

UPDATED

Councilmember Browne's Cherry point comments. Updated October 10 to provide background for each comment, see boxes below.

Throughout this process my legislative focus has focused on areas where I believe the County Government has clear legitimate authority and responsibility related to health, public safety, and transportation:

Transportation

We have a responsibility to advocate for our community not to permit facilities that will result rail traffic beyond the capacity of our rail/road intersections capacity to accommodate other business uses, residents, and emergency response needs. If industry wants to increase rail capacity beyond what our crossings can accommodate, then industry, not local taxpayers, should shoulder the cost.

Climate Change

Climate change is real and is already affecting the health and welfare of our community, including the economic interests of our local fishing and farming businesses. Global warming is caused in large part by increased CO2 emissions, as refineries are emitting large amounts of CO2 as part of their processing, any increase of local emissions should be offset by local mitigation.

Insurance

The oil-by-rail transportation system has demonstrated an inability to operate accident free and failures have resulted in significant loss of life and economic damage to communities including businesses. Therefore, it is our responsibility to advocate that if an accident occurs within the borders of Whatcom County our taxpayers will not be left to bear the cost.

Comments

16.08.090

Line 16

Retain consultation with "*Climate Impacts Advisory Group and its members*".

Add "*with final approval of county council*"

Explanation: The community is fortunate to have very well qualified members volunteering their time to serve on the Climate Impacts Advisory Group and we would be well served to have their ongoing contribution to the SEPA checklist. Final approval of which should be subject to County Council approval.

Green House Gas & SEPA

Retain Green House language but have it sunset once equivalent language is provided for in State law

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

16.08.160

Line 164

Delete "*that create specific adverse environmental*"

Explanation: A ton of CO2 produced in Whatcom County will over time be dispersed around the world, the specific adverse environmental impact to Whatcom County of the amount that remains in Whatcom County will be small. However, the cumulative sources of all greenhouse gas from emissions around the world is having a significant impact to Whatcom County as demonstrated by increased sea water acidity, reduced snow pack and longer drier summers. We should avoid any language that could suggest mitigation of greenhouse gas emissions should be limited to only that portion of GHG emissions produced in Whatcom that remains to have a "specific adverse environmental" impact.

20.68.150

Line 551

.153 Expansion of existing legal Fossil or renewable Fuel or expansion of existing legal Fossil or renewable Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following thresholds:

- A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- B. Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day; or
- C. Cumulatively increases the maximum ~~transshipment~~ fossil fuel storage capacity of ~~unrefined fossil fuels from~~ the facility by more than 10,000 barrels (or 420,000 gallons) ~~per day~~.

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Explanation: The proposed language allows industry the flexibility to increase it's refining and transshipment capacity by up to 9,999 barrels as an outright permitted use. However, as proposed it would allow for unlimited permitted increases in the number of barrels of crude oil storage without a conditional use permit provided it:

1. Does not increase in refining capacity at the time it is permitted. As storage capacity can be increased without the need to increase refining capacity this would not be difficult.
2. Does not increase transshipment capacity at the time it is permitted. As storage capacity can be increased without increasing transshipment facility at the time this would also not be difficult

However, once built these storage tanks could later be repurposed to expand either refining or transshipment outside of the conditional use process which is contrary to the intent of the language.

As industry has proposed an increase in refining or transshipment capacity of 10,000 barrels as a reasonable threshold for a Conditional Use permit related to refining or transshipment it should logically apply to increases in fossil fuel storage capacity as well.

Line 598

Retain (10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

20.68.200 Prohibited uses.

Line 708

.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined petroleum products, (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., including bulk storage or transfer facilities for fossil fuels [XXX effective date].

Explanation: As proposed the amendments to WCC 20.68.205 would allow any previously permitted, currently existing, Fossil Fuel Transshipment Facilities (including storage tanks accessory to existing Fossil Fuel Refineries) to be converted and used for "inter-refinery shipments" of fossil fuels (including crude oil) without further permitting.

As the ideal destination for all crude oil located in a "storage tank" is a "refinery" it seems logical the ability to build an unrestricted amount of storage capacity would facilitate increasing shipments of crude oil-by-rail which in turn will lead impacts to the rest of the community.

While it is reasonable and normal to permit the refineries to store and transship refined products as a part of their normal operations, the community should retain the right to require a Conditional Use permit prior to allowing any substantive increase in inter-refinery shipments of crude oil-by-rail or oil-by-sea because these could result in significant new risks to the health, safety and public transportation infrastructure within the community.

