

COUNCILMEMBER BROWNE’S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

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

Option 4: Base Expansions on historic ~~population~~ increased consumption of refined fossil fuels, and relationship of production throughput and storage capacity.

(1) Expansions of existing fossil fuel refinery or fossil fuel transshipment capacity shall be an outright permitted use up to a percentage limit defined as a rolling five-year average of the annual percent change in ~~population~~ increase in consumption of refined fossil fuels for the combined region of the states of Washington and Oregon and the Province of British Columbia as determined by their respective published government estimates for the five years immediately preceding the date of a completed application for any necessary County permits.

(2) Storage tank capacity increases at existing refineries or transshipment facilities shall be limited to the ratio of storage to refining capacity currently existing at the facilities as of [XXX effective date]. See WCC 20.97.160.5 for applicable definitions.

(3) The capacity of a refinery or process unit is a measure of its current actual throughput averaged over the latest three-year reporting period preceding the date of a completed application for any necessary County permits.

(a) The data used to calculate the current actual throughput average shall be obtained from official government reports from the refinery to federal or state agencies regarding production of the refinery or a particular process unit to be expanded. This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction permits.

(b) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day), consistent with data collected by the US Energy Information Administration. The zoning administrator may approve another measure of capacity or source that is consistent with (3) and (3)(a).

(c) The data used to calculate any actual increase in consumption of refined fossil fuels for the combined region of the states of Washington and Oregon and the Province of British Columbia shall be obtained from the US Energy Information Administration (EIA) (for Washington and Oregon), and from the Canadian National Energy Board (for British Columbia). This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction permits.

(4) Expansions of existing refineries or transshipment facilities above that threshold in subsections (1) and (2) above shall require a conditional use permit consistent with the criteria of 20.68.150, conditional uses, and major project permits subject to Chapter 20.88.

(5) Expansions below the threshold are permissible with approval of a master site plan consistent with WCC 20.74.060 and consistent with applicable project permits per Chapter 22.05.

(6) Incidental increases in refinery capacity or transshipment capacity related to normal safety or process improvements that do not exceed 1% of throughput for the prior three-year period as calculated under subsection (3) shall not require new major project permits or conditional use permit approval and shall not trigger greenhouse gas mitigation requirements until they cumulatively exceed 1% of refinery throughput.

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20.74.055 Prohibited uses.

Prohibited uses shall be the same as those prohibited in the Heavy Impact Industrial District, Chapter 20.68 WCC and the following:

(1) New piers, docks, or wharves.

(2) Conversion of Renewable Fuels Facilities and Transshipment Facilities to fossil fuel facilities unless a new permit is issued under the conditions applicable for increases in capacity for fossil fuel facilities in Chapter 20.68

20.74.115 Change of Use of Renewable Fuels Facilities

A change of use of a Renewable Fuels Facilities and Transshipment Facilities to fossil fuel facilities unless a new permit is issued under the conditions applicable for increases in capacity for fossil fuel facilities in Chapter 20.68

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22.05.125 Proof of insurance for hazards created in the County

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 (1) provide proof of insurance or other financial security acceptable to the prosecuting attorney, and (2) a Parent Company Corporate Guarantee –to cover loss or damages to the County and to County residents from any fire, explosion, spill or other incident from operations of the refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and Parent Company Corporate Guarantee shall contain the following Coverage Terms:

(1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional Insured and shall be provided complete copies of applicable insurance policies and endorsements.

(2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or after the Permit effective date, either:

(a) emanating from and beyond the boundaries of a Permitted Facility, or

(b) arising from materials or waste during transportation to or from a Permitted Facility.

(3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses. The required limits may be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.

(4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any deductible or self-insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. If the Policy has a self-insured retention (SIR) amount, the Primary Named Insured shall declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of financial assurance are letters of credit and certificates of deposit.

(5) Term and Cancellation Notice:

(a) Insurance shall be carried for the lifetime of the fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities.

(b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the County as evidenced by the return receipt.

(6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.

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(8) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or the equivalent from another major financial rating agency.

(9) Definitions: For the purposes of this section, terms are defined as follows:

(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any fixed conveyances such as pipelines and terminal distribution systems.

(b) Loss shall include:

(i) monetary awards or settlements of compensatory damages; and

(ii) where allowable by law, punitive, exemplary, or multiple damages; and

(iii) civil fines, penalties, or assessments.

(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors, soot, fumes, acids, alkalis, or other chemicals.

(d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to the insurer.

(e) Transportation shall include movement by any vehicle or mode of transit including automobile, railway or watercraft, including loading, temporary placement during transit prior to final delivery, or unloading, of materials or waste, either:

(i) intended for delivery to a Permitted Facility, or

(ii) being sent from a Permitted Facility.

10 The Parent Company Corporate Guarantee shall provide coverage for loss or damages to the County and to County residents for any amount payable in excess of the available insurance coverage.