very important.
- 35 Commissioner Honcoop stated that there is a prohibition on new tanks in the proposed
36 amendments. He asked if Washington State adopts a low carbon fuel standard, would REG
37 consider selling their products in Washington State.
- 38 Mr. Hartwig stated that the proposed program in Washington State is similar to what is already
39 being done up and down the west coast. If passed, that would be a market opportunity for REG.
- 40 Commissioner Honcoop stated that he believes that eventually the state will adopt some kind of
41 low carbon fuel standard and legislation is continuing to move in that direction.
- 42 Mr. Hartwig stated that if the proposed state legislation went into effect, there would likely be a
43 transition to sell fuel into that marketplace. There is a lifecycle analysis of the company's fuel
44 process: how far the feedstock is to the facility, the process, and the transportation to the end

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- 1 user. The closer the end user, the better the carbon intensity of the fuel. As processes get
2 implemented locally, the process would be to transition the fuel to those marketplaces.
- 3 Commissioner Honcoop asked what the local benefit would be.
- 4 Mr. Hartwig stated that the local benefit would be an increase in local jobs, significant amount
5 of capital investment, and a green economy into the community. The environmental community
6 wants to see more renewable fuels.
- 7 Commissioner Honcoop stated that the mitigation requirements are limited to local mitigation
8 which makes it challenging and difficult to meet the requirements. He stated that he believes
9 the County should be incentivizing these kinds of projects because the demand for energy
10 continues to grow and population continues to grow. When producing a barrel of oil, only 8-
11 10% of the initial product is used as the final product. He asked if 100% of the final produced
12 product would go into a fuel tank.
- 13 Mr. Hartwig stated that the main component of the final product is renewable diesel and there
14 are two byproducts that are used as a blunt stock for gasoline. Petroleum LPG could be used for
15 transportation fuels, but could also be combusted during the process.
- 16 Commissioner Honcoop asked if it is not like a regular barrel of oil, where you get 8-10% of the
17 feedstock, rather, they would get 80% of the use of their feedstock. The benefit is huge
18 because the input versus the output compared to a conventional refinery and barrel of oil is
19 much better. He stated that he looks at the mitigation issue as a regional issue and looks at
20 emissions as a global issue.
- 21 Mr. Hartwig stated that emission reductions happening here are no more impactful than those
22 happening in California, Oregon, or in Vancouver, B.C. He stated that the conversation between
23 REG and Phillips 66 has been ongoing. Prior to the proposed amendments, it was thought that
24 there would be no requirements for local mitigation with regards to renewable fuels. That was
25 put into the thought process of return on investment (ROI). Local mitigation requirements will
26 change the calculated ROI.
- 27 Commissioner Honcoop asked if the local mitigation requirements remained, would the project
28 continue to be built.
- 29 Mr. Hartwig stated that the current application process is already underway, but it would impact
30 hypothetical future expansions.
- 31 Commissioner Honcoop stated that he asked if the project was vested or not at the previous
32 meeting and was told that it is not.
- 33 Mr. Hartwig stated that he opposes the local mitigation requirements.
- 34 Commissioner Honcoop stated that he is concerned that the project will be compromised if the
35 regulatory environment continues to change.
- 36 Mr. Hartwig stated that he is not in a position to make that statement.
- 37 Commissioner Deshmane asked Mr. Hartwig if the low carbon fuel standards were not in place
38 in British Columbia and California, would the company be doing this project.
- 39 Mr. Hartwig stated that he is cautious to answer that question, but probably not.
- 40 Commissioner Deshmane stated that one thing the oil industry does particularly well is that
41 they turn every ounce of oil into something useful. Whether it is vegetable oil or crude oil, the
42 refining industry ensures that all of it is used.
- 43 Commissioner Honcoop stated that the Green Apple project will be beneficial in reducing
44 emissions.

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1 Commissioner Lund stated that part of the work that needs to be done is to figure out what
2 standard renewable facilities will be held to, compared to what has been proposed.

