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2309 Meridian St
Bellingham, WA 98225
(360) 733-8307
re-sources.org

July 9th, 2020

Whatcom County Planning Commissioners,

In response to the staff memos from Planning & Development Services (PDS) and the July 7th letter from BP America, I wish to address each of the matters pending decisions by the Commission here in writing and directly to you all at tonight's work session.

Value-Added Processing

The definition presented by PDS on behalf of Western States Petroleum Association (WSPA) was voted down 7-2 on June 25th. Yet today, PDS is again presenting a nearly identical definition to the Planning Commission, after meeting the oil industry lobbyists on Monday. I was not notified of this meeting, despite openly stating my interest in meeting with industry advocates and planning staff on that subject. Upon inquiry, I learned that the meeting was arranged last week without my knowledge.

The revised VAP definition presented in the supplemental PDS memo is wholly unworkable. Moreover, revising the definition of value-added processing is unnecessary if the Commissioners simply remove the whole phrase "for the transshipment of fossil fuels outside of Whatcom County without value-added processing" from proposed WCC 20.68.153. This phrase was added spontaneously by Commissioners during the January 30th work session. Regardless of how the term "value added processing" (VAP) is defined, the effect of this phrase is to practically exclude all new fossil fuel storage tanks from being classified as an expansion, regardless of volume, unless the permit applications explicitly specified their intended purpose was for transshipment of crude oil without refining. The effect of withdrawing the phrase would be that storage tanks larger than the specified volume would require conditional use permits, for which the approval criteria listed are altogether consistent with current standards and expected practices.

Renewable Fuels

The current draft definition of "Renewable Fuel Facility" would have applied to the formerly proposed Green Apple project. Green Apple, if built, would have had no structural capability to refine petroleum, and no direct means to receive crude oil from the adjacent Ferndale Refinery facilities. Though it would have consumed fossil fuels in the production of renewable diesel, it would not have produced fossil fuel products.

BP suggested this revision to proposed WCC 20.97.350.3:

'Renewable Fuel Refinery' means a facility that processes, co-processes, or produces renewable fuels; provided, however, that only the components of coprocessing projects that are 100% dedicated to the production of renewable fuels shall be covered under this definition.

This clause is altogether incoherent and inoperable. If a refinery is considered to be a facility (composed of many units on multiple land parcels), and a facility that co-processes renewable fuels

with petroleum is considered to be a Renewable Fuel Refinery, that definition applies to the whole refinery complex. Adding the sentence *"provided, however…"* makes no functional sense whatsoever. Furthermore, the facility can be said to co-process feedstocks such as animal fats and vegetable oils, but they do not "co-process renewable fuels." They produce a fuel product from multiple feedstocks, which would not be considered a biofuel. BP Cherry Point co-processes bovine tallow with bitumen and petroleum to produce diesel fuel, as their chosen method of compliance with federal rules. This product is not considered to be "renewable fuel" and the tallow is a feedstock, not a fuel. Alternately the refinery can blend some biofuels such as ethanol with fossil fuels such as gasoline, but that product would not be considered a renewable fuel.

It would be a mistake to exempt co-processing projects from CUPs, because the components of such upgrades can serve concurrent purposes. For instance, the renewable fuels expansion could involve increasing the production of hydrogen, which could require increased transshipment capacity for methane gas. The expanded supply of hydrogen and new piping could also be necessary for increased processing of bitumen.

If the aim is to ensure permitting certainty for upgrade projects biofuels at either existing oil refinery that involve co-processing bio-feedstocks or blending biofuels, no changes need to be made to the code. These projects have always been permitted promptly. The proposed code amendments present no new barriers, unless the expansion increases refining capacity by over 10,000 bbl/day, in which case a CUP is required. Such projects would easily obtain CUPs.

Pipelines

Under the Planning Commission's current draft rules, proposed WCC 20.68.068 lists 19 types of projects that would be considered permitted uses unless qualified as an expansion in 20.68.153. The list is preceded by the term "including but not limited to" thus is inclusive of pipelines by omission. Pipelines of this classification would remain a permitted use only if the project did not qualify as an expansion under the terms of proposed WCC 20.68.153. It is entirely plausible that a new pipeline or transfer piping could, for instance, increase the maximum transshipment capacity of the facility by 10,000 bbl/day, thus would be considered an expansion. The simplest way to clarify terms within the current draft's structure would simply be to add the word pipelines back onto the list under 20.68.068. Instead however PDS has proposed inserting new language as WCC 20.68.086 & 20.68.087, removed from the sub-section which states that the thresholds for requiring a CUP in proposed WCC 20.68.153 will apply to types of projects that would otherwise be permitted uses.

