



Memorandum

July 22, 2019

TO: The Honorable Jack Louws, Whatcom County Executive
The Honorable Whatcom County Council

FROM: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

The County Council has been working with the Cascadia Law Group to develop proposed amendments to the Whatcom County Code (WCC) primarily relating to fossil fuel facilities at Cherry Point. Cascadia's latest draft (July 16, 2019) includes proposed regulatory language, including a number of outstanding issues and options, for Council to consider. PDS is committed to facilitate the Council's final preferred proposal through the public review process. However, in order to clarify the Council's proposal and help facilitate a more timely review process by the Planning Commission, PDS requests that Council provide specific direction or identify their preferences on the issues/options set forth below:

Council Direction Requested on Options in the Draft

1. Thresholds for Permitted Uses – Proposed WCC 20.68.801 provides three options for determining whether an expansion of an existing fossil fuel refinery or fossil fuel transshipment facility is an outright permitted use (typically a building permit processed by the Planning Department).¹ If the use is not outright permitted, it would require either a conditional use permit (currently decided by the Hearing Examiner) or major project permit (decided by the County Council). Cascadia's current draft provides three options for consideration by Council, which are summarized as follows:

Option # 1 – Base the threshold for an outright permitted expansion of an existing fossil fuel refinery or fossil fuel transshipment facility on historical population growth over the *last five years* in Washington, Oregon, and B.C. Base the threshold for outright permitted storage tank capacity increases on the ratio of storage to refining capacity currently existing at the facility. Expansions that exceed the thresholds would require a conditional use permit and major project permit. We would note that the storage threshold does not address a transshipment facility without refining.

Option # 2 – Base the threshold for an outright permitted expansion of an existing fossil fuel refinery or fossil fuel transshipment facility on projected population growth over the *next five years* in Washington,

¹ Under the existing code, a major project permit is required if the criteria of WCC 20.88.120 are met.

Oregon, and B.C. The threshold for storage tank capacity increases would be the same as option # 1 above. Expansions that exceed the thresholds would require a conditional use permit and major project permit. Again, we would note that the storage threshold does not address a transshipment facility without refining.

Option # 3 – Base the thresholds for an outright permitted expansion of an existing fossil fuel refinery, fossil fuel transshipment facility, and storage tank capacity on a flat percentage increase over a certain number of years. Expansions that exceed the thresholds would require a conditional use permit. While the language of this option may need some work, out of the three options presented, it would be the most straightforward to implement from an administrative perspective.

For Option # 3, the Council should identify the percentage increase, over a certain number of years, for outright permitted uses.

PDS requests Council provide direction on which option to recommend moving forward for Planning Commission review.

2. Types of Permits – Cascadia Law Group’s July 16 draft includes four options for the types of permits required for fossil fuel refinery expansions and fossil fuel transshipment facility expansions that do not qualify as permitted outright uses (see proposed WCC 2.11.205, 20.68.153, 20.88.270, 20.88.280, and 22.05.020):

Option 1 – Require both a conditional use permit and major project permit. The Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

Option 2 – Require a major project permit (without a conditional use permit). The Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

Option 3 – Require a conditional use permit (without a major project permit). The Hearing Examiner would conduct the public hearing and make the final decision.

Option 4 – Require a conditional use permit. The Hearing Examiner would conduct the public hearing and make the final decision. However, if the proposal meets the existing criteria for a major project permit (WCC 20.88.120) then a major project permit would be required (without a conditional use permit). In this case, the Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

The type of permit required, and associated decision-making body, is a basic and important policy choice. Therefore, PDS requests Council direction or preference on which option should go forward for public review.

3. Renewable Fuel Operations - Cascadia Law Group's July 16 draft includes two options for the types of permits required for renewable fuel projects (see proposed WCC 20.68.054(9) and 20.68.159):

Option 1 – Allow renewable fuel projects as an outright permitted use.²

Option 2 – Require a conditional use permit or major project permit for expansions over the thresholds in WCC 20.68.800.

Again, PDS requests Council direction or preference relating to these options to help facilitate the public review process.

Council Direction Requested on Other Issues

4. Insurance - Cascadia Law Group's July 16 draft includes proposed proof of insurance requirements (WCC 22.05.125). This section states: "At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities, the applicant shall provide proof of insurance. . . ." Does Council intend the insurance requirement only apply to potential damages from the proposed facility expansion or does it apply to the entire existing facility/operation?
5. Pipelines - Cascadia Law Group's July 16 draft includes *Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location*, which states that pipelines are not addressed in the proposal per *Reducing Impacts from Fossil Fuel Projects Report to the Whatcom County Council* (Cascadia Law Group, February 23, 2018). We would note two issues:
 - a. The proposed definition of "Fossil Fuels Transshipment Facilities" (WCC 20.97.160.3) is silent on pipelines. If pipeline facilities are not included in the definition, this should be explicitly stated.
 - b. The proposed insurance provisions of WCC 22.05.125(9)(e) state that "Transportation shall include movement by any vehicle or mode of transit including automobile, railway or watercraft . . ." Are pipelines included in this definition?
6. Small Oil Storage and Distribution Facilities – Cascadia Law Group's July 16 draft includes *Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location*, which states that small oil storage and distribution facilities are not included in the uses that are prohibited, per the definitions of fossil fuel refinery and fossil fuel transshipment facility (see WCC 20.97.160.3 and 20.97.160.4). However, it is unclear from these definitions when a proposal would be considered a small oil storage and distribution facility. We are also unclear whether this is intended to apply to oil facilities only, or could include propane storage and distribution.

PDS requests Council direction on the above issues, to the maximum extent possible, and that Cascadia Law Group incorporate this direction into a revised draft for consideration by the Planning Commission.

² Under the existing code, a major project permit is required if the criteria of WCC 20.88.120 are met.