3 Commissioner Barton introduced Mark Buford with Northwest Clean Air Agency.

4 Mr. Buford stated that he is the director of the Northwest Clean Air Agency and that Agata
5 McIntyre, the engineering manager, and Bob Carmichael, the agency council, are also in
6 attendance. He stated that he will be discussing GHG emissions and how that fits into the Clean
7 Air Act regulatory framework. Northwest Clean Air Agency is a local clean air agency that was
8 created over 50 years ago. The agency pre-dates the Department of Ecology and the EPA.
9 Northwest Clean Air Agency is the agency for Island County, Skagit County, and Whatcom
10 County. A local clean air agency is not a state or federal agency; rather, it is a multi-county
11 government agency. There are seven local clean air agencies in Washington and 114 in the
12 United States. About 80% of the population in Washington State is in the jurisdiction of a local
13 clean air agency and not the Department of Ecology and EPA. Their authority gets delegated
14 down to the local clean air agency. The clean air agencies implement state, federal, and local
15 clean air programs. Northwest Clean Air Agency concentrates on stationary sources of air
16 pollution, so there is limited authority over cars, trucks, planes, trains, or anything that moves.
17 Stationary sources are the primary regulatory focus. There is one exception in Whatcom County
18 that was retained by the state, and that is Intalco. Intalco is regulated by the Department of
19 Ecology directly. Northwest Clean Air Agency has 23 employees who have deep experience with
20 working with refineries. There are four in the jurisdiction and are the largest in Washington.
21 Northwest Clean Air Agency is the only agency that he is aware of that sends staff to refinery
22 operator training held by a third party in Houston, called Refining Process Services. It is difficult
23 to effectively regulate a source if there is a lack of understanding of how it works. The existing
24 laws in the Clean Air Act covering GHG emissions are relatively new. There was a lot of work
25 done in the early 2000's to tailor the programs in the Clean Air Act to accommodate GHG's. The
26 law continues to evolve and is a very complicated field. Right now in Washington, there are a
27 number of programs that could apply under the Clean Air Act. There are emissions reporting of
28 GHG's for sources that emit more than 10,000 metric tons per year. There are two levels of air
29 quality permitting in Washington; one is a minor permit up to a certain threshold of emissions,
30 and the other is for projects that are over that threshold. When a project exceeds the
31 threshold, it is called a prevention of significant deterioration permit. Those are issued by the
32 Department of Ecology. Those can include GHG's when it is over 75,000 metric tons per year.
33 That would require best available control technology review and implementation by the source
34 as they condition a permit approval. There would be requirements in that type of permit.
35 Northwest Clean Air Agency would issue minor source permits. In the past, using the SEPA
36 authority, some projects that were less than 75,000 but more than 25,000 metric tons of GHG
37 emissions required mitigation. Two specific examples include an option for a one-time fee in
38 lieu of mitigation and the Department of Ecology's "Clean Air Rule" that was adopted in 2016
39 and is currently in front of the Supreme Court. This applies to projects that emit more than
40 70,000 metric tons of GHG's per year. It would require an annual reduction in GHG's or an
41 annual increase in energy efficiency. Particular to Washington State, there are GHG standards
42 for existing petroleum refineries. Northwest Clean Air Agency had a large role in writing that
43 rule. It took effect in 2014 and requires that existing refineries in Northwest Clean Air Agency's
44 jurisdiction fall into the top 50th percentile for energy efficiency nationwide. There is also a GHG
45 standard for new power plants, which requires mitigation for 20% of GHG emissions. There are
46 programs under the Clean Air Act that address GHG's, they do apply at the refineries, and we
47 have experience with many of them. When asked to look at the proposed amendments, we
48 used this experience to draft our comment letter. This was reviewed about 4 weeks ago, and is
49 our first review of what we see as issues, or parts that need more thought or clarity. In general,
50 some clarity around what happens when a particular project's GHG emissions are also subject
51 to state regulations. Clarity would help the staff member reviewing a project in the future to

