

# Cherry Point Amendments Joint-Stakeholder Revisions

Requesting consideration by Whatcom County Council on October 20th, 2020, authorized representatives of the following parties have agreed that our respective interests would be served by revising the Planning Commission's Aug 13<sup>th</sup> draft of Cherry Point Amendments as shown below:

**RE Sources, Stand, Washington Environmental Council**

**bp, Phillips 66, Petrogas**

**Laborers International Union of North America (LIUNA)- local 292**

These revisions aim to address facility use changes that could be identified as conditional uses or prohibited uses. In the Aug 13<sup>th</sup> draft code amendments, the definition of the term "Change of Use" in WCC 20.97.052.1 does not meaningfully align with the term's apparent purpose in the two clauses where it appears. We are proposing to remove the term from these code amendments, and address its purpose through an alternative approach. Our collective request for these revisions to the draft amendments should not be construed as support for adopting the amendments into county code, nor does it indicate the full extent of revisions that respective parties would like to see.

## Key:

Council-proposed amendments

Planning Commission-proposed revisions

Stakeholder-proposed additions and deletions

Unconfirmed edits for consideration

Current unamended Whatcom County Code

Commentary or explanation

## Additions:

### **20.68.050 Permitted Uses [Heavy Impact Industrial District]**

20.68.068 Existing Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 to the county permitting authorities. Per provided that a conditional use permit is not required by WCC 20.68.153, permitted uses including repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following:

[numerated 1 - 22]

Note: Per proposed WCC 20.68.153, conditional use permits will be required when certain cumulative capacity increases occur at a fossil fuel refinery or a fossil fuel transshipment facility. To measure baselines and track cumulative increases, beginning with the first land use permit sought after the effective date of the amended rule, a permittee shall provide the following information and update the information provided upon every subsequent land use permit application:

- Types of fuels or feedstock<sup>1</sup>
- Mode of shipment<sup>2</sup>
- Maximum transshipment capacity<sup>3</sup>
- Maximum atmospheric crude distillation capacity<sup>4</sup>

## 20.68.150 Conditional Uses

The following uses require a conditional use permit in the HII Zoning District

.153 Expansion of existing legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance that meets any one of the following applicable thresholds:

- A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- B. Cumulatively increases it's the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day.
- C. Cumulatively increases it's the maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.

Determination of "maximum transshipment capacity" under this WCC 20.68.153, shall be the maximum capacity resulting from an evaluation by a licensed professional engineer of the facility's storage, transfer, or shipment capacities and which may include, or be solely based on, other transshipment limitations that can be demonstrated by the applicant.<sup>5</sup>

If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

Such expansions shall be subject to the conditional use criteria below:

(1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

(2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

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<sup>1</sup> Disclosures cannot include trade secrets, i.e. locational origin of feedstock sources.

<sup>2</sup> Shipment mode categorized generally i.e. tanker, barge, truck, unit train, etc.

<sup>3</sup> This term is defined in the Aug 13<sup>th</sup> draft code and disclosed calculations may incorporate the throughput and capacity of multiple fuel production units.

<sup>4</sup> a definition of "maximum transshipment capacity" has been discussed by stakeholders but have not reached full consensus.

<sup>5</sup> Petrogas proposed this definition. Particularly, "be solely based upon" raised concerns for Stand.

(3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated types, and volumes of substances to be processed, stored, or transferred in bulk at the facility, the maximum transshipment capacity or the maximum atmospheric crude distillation capacity (as applicable), and the mode of shipment vessels to be loaded or unloaded at the facility. The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

(4) Insurance requirements meet the provisions of WCC Section 22.05.125.

(5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction

(6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to address risks created by expansions.

(7) Plans for stormwater and wastewater releases have been approved.

