



Memorandum

August 4, 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	<p>Planning Commission approved motions to:</p> <ul style="list-style-type: none"> <li>• Amend proposed WCC 16.08.175.C, the definition of "Facility Emissions," by removing renewable fuel facilities from the definition.</li> <li>• Amend proposed WCC 20.68.068 by adding certain pipelines to a list of permitted uses in the Heavy Impact Industrial zoning district.</li> <li>• Amend proposed WCC 20.68.153, the conditional use provisions for fossil fuel facility expansions, by adding a clause that the County decision maker may impose a condition that relevant leases and state/federal permitting requirements must be obtained prior to site preparation or construction activities.</li> <li>• Amend proposed WCC 20.88.130(3), a major project permit approval criterion, by indicating that prior to commencement of site preparation or construction activities necessary leases, permit consultations, and authorizations must be obtained.</li> <li>• Amend WCC 20.88.140, major project permit provisions relating to permit conditioning, by adding a clause that the County decision maker may impose a condition that relevant leases and state/federal permitting requirements must be obtained prior to site preparation or construction activities.</li> </ul> <p>Planning Commission approved a motion affirming that Exhibits A-D are ready for SEPA Review and a public hearing.</p>
12	8/13/20	Public Hearing	

At the August 13, 2020 public hearing, the Planning Commission will hear public testimony relating to the proposed amendments and may make final recommendations to the County Council on:

- Exhibit A - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
- Exhibit B - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
- Exhibit C - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).

- Exhibit D - Amending the Project Permit Procedures (WCC 22.05).
- Findings of Fact and Reasons for Action

### **Draft Exhibits and Findings**

Exhibits A, B, C, and D, as amended by the Planning Commission on July 9, and the draft Findings of Fact and Reasons for Action are attached. Planning Commission recommended changes from previously adopted language are shown with underlining and strikethroughs in the Exhibits. Planning Commission changes that differ from the County Council draft (Resolution 2019-037) are also shown in yellow.

The packet also includes a joint Industry/RE Sources proposal submitted on August 3, 2020 (hereinafter "joint proposal"). The joint proposal was submitted in lieu of submitting a definition of "Value Added Processing" used in proposed WCC 20.68.153.D (which is deleted in the joint proposal).

Staff has three comments relating to the joint proposal:

1. **Conditional Use Permit Requirements** - The joint proposal would continue to require a conditional use permit for fossil fuel facility development that "Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day" (proposed WCC 20.68.153.B). However, the joint proposal would no longer require a conditional use permit for development that "Cumulatively increases the maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day" (proposed WCC 20.68.153.C). Therefore, a conditional use permit would be required if the overall fossil fuel transshipment capacity increased by more than 10,000 barrels per day. However, the increased shipment of unrefined fossil fuels would not be subject to this same requirement. Theoretically, under the joint proposal, a refinery could convert its entire refined fossil fuel transshipment capacity to unrefined fossil fuel transshipment capacity (plus another 10,000 barrels per day) without a conditional use permit. This may significantly change the intent of the current recommendations.

*Possible Modification to Joint Proposal:* Restore WCC 20.68.153.C.

2. **Allowed Uses in Prohibited Use Section** – The joint proposal would set forth certain accessory uses in the "Prohibited Uses" section of the code (proposed WCC 20.68.205) instead of the "Accessory Uses" section. Although County Code typically does not use this approach, it's not a major issue.

*Possible Modification to Joint Proposal:* Move the text relating to accessory uses to the "Accessory Uses" section of the Heavy Impact Industrial Zone.

3. **Definitions** – The SEPA, zoning, and insurance amendments specifically address Renewable Fuel Transshipment Facilities. However, the joint proposal deletes the definition of “Renewable Fuel Transshipment Facilities” (part of proposed WCC 20.97.160.3). A definition should be included in the amendments.

*Possible Modification to Joint Proposal:* Either restore “Renewable Fuel Transshipment Facilities” to the proposed definition (WCC 20.97.160.3) or create a new definition of “Renewable Fuel Transshipment Facilities.”

### **Public Hearing and Planning Commission Action**

The hearing is scheduled for Thursday August 13 (6:00 p.m.). 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 Exhibits and Findings – sending them to the County Council for review.