

From: [Council](#)
To: [Barbara Brenner](#); [Barry Buchanan](#); [Carol Frazey](#); [Rud Browne](#); [Satpal Sidhu](#); [Todd Donovan](#); [Tyler Byrd](#)
Cc: [Matt Aamot](#); [Mark Personius](#); [Ashley Ubil](#); [Becky Boxx](#)
Subject: FW: Potential Cherry Point Code Amendments
Date: Monday, July 08, 2019 8:29:51 AM

From: Paula Rotondi [mailto:perotondi@comcast.net]
Sent: Sunday, July 07, 2019 2:21 PM
To: Council; Paula
Subject: Potential Cherry Point Code Amendments

Dear Whatcom County Council Members,

It is concerning to me that the Cherry Point draft amendments released on June 18, 2019 are significantly *weaker* than the January 15, 2019 draft amendments. I am writing about five specific issues in the June 18th draft amendments which are most concerning to me and which I believe should be changed.

- The June 18th draft amendments do *not* address health, safety and environmental *impacts* of Cherry Point industrialization. The draft amendments should be changed to include specific language addressing the importance of pollution reduction as central to the County's first and paramount duty to protect public health and safety. The June 18th draft amendments should include provisions requiring existing industries to reduce pollution. Also the draft amendments should include a provision requiring pollution reduction commensurate with, or more than, the amount of permitted increased "expansion capacity".
- The June 18th draft amendments significantly weaken conditional use permitting by addressing regulation as a function of expansion capacity. I urge Council to return to the January 15, 2019 draft amendments which required *all* fossil fuel facilities, new or modified, unless exempted by SEPA to obtain a County conditional use permit - "Amend WCC 20.66.150, LII Conditional Uses, as follows: Fossil Fuel Facilities, New or Modified, require a County conditional use permit, unless the user applies for and the Director authorizes an exemption from conditional use permit review, under 20.84.230WCC." The January 15th draft is clear, strong, straightforward and enforceable. In comparison the June 18, 2019 draft amendments allow unregulated expansion of existing oil refineries based upon a complicated formula tied to regional population growth - requiring existing refineries to obtain a conditional use permit *only* for projects with a capacity for expansion above 1% per three year period. The June 18th draft's allowance for unregulated expansion of existing oil refineries based upon a complicated formula also establishes indefinite capacity for increasing air, land and

water pollution, greenhouse gas emissions, and risks to public health and safety.

Regulating as a function of expansion capacity is a set-up for regulatory evasion - through piecemealing, through loopholes in regulatory detail and definition, and through the absence of mandatory public reporting and accountability. The new amendments should include modifications to prevent problems exposed by past permitting mistakes. For example, presently BP Cherry Point is permitted to receive an average of one train loaded with crude oil per day, and Phillips 66 can get one every other day. However residents sometimes have seen more than 1½ crude oil trains during a 24 hour period. Most trains have some crude oil tank cars along with some railcars carrying other freight. How many crude oil tank cars equal “one crude oil train”? Are the refineries exceeding their limits? Are individuals supposed to monitor and keep track of crude oil trains? Where is the public accountability report?

- The June 18th draft amendments are premised in part upon the State Environmental Policy Act (SEPA) and SEPA’s responsibility to make the initial determination of Significant or Non-Significant environmental impact. However SEPA does *not* ensure an environmental impact statement for all projects which could have significant environmental impacts. SEPA policies do not address water pollution. Under SEPA, the state must “prove” that a proposed project has significant adverse impacts that require mitigation before requiring an EIS. Under SEPA the “default” is that a project does *not* have significant environmental impact unless the state can prove otherwise. Likewise, at present and under the June 18th draft, Whatcom County’s “default” is that a project does *not* have significant environmental impact unless the county can prove otherwise. Whatcom County’s “default” policy of considering projects “non-significant” unless the county proves otherwise produced our present disastrous situation in which the entire county is exposed to dangerous crude oil trains multiple times every day. The new amendments should make Whatcom County’s “default” position that all projects in the Cherry Point Industrial Growth Area are significant unless the project proponent proves otherwise.
- The June 18th draft amendments pertaining to exemptions for biofuels are overly broad, vague and susceptible to abuse. The draft amendments pertaining to exemptions for biofuels should be “refined” to include more specific descriptions and definitions that prevent exemptions for biofuels that exacerbate environmental degradation and pollution.
- The June 18th draft amendments pertaining to “Proof of insurance for hazards created in the County” address reimbursement for property damage but provide no reassurance or comfort to a person who values life more than money. The *first* responsibility of every county council member is to protect public health and safety. When a hazard is so significant that it jeopardizes public health and safety and is a threat to what is so precious that no amount of money could ever compensate for its loss then Council Members’ first and paramount responsibility is to provide the strongest possible protections to prohibit, limit or restrict that hazard. If/when an oil train or pipeline

explodes - perhaps near a school or park - how much money is fair reimbursement for a dead or injured child or other family member? How much money reimburses us if/when a crude oil ship failure results in permanent, irreversible damage to the last remaining herring, salmon, and Orca in the Salish Sea? The draft amendments should be changed to include the specific calculation method to be used for determining reimbursement for permanent, irreversible damage to herring, salmon, and Orca in the Salish Sea. The draft amendments should be changed to specify that Whatcom County - not "the applicant" - determines the exact minimum insurance amount for "each Loss / total for all Losses" for each permit application. The draft should be changed to specify that the "applicant" includes all corporations, subsidiaries, contractors, sub-contractors, consultants, partners and advisors working at any and every stage of the project including all involved in removing the fossil fuel from the ground, modifying its composition, and transporting it. As owner of the Trans Canadian pipeline, the Canadian government should be among those specifically required to provide "Proof of insurance for hazards created in the County".

Thank-you for reading my letter and considering my suggested changes.

Sincerely,

Paula Rotondi