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1 understand what was meant by the amendments without the context of these meetings. There
2 is a question of preemption, as an agency we do not have a position on it. RCW 70.94.230 of
3 the Clean Air Act has wording around when there is a local clean air authority, the local clean
4 air authority's rules preempt the County or any member authority. This is something that
5 County attorneys should review and come up with a position around preemption. There is not
6 an emissions threshold in the proposed amendments. It is really important that an emissions
7 threshold is added. There are other things that Northwest Clean Air Agency pointed out in our
8 comment letter. This is complicated work on a complicated topic that covers facilities that are
9 very adaptable, complicated, and can change based on market demands. It is a daunting task
10 to get this right in a way that allows everybody the flexibility that is needed to continue to
11 operate while achieving the environmental improvement that is wanted. Northwest Clean Air
12 Agency offers their help to the Planning Department and the Commission as needed.

13 Commissioner Jackson asked why Northwest Clean Air Agency is not taking a position on
14 preemption because it seems that mitigation and regulation of GHG's are clearly preemptive
15 under the Clean Air Act.

16 Mr. Buford stated that it is not clear at the end of the section in the Clean Air Act. It comes
17 down to one word, "or".

18 Commissioner Jackson stated that it seems that the way the code is written now, the GHG
19 regulation and mitigation are not included in the performance standards.

20 Mr. Buford stated that he is not here to present a legal interpretation of what the code means
21 and that it can be read several ways depending on the word "or". It would be good for the
22 County to think about the issue and have a position that they are comfortable with.

23 Commissioner Mocerri asked Mr. Buford why Northwest Clean Air Agency has their level set at
24 25,000 metric tons, but below that mitigation is not required.

25 Mr. Buford stated that 25,000 tons – 75,000 tons is a number that came from a state SEPA
26 policy that has since been withdrawn. This is part of the evolution of the regulation of GHG's
27 under the Clean Air Act and SEPA. It will continue to change in the coming years.

28 Commissioner Mocerri asked Mr. Buford if he believes that current level is accurate or if it should
29 be more or less restricted.

30 Mr. Buford stated that he believes this should be a longer conversation because the number
31 needs to be justified. There is also another number which is the 10,000 ton per year reporting
32 threshold.

33 Commissioner Lund asked Mr. Buford if a percentage for annual factory baseline emissions
34 would be better than using a baseline number due to the differences in individual facility
35 emissions.

36 Mr. Buford stated that baseline calculations are tricky. The EPA struggled with determining their
37 baseline emissions as well. Something that has been done before is a year range is selected
38 and each facility selects their yearly range to help determine their baseline. How a baseline is
39 selected is very important.

40 Commissioner Lund stated that the baseline question is something that the Commission is
41 tasked to address.

42

43 Commissioner Mocerri asked Mr. Buford if he is aware of other counties in Washington State or
44 other states that have something similar to Northwest Clean Air Agency. He asked if there is
45 another example of existing code that is similar to what is being addressed.

