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Mark Personius
Director

Memorandum

September 3, 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 has been working 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. This Resolution is attached for your review.

The Planning and Development Services Department anticipates the following schedule for Planning Commission review:

- September 12, 2019 – Town hall meeting,
- September 26, 2019 – Work session,
- October 10, 2019 – Public hearing, and
- October 24, 2019 – Work session (if needed).

The County Council's consultants, Cascadia Law Group and BERK Consulting, Inc., have provided an overview of the proposed amendments that is attached to Resolution 2019-037. Additionally, Planning and Development Services is providing a brief summary of the major components of the Council's proposed amendments.

1. **State Environmental Policy Act or SEPA (WCC 16.08)**

The subject proposal would amend several provisions of the County Code implementing SEPA:

- a. *Environmental Checklist / Worksheet* – A new "Worksheet for Fossil and Renewable Fuel Facilities" would be developed by the SEPA Responsible Official (Planning Director or designee) in consultation with the Whatcom County Climate Impact Advisory Committee. This worksheet would be attached to the SEPA checklist and filled out by the applicant. The Responsible Official would review the worksheet when assessing potential project impacts relating to greenhouse gas and other emissions, risk of spill or explosion, interference with fishing areas, stormwater, and wastewater.

- b. *Relationship to Federal, State, and Regional Regulations* – The proposed language requires the County to consult with other agencies and base or condition a project decision on compliance with other existing regulations. However, the County may not defer to other regulations if they did not anticipate or are inadequate to address project impacts.
- c. *Specific Environmental Policies / Air Quality and Climate* – The proposed language requires calculation and assessment of greenhouse gas emissions for fossil fuel facilities, renewable fuel facilities, and other uses in the Heavy Impact Industrial Zoning District. Additionally, it allows mitigation of impacts from these emissions. The language also allows the decision-maker to impose conditions or, if impacts cannot be mitigated, to deny a project.
- d. *Specific Environmental Policies / Plants and Animals* – The proposed language seeks to minimize or prevent the loss of fish and wildlife habitat. Additionally, it would require documentation of consistency with federal and state laws. The language also allows the decision-maker to impose conditions or deny a project.

2. Zoning Code / Light Impact Industrial District (WCC 20.66)

The subject proposal would amend the Light Impact Industrial Zone to prohibit new fossil fuel refineries and new fossil fuel transshipment facilities.

3. Zoning Code / Heavy Impact Industrial District (WCC 20.68)

The subject proposal would amend the Heavy Impact Industrial Zone to address fossil fuel refineries and transshipment facilities. Proposed amendments also address renewable fuel refineries and transshipment facilities. The proposal treats existing facilities, expansions of existing facilities, and new facilities differently as shown below.

Fossil Fuel Refineries and Transshipment Facilities

- a. *Existing Facilities* – Are permitted by both the existing Zoning Code and the proposed amendments.
- b. *Expansions of Existing Facilities* – Are permitted by the existing Zoning Code, but require a conditional use permit under the proposed amendments. The proposal would also insert additional conditional use approval criteria into the Zoning Code.
- c. *New Facilities* – Are permitted by the existing Zoning Code, but prohibited in the proposed amendments.

Renewable Fuel Refineries and Transshipment Facilities

- a. *Existing Facilities* – Are permitted by both the existing Zoning Code and the proposed amendments.
- b. *Expansions of Existing Facilities* – Are permitted by the existing Zoning Code, but require a conditional use permit under the proposed amendments.
- c. *New Facilities* – Are permitted by the existing Zoning Code, but require a conditional use permit under the proposed amendments.

New Piers, Docks, or Wharves

- a. New industrial piers are permitted by the existing Zoning Code, but prohibited in the proposed amendments.

Coal-Fired Power Plants

- a. Coal-fired power plants are permitted by the existing Zoning Code, but prohibited in the proposed amendments.

Greenhouse Gas Analysis and Mitigation

- a. The proposed Heavy Impact Industrial zoning amendments require a permit applicant for a fossil fuel or renewable fuel facility to provide a baseline calculation of existing greenhouse gas “facility emissions” (see proposed WCC 20.97.124.1 for a definition of facility emissions). The baseline calculation is based upon an average from the prior three year period. Additionally, “facility emissions” must be quantified for each expansion of refining and storage capacity. There are currently no County Code provisions that specifically address calculation of facility emissions.
- b. The proposed Heavy Impact Industrial zoning amendments require a permit applicant to provide mitigation (which may be an in-lieu fee) for additional greenhouse gas emissions above baseline emissions.

