

From: [Eddy Ury](#)
To: [PDS Planning Commission](#)
Subject: cherry point amendments
Date: Thursday, September 26, 2019 3:30:57 PM
Attachments: [Shell storage tank \(1\).pdf](#)

Planning Commissioners,

In preparation for your important work tonight in reviewing the proposed Cherry Point code amendments, please note the attached document for reference to a point I made at the Sept 12th Town Hall.

A Conditional Use Permit (CUP) is required for all constructions over 50 feet high at the two oil refineries in March Point, Anacortes. To illustrate, see the attachment, a decision from the Skagit County Hearing Examiner approving a permit to the Shell Puget Sound Refinery for a crude oil storage tank in 2018. Note that the permit was approved 14 days after the hearing (at which I participated) and about six months after applications were submitted. It is safe to presume that if the requirement to obtain conditional use permits was a nuisance for these two refineries, that they would have lobbied for simple zoning code changes to create exemptions for the CUP requirements, which would also presumably be met with little resistance from Anacortes Councilmembers and the Skagit County Commissioners. Granted, the Anacortes CUP does not require the same conditions proposed by Whatcom County Council, but the evidence is clear that a CUP is not in itself a barrier to project permitting.

I understand the arguments about detrimental consequences to the refineries' business and operations to be essentially that Conditional Use Permits are an overly burdensome requirement which will delay project approvals, and that the conditions for insurance verification and greenhouse gas mitigation are infeasible to comply with, which will deter investments in upgrades.

The Aug 7th draft code [20.68.802] explicitly specifies that "regular equipment maintenance, replacement, safety upgrades, and environmental improvements are outright permitted uses, but shall mitigate greenhouse gas emissions if required by WCC 20.68.801." We should carefully consider appropriate additions or greater specificity of definitions on this list of exemptions, based on input from impacted companies and labor unions.

The next question to address is if the insurance requirements and GHG mitigation are operable and reasonable to comply with. For this there appear to be substantive arguments as to why these sections of draft code are flawed. I would invite the critics to suggest alternative language that would satisfy the intended purposes of these criteria, which are respectively to ensure accountability for damages in the case of foreseeable catastrophes that may arise from permitting volatile hazardous facilities, and to prevent unnecessary increases in climate destabilizing pollution which threatens our continued existence. The concurrent goal of these policies is of course to support refinery upgrades to be cleaner, safer, and more efficient. If the current draft is not achieving this purpose then it should be corrected.

Thank you for consideration of our input, and for your dedicated volunteer service to our communities,