8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the project applicant has met any federal or state permit or consultation requirements, including tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and

(9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site preparation or construction activities until it has fulfilled that condition

(10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the department can document current capacity levels to ensure that the cumulative thresholds under 20.68.153 have not been exceeded.<sup>6</sup>

## **20.68.200 Prohibited Uses**

.205. New Fossil Fuel Transshipment Facilities; provided that, the following uses of facilities are not prohibited: (i) inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring petroleum products Fossil Fuels during emergency scenarios where contingencies require petroleum products Fossil Fuels to be moved, and (iii) necessary petroleum product Fossil Fuels transfers during turn-arounds or maintenance periods, including bulk storage or transfer facilities for fossil fuels [XXX effective date].

Note: We believe this change would satisfy the concerns expressed by Councilmembers about this provision without functionally changing the intended effect of this provision. As we understand it, any project that meets the codified definition of "New Fossil Fuel Transshipment Facilities" would be prohibited outright, regardless of the three identified activities, but this language serves to clarify that facilities which do not meet that definition would not be prohibited from engaging in these activities to the extent that they do not meet the definition specified in draft WCC 20.97.160.3.

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<sup>6</sup> Criteria (10) could be moved to fit within criteria (3) and/or be duplicated to be clear as to which aforementioned disclosures are the permittee's responsibility to update the county on changes to after approval of a CUP.

We suggest this change on the condition that satisfactory definitions of "refined products and intermediate materials" be added, which we will submit accordingly if this suggestion is accepted by Council.

"Intermediate Materials" refers to refined or partially refined products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other blending components.

We are recommending the term "Fossil Fuels" in place of "petroleum products" in 20.68.205 because a specific definition for Fossil Fuels is already in place within the draft amendments proposal, WCC 20.97.160.2. This definition may also warrant revisions to ensure the intended meaning is appropriately captured. Stakeholders discussed possible changes but have not yet reached consensus. Other definitions may also be worth revisiting in addition to the one below.

## **Definitions**

### 20.97.160.4 Fossil-Fuel Refinery

A "Fossil-Fuel Refinery" means is a facility that receives and converts crude oil Fossil Fuels into products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, intermediate materials and asphalt. Activities that support refineries Fossil Fuel Refinery facility uses include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels, intermediate materials or byproducts, and shipment of those processed materials to downstream customers. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

## **Deletions or substitutions of "Change of Use" terminology:**

SEPA Chapter: 16.08.090 Environmental checklist

E. ... "For any proposed change of use or expansion of facilities pursuant to and in accordance with WCC 20.68.153 that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock, the proponent will provide an expert evaluation or fill out the County's SEPA "Worksheet for Fossil and Renewable Fuel Facilities." ...

### 20.97.052.1 Change of Use [definition]

~~"Change of use" means when a building or occupancy is altered or replaced, for example from manufacturing to office.~~

### 20.74.115 Change of Use of Renewable Fuels Facilities:

~~A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.~~

Note: 20.74.115 would be inoperable as written and otherwise redundant to retain. Existing Fossil Fuel Refineries would already be required to obtain CUPs for increasing their capacity to refine crude oil. It should be clear that a standalone Renewable Fuel facility could not change its use to what is barred in 20.68.200 for new facilities. If that meaning is not unequivocal enough with the above additions included, it should be further clarified in the Prohibited Use section that any existing facility cannot alter itself in such a way that it meets the definition of a new prohibited facility. Moreover, there is no generalized definition of “fossil fuel facilities” in the code, and this clause appears to imply that a Renewable Fuel Refinery or a Renewable Fuel Transshipment Facility could exist separately within the boundary of a Fossil Fuel Refinery, which further convolutes the defined construct of a Refinery being defined as a singular facility containing various interrelated structural units within its complex.

We've sought to remove ambiguities and equivocations of the term “facility” throughout the code amendments to distinguish a cohesive intended meaning. To that end, we have made a point to capitalize all terms that correspond to codified definitions. Any such instance where a specifically defined term is uncapitalized should be understood as an error to be corrected.