

From: [Brady, Pamela](#)
To: [Eddy Ury](#); [PDS Planning Commission](#); [Matt Aamot](#); [Mark Personius](#); [Ashley Ubil Johnson, Tim](#); [Chalfant, Jeff](#); [Brown, Brad J](#); [Gavin Carscallen](#); [Andrew Gamble](#)
Cc: [Johnson, Tim](#); [Chalfant, Jeff](#); [Brown, Brad J](#); [Gavin Carscallen](#); [Andrew Gamble](#)
Subject: RE: invitation to discuss code revisions proposal with stakeholders
Date: Wednesday, August 12, 2020 2:59:28 PM
Attachments: [Joint Stakeholder Comment Letter final 081220.pdf](#)

Please see attached for the comment letter Eddy referenced below.

Thanks,

Pam Brady

director NW government and public affairs
communications & advocacy
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From: Eddy Ury <eddyu@re-sources.org>
Sent: Wednesday, August 12, 2020 2:36 PM
To: pds_planning_commission@whatcomcounty.us; Matt Aamot <MAamot@co.whatcom.wa.us>; Mark Personius <MPersoni@co.whatcom.wa.us>; Ashley Ubil <AUbil@co.whatcom.wa.us>
Cc: Brady, Pamela <Pamela.Brady@bp.com>; Johnson, Tim <tim.d.johnson@p66.com>; Chalfant, Jeff <Jeff.Chalfant@bp.com>; Brown, Brad J <brad.j.brown@p66.com>; Gavin Carscallen <GCarscallen@petrogascorp.com>; Andrew Gamble <Argamble@petrogascorp.com>
Subject: invitation to discuss code revisions proposal with stakeholders

Good afternoon Commissioners,

On August 3rd, RE Sources, bp, Phillips 66 and Petrogas submitted a collaboratively proposed set of code revisions for your consideration, which PDS included in the agenda packet for the Aug 13th public meeting. Momentarily, we will be sending a public comment letter to elaborate on the intention and effect of our proposal, as soon as we obtain final executive confirmation from all signatories this afternoon.

We would like to give Commissioners the opportunity to seek clarification from us directly in advance of the public hearing. Because of the need to avoid quorum and to accommodate schedules, I have set up three Zoom meeting times which Commissioners can choose to dial into to ask questions directly of myself and representatives from bp, Phillips 66 and Petrogas. The first meeting with confirmed participation is at 3PM, which will be attended by PDS staff and four commissioners. We will hold the time slots open for two additional virtual meetings, awaiting confirmation from remaining Commissioners who would like to discuss our proposal.

Please RSVP to any one of the following meetings if you wish. I apologize for the late notice and confirmation, having reached most but not all commissioners over the telephone this week. If anyone is unavailable at these given times and interested, we can arrange a phone call at a different time tomorrow.

#1) Wednesday August 12th, 3:00PM - 4:00PM

Zoom Link: <https://us02web.zoom.us/j/88051656571>

Meeting ID: 880 5165 6571

Dial in: +1 253 215 8782

One tap mobile: +12532158782,,88051656571# US (Tacoma)

#2) Wednesday Aug 12 6:00 PM - 7:00PM

Zoom Link: <https://us02web.zoom.us/j/85611948524?pwd=eHFhSkltZmJmcnd3d0xzYk1xZktPUT09>

Meeting ID: 856 1194 8524

Dial: +1 253 215 8782 US (Tacoma)

One tap mobile: +12532158782,,85611948524#,,,,,0#,,139051#

#3) Thursday Aug 13 9:00AM - 10:00AM

Zoom Link: <https://us02web.zoom.us/j/85969377475>

Meeting ID: 859 6937 7475

Dial: +1 253 215 8782

One tap mobile: +12532158782,,85969377475#

Otherwise, we look forward to communicating further at the virtual public hearing tomorrow evening.

Best Regards,

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Eddy Ury

Climate & Energy Policy Manager

RE Sources for Sustainable Communities

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August 12th, 2020

To: Whatcom County Planning Commission
Whatcom County Planning & Development Services

We are submitting this letter jointly on behalf of RE Sources for Sustainable Communities, bp, Phillips 66, and Petrogas to explain our proposal, dated August 3rd, which includes edits to three sections of code to be modified in concert with the intention of removing conditional use permit (CUP) requirements for storage tanks while ensuring that the new transshipment facilities are prohibited except under certain circumstances. We appreciate Planning & Development Services (PDS) Director Mark Personius and Senior Planner Matt Aamot for including our joint proposal in the agenda packet for the August 13th Planning Commission meeting.

All parties wish to express their gratitude to the Planning Commission for their work in this code revision process. This issue is of great importance to many in the community, and we appreciate that the Commission has prioritized stakeholder engagement throughout this long process as it worked to find fitting policy and language. We recognize the issues are complex and difficult, and the process has been long, but we appreciate that the Commissioners spent the necessary time to consult with stakeholders and understand impacts.

At the July 9, 2020 meeting, Commissioners recommended that representatives from industry and RE Sources meet to resolve a definition for “value added processing” (VAP). Over the last four weeks, we have participated in a series of meetings to identify and understand areas of mutual concern, and we have found that the draft code amendments can be improved in specific ways that may simultaneously avoid problems for industries, address key concerns of environmental advocates, and better achieve the County Council’s policy objectives. We have sought to propose revisions that simplify the draft code amendments, rather than complicate them.