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Eddy Ury

Clean Energy Program Manager

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NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Shell Puget Sound Refinery
c/o Burt Newbry
8505 South Texas Road
Anacortes, WA 98221
- Consultant:** AECOM
c/o Jeff Walker
1111 3d Avenue, Suite 1600
Seattle, WA 98101
- Request:** Conditional Use Permit (Anacortes), PL17-0518
- Location:** Northwest portion of the Shell refinery on March Point, 8505 South Texas Road, Anacortes, within a portion of Sec. 33, T35N, R21W, W.M. Parcel Number: P10874.
- Zoning:** City of Anacortes Urban Growth Area, Urban Development District (A-UD)
- Summary of Proposal:** To construct and use a new crude oil storage tank, 190 feet in diameter and 72 feet tall, with a 344,000 barrel capacity. The tank will include containment berms and other associated structures in the area of the existing West Land Treatment Farm on the refinery site.
- SEPA Compliance:** Mitigated Determination of Non-Significance (MDNS) issued November 14, 2017. No appeals.
- Public Hearing:** February 28, 2018, Testimony by Planning and Development Services (PDS) staff and by applicant's representatives. Public testimony by two environmental organizations.
- Decision:** The application is approved, subject to conditions. March 14, 2018
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the County Commissioners by filing with PDS within 14 days of this decision, or decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Shell Puget Sound Refinery seeks to construct a crude oil storage tank at the refinery site on March Point. The tank will measure 190 feet in diameter and be 72 feet tall with a 344,000 barrel capacity.
2. The tank will be assembled and located in the existing West Land Treatment Farm in the northwest corner of the refinery property. The refinery address is 8505 West Texas Road, Anacortes. The site is within a portion of Sec. 33, T35N, R2E, W.M. The parcel number is P19874.
3. The site is bounded by “A” Street to the west, “B” Street to the east, 8th Street to the south, and an access road bisecting the land treatment farm to the north.
4. The project will be situated within the City of Anacortes Urban Growth Area in a district called the Anacortes UGA Urban Development District (A-UD). The City of Anacortes classifies the site as Heavy Manufacturing (HM).
5. The surrounding lands are primarily in refinery and other heavy industrial uses. There are a few scattered residential parcels nearby and open pasture areas used for cattle grazing.
6. The purpose of the project is to allow more flexibility for the refinery, reducing delays in crude oil transfers at the dock that force ships to go to anchor and wait until space is available for offloaded oil. The new tank will also provide more storage during possible refinery shutdowns.
7. The refining capacity at the Shell facility will not be affected by use of the new tank, and thus no increase in the processing of crude oil will result.
8. The new tank installation will be surrounded by berms to contain any potential spills or leakage. External roads and necessary emergency services are already in place. An internal access road with turnaround areas at each end will partially encircle the new tank.
9. The site for the tank is rectangular and flat. It is large enough to accommodate the tank, the access road, the needed containment area, and the berms. Storm water from the site will drain to a catch basin inside the southwest corner of the containment berm before discharging to existing on-site ditches.
10. No additional employees will be added for operation of the installation. It will have no impact on hours of operation and will not add additional traffic trips to public roads.
11. The location of the new tank inside the developed refinery property will ameliorate visual impacts. The tank will blend in with the existing industrial scene. No screening will be needed.

12. An archaeological assessment was conducted at the site. No cultural resources were found. Under the adopted Inadvertent Discovery Plan, in the event of an archaeological discovery, all work in the vicinity will cease until a qualified expert can evaluate the find and identify an appropriate course of action.

13. The 72-foot height is requested to allow the company to re-assemble a tank it already has. The permit sought will authorize this height in a zone where the Anacortes height limit is 50 feet. Under the Anacortes Municipal Code, applicable here, a Conditional Use Permit is required for this purpose.

14. Environmental review resulted in the issuance of a Mitigated Determination of Non-Significance (MDNS) on November 14, 2017. The MDNS was not appealed. It imposed the following conditions:

- (1) Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures shall remain in place until completion of Project.
- (2) The applicant shall comply with Northwest Clean Air Agency requirements.
- (3) The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces.
- (4) The applicant shall comply with Fire Code Standards.
- (5) An engineered soils compaction report shall be required for all structures placed on fill material.
- (6) The applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).
- (7) This project will be subject to one of Ecology's National Pollutant Discharge Elimination Systems (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology ((WSDOE) for this project. Contact the WSDOE Bellingham Field Office at (360) 715-5200.
- (8) In accordance with the Inadvertent Discovery Plan (Cultural Resources Assessment dated September 12, 2017), should any human remains, archaeological, historic or cultural materials be discovered during construction, work on the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff's Office, Skagit County Planning and Development Services, the Washington State Department of Archaeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall continue when in conformance with applicable state and federal laws.

15. In relation to the MDNS, an organization called RE Sources for Sustainable Communities expressed concerns about a possible increase in the volume of oil being handled at the facility and about additional vessel traffic. The applicant responded, in effect, that neither of these possibilities is a likely result of this proposal.

16. Notice of the application was posted, published and mailed as required by law. Two comments letters were received. One from the City of Anacortes requesting clarification and another from the Anacortes Chamber of Commerce expressing support. The requested clarification was provided.

17. The application was routed to various County departments. None had objections. Departmental comments are reflected in conditions of approval.

