From:	Council
To:	Dana Brown-Davis; Lisa Bruner; Cathy Halka
Subject:	FW: Cherry Point Amendments - PDS Comments on Proposed Revisions (Nov 24)
Date:	Wednesday, November 25, 2020 1:53:59 PM

From: Matt Aamot
Sent: Wednesday, November 25, 2020 1:53:55 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; Karen Frakes
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Dear Stakeholder Group:

Thank you for sending PDS a copy of the "Cherry Point Amendments Stakeholder Revisions" submitted to the County Council on Nov. 24, 2020. We appreciate and value the Stakeholder Group's hard work and diligence on this matter. PDS staff has the initial comments on the proposed changes:

General Comments

Generally speaking, we are still concerned about the degree to which proposed regulations are "transparent, accountable and easy to understand" (see our 11/19/2020 e-mail). As mentioned at the Council Committee of the Whole meeting yesterday, we would like the Stakeholder Group to apply the proposed regulations to a number of scenarios or examples to get a sense of whether the Council, PDS, and the Stakeholder Group would interpret the (sometimes complex) regulations in a similar fashion. This would also provide some level of transparency for the public relating to what the proposed regulations might mean for County review of different types of projects. We would appreciate receiving this information in writing.

Specific Comments

We also have the following specific questions/comments on the proposed amendments that we are hoping the Stakeholder Group can address:

Proposed WCC 20.68.153.C – This section requires a conditional use permit for expansion of Fossil Fuel Refineries when, among other things, the expansion:

> Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by County, State or Federal authorities (where

> applicable) as of [XXX effective date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

If a refinery could increase the train shipments without physical improvements (outside the RR R-O-W), would the County have the authority to permit an increase in rail traffic? Or is this preempted by the Federal government? This may initially be a question for industry (is it possible to increase train traffic without physical improvements). If so, it may be prudent to have County's legal counsel review the proposed language.

Conditional Use Criteria – When expansion of Fossil Fuel Refineries (20.68.153) was separated from Fossil Fuel Transshipment Facilities (20.68.154), the approval criteria relating to both .153 and .154 were left hanging (don't appear to have a code citation). It may be cleaner to insert the conditional use criteria under both .153 and .154 so the code citations are clear.

Transshipment by Refineries

The proposal allows transshipment by Fossil Fuel Refineries that, by definition, are not Fossil Fuel Transshipment Facilities.

Proposed WCC 20.68.068(24) allows the following as a permitted use (as long as none of the conditional use thresholds are met):

> Storage Tanks, provided that the County decision maker shall include in any approval of an application for storage tanks at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or will not be used for transshipment.

Proposed WCC 20.68.153(B) requires a conditional use permit for a Fossil Fuel Refinery expansion if, among other things, it:

> Cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.2.

Proposed conditional use criterion 11 states:

(11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used for transshipment.

The fact that Fossil Fuel Refineries may transship fossil fuels raises the question of how much they can transship without processing on site? How would it be viewed if an existing Refinery imported exactly the same amount of crude oil but, instead of refining all of this crude oil on site, proposed to ship out some of it? It can be assumed that this would be a permitted use, if the Maximum Transshipment Capacity is increased by less than 10,000 barrels/day. If Maximum Transshipment Capacity is increased by more than 10,000 barrels/day of crude oil, it would require a conditional use permit. But at what point would it be considered a New Fossil Fuel Transshipment Facility that is prohibited under proposed WCC 20.68.205? Would it be when 25%, 50%, or some other % of this crude oil is transshipped (instead of refined on site)?

Proposed WCC 20.97.230.4 – Clause # 1 of the definition of Maximum Transshipment Capacity is somewhat complex. The scenarios will give us a sense of the meaning of this definition, but ultimately, an engineer will have to determine whether clause # 1 is met in any given case (same for MACDC). We would like some examples of what improvements/activities, other than changes to the DNR lease limiting the number of vessels/year, would constitute an increase in the Maximum Transshipment Capacity?

Thank you for considering our input.

Sincerely,

PDS Staff