

**WHATCOM COUNTY**

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**Mark Personius**  
Director

## Memorandum

August 20, 2020

TO: The Honorable Satpal Sidhu, Whatcom County Executive  
The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

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The County Council worked with the Cascadia Law Group to develop proposed Comprehensive Plan and Whatcom County Code (WCC) amendments primarily relating to fossil fuel and renewable fuel facilities in the Cherry Point Area (some of the amendments apply to various land uses on a countywide basis). The Council approved Resolution 2019-037 on August 7, 2019 forwarding the proposed amendments to the Planning Commission for review.

The Planning Commission held a series of meetings on the proposed amendments between September 2019 and August 2020 (there were no meetings in March, April, or May because of the COVID-19 meeting restrictions). Public comments through the end of the Planning Commission review process are posted on the County's website: <https://www.whatcomcounty.us/2849/Cherry-Point-Amendments>  
The Planning Commission issued their Findings of Fact and Reasons for Action, Conclusions, and Recommendations on August 13, 2020 relating to:

- Exhibit A - Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
- Exhibit B - Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
- Exhibit C - Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
- Exhibit D - Amending the Project Permit Procedures (WCC 22.05).

Selected differences between the original Council proposal and the Planning Commission proposal are summarized below (not all differences are shown below – please see the Exhibits in which all Planning Commission changes to the Council proposal are shown with yellow highlighting).

Exhibit	Document	Council	Planning Commission	Comments
A	Comp Plan		Added Policy 2CC-18 to allow on-going operation, maintenance, repair, modifications, etc. of existing facilities	New Policy would provide certainty to industry relating to particular types of activities that they can continue to conduct as allowed uses at existing facilities.
A	Comp Plan	Added Policy 2CC-18 to treat renewable fuel facilities similar to fossil fuel facilities	Deleted this proposed Policy	The Planning Commission recommended that new renewable fuel refineries and transshipment facilities should be allowed as a permitted use but new fossil fuel refineries and transshipment facilities should be prohibited. Additionally, the Planning Commission recommended that expansion of existing renewable fuel refineries and transshipment facilities should be allowed as a permitted use but expansion of fossil fuel facilities should require a conditional use permit. Therefore, the Planning Commission proposal would not treat renewable fuel facilities in a manner similar to fossil fuel facilities.
B	SEPA Code	Added worksheet for fossil fuel and renewable fuel facilities  WCC 16.08.090.E	Allows use of the worksheet or an expert evaluation and makes other changes to this proposed code  WCC 16.08.090.E	The worksheet will take time to develop and likely will not be available when Council adopts the ordinance. Additionally, larger or more complex projects may benefit from expert evaluation of the issues.
B	SEPA Code	Greenhouse gas (GHG) mitigation through SEPA or the Zoning Code  WCC 16.08.160.F.1	GHG mitigation through SEPA only  WCC 16.08.160.F.1	The Council proposal provides for GHG mitigation through either the Zoning Code or the SEPA Code. The Planning Commission version would provide the SEPA Responsible Official with the discretion to impose mitigation for GHG impacts, but there would not be an automatic requirement for GHG mitigation under the Zoning Code.
B  C	SEPA Code  Zoning Code	Definition of "Facility Emissions"  WCC 20.97.124.1	Definition of "Facility Emissions"  WCC 16.08.175.C	The Council proposal provided a definition of "Facility Emissions" in the Zoning Code. The Planning Commission proposal moves the definition to the SEPA Code. The Planning Commission version deleted the following elements from the original Council definition of facility emissions: <ul style="list-style-type: none"> <li>• The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy Industrial area, and</li> <li>• The upstream emissions generated by the production and transport of raw products to the facility such as crude oil feedstocks or other fuels used in production or energy generation at facilities.</li> </ul>