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- 1 Mr. Buford stated that he believes there are examples of GHG emission regulation through
2 SEPA actions. Commissioner Honcoop previously mentioned the Puget Sound Clean Air Agency,
3 which is the local clean air agency to the south in King, Pierce, Snohomish, and Kitsap Counties.
4 They are pursuing a low carbon fuel standard. The geographic area is so small that a market
5 driven solution isn't necessarily effective.
- 6 Commissioner Honcoop stated that the Planning Department in Whatcom County has a large
7 amount of things they have to work on. They are not the specialists when it comes to GHG
8 emissions. This is a quickly evolving science and is a regional issue. Staff members at the
9 Planning Department are not experts in this field. He stated that he would prefer the regulators
10 to be a larger jurisdiction than the Whatcom County Planning Department. He asked Mr. Buford
11 about comments regarding the inability to locally mitigate and current mitigation funds that
12 have not been used.
- 13 Mr. Buford stated that there is an example of a project that predated the Clean Air Act
14 framework for regulating GHG's. It was the BP Refinery. The permits were issued prior to the
15 new framework. BP approached Northwest Clean Air Agency about the Clean Air Act and asked
16 what they could do to help mitigate GHG's if there is no regulatory framework present. They
17 came up with a voluntary program to fund a \$4 million environmental project to use to mitigate
18 GHG's in Skagit, Whatcom, and Island Counties. In 2013-2014, Northwest Clean Air Agency's
19 board requested projects from the community and selected projects to implement. After the
20 completion of these projects, there is about \$500,000 left over. It is not because there was a
21 struggle to find projects to locally mitigate; it is simply because one of the projects came in
22 under budget. A one-time \$4 million input, compared to an annual \$26 million input is much
23 different. He suggested adding wordage to the code to state "mitigate locally, if possible".
- 24 Commissioner Lund asked Mr. Buford to clarify the difficulties of finding projects to locally
25 mitigate. In his written comments, it stated that he did find it challenging to find projects, but
26 now he stated that it was not challenging.
- 27 Mr. Buford stated that it took a number of years to go through the process of finding projects.
28 It has been a number of years to implement projects based on a one-time \$4 million fee. It
29 took 6 years to allocate \$3.5 million. If they had \$26 million annually, it would be very difficult
30 to find projects.
- 31 Commissioner Lund stated that she has an example of a shuttle ready process. She stated that
32 she works to find funding to close gaps in a local public school district. They have a contractor
33 to build a new high school in the area which is a huge capital investment for taxpayer dollars in
34 the community. The general contractor put up \$100,000 for a solar panel, which will offset only
35 a tiny fraction of that building's energy usage. They were trying to seek a private match for that
36 for years, so there are projects that could be invested. Globally, GHG emissions are about 6%
37 from the construction industry, which is significant. There could be investments in tax payer
38 funded buildings, like schools, to help them reach a gold LEED standard and that could
39 consume a significant amount of resources.
- 40 Mr. Buford recommended looking at the total amount of GHG reduction from those projects and
41 comparing that to the amount that needs to be reduced under the regulatory framework.
- 42 Commissioner Lund stated that there are local projects that these investments can go towards.
- 43 Mr. Buford stated that he agrees with Commissioner Lund.
- 44 Commissioner Maberry asked Mr. Buford if he sees a reduction of local fuel production leading
45 to a reduction in global GHG emissions.
- 46 Mr. Buford stated that there was a case that Northwest Clean Air Agency was a part of in the 9th
47 Circuit Court of Appeals. One of the findings was that if all four refineries were completely

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- 1 eliminated in the jurisdiction, there would not be a measurable change in the amount of CO₂ in
2 the atmosphere.
- 3 Commissioner Maberry asked if Mr. Buford knows why that finding was made.
- 4 Mr. Buford stated that the amount of GHG emissions globally is a very large number, which is a
5 part of the reason why the Clean Air Act needed tailoring.
- 6 Commissioner Maberry stated that if the fuel is not produced here, it will likely be produced
7 somewhere else and it would not impact consumption. Considering that GHG's are a huge part
8 of the code amendments is it necessary to look at this in terms of consumption as opposed to
9 production.
- 10 Mr. Buford stated that it is through a collection of small actions that big actions are
11 accomplished. With care in how the proposal is written and understanding what the impact
12 would be on the regulated facilities, an answer to that could be conceived.
- 13 Commissioner Maberry asked if there are agencies that could make the calculation of what the
14 projected benefits could be.
- 15 Mr. Buford recommended going to LFN.
- 16 Commissioner Mocerri asked Mr. Buford what dollar amount per ton is required for mitigation
17 and how does that compare to the \$60 per ton. Also, he asked with the \$3.5 million mitigation
18 projects, what percentage did that offset of the plant that BP built.
- 19 Agata McIntyre from Northwest Clean Air Agency stated that it was \$1.60 per ton and a 20%
20 offset. This was mirrored from what was already in the rules for FSEC.
- 21 Commissioner Mocerri asked what is currently being required per ton.
- 22 Mr. Buford stated that they have not had a project since then and it would have to be
23 reevaluated.
- 24 Commissioner Honcoop asked if that is a one-time fee.
- 25 Mr. Buford stated that is correct. This was a 2010 permit that was paid in 2013.
- 26 Commissioner Mocerri asked if it is a 20% offset of an annual amount or what duration was the
27 offset in.
- 28 Ms. McIntyre stated that it was a 20% offset of a 30 year life of the plant.
- 29 Commissioner Deshmane asked if they are aware of discussions in California about deferring
30 the baseline and if that is something the County could benefit from.
- 31 Mr. Buford stated that they are in communication with local clean air agencies in California a
32 lot. He stated that they would reach out if this came up during a permitting decision.
- 33 Commissioner Deshmane asked if Northwest Clean Air Agency would be comfortable with the
34 County passing the responsibility to come up with a number after studying the benchmarks of
35 other communities.
- 36 Mr. Buford stated that it is a topic that has been discussed. It would come down to the details
37 of legal authority. There are parts where Northwest Clean Air Agency is able and willing to help.
- 38 Commissioner Deshmane asked what Northwest Clean Air Agency's definition of regional is in
39 the proposed code amendments and referenced Northwest Clean Air Agency's memo.
- 40 Mr. Buford stated that regional means a regional clean air authority.

