

From: [Council](#)
To: [Dana Brown-Davis](#); [Lisa Bruner](#); [Cathy Halka](#)
Subject: FW: Cherry Point Amendments - PDS Comments
Date: Thursday, November 19, 2020 1:47:55 PM

From: Matt Aamot
Sent: Thursday, November 19, 2020 1:47:49 PM (UTC-08:00) Pacific Time (US & Canada)
To: Eddy Ury; Council; Todd Donovan; Barry Buchanan; Tyler Byrd; Kathy Kershner; Ben Elenbaas; Rud Browne; Carol Frazey
Cc: Brady, Pamela; Johnson, Tim; Gavin Carscallen; Andrew Gamble; Verburg, James E; Chalfant, Jeff; Brown, Brad J; Strang, Erin T; Trevor Smith; Alex Ramel; Rebecca Ponzio; Anna Doty; Mark Personius; Nick Smith; Amy Keenan
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Dear Stakeholder Group and Council:

Whatcom County Planning and Development Services (PDS) appreciates the efforts of the Stakeholder Group working on the proposed Cherry Point development regulation amendments. PDS has several thoughts/concerns/issues that we would like the Stakeholder Group, and ultimately the County Council, to address or clarify in the Cherry Point amendments:

1. **Plain Language** – Whatcom County Comprehensive Plan Goal 1A is to “Ensure that government activities, regulations and policies are transparent, accountable and easy to understand” (Chapter 1, p. 1-3). The Comprehensive Plan text also states that “. . . Regulations should be clear, concise, and predictable with enough flexibility to allow for reasonable and efficient decision making. . .” (Chapter 2, p. 2-9).

We recognize that drafting regulations relating to the Cherry Point industrial area is challenging because there are at least three distinct audiences for the regulations: The industries being regulated, PDS staff, and the public. Industry representatives have specialized knowledge that PDS staff and most members of the public do not possess. Additionally, industry may not want/be able to disclose confidential business information. There are also differing views on how these industries should be regulated. These factors all add to the difficulty of developing the regulations.

However, development regulations are evaluated for consistency with the Comprehensive Plan pursuant to [WCC 22.10.060\(2\)](#). Therefore, we would urge the Stakeholder Group and the Council to consider the Comp Plan goal of ensuring regulations are “. . . transparent, accountable and easy to understand . . .” This is especially important to allow PDS to administer the regulations in a manner that is consistent and transparent to all.

2. **Clarify Definition of Fossil Fuel Transshipment Facilities** - It is our understanding that members of the Stakeholder Group have indicated that the existing rail and pier facilities associated with the refineries are not considered "Fossil Fuel Transshipment Facilities" under proposed WCC 20.97.160.3. If this is the recommendation of the Stakeholder Group, PDS requests that it be clearly stated in the definition of Fossil Fuel Transshipment Facilities. For example, a clause could simply be added to the definition stating: "Shipping facilities associated with refineries, such as piers and rail facilities, are not Fossil Fuel Transshipment Facilities."

3. **MACDC or Transshipment Capacity / 3rd Party Engineer Review** – A conditional use permit would be required when a project increases the "maximum atmospheric crude distillation capacity" (MACDC) or maximum transshipment capacity by more than 10,000 barrels per day (proposed WCC 20.68.153). MACDC is defined in proposed WCC 20.97.230. A determination of whether a project's increase in MACDC triggers a conditional use permit would be based on an evaluation by a licensed professional engineer. It is assumed that maximum transshipment capacity (as currently proposed) would also be determined by a professional engineer. The PDS concern is that we do not have staff with expertise in these issues. It is also our understanding that the current proposed stakeholder approach would require the engineer's MACDC/Transshipment Capacity analysis and County 3rd party review before PDS could even determine whether a proposed use is permitted outright in 20.68.068 or triggers a conditional use permit under 20.68.153 (in many but not all cases). This requires that PDS would first have to develop and issue a RFQ for qualified independent consulting petroleum engineers and that we received sufficient responses to establish a roster upon which to select from to conduct subsequent 3rd party review. That process would likely take 3-4 months to establish the roster before we could fully implement this approach (i.e., begin accepting permit applications). Some additional thoughts and questions relating to these issues include:

