<u>COUNCILMEMBER DONOVAN'S</u> PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

Amendment 1: Treat expansions of existing refineries and storage capacity as subject to conditional use permits, rather than being outright permitted.

20.68.054. The following are permitted uses except as otherwise prohibited:

(3) Refining and storage of fossil fuels, limited as follows:

(a) fossil fuel refineries, existing legally as of [XXX effective date], ~~together with allowed expansions below the thresholds in WCC 20.68.800~~.

(b) fossil fuel transshipment facilities existing legally as of [XXX effective date], ~~together with allowed expansions below the thresholds in WCC 20.68.800~~.

(9) The refining, storage, blending, and manufacture of renewable fuels, <u>existing legally as of [XXX effective date]</u>, ~~together with allowed expansions below the thresholds in WCC 20.68.800~~.

20.68.150. Conditional uses.

.153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or expansion of existing legal fossil fuels transshipment facilities ~~when proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and~~ <u>are</u> subject to the conditional use permit criteria below and approval of a major project permit:

20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment

.801. Limits on Refinery or Transshipment Facility Capacity Expansions:

Delete entire section 20.68.801**; delete options 1, 2 & 3.**

.802 [renumber]. Environmental Review and Greenhouse Gas Mitigation.

(3) Local mitigation of greenhouse gas emissions shall be required, whenever ~~increases of~~ greenhouse gas increase ~~equal or exceed 1% cumulatively above~~ the baseline for a 3-year average (per section .802(2)(a)), after the effective date of this section [XXX].

23.100.170 Cherry Point management area

B. 1. b. Fuel uses

i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries ~~below thresholds of the zoning code at WCC 20.68.800~~ are subject to review as shoreline substantial development permits. Expansions of existing legal fossil fuel refineries ~~above thresholds at WCC 20.68.800~~ require a shoreline conditional use permit.

Amendment 2: **Treat renewable fuel facilities as a conditional use permit to match fossil fuel requirements.**

20.68.150. Conditional uses.

.159 Expansion of existing legal renewable fuels refinery operations or renewable fuels transshipment facilities ~~when proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and~~ are subject to a conditional use permit and major project permit and the criteria identified in .153 (1) to (11).

23.100.170 Cherry Point management area.

B. 1. b. Fuel uses

i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries ~~below thresholds of the zoning code at WCC 20.68.800~~ are subject to review as shoreline substantial development permits. Expansions of existing legal fossil fuel refineries ~~above thresholds at WCC 20.68.800~~ require a shoreline conditional use permit.

ii. Fossil fuels transshipment facilities as a primary use are prohibited. Those that are a necessary part of providing raw materials to, and serving, a permitted expansion of an existing fossil fuel refinery shall require either shoreline substantial development permit or a shoreline conditional use permit. ~~dependent on the level of expansion as identified in subsection b.i.~~

iii. Refining, storage, blending, and manufacture of renewable fuels (biofuels, biomass) existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal renewable fuels facilities are subject to review as shoreline substantial development permits. Expansions of existing legal renewable fuels facilities require a shoreline conditional use permit.

Amendment 3: Clarify the criteria for major project permits in Cherry Point.

20.88 Major project permits

110 All major developments shall, prior to any construction, obtain 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, <mark>**or** if in the Cherry Point UGA, any one of these conditions</mark>:

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

In addition the zoning administrator may make an administrative determination after receiving a recommendation from the technical review committee that any project be considered a major development, if in the opinion of the administration it is of a nature that council review would be appropriate.

.130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a major project permit application based on the following criteria:

(1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.

(2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

20.88.200 Procedure.

<mark>.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit.</mark> [question here]

Amendment 4: Supplemental SEPA worksheet

16.08.090. Environmental checklist

E. For any proposed change of use or expansion of facilities that manufacture, process, ship by sea any fossil fuel or fossil fuel product, the proponent will fill out the County's SEPA "Worksheet for Fossil Fuel Facilities." This Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of worksheet shall be prepared and updated once per year by the SEPA Responsible Official in consultation with and taking into account the comments of the Climate Impacts Advisory Group and its members. The Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts including but not limited to those arising from:

Windborne transport of burned fossil fuel emissions into Whatcom County;

Life cycle greenhouse gas emissions above existing levels;

Transits of tankers or barges and their support vessels that have the potential to interfere with commercial and treaty tribe fishing areas; and

Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters;

In determining whether possible impacts are "significant" and "probable," the Responsible Official shall determine whether the answers on the Worksheet for Fossil Fuel Facilities accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330, -794

The county may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is prepared, it must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 98-048 Exh. A; Ord. 84-122 Part 3 (part)).