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- 1 Commissioner Deshmane asked if it is odd to require additional mitigation on a project like
2 Green Apple since it is already a renewable fuel facility.
- 3 Mr. Buford stated that he cannot talk about it because it is currently under review by their
4 facility.
- 5 Commissioner Mocerri asked if there have been projects similar to Green Apple under a
6 jurisdiction like Northwest Clean Air Agency that have determined that the project does not
7 require mitigation because it was self-mitigating.
- 8 Mr. Buford stated that he cannot think of one offhand, but one of the first steps in permitting is
9 looking for other similar projects. There are some in Louisiana that have been looked at, but he
10 does not know the specific answer to the question, but they will look into it.
- 11 Commissioner Mocerri stated that Mr. Buford could send the Commission a list of similar projects
12 if they compile one.
- 13 Commissioner Honcoop asked if parts of the gasses are regulated by the DOE and by Northwest
14 Clean Air Agency, but the other parts are not, how facilities are expected to follow proper
15 methodology. He asked how Whatcom County would be equipped to do that as well.
- 16 Mr. Buford stated that he has respect for the ability of the County to do the work. Criteria
17 pollutants, GHG's, hazardous air pollutants, and toxic air pollutants are all categories that
18 pollutants are placed in. Sometimes a particular pollutant can be in multiple categories. When
19 crafting the amendments, we would have to make sure that we are not overlapping in the
20 regulations.
- 21 Mr. Personius asked Mr. Buford if the best available control technology (BACT) can be
22 considered the most emission control that a refinery can do on site to mitigate GHG's.
- 23 Mr. Buford stated that the BACT has a cost component. If the cost of control is more than "x"
24 amount, then the control technology could be ruled out as economically infeasible. There is no
25 economic out in lowest achievable emission rate, and whatever emissions are left over would
26 have to be offset.
- 27 Commissioner Honcoop stated that crafting this ordinance falls on staff's and the Planning
28 Commissioner's shoulders. He stated that it is beyond their skill level, but they are learning and
29 researching as they go. There are some technical points that the Commission may not be able
30 to address. Staff presented some good main points for the Commissioners to address.
- 31 Mr. Personius stated that Mr. Aamot is available to walk the Commissioners through the points,
32 but that staff would appreciate the Commissions input.
- 33 Mr. Aamot stated that in the memo of the packet, staff has highlighted four issues and policy
34 questions for Planning Commission's consideration. Most of them have been touched upon in
35 length tonight already. The first issue is GHG mitigation for renewable projects. The Council
36 proposal contains two different provisions for GHG mitigation for renewable refineries and
37 transshipment facilities. The SEPA provisions relate to lifecycle emissions. The Heavy Impact
38 Industrial Zone (HII) regulations relate to facility emissions. The issue is that the two terms are
39 defined differently. Facility emissions include upstream emissions from extraction and
40 transportation of raw product to the facility, refining and processing, and transportation within
41 the boundaries of Whatcom County. Lifecycle emissions include all of those things, but also
42 include distribution and use of the final fuel by the consumer. The policy question in the memo
43 is "should a renewable fuel facility be required to mitigate GHG emissions if it would increase
44 local emissions, but would reduce global GHG emissions when compared to the use of fossil fuel
45 by the end consumer"?.
- 46 Commissioner Deshmane requested that the Commission deals with each issue separately.