- Are we correct in understanding that the County would have to hire a 3rd party engineer to review the industry engineer's documentation of MACDC or transshipment capacity? If so, it would seem to have to happen before they can submit a permit application (e.g., at the pre-app meeting stage). The added layer of the 3rd party review will extend the time period for PDS to make a determination on the appropriate permit path and may require an additional meeting with an applicant prior to application submittal.

- Is there any potential amongst professional petroleum engineers for significant disagreement or differing interpretation of the effect of certain refinery equipment or operations on MACDC/Transshipment Capacity? (i.e., can you advise us on the likelihood that a 3rd party engineer's review would differ from an applicant's engineer's report conclusions on MACDC to such a degree that could give PDS cause to reach a permitting path decision that differs from an applicant's perspective?)
- PDS's initial determination (after 3rd party review) of whether the proposed use is permitted outright or requires a CUP is appealable under WCC 22.11.210. How might this affect permitting timelines for industry permit applications?
- How might this effect the industry's and the public's understanding, perception or expectation of the certainty or uncertainty of the permitting process?
- Would the information in the industry engineer's evaluation include confidential business information from an industry perspective?
- If so, would it be exempt from public disclosure? This may require review by the County's legal counsel.
- Again, being non-engineers, it is our understanding that some new refinery equipment does not operate at full capacity all of the time (e.g. vacuum heaters). What level does the County determine MACDC for a specific project proposal (e.g. "normal operating conditions" or at "assumed maximum capacity conditions")? Staff assumes that the evaluation of proposed new uses or equipment on overall refinery output would be in relation to maximum capacity. Is this correct? Please note, our understanding is that some new refinery operations/equipment may not be able to (or never) reach maximum capacity because of limitations in other downstream equipment (i.e. "bottlenecks"). Does this mean that the refineries never actually reach MACDC? If so, is there any improvement that would trigger an increase in MACDC to the threshold levels requiring a CUP? Please advise.
- Related to the question above, what types of equipment and/or new uses would increase MACDC or transshipment capacity? It would be helpful if industry could provide specific examples of improvement projects that likely would/would not trigger the conditional use permit requirement as proposed in

20.68.153. For example, would a new or replacement vacuum heater that is more efficient than existing equipment increase MACDC to a threshold requiring a CUP? Other examples such as a new oxygen plant, new nitrogen plant, heat exchanger, hydrotreater, pier improvements, etc?

4. **Storage Tanks** – At this point in the process, we have concerns that the proposed storage tank regulations may not be clear, concise, and predictable (or easy to understand) for non-engineers and the public. Storage tanks are permitted under proposed WCC 20.68.068 unless a conditional use permit is required under proposed WCC 20.68.153 (certain increase in MACDC or transshipment capacity – see discussion above). Additionally, new fossil fuel transshipment facilities are prohibited under proposed WCC 20.68.205. We would like to understand:

- Under what conditions would a new tank increase MACDC or transshipment capacity? It would be helpful if industry could provide several storage tank examples/scenarios that would trigger the conditional use permit requirement.
- Under what conditions would a new tank not increase MACDC or transshipment capacity? It would be helpful if industry could provide several storage tank examples/scenarios that would not trigger the conditional use permit requirement.
- Is it the intent of these regulations to prohibit new tanks that would be used solely for transshipment?
- Is it the intent of these regulations to prohibit use of existing tanks solely for transshipment?

We recognize and appreciate that the Stakeholder Group is currently working through some of these issues. Our request is simply that the Group ask the following question for each proposed regulation and definition: Is it transparent, accountable and easy to understand for industry, PDS, and the public?

Thank you for considering our input.

Sincerely,

PDS Staff