18. The County staff evaluated the proposal under the appropriate approval standards and concluded that, as conditioned, the project will comply with the standards. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

19. The City of Anacortes made no objection to the County's Staff Report.

20. At the hearing, REsources for Sustainable Communities submitted written comments, endorsed by the Friends of the San Juans. REsources also made an oral presentation. They did not object to the storage tank per se, but registered concerns about what increased storage capacity may mean in terms of increased vessel traffic and increased spill risks. Particular attention was given to the special risks posed by heavy crude from tar sands brought in from Canada.

21. Written comments and testimony were also submitted by Evergreen Islands. Their concerns were about long-term impacts of regional refinery expansion resulting in increases in marine traffic. They noted that the ban on crude oil exports has recently been lifted and asked that a condition stating that the export of crude oil from the Shell refinery is not authorized under the Conditional Use Permit.

22. The applicant acknowledged that storage is needed because of the complexity of different crude sources, but reiterated that the purpose here is to deal with offloading ships without having to decouple after they've tied up. Exports, it was pointed out, do not occur from this Shell refinery.

23. The Examiner is persuaded that the purpose of the additional tank was accurately described by the applicant. He further concludes that there was no showing that the installation will be the proximate cause of new adverse environmental impacts. On the record, a condition relating to crude oil exports would not be relevant.

24. Any conclusions herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.050(1)(b). SCC 14.16.220. Under Anacortes' regulations the application requires Hearing Examiner review and it is thus a Level II decision pursuant to SCC 14.06.120.

2. Skagit County classifies the project site as A-UD (Anacortes Urban Development District). Anacortes classifies the site at HM (Heavy Manufacturing). Under SCC 14.16.220, uses may be allowed within urban growth areas if they are consistent with the standards for the property identified by the City. Anacortes permits industrial, processing and shipping terminal uses in the HM zone. The proposed use is consistent with Anacortes' standards, with the exception that the relevant Anacortes height limit is 50 feet. See AMC 17.15.090. T

3. Under Anacortes regulations, the requested height requires a Conditional Use Permit. The Anacortes Conditional Use Criteria are set forth in AMC 19.36.040. The Staff analysis shows that the proposal, as conditioned, complies with these criteria.

4. The requirements of SEPA have been met.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.

2. All required permits shall be obtained and their conditions shall be complied with.

3. The applicant shall comply with all relevant provisions of the Skagit County Code, including but not limited to Chapter 14.24 (critical areas), Chapter 14.16 (zoning).

4. The applicant shall comply with all relevant state regulations, including but not limited to Chapter 173-60 (noise) and Chapters 173-200 and 173-201A WAC (surface and ground water quality).

5. The applicant shall comply with all conditions of the SEPA MDNS, issued November 14, 2017. (See Finding #14 above.)

6. Aerial Fire Apparatus Road access structures exceeding 35 feet in height must meet IFC 2015.

7. D105.1 Where required. Where the vertical distance between the grade plane and the highest roof surface exceeds 30 feet (9144 mm), approved aerial fire apparatus access roads shall be provided. For purposes of this section, the highest roof surface shall be determined by

measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of parapet walls, whichever is greater.

8. D105.2 Width. Aerial fire apparatus access roads shall have a minimum unobstructed width of 26 feet (7925 mm), exclusive of shoulders, in the immediate vicinity of the building or portion thereof.

9. A Building Permit, and any other associated development permits, will be required.

10. All outstanding planning review fees shall be paid prior to final approval.

11. This permit shall be void if the use permitted has not been established or a complete building permit filed with two years of this permit approval.

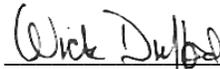
12. A copy of this decision shall be submitted with the Building Permit.

13. Failure to comply with any condition herein may result in permit revocation.

ORDER

The requested Conditional Use Permit for a crude oil storage tank and associated structures (PL17-0518) is approved, subject to the conditions set forth above.

SO ORDERED, this 14th day of March, 2018.



Wick Dufford, Hearing Examiner

Transmitted to applicant, county staff, county commissioners, and other parties in interest, March 14, 2018.

See Notice of Decision, page 1, for appeal information.