The arguments for making all pipelines permitted uses, stated in Pam Brady's July 7th letter on behalf of BP America, are frivolous and misleading. It is broadly recognized that requiring conditional use permits (CUPs) for pipelines is within the indisputable authority of the County and CUPs are already required by law for pipelines outside of industrial zones, in WCC 20.82.030 as well as other counties across the United States. It should be noted however that certain conditions on the operational use of the pipeline could be in conflict with federal law if applied to *interstate* pipelines.

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An operating definition for pipelines, being subject to CUPs, should be inclusive of piping connecting storage tanks to the wharf for loading/unloading vessels, which could be technically differentiated from "process pipes" used within the refinery and transshipment terminals at Cherry Point to transfer liquids and gases between units, which could be subject to conditions otherwise precluded by federal law for interstate pipelines.

For now, we suggest adding process pipes and pipelines (non-interstate) to the list of otherwise permitted projects under WCC 20.68.068.

Federal & State authorizations

We agree with BP's stated premise that the Cherry Point Amendments should not impede the County's ability to conduct permitting concurring with federal or state authorities.

The effect of the Planning Commission's prior revisions to proposed WCC 20.88.130 was to render the amendments inconsequential by deleting any requirements. It goes without saying that an applicant will seek all necessary permits for their project. BP's suggested changes to the updated draft would simply identify an authority that already exists, that the county may choose to impose these conditions on permitting. We see no problem with BP's suggested changes at this point, however, this language: *"The County decision maker may approve a major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it has fulfilled that condition"* would fit more appropriately under 20.88.140 rather than the 20.88.130.

BP's claims that proposed WCC 20.88.130 could impede federal or state permitting processes are unfounded. The text of the provision as originally proposed and revised did not prevent the County from issuing a major project permit (MPP) before federal authorizations or state permits were granted, and could not create a "Catch 22" whereby federal agencies withheld their authorizations, as BP indicated.

Permits for site preparation and construction are always granted subsequent (never prior) to approval of a major project permit or conditional use permit (CUP), and it is already usual and expected practice for MPPs and CUPs to include conditions that all other authorizations be granted before minor permits for building/grading etc. are issued. Furthermore, federal and state agencies do not expect proponents to submit applications for building/grading permits – let alone have them approved – prior to their determinations. Because county building permits are typically valid for a limited period of time, it is in the project applicant's interest to wait until they are altogether free to construct before seeking building permits from the county.

There have been cases however, when applicants (such as Pacific International Terminals) have been granted permits for site preparation activities on their property in the Cherry Point UGA before project authorizations were obtained, involving the disturbance of lands and vegetation to allow surveying and assessment for project engineering. We can also look to other examples outside Whatcom County. In Tacoma, Puget Sound Energy (PSE) was authorized to construct a Liquified Natural Gas storage tank before their air pollution permit had been approved by the Puget Sound Clean Air

Agency (PSCAA), and while a supplemental Environmental Impact Statement process was still underway. PSE began building the facility pending that approval because there was no apparent legal reason for PSCAA to deny their air permit, which was ultimately approved.

Alternatively to BP's suggested edits, we recommend adding this provision as a new segment:

20.88.160

"The County decision-maker may approve a major project permit only with a condition that the applicant must obtain relevant leases and complete any necessary federal and state permitting requirement. The county may withhold subsequent permits for site preparation or construction activities until the major project permittee has fulfilled that condition."

In sum, we also suggest the following motions:

20.68.153

Strike:
"for the transshipment of fossil fuels outside of Whatcom County without value-added processing"
Reject PDS/WSPA suggested definition

20.97.350

No changes. Reject BP's suggested edits.

20.68.068

Add: (20) Process Pipes
Reject PDS suggested additions.

20.88.130
Reject BP's suggested edits

At the February 27th work session, the Planning Director requested that the Commission prioritize completing their review forthwith. At the June 25th meeting, the Planning Director stated that changes at the July 9th work session should be limited to edits for clarification, consistency, and error correction. We respected the urgency for the process to move forward, given the year-long backlog of docket items awaiting review by the Planning Commission. However, because PDS has chosen to introduce substantive policy changes, I am suggesting these motions in hopes to assist the Commission with resolving these points of debate in a timely manner this evening. We will reserve additional suggestions for the upcoming public hearing, unless an additional work session takes place.

Sincerely,
Eddy Ury
Climate & Energy Policy Manager