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Permitted outright improvements to existing fossil fuel and renewable fuel facilities  WCC 20.68.802	Permitted outright improvements to existing fossil fuel and renewable fuel facilities  20.68.068	Planning Commission moved improvements to existing fossil fuel and renewable fuel facilities that are permitted outright (i.e. do not constitute an "expansion" that requires a conditional use permit) to the permitted use section of the Heavy Impact Industrial Zone. The Planning Commission also expanded the list of permitted uses to address industry and public comments.
C	Zoning Code	Renewable Fuel Facilities  WCC 20.68.153 and .159	Renewable Fuel Facilities  WCC 20.68.070 and .071	Council proposal requires a conditional use permit for new or expanded renewable fuel facilities. Planning Commission proposal would allow these as permitted outright uses.
C	Zoning Code	Conditional use permit for expansion of fossil fuel and renewable fuel facilities  WCC 20.68.153	Conditional use permit for expansion of fossil fuel facilities (does not include renewable fuel facilities because they are permitted outright)  WCC 20.68.153	Planning Commission proposal: <ul style="list-style-type: none"> <li>• Sets specific thresholds defining what constitutes an "expansion" that requires a conditional use permit.</li> <li>• Inserts a clause that "If a conditional use permit is obtained, the baseline for determining the cumulative increase is reset."</li> <li>• Modifies the conditional use permit approval criteria.</li> </ul>
C	Zoning Code	Prohibited Uses: New fossil fuel transshipment facilities  WCC 20.68.205	Prohibited Uses: New fossil fuel transshipment facilities  WCC 20.68.205	The Council proposal prohibits new fossil fuel transshipment facilities. The Planning Commission proposal maintains this prohibition, but inserts language clarifying that certain movements of petroleum products are not prohibited by this clause.
C	Zoning Code	GHG Mitigation  WCC 20.68.801	Deletes GHG Mitigation requirement in the Zoning Code	The Council proposal included language in the Zoning Code requiring GHG mitigation for fossil fuel and renewable fuel facilities if certain criteria are met. The Planning Commission proposal deleted this language from the Zoning Code, but includes GHG mitigation language in the SEPA Code that is more discretionary in nature.  There are a number of state laws, regulations, and proposals that address GHG emissions: <ul style="list-style-type: none"> <li>• RCW 70.94 (Washington Clean Air Act)</li> <li>• RCW 70.235 (Limiting Greenhouse Gas Emissions)</li> <li>• WAC 173-441 (Reporting of Emissions of Greenhouse Gases)</li> <li>• WAC 173-442 (Clean Air Rule)</li> <li>• WAC 173-485 (Petroleum Refinery Greenhouse Gas Emission Requirements)</li> <li>• Directive of the Governor 19-18</li> <li>• Proposed New WAC 173-445 WAC (Greenhouse Gas Assessment for Projects) – to be adopted by September 1, 2021</li> </ul>

Exhibit	Document	Council	Planning Commission	Comments
C	Zoning Code	Change of Use WCC 20.74.110	Deletes this Change of Use provision	The Council proposal includes a provision that requires a change of use permit for certain activities. The Planning Commission deleted this proposed change of use provision (WCC 20.74.110). Concerns had been expressed relating to the potential conversion of an existing refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution 2019-037). The Planning Commission language for proposed WCC 20.68.153 addressed this potential situation by requiring a conditional use permit if shipping capacity of unrefined fossil fuels were to increase over a certain level.
C	Zoning Code	Definition of "Fossil or Renewable Fuel Transshipment Facilities" WCC 20.97.160.3	Definition of "Fossil Fuel Transshipment Facilities" WCC 20.97.160.3  Definition of "Renewable Fuel Transshipment Facilities" WCC 20.97.350.4	The Council proposal provided a combined definition of "Fossil or Renewable Fuel Transshipment Facilities." The Planning Commission proposal provides separate definitions of "Fossil Fuel Transshipment Facilities" and "Renewable Fuel Transshipment Facilities" as the Commission's proposal treats these land uses differently. The Planning Commission also made modifications to these definitions.
C	Zoning Code		Definition of "Maximum Atmospheric Crude Distillation Capacity" WCC 20.97.230	The Planning Commission proposal adds a definition of this term because it is used in the conditional use section of the code (WCC 20.68.153).
D	Project Permit Procedures	Proof of Insurance WCC 22.05.125	Proof of Insurance WCC 22.05.125	The Council proposal includes new provisions relating to "Proof of insurance for hazards created in the County." The Planning Commission proposal includes abbreviated proof of insurance language with less detail than the Council proposal.  There are several state laws and regulations that address insurance and/or financial responsibility: <ul style="list-style-type: none"> <li>• RCW 88.40 (Transport of Petroleum Products – Financial Responsibility)</li> <li>• WAC 480-62-300(2) (Railroad Companies – Operations)</li> </ul>

In September, the Planning and Development Services Department would like to review the Planning Commission's recommendations with the County Council's Special Committee of the Whole. When this review is complete, and the County Council has developed a final proposal, an ordinance can be introduced and public hearing scheduled before the Council. Please note that the "[Determination of Non-significance](#)" issued pursuant to the State Environmental Policy Act for the proposed amendments has been appealed.