



Memorandum

September 19, 2019

TO: The Whatcom County Planning Commission
FROM: Matt Aamot, Senior Planner *MA*
THROUGH: Mark Personius, Director *MP*
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 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 hosted a Town Hall meeting on September 12, 2019 to listen to public comments on the proposal.

The Planning and Development Services Department has identified several issues that should be considered by the Planning Commission, as shown below. Additionally, we have proposed a number of language changes for clarification (PDS suggested changes are shown in yellow on the attachment).

1. Definition of "Expansion"

The Council proposal requires a conditional use permit for "Expansion of existing legal fossil or renewable fuel refinery operations and the primary manufacturing of products thereof or expansion of existing legal fossil or renewable fuel transshipment facilities. . ." (proposed WCC 20.68.153). The proposal also uses the term "expansion" in a number of other provisions, including the SEPA provisions (proposed WCC 16.08.090) and the greenhouse gas provisions (proposed WCC 20.68.801). However, "expansion" is not defined.

Uses set forth in proposed WCC 20.68.802(1) and (2) are permitted uses (do not require a conditional use permit). One option would be to state that any improvement not included in WCC 20.68.802(1) and (2) is an expansion (that requires a conditional use permit).

2. Greenhouse Gas (GHG) Mitigation for Renewable Projects

The Council proposal contains two different provisions relating to GHG mitigation for renewable fuel refineries and transshipment facilities.

- a. *State Environmental Policy Act (SEPA)* – The proposed SEPA provisions (WCC 16.08.160.F.1.b.ii) state:

. . . The applicant shall demonstrate that the lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA Responsible official may require mitigation. . .

- b. Heavy Impact Industrial (HII) Zone – The proposed HII regulations (WCC 20.68.801(2)(b)) state “Facility emissions, defined in WCC 20.97.124.1, shall be quantified for each expansion of refining and storage capacity . . .” Additionally, proposed WCC 20.68.801(3) indicates that “Local mitigation of greenhouse gas emissions shall be required, whenever calculated greenhouse gas emissions increase above the baseline . . .”

The SEPA provisions for renewable facilities relate to “lifecycle” emissions but the HII regulations relate to “facility emissions.” These two terms are defined differently. Facility emissions basically include upstream emissions from extraction and transportation of the raw products to the facility, refining and processing, and transportation within the boundaries of Whatcom County. Lifecycle GHG emissions include all of these things, but also include distribution and use of the finished fuel.

A policy question for the Planning Commission is whether renewable facilities should be required to provide mitigation if they result in reductions of lifecycle emissions but increase facility emissions. For example, if a renewable facility would reduce overall GHG emissions on a global scale but would increase GHG emissions locally, should it be required to mitigate these emissions?

3. **Insurance Provisions**

The Council proposal requires a \$100 million insurance policy for capacity or storage tank increases at fossil fuel and renewable fuel facilities (proposed WCC 22.05.125(3)). However, in a note underneath this provision, Cascadia Law Group stated “. . . We suggest taking out the \$100 million liability limit and substituting language that determines the liability limit as each permit is reviewed. . .” Therefore, on September 9, 2019, the Whatcom County Prosecuting Attorney’s Office recommended modifying the insurance provisions as follows:

Policy limits shall be ~~no less than \$100 million for each Loss / total for all Losses determined by the County during the review of each individual permit application and shall be based on an assessment of the facility’s specific risk of loss or damages~~. The required limits may be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.