Jointly Proposed Changes

VAP is currently used in the context of defining the expansion threshold for storage tank capacity that would trigger the CUP requirement in proposed WCC 20.68.153. After discussing the intended meaning and function within the code, we determined it was unnecessary to include the term VAP at all under proposed WCC 20.68.153. We found consensus on an alternative approach that we believe meets the intent of the original CUP applicability clauses. We have agreed that the best way to address the storage tanks issue is to make three changes to the draft code amendments, including:

- Strike the expansion threshold for storage tank capacity at proposed WCC 20.68.153(D) entirely, which will make it unnecessary to adopt a VAP definition.
- Modify the prohibited use for new fossil fuel transshipment facilities at proposed WCC 20.68.205 to ensure that certain atypical uses of transshipment facilities are not prohibited.
- Clarify the definition of “Fossil Fuel Transshipment Facilities” at proposed WCC 20.97.160.3.

Reasoning for Jointly Proposed Changes

The Planning Commission's July 10th draft of proposed WCC 20.68.153 establishes that “expansions” of existing fossil fuel refineries or transshipment facilities are conditional uses. “Expansions” occur when a development at an existing fossil fuel refinery or transshipment facility meets any one of four thresholds. The fourth threshold, proposed WCC 20.68.153(D), specifies that developments that cumulatively increase the fossil fuel storage tank capacity of the facility by more than 200,000 barrels for the transshipment of fossil fuels outside of Whatcom County without VAP are considered an expansion triggering a CUP. The purpose of VAP in this context is essentially to focus the CUP requirement on tanks

being proposed for the purpose of transshipment without refining, such that a CUP is *not* required for tanks being proposed for the purpose of storing refined products or crude oil before refining—which are permitted uses at proposed WCC 20.68.068. Thus, the intended effect of proposed WCC 20.68.068(D) is to specify that a narrow category of transshipment projects associated with existing fossil fuel refineries and transshipment facilities (precisely those that are currently barred by the interim moratorium) are conditional uses.

However, without a carefully crafted definition of VAP and “fossil fuel transshipment facilities,” proposed WCC 20.68.153(D) could have the unintended effect of impeding industry’s ability to adapt their operations to dynamic markets by imposing a CUP requirement that could create uncertainty for permitting. Industry is unlikely to propose a project explicitly for the purpose of transshipping crude oil without refining—as it is not in their foreseeable business interests. However, any restrictions on multi-modal terminal use and modifications could create future challenges for existing refineries and transshipment facilities, which operate competitively in dependence on an unpredictable global commodities market where supply chain shifts necessitate adaptive management decisions within both operations and maintenance as well as development project planning. It is a priority for refineries and existing transshipment terminals to maintain flexibility to adjust their operations for optimal effect.

RE Sources has concerns that new or existing storage tanks could eventually be repurposed for the transshipment of crude without refining, through piecemeal upgrades modifying the configuration of the connection between the tanks and the wharf, pipelines or rail terminal.

We believe the proposed edits simplify the draft code amendments and preserve the intent of the County Council, while addressing all parties' concerns.

Response to PDS August 7 Memo

PDS responded to our proposal in a memo on August 7th by making three recommendations.

- Recommendation 1: We have no objections to PDS’ first recommendation to retain proposed WCC 20.68.153(C). Our proposal to strike (C) was intended only to simplify the code, and with PDS staff having clarified its purpose, we agree that it serves a functional purpose.
- Recommendation 2: We respectfully disagree with PDS’ second recommendation. Removing these specified exemptions from the proposed WCC 20.68.205 would obscure the meaning and function of the proposed language, which specifically serves to ensure that such non-routine but necessary uses of facilities do not constitute a code violation. We understand the use of the word “accessory” to have prompted the recommendation to move the provision to WCC 20.68.109. To resolve the issue, we suggest modifying our proposal to read:

20.68.205

New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments, (ii) transferring petroleum products during emergency scenarios where contingencies require petroleum products to be moved, and (iii) necessary petroleum product-transfers during turn-arounds or maintenance periods.

- Recommendation 3: We have no objections to PDS’ third recommendation to include a separate definition of “Renewable Fuel Transshipment Facilities.” PDS noted that in striking the words

“or Renewable” from 20.97.160.3, reference to Renewable Fuel facilities in the proposed code text would be lacking a definition, with which we agree.

* * * * *

Other key terms may still require clarified definitions; however, we are confident that stakeholders can reach agreement on appropriately worded definitions that would be suitably applicable for any use within the context of the county code for industrial zones.

If the Planning Commissioners would like further clarification about our proposal, we will gladly offer further explanation during the August 13th meeting (or prior to the meeting, at the convenience of the Commissioners). We appreciate this opportunity to provide input into this important process. Thank you for your thoughtful consideration of our comments and for your continued service to our communities.

Sincerely,

Eddy Ury
Climate & Energy Policy Manager
RE Sources for Sustainable Communities

Jose L. Mesa
Interim Refinery Manager
bp Cherry Point Refinery

Carl P. Perkins
General Manager
Phillips 66 Ferndale Refinery

Gary McSpadden
Operations Manager
Petrogas Ferndale Storage Terminal