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**Mark Personius**  
 Director

Memorandum

June 30, 2020

TO: The Whatcom County Planning Commission  
 FROM: Matt Aamot, Senior Planner  
 THROUGH: Mark Personius, Director  
 RE: Cherry Point Amendments (PLN2018-00009)

The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review. The Planning Commission is holding a series of meetings on the proposed amendments, as shown below.

Meeting	Date	Type of Meeting	Comments
1	9/12/19	Town Hall Meeting	Opportunity for the public to speak on the proposal.
2	9/26/19	Work Session	Included discussion with a representative of Cascadia Law Group.  Planning Commission approved a motion requesting the Planning and Development Services Department to meet with industry representatives to obtain input.
3	10/10/19	Work Session	Discussion with industry representatives, environmental group representatives, and the Northwest Clean Air Agency.  Planning Commission reached consensus to delete the proposed greenhouse gas (GHG) mitigation requirements for renewable fuel facilities that reduce lifecycle GHG emissions.
4	10/24/19	Work Session	Industry presentation relating to GHG regulations.  Planning Commission approved a motion that the conditional use permit requirement should be maintained in the proposal for expansions of existing refineries and transshipment facilities (with further discussion on change of use and exempt/permitted uses at a later date).  Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).

5	11/14/19	Work Session	<p>Industry presentation relating to insurance.</p> <p>Planning Commission approved a motion to insert the following language in proposed WCC 22.05.125: "Permit applicant to provide proof of insurance naming Whatcom County as additional insured." The remainder of the insurance language was deleted.</p> <p>Planning Commission approved a motion to retain the term "expansion" of existing refineries and transshipment facilities in the conditional use section and other sections of the code.</p>
6	12/12/19	Work Session	<p>Planning Commission approved a motion to recommend that new fossil fuel refineries be a prohibited use in the Heavy Impact Industrial zone (proposed WCC 20.68.204).</p> <p>Planning Commission approved a motion that new renewable fuel refineries or renewable fuel transshipment facilities be allowed as a permitted use in the Heavy Impact Industrial zone (proposed WCC 20.68.159 in the conditional use section of the code would be deleted and these uses would be moved to the permitted use section).</p>
7	1/16/20	Work Session	<p>Planning Commission approved a motion to move expansion of renewable fuel facilities from conditional use to permitted use, as long as the expansion is for the increased production of renewable fuels.</p> <p>Planning Commission approved motions to amend proposed WCC 20.68.153 relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions define what activities constitute an "expansion" and when a conditional use permit is required.</p>
8	1/30/20	Work Session	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> <li>• Amend proposed WCC 20.68.153 relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions further define what activities constitute an "expansion" that requires a conditional use permit.</li> <li>• Amend proposed WCC 20.68.153 by removing the following from the conditional use permit approval criteria: "Demonstration that the proposal will retain or add living-wage jobs or contribute to the Whatcom County economy."</li> <li>• Add a definition of "Maximum Atmospheric Crude Distillation Capacity" to the Zoning Code (WCC 20.97).</li> <li>• Delete proposed WCC 20.74.110 relating to Change of Use.</li> <li>• Amend proposed WCC 20.68.068 relating to permitted uses in the Heavy Impact Industrial Zone.</li> <li>• Amend proposed WCC 16.08.090, relating to the</li> </ul>

