

November 14th, 2019

To: Whatcom County Planning Commission

Cc: Whatcom County Planning & Development Services  
Whatcom County Council

**Subject: Cherry Point Amendments : Change of Use**

Planning Commissioners,

The November 5th memorandum from Planning & Development Service (PDS) staff raises pertinent questions for your ongoing review of the Cherry Point Amendments to Whatcom County Zoning Code. I am writing to address the fourth issue in the memo, Change of Use provisions in proposed WCC 20.74.110 with information and suggestions for your consideration.

Change of Use is integral to the policy framework of these amendments and is briefly addressed in Section 5.4 of the Cascadia Law Group report. The sort of scenario this policy is meant to address is wherein an existing marine oil terminal, storage tank or transshipment facility was leased, sold, or otherwise shifted its primary purpose to, for instance, shipping out tar sands bitumen received by pipeline and loaded outbound onto tankers, not being processed at the adjacent refinery. This would deviate from the terms under which those facilities were originally permitted and would create new and different foreseeable adverse impacts than under current use.

Under existing rules, piecemeal upgrades can occur without substantive review of direct or indirect impacts, which can fundamentally alter the operations of the facility over time, while each project is looked at as an insignificant addition to an existing industry. Whatcom PDS has historically ignored changes of use at industrial facilities and allowed significant developments to escape environmental review.

Here's an example of a recent change of use that was not addressed under current code and PDS practice:

The Petrogas pier structure is non-conforming, under the terms of SMP 23.50.07, and its use has changed substantially. The Pier was constructed in 1965, prior to the existence of

SEPA or the SMA. IN 1975, California Liquid Gas Corporation was permitted to construct and operate a liquid propane (LPG) storage and transfer facility attached to the Intalco wharf and dock. Whatcom County issued a "Declaration of Insignificant Impact" on July 7, 1975, and a Shoreline Development Permit on July 14th, 1975. The upgrades and modifications to the terminal included piping and installation of a marine unloading arm for LPG. The purpose of the project was explicitly described to be for receiving and unloading gas for use in Whatcom County. No mention of loading gas for export was made in the project documents. Yet since Petrogas acquired the pier in 2014, LPG export volumes out of Ferndale have risen sharply. In 2013, LPG exports averaged only 10 Mb/d, but they increased to 22 Mb/d in 2014, 32 Mb/d in 2015 and 41 Mb/d in 2016. ("Floating Bridge - West Coast Alternatives for Exporting LPG to Asian Markets" RBN Energy. June 21, 2017). The change of use, from unloading propane to exporting propane, should have required a shoreline conditional use permit, as per SMP. 23.50.07 (J). Yet in August 2018, Whatcom PDS issued a shoreline exemption permit rather than a substantial development permit for a reconstruction of the pier, which had previously been required for similar projects in both Whatcom and Skagit counties.

This instance revealed that under existing code and PDS practice, another marine terminal currently used primarily in service of an oil refinery could be sold or leased to another interest and utilized for transshipment of crude oil without processing, refining or consumption occurring at a local facility.

Staff is correct in identifying flaws in the current draft language, which does not clearly define terms. We propose the following language (attached) as a substitute for the current draft proposal.

Thank you for considering this input, and for your diligent volunteer service to our communities.

Best Regards,