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- 1 Commissioner Barton stated that there was a consensus to deal with each individually.
- 2 Commissioner Mocerri stated that based on some of the testimony tonight, he questions if the
3 County should even be asking the question, or if they should defer it to an organization that is
4 already reviewing the issue. He also asked which way Northwest Clean Air Agency is looking at
5 it and how the two different ways would impact different projects.
- 6 Commissioner McClendon stated that her understanding is that Mr. Hartwig suggested that he
7 preferred lifecycle accounting and that is what other states are using.
- 8 Commissioner Deshmane stated that the term renewable fuel is very explicitly defined at the
9 federal level and means that it is a commodity that is approved by the EPA as a renewable fuel.
10 This means that the feedstocks that it is made from have met thresholds of social acceptability.
11 He stated that it is addressed in other areas and supports the deletion of a mitigation
12 requirement for renewable fuel facilities.
- 13 **Commissioner Deshmane motioned to delete the reference for mitigation for**
14 **renewable fuel facilities under 20.68.801.**
- 15 **Commissioner Mocerri seconded.**
- 16 Commissioner Honcoop asked if it would be better to place renewable fuel facilities on the
17 exemption list, rather than deleting the reference.
- 18 Mr. Aamot asked if Commissioner Honcoop meant that renewable fuel facilities should be
19 changed from a conditional use to a permitted use.
- 20 Commissioner Honcoop stated yes.
- 21 Commissioner Deshmane asked staff to clarify if a SEPA would be required if the GHG
22 mitigation requirements stayed in place.
- 23 Mr. Aamot stated that SEPA relates to the state thresholds for exemptions, so it would not
24 change whether a project would need a SEPA or not. The Planning Commissioners have the
25 authority to determine whether renewable fuel facilities will be a conditional use or an outright
26 permitted use under the current code.
- 27 Commissioner Mocerri stated that even if the GHG mitigation portion was required, the project
28 still may not be permitted due to the tanks and other parts of the project. He stated he
29 supports Commissioner Honcoop's suggestion.
- 30 Commissioner Deshmane stated that he would be open to amending his motion.
- 31 Commissioner Lund stated that it is difficult to thoughtfully consider and word a motion without
32 the code in front of them. She asked staff to bring up the code on the projector.
- 33 Commissioner Honcoop asked if the Commission should make any motions tonight because
34 additional information has been asked for throughout the meeting.
- 35 Commissioner Deshmane asked if the Commission can provide staff with feedback rather than
36 stating specific motions.
- 37 Commissioner Barton stated that the Commission is able to move forward with a consensus.
- 38 Commissioner Deshmane called to question.
- 39 Commissioner Mocerri stated he would like to remove his second of the motion.
- 40 **Motion was withdrawn through consensus of the Commissioners.**
- 41 Commissioner Honcoop asked staff why upstream emissions are included in facility emissions.