Non-Capacity, Maintenance, Safety, and Environmental Improvements.

- a. The proposal also includes a list of improvements to existing refineries and transshipment facilities that are permitted outright (do not require a conditional use permit). These permitted uses include things such as accessory buildings, office space, parking lots, etc. that presumably do not have to mitigate greenhouse gas emissions. Equipment maintenance, replacement, safety upgrades, and environmental improvements are also permitted outright, but would have to mitigate greenhouse gas emissions if above baseline levels.

4. **Zoning Code / Cherry Point Industrial District (WCC 20.74)**

The Cherry Point Industrial District is an overlay zone that applies to the Heavy Impact Industrial and Light Impact Industrial zones within the Cherry Point Urban Growth Area. There are several proposed modifications to this District.

- a. Prohibited Uses – New piers are prohibited within the Cherry Point Industrial District. Conversion of renewable fuel facilities to fossil fuel facilities is prohibited, except inside the boundary of an existing fossil fuel refinery where conversion requires a conditional use permit.
- b. Change of Use – Requires a new County permit to change uses within the Cherry Point Industrial District. However, the new use must be consistent with the underlying zoning.
- c. Change of Use of Renewable Fuels Facilities – Inside the boundary of an existing fossil fuel refinery, a conditional use permit is required for changing renewable fuel facilities to fossil fuel facilities. Outside the boundary of an existing fossil fuel refinery, changing from a renewable fuel facility to a fossil fuel facility is prohibited.

5. **Zoning Code / Major Project Permits (WCC 20.88)**

Major project permits are required if certain criteria are met (e.g. if construction cost exceeds \$5,000,000 and an environmental impact statement is required). The hearing examiner makes recommendations and the County Council issues final decisions on major project permits.

The proposal includes several amendments to the major project permit chapter of the Zoning Code.

- a. *Approval Criteria* - The major project permit approval criteria would be amended to require the applicant to obtain state and federal permits prior to site preparation or construction permits.
- b. *Minor Changes* – The existing Zoning Code authorizes the Planning Director to approve minor changes to major project permits. The proposed amendments define minor changes.
- c. *Relationship to Other County Permits* – The current Zoning Code exempts projects from the major project permit if an application is submitted for a planned unit development or development agreement. The proposal eliminates this exemption in the Cherry Point Industrial District. However, it also states that such permits should be processed concurrently.

6. Zoning Code / Definitions (WCC 20.97)

The subject proposal includes the following new definitions for terms used in the proposal:

- a. Change of Use
- b. Facility emissions
- c. Fossil Fuels
- d. Fossil or Renewable Fuel Transshipment Facilities
- e. Fossil-Fuel Refinery
- f. Fossil-Fuel Refinery Capacity
- g. Greenhouse Gas Emissions
- h. Lifecycle Greenhouse Gas Emissions
- i. Living Wage
- j. Renewable Biomass
- k. Renewable Fuel
- l. Renewable Fuel Refinery
- m. Small Fossil or Renewable Fuel Storage and Distribution Facilities
- n. Technical Committee

7. Project Permit Procedures (WCC 22.05)

There are several proposed modifications to the County's permit procedures.

- a. *Change of Use* - A new "Change of Use, Cherry Point Industrial District" permit is added as a Type I application, which requires an administrative decision by the Planning and Development Services Department with no public notice or hearing. However, if the underlying zoning requires a conditional use permit, the hearing examiner would issue the decision after holding a public hearing.
- b. *Council Decisions* - County Council decisions are based upon the record and criteria established in applicable state laws and regulations, county code, comprehensive plan, shoreline management program, and SEPA.
- c. *Insurance* - Proof of insurance or other financial security would be required for production capacity or storage tank increases at fossil fuel and renewable fuel facilities. The proposal would require a minimum of \$100 million of insurance.

8. Shoreline Management Program Amendments

The subject proposal also includes a number of Shoreline Management Program amendments. However, these amendments will be rolled into the Shoreline Program update process that will come to the Planning Commission at a later date (the Shoreline Program update must be completed in 2020).