			SEPA worksheet for fossil and renewable fuel facilities, by removing the reference to the Climate Impact Advisory Committee.
9	2/27/20	Work Session	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> <li>• Amend proposed WCC 16.08.090 to state that the SEPA Responsible Official will consult with the Planning Commission when preparing or updating the worksheet for fossil and renewable fuel facilities.</li> <li>• Accept the staff proposed changes in Exhibit A (Comprehensive Plan amendments).</li> <li>• Amend Comprehensive Plan Policy 2CC-16 by removing the reference to the Prosecuting Attorney as a person who should give notice to the County Council of fossil or renewable fuel facility applications and documents.</li> <li>• Amend Comprehensive Plan Policy 2CC-17 to "Allow existing operations or maintenance of existing fossil-fuel related facilities operating at <del>levels as of 2020. . .</del>".</li> <li>• Insert a new Policy 2CC-18 allowing the on-going operation, maintenance, repair, certain modifications, safety and environmental improvements, and regulatory compliance projects at existing facilities.</li> </ul>
	March, April, and May		<i>Work sessions cancelled because of the COVID-19 pandemic.</i>
10	6/25/20	Work Session	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> <li>• Accept Exhibit A (Comprehensive Plan amendments) as previously amended by the Planning Commission, with the proposed staff change.</li> <li>• Accept Exhibit B (SEPA Code Amendments) as previously amended by the Planning Commission, with the proposed staff changes, and several other changes by the Commission. One Commission change modified the definition of "Facility Emissions."</li> <li>• Accept Exhibit C (Zoning Code Amendments) as previously amended by the Planning Commission, with the proposed staff changes, and several other changes by the Commission.</li> <li>• Accept Exhibit D (Project Permit Procedure Code Amendments) as previously amended by the Planning Commission, with the proposed staff changes.</li> </ul> <p>The Commission will review the Exhibits at the next meeting to ensure they are ready for a public hearing.</p>
11	7/9/20	Work Session	

At the July 9, 2020 meeting, the Planning and Development Services (PDS) Department would like to discuss the following:

- Definition of "Facility Emissions" in Exhibit B
- Major Project Permit Criteria in Exhibit C
- Planning Commission Exhibits for SEPA Review and Public Hearing
- Preliminary Draft Findings
- The Public Hearing

Exhibits A, B, C, and D, as amended by the Planning Commission on June 25, are attached. Changes approved by the Planning Commission to date are shown in yellow. Staff has two additional proposed changes, shown in gray, for consideration by the Planning Commission.

### **Definition of Facility Emissions**

Staff is proposing to modify the definition of "Facility Emissions" (proposed WCC 16.08.175.C, Exhibit B, p. 8) as follows:

"Facility Emissions" means greenhouse gas emissions associated with fossil fuel ~~or renewable fuel~~ refineries or fossil ~~or renewable~~ fuel transshipment facilities based upon the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area.

Rationale: The term "Facility Emissions" is used in the proposed code only in relation to fossil fuel facilities (proposed WCC 16.08.090.E.2 and 16.08.160.F.1.b.i(a)). It is not used in relation to renewable fuel facilities. Therefore, renewable fuel facilities should be deleted from the definition.

### **Major Project Permit Criteria**

Staff is proposing to modify the definition of Major Project Permit approval criterion # 3 (proposed WCC 20.88.130, Exhibit B, p. 28) as follows:

(3) Prior to issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project permit, ~~W~~will seekobtain, if required, a state aquatic lands lease, and all other necessary permits consultations and authorizations, including federal determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the "Magnuson Amendment" under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, ~~prior to issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project permit.~~

Rationale: The intent of the above modification is to make the proposed Major Project Permit criteria more consistent with the proposed Conditional Use criteria for expansion of fossil fuel refineries and transshipment facilities (WCC 20.68.153).

### **Planning Commission Exhibits**

Staff would ask the Planning Commission to make a motion affirming that Exhibits A - D are ready for SEPA review and the public hearing.

### **Preliminary Draft Findings**

Staff has drafted preliminary findings to support the proposed amendments. We would like to review these findings with the Planning Commission on July 9 and incorporate any modifications that the Commission deems appropriate.

### **Public Hearing**

The hearing will be scheduled for Thursday August 13. It will be an on-line meeting where the public can participate remotely. The Planning Commission would then make any additional changes, if needed, and take a final vote on the amendments – sending them to the County Council for review.

Thank your review and consideration of these issues. We look forward to discussing them with you.