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- 1 Mr. Aamot stated that the proposal came from the County Council and Cascadia Law Group.
- 2 Commissioner Honcoop stated that another issue when calculating the GHG's is that the
3 location of a facility's supplier of feedstock could change due to market changes, which would
4 change the total facility GHG emissions if they are included in facility emissions.
- 5 Mr. Aamot stated that that was brought up during a meeting with industry representatives on
6 Tuesday.
- 7 Commissioner Honcoop stated that the definition of facility emissions should be refined to only
8 the emissions within the facility's boundaries and not include upstream emissions and
9 transportation to the facility.
- 10 Commissioner McClendon stated that biofuels require reporting of carbon content on lifecycle
11 emissions, which is upstream to consumption. She asked why the County would not ask for
12 lifecycle emissions if they are already reporting those numbers.
- 13 Commissioner Deshmane stated that in California where there is a low carbon fuel standard,
14 refineries have to provide that reporting for the fossil fuel pathway as well. He stated that there
15 is a federal requirement for that level of accounting for all renewable fuels made in the United
16 States, but that kind of lifecycle accounting is not uniform as it relates to petroleum derived
17 fuels. States have specific requirements.
- 18 Commissioner Lund stated that staff asked the Commissioners whether renewable facilities
19 should be required to provide mitigation if they result in reductions of lifecycle emissions. The
20 code that Mr. Aamot put up, Exhibit B under 20.68.801, is what needs to be clarified by the
21 Commission, whether it should be facility emissions or lifecycle emissions. She stated that she
22 proposes that the Commission adopts the lifecycle emission standards.
- 23 Commissioner Maberry stated that it does not take into account that it is replacing existing
24 fossil fuels, which have a higher carbon value. If that is replaced with lifecycle emissions, the
25 impact for mitigation would be substantially higher. He stated that the way the code is written,
26 it would be a higher mitigation requirement, which is why it should be taken out.
- 27 Mr. Aamot stated that if the Commissioners give staff a direction, staff would then review and
28 revise the language in the code and come back with a modified version.
- 29 Commissioner Deshmane asked Mr. Aamot if he feels like staff has sufficient input on this issue
30 to revise it in a way that would not put an additional requirement in the code.
- 31 Mr. Aamot stated yes. He stated that staff will look at the code to delete GHG mitigation
32 requirements for renewable fuel projects.
- 33 Commissioner Barton stated that the Commission is in consensus to move forward with that
34 recommendation.
- 35 Mr. Aamot stated that the second issue is that there is no *de minimis* threshold for when the
36 County would require local mitigation, with local being the key word. The policy question for the
37 Commission is should there be a threshold established in the zoning code so that projects under
38 the threshold would not require mitigation. The memo proposes a couple options, such as a
39 metric ton limit, or if something is a permitted use then it would be exempt from GHG
40 mitigation requirements.
- 41 Commissioner Honcoop asked why is GHG mitigation policy in the land use and zoning code and
42 not somewhere else. He stated that he agrees that there should be a minimum, and anything
43 below the threshold would not require mitigation. He stated that the proposal should match
44 what Northwest Clean Air Agency suggested in their letter.