.206 ...

.207 ...

.208. New Unrefined Fossil Fuel Transshipment Facilities

Explanation: New Unrefined Fossil Fuel Transshipment Facilities should be prohibited, as the risks associated with increasing the volume of oil-by-rail to support such a facility is greater than the benefit it brings the community.

20.68.800

Line 830

.801 Environmental Review and Greenhouse Gas Mitigation

Retain Green House language but have it sunset once equivalent language is provided for in State law

Retain local mitigation requirement after state law is updated

Explanation: Until the State law is established the County's greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset. Any mitigation should be done locally

20.74.110 Change of Use

Line 996

Retain

A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A change of use permit is required to document a change of use, even where no alterations are planned or required by the code. This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:

- (1) Applicable building and construction codes are met per Title 15;
- (2) Consistency with the requirements of the CP Industrial District, Chapter 20.74, and base zone; and
- (3) Transportation concurrency requirements are met per Chapter 20.78.

Explanation: The community should retain the right to require a Conditional Use permit prior to allowing any substantive change of use that could increase in crude oil-by-rail or oil-by-sea traffic because these could result in significant new risks to the health, safety and public transportation infrastructure within the community.

20.88.100 Major project permits.

.110 All major developments shall, prior to any construction, obtain 1030 a major project permit.

.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC and for any proposed development that meets any two of the following conditions:

- Cost (estimated construction cost exclusive of land value) \$5,000,000
- Size Retail 75,000 square feet office or industrial (gross leasable floor space) 200,000 square feet
- Residential 300 dwelling units
- motel/hotel 200 units
- Number of Employees 250
- SEPA Review An EIS is required

- Increases the maximum cumulative fossil fuels transshipment capacity by more than 10,000 barrels per day
- Increases the maximum cumulative storage capacity of fossil fuels by more than 10,000 barrels.

Explanation: As industry has proposed an increase in refining or transshipment capacity of 10,000 barrels as a reasonable threshold for a Conditional Use permit related to refining or transshipment it should logically apply to the “*any two of the following conditions*” threshold test for a Major project permit as well.

20.97.124.1 Facility Emissions.

Retain

Explanation: Until the State law is established the County’s greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

20.97.160.5 Fossil-Fuel Refinery Capacity.

Retain

Explanation: Until the State law is established the County’s greenhouse gas language should apply. If and when the State regulations are enacted the County language should sunset.

22.05.125 Proof of insurance for hazards created in the County

Retain for further discussion

Need to establish who responsible party is for all scenarios. If it’s not clear who will pay to clean up and compensate it likely means the community will have to

Rail engine failure – likely BNSF

Rail employee negligence – likely BNSF

Rail track failure – likely BNSF

Leased rail car failure – often Third Party rail car leasing companies

Inside refinery fence line - likely Refinery

- BNSF - likely has adequate assets/insurance to compensate
- Refinery - likely has adequate assets/insurance to compensate
- Third Parties – multiple companies, assets/insurance to compensate may be zero. If so the Refinery should provide guarantee to cover any uncovered liability because they have control over the choice of provider

The County has an obligation to ensure the potentially responsible parties are identified in all possible scenarios that could result in significant loss of life, personal injury, environmental, economic and property damage at a level large enough to require our Emergency Operations Center to respond. County residents have the right to expect all potentially responsible parties related to an oil-by-rail disaster to have the financial capacity to provide adequate compensation in the event of a catastrophe.

The County has no say, knowledge or oversight as to whether the third parties used to transport materials by rail have adequate insurance or assets in the event of a catastrophe. The refineries have control over the means of transportation and the carriers they select to use to ship product in and out of their facilities. It is therefore only reasonable to require the refineries to provide corporate guarantees to make up any shortfall in the event there is an accident that is beyond any third party's capacity to pay for.

As proposed section 22.05.125 allows for the refineries to provide a "*parent company corporate guarantee*" in lieu of an additional insurance policy. This option will place no additional financial burden on the refineries unless the third parties they use are negligent and held responsible for an accident they have inadequate insurance to cover the damage.

If the transportation of oil-by-rail continues to operate without incident within the county there will be no additional cost to refineries.

If however the refineries are unwilling to assume this liability, other businesses, citizens, and taxpayers within Whatcom County will by definition be asked to fund any shortfall on behalf of the refineries.