

From: [Holli Johnson](#)
To: [PDS Planning Commission](#)
Cc: [Connie Carlson](#)
Subject: WSPA Comments for Planning Commission Meeting August 13
Date: Thursday, August 13, 2020 1:18:08 PM
Attachments: [image002.png](#)
[WSPA Whatcom Planning Commission Comments Aug 13 2020.pdf](#)

Dear Whatcom County Planning Commission,

Enclosed are Western States Petroleum comment letter regarding the Cherry Point Amendments. Please contact me if you have any additional questions.

Thanks,

[Holli Johnson](#)
MANAGER, NW REGION

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Holli Johnson
NW External Affairs

August 13, 2020

Sent via email

Whatcom County Planning Commission
5280 Northwest Drive
Attn: Planning and Development Services Department
Bellingham, WA 98226

RE: Cherry Point Amendments (PLN2018-00009).

Planning Commission Members:

I am writing on behalf of the Western States Petroleum Association (“WSPA”) to offer comments on the July 10, 2020 version of Whatcom County’s proposed amendments to development regulations and Whatcom County’s Comprehensive Plan governing fossil and renewable fuel facilities (“Proposed Amendments”). WSPA is a non-profit trade association that represents companies that participate in petroleum exploration, production, refining, transportation, and marketing in the Western United States, including members with operations in Whatcom County. WSPA has previously submitted comments on the Proposed Amendments in a letter dated September 12, 2019 (“September 12, 2019 Letter”), in prior comment letters on both of the County’s SEPA Determinations of Nonsignificance (“DNS”) and through ongoing comments during the Planning Commission review. As the Planning Commission completes its work on the Proposed Amendments, WSPA offers the following comments and encourages reconsideration of a few outstanding issues that WSPA believes are either unnecessary or unlawful and thus warrant correction before passing a recommendation on to the County Council.

First, WSPA appreciates several key improvements to the Proposed Amendments that have been made by the Planning Commission over many months of hard work and careful consideration of public input, including industry input. The July 10 version of the Proposed Amendments are much improved over the original package transmitted to the Planning Commission by the County Council. In particular, WSPA appreciates and supports the following changes that have occurred during Planning Commission review:

- Eliminating the unnecessary and duplicative mitigation requirements originally proposed in WCC 20.68.801;
- Revisions to WCC 20.68.068 clarifying that maintenance and safety upgrades and various refinery accessory uses are necessary permitted uses and do not require a new, highly discretionary, conditional use permit review process;
- Revisions to WCC 20.68.153 establishing a threshold below which a conditional use permit is not required;

- Revisions to WCC 22.05.125 establishing adequate and realistic insurance requirements;
- Recognizing renewable fuel refineries as a permitted use, in revisions to WCC 20.68.070 and .071.

Second, WSPA and its membership worked with representative from RE Sources for Sustainable Communities and developed what we support as reasonable compromise amendments that were jointly sent to Mark Personius on August 3, 2020, addressing important clarifications to transshipment and value-added processing issues. WSPA and RE Sources both believe these suggested clarifications retain the original intent of the Proposed Amendments (prohibiting projects intended solely to receive, store and export crude oil) while addressing unintended consequences of the former overly-broad prohibition. WSPA urges the Planning Commission to adopt those jointly-proposed additional amendments before transmitting its recommendation to the County Council.

Finally, while the July 30 version of the Proposed Amendments are much improved from those originally transmitted by the County Council, WSPA continues to have significant concerns regarding a few remaining sections and urges those be further amended or removed from the Proposed Amendments before transmittal to the County Council. WSPA urges the Planning Commission to make the following changes to the Proposed Amendments:

- Eliminate the separate requirement for a county-specific SEPA worksheet applicable to only fossil fuel and renewable fuels. Topics identified in the new SEPA Worksheet are topics already covered under existing SEPA requirements. Currently these additional worksheet requirements are undefined and cannot be adequately evaluated.
- The GHG impact analysis proposed in WCC 16.08.090 should be deferred pending the outcome of the ongoing Department of Ecology GAP rulemaking. Ecology's scheduled to release a draft rule in November 2020 and to complete that rule-making effort by September 1, 2021, pursuant to a Directive of the Governor No. 19-18. A separate county review process layered on top of a required state review process for greenhouse gases will create significant potential for inconsistencies, unnecessary duplication of effort, permitting delays and project uncertainties. A local review process is unnecessary now that the state has initiated rulemaking. At a minimum, this County SEPA worksheet and review process should sunset once the state rule is adopted.
- Eliminate the undefined and highly-discretionary conditional use permit and substantive SEPA policy language that suggests the County has authority to condition or even deny a project that otherwise fully complies with all applicable statutes and regulations that directly address the issue or element of the environment, such as air emissions, water quality, fish and wildlife habitat, public health and safety. The Proposed Amendments create undefined County authority based on vague and undefined substantive policies such as "healthful environment," "trustee of the environment for future generations," and "do it's fair share," none of which have any definition or provide any framework in which a project would be evaluated. Most of those other existing environmental regulations are

regularly updated and require application of the best technologies to address adverse impacts. Relying on vague and undefined substantive SEPA policies to add further conditions or support project denial based on “gap-filling” whenever the County might decide that those existing regulations do not adequately address environmental quality or “fair share” creates untenable uncertainty for new project investment, and are in direct conflict with those other laws that were adopted specifically to address those issues.

- Eliminate or further clarify the language in WCC 16.08.160(E) to make clear that the County *shall* defer to federal, state or regional agencies to determine whether the project complies with existing regulations administered by those other agencies. The County does not have legal authority, under SEPA or otherwise, to substitute its judgment of the judgment of other agencies explicitly granted permitting jurisdiction.

WSPA and its membership remain fully committed to refinery operations that fully address adverse environmental impacts from those operations, applying state-of-the-art methods and technologies, while also being able to modify and upgrade processes and facilities when necessary to meet regional, national and global demand for cleaner fuels. WSPA’s member operations in Whatcom County have been a primary driver of economic growth and prosperity, supporting many of the County’s living-wage jobs, boosting other business and economic development throughout the County, and generating significant public tax revenues that support local schools, public health and safety and other vital County services. Ongoing capital investment by WSPA membership in the existing refinery operations in the County is necessary to ensure long-term success of those operations. Unnecessary and undefined, highly discretionary new permitting processes and approval criteria will discourage capital investment—the exact opposite of what the County should be striving for, especially during the current, unprecedented economic downturn.

Thank you for the opportunity to provide input throughout the Planning Commission’s review. WSPA appreciates the Planning Commissions efforts to date, and urges a few additional changes to make the Proposed Amendments something that strikes the best balance between supporting vital county industry and protecting the environment for future generations.

Sincerely,



cc: Jessica Spiegel - WSPA
Jodie Muller - WSPA