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- 1 Mr. Aamot stated that this issue is in the zoning code because that is what the County Council
2 and Cascadia Law Group proposed. The proposal has GHG requirements both in SEPA and in
3 the zoning code. SEPA mitigation is typically for significant adverse impacts.
- 4 Commissioner Lund asked if the theoretical one pound that is proposed in the packet comes
5 from a specific calculation. She asked why actuals are not being used instead of theoretical
6 numbers, since the baseline is being measured from actuals. The proposal doesn't look at what
7 is actually happening in the real world. She suggested that the threshold should come from a
8 real-life number after the refinery reaches a stable level of operations.
- 9 Mr. Aamot stated that Commissioner Lund's suggestion could create legal questions because it
10 would put an unspecified condition on a permit. He asked Royce Buckingham, Whatcom County
11 legal counsel for input.
- 12 Mr. Buckingham stated that it would likely raise legal issues.
- 13 Commissioner Deshmane stated that modeling tools are not exact science, so there could be
14 issues using theoretical calculations. He stated that he is supportive of both setting a threshold
15 and exempting process improvements from GHG mitigation requirements.
- 16 Commissioner Barton asked for the Commissioners to come to a consensus to change the order
17 of the Planning Commission's agenda, placing new business after commissioner comments and
18 that it will be discussed at the next meeting.
- 19 Commissioner Mocerri stated that the problem with having to defer requirements until actual
20 numbers are achieved creates uncertainty and would be atypical to how other permit fees are
21 applied.
- 22 Commissioner Lund stated that she agrees that eliminating ambiguity and uncertainty is
23 important, but that it is interesting that actual numbers are not being looked at after the fact
24 to compare to the models in regards to the mitigation requirements.
- 25 Mr. Aamot stated that there is a chart in the report showing plant actuals from the EPA.
26 Between 2010 and 2018, GHG's were down 15.7%, Phillips 66 was down 9.4%, so they are
27 reducing their footprints.
- 28 Commissioner Honcoop asked how a baseline is established because refineries are not
29 producing at a stable rate. They produce based on market demand. There are complete and
30 partial shutdowns, which affects the average. There needs to be a way to address where the
31 slowdowns and shutdowns are. Selecting a range of years does not take into consideration the
32 way the facility actually operates. If a refinery has a decreasing average, are they then stuck
33 under that cap or can the average be moved depending on circumstances. He stated that the
34 County should be using the same method as the Federal regulations.
- 35 Mr. Aamot stated that a question that was asked to industry and was not yet addressed is
36 whether or not it is necessary to have a baseline calculation for the whole plant. More
37 discussion with industry is needed on this topic.
- 38 Commissioner Honcoop asked if staff has any follow up meetings scheduled with industry and
39 asked for an update on the process.
- 40 Commissioner McClendon stated that the Commissioners got off topic about the second policy
41 question about having a lower threshold.
- 42 Commissioner Mocerri stated that it should be tabled until a decision is made about whether a
43 threshold is needed or not.
- 44 Mr. Aamot stated that the staff will need direction from the Commissioners to address this topic
45 further.

**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
October 10, 2019**

Work Session


19

- 1 Commissioner Barton asked Mr. Personius if he could brief the Commission on the timeline of
2 the upcoming meetings and process.
- 3 Mr. Personius stated that the next meeting is set for October 24th and that there are three large
4 topics that still need to be addressed, plus the changes that are currently in the packet in
5 yellow. He stated that he feels that the Commissioners need to be direct about what
6 information they need from the industry representatives and what the expectation is. He asked
7 the Commissioners when they would like feedback from industry.
- 8 Commissioner Barton stated that feedback at the next meeting would be preferred.
- 9 Commissioner Mocerri agreed with Commissioner Barton.
- 10 Mr. Personius stated that Mr. Aamot will send out a memo to industry with the questions asked
11 in the meeting to get feedback.
- 12 Commissioner Honcoop asked Mr. Personius if he anticipates staff having another meeting with
13 industry.
- 14 Mr. Personius stated that another meeting is likely to happen. Based on the first meeting, it was
15 clear that industry did not support the GHG mitigation requirements and would prefer a state-
16 wide requirement rather than a local requirement.
- 17 Commissioner McClendon requested that staff puts together a chart to easily visualize the
18 whole picture of the proposed amendments.
- 19 Mr. Chalfant stated that industry supports putting together a chart to address the problem
20 statement first and have the smaller issues branching out from it to be able to easily identify
21 gaps in the regulations and how everything ties together.
- 22 Mr. Aamot stated that it may be difficult to put everything into a chart based on the intricacy of
23 the process and the fact that it is an evolving process.
- 24 Commissioner McClendon stated that it is challenging to keep everything straight with such a
25 large proposal with so many components.
- 26 Mr. Aamot stated that it is not black and white, so it is challenging to put it into a chart form.
- 27 Commissioner Deshmane stated that there are two parts, one part relating to GHG's and the
28 other part addressing the code amendments. It is complex and layered. He stated that a chart
29 could be made of how GHG's are regulated at the state, federal, and local level.
- 30 Mr. Chalfant stated that he and other industry representatives will produce an informational
31 chart.
- 32 Mr. Personius stated that staff will look at the chart industry creates at the next meeting with
33 industry representatives.
- 34 Commissioner Barton thanked everyone for coming.
- 35 The meeting was adjourned at 9:43 p.m.
- 36 Minutes prepared by Ashley Ubil.
- 37 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

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Kelvin Barton, Chair


Ashley Ubil, Secretary