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**Mark Personius**  
Director

FILE UNDER AB 2019 . 387  
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SUBMITTED BY: Mark Personius,  
Planning  
 COUNCIL MEETING  
 Special COTW COMMITTEE  
EXHIBIT: \_\_\_\_\_

Memorandum

July 30, 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. PDS is committed to facilitating 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 set forth below:

1. Non-Capacity Improvements / Interpretation – Proposed Section 20.68.802(1) states that "Expansions of existing legal fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses. . ." Examples given include accessory buildings, office space, parking lots, regular equipment maintenance and replacement, safety upgrades, security buildings, storage buildings, etc. However, Section 20.68.802(2) indicates "This allowance does not include improvements that would expand the capacity of the refinery or the transshipment facility which requires a conditional use permit per 20.68.153 or non-capacity improvements that would cause a net increase in or greenhouse gas emissions above subsection .801." Does this mean:
  - a. Any structure would no longer qualify as a permitted use if the structure itself emitted any greenhouse gases?
  - b. The structure would be permitted, but mitigation would be required for any greenhouse gases emitted by the structure itself?
  - c. Any structure would no longer qualify as a permitted use if it caused any increase in greenhouse gases emissions from the refining process?
  - d. The structure would be permitted, but mitigation would be required for any increase in greenhouse gasses emitted from the refining process associated with the new structure?

PDS would suggest allowing all uses listed in WCC 20.68.802 as permitted outright uses. Some of these uses, such as storage buildings or parking lots, may be similar to uses in other zones that do not require greenhouse gas mitigation. However, some of these uses, such as regular equipment maintenance and replacement, have the potential to increase refining capacity. While it would be reasonable to allow these uses as outright permitted uses, greenhouse gas mitigation could also be required (see potential language modifications below).

✓ **.802 Non-Capacity, Maintenance, and Safety Improvements**

(1) Expansions of existing legal fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses. Examples of non-capacity improvements include, but are not limited to:

- (a) accessory buildings,
- (b) office space,
- (c) parking lots,
- (d) radio communications facilities,
- ~~(e) regular equipment maintenance and replacement,~~
- ~~(f) safety upgrades,~~
- (eg) security buildings,
- ~~(fh) storage buildings, and~~
- (gi) other similar structures or activities.

~~(2) Regular equipment maintenance and replacement and safety upgrades are outright permitted uses, but shall mitigate greenhouse gas emissions if required by WCC 20.68.801. This allowance does not include improvements that would expand the capacity of the refinery or the transshipment facility which requires a conditional use permit per 20.68.153 or non-capacity improvements that would cause a net increase in or greenhouse gas emissions above subsection .801.~~

2. Life Cycle Greenhouse Gas Emissions / Facility Emissions – Proposed WCC 16.08.090.E(2) indicates that “Life cycle greenhouse gas emissions” will be analyzed in the new SEPA Worksheet for Fossil and Renewable Fuel Facilities. There is no definition of life cycle greenhouse gas emissions, so we would recommend adding one. Additionally, the proposed code sometimes addresses lifecycle greenhouse gas emissions and sometimes addresses “facility emissions” (which is defined by proposed WCC 20.97.124.1). Therefore, please consider modifying proposed WCC 16.08.090.E(2) as follows: “Lifecycle greenhouse gas emissions and facility emissions above

existing levels.” This would provide calculations for both categories of emissions.

3. Insurance - Cascadia Law Group’s 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?
4. Pipelines - Cascadia Law Group’s 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 or Renewable Fuel 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?
5. Small Oil Storage and Distribution Facilities – Small oil storage and distribution facilities are specifically excluded from the definitions of refineries and transshipment facilities (see WCC 20.97.160.3, 20.97.160.4, and 20.97.350.3), that are regulated by the proposed amendments. However, while the definition of “Small Oil Storage and Distribution Facilities” includes propane and renewable fuels, the title doesn’t. Therefore, PDS recommends the following modification to the proposed definition:

**20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities**

“Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

- (1) Equipment used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or
- (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel transshipment facilities.

If the above changes are made in WCC 20.97.425.1, they would also need to be made in WCC 20.97.160.3, 20.97.160.4, and 20.97.350.3.

6. SEPA Rules – The proposed amendments generally apply to fossil fuel and renewable facilities. However, proposed WCC 16.08.160.F.1.b.iii appears to apply to land uses throughout the County. Is this Council’s intent?
7. Standard Industrial Classification (SIC) – WCC 20.68.050, the introductory text to the permitted use section of the Heavy Impact Industrial (HII) zone, references SIC numbers and “other activities similar in nature.” However, these terms are not referenced in the HII regulations. Therefore, PDS recommends modifying WCC 20.68.050 as follows:

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program and implementing regulations. ~~The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein, except that some of those SIC number uses and “other activities similar in nature” may be precluded by or do not otherwise meet the requirements of the WCC or the county Comprehensive Plan. Uses that are not expressly permitted herein are not permitted if they are precluded elsewhere in the code or in the Comprehensive Plan and any applicable subarea plan.~~

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