

Proposed Modifications

Exhibit A – Comprehensive Plan Amendments

COMMISSIONER MABERRY PROPOSAL (see attached): Amend Whatcom County Comprehensive Plan Policy 2CC-11 (Chapter 2), as shown in red below. The language in blue is in the existing Comprehensive Plan. The Council proposal would delete it. The Maberry amendment would re-instate it.

Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:

- Honor any existing vested rights or other legally enforceable agreements for an additional dock/ pier; Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
- ~~Update the~~ Optimally implement the Whatcom County Shoreline Master Program ~~to conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve natural character, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

COMMISSIONER MABERRY PROPOSAL: Amend Whatcom County Comprehensive Plan Policy 2CC-17 (Chapter 2), as shown in red below:

~~Policy 2CC 16 shall not limit~~ Allow existing operations or maintenance of existing fossil-fuel related facilities operating at levels as of March 1, 2017 [XXX, 20202019] with limited expansions subject to environmental review, greenhouse gas emission analysis mitigation, and conformance with Policies 2CC-3 and -11.

Exhibit B – SEPA Code Amendments

COMMISSIONER MABERRY PROPOSAL:

1. **Delete** proposed WCC 16.08.090(E), relating to the “Evaluation/Worksheet for Fossil and Renewable Fuel Facilities” (Exhibit B, pp. 1-2); and
2. **Delete** proposed WCC 16.08.160(F), the “Specific Environmental Policies” relating to Air Quality & Climate and Plants & Animals (Exhibit B, pp. 4-6).

COMMISSIONER MABERRY PROPOSAL: *Amend WCC 16.08.160.E, in the “Substantive Authority” section of the SEPA Code, as shown in red below:*

E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific adverse environmental impact has been **adequately** addressed by an existing rule or law of another agency with jurisdiction, the County shall consult orally or in writing with that agency and **may expressly** defer to that agency. In making this deferral, the County shall base or condition its project approval on compliance with these other existing rules or laws. ~~In deciding whether these regulations provide sufficient impact mitigation, the County shall consult orally or in writing with the responsible federal, state or other agency with jurisdiction and environmental expertise and may expressly defer to that agency. The County shall base or condition its project decision on compliance with these other existing regulations, rules, laws, or adopted enforceable plans.~~ **The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address a particular impact of a project.**

COMMISSIONER MABERRY PROPOSAL: Amend WCC 16.08.175, the “Purpose of this article and adoption by reference” section of the SEPA Code, as shown in red below:

C. "Facility Emissions" means ~~are~~ greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or renewable fuel transshipment facilities based upon:

~~(1) 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~~

~~(2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and~~

~~(3) 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.~~

Exhibit C – Zoning Code Amendments

COMMISSIONER MABERRY PROPOSAL: *Amend WCC 20.68.010, the “Purpose” section of the Heavy Impact Industrial District, as shown in red below:*

20.68.010 Purpose.

The purpose of the Heavy Impact Industrial District is to implement the Heavy Impact Industrial land use designation of the Comprehensive Plan by supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses. Heavy industrial uses are primarily related to producing, distributing and changing the form of raw materials; whereby, product demand and industrial employment are predominately basic, that is, serving nonlocal markets. In addition, the purpose of this district is to encourage the siting of industrial uses which will optimize the limited resource of land available for heavy impact industry. A further purpose of this district is to minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof; as enabled through the district’s performance and development standards, and the buffer and setback requirements. Nothing in this Chapter is intended to unnecessarily interfere with the ongoing operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements and regulatory compliance projects. (Ord. 98-083 Exh. A § 66, 1998).

COMMISSIONER MABERRY PROPOSAL: *Amend proposed WCC 20.68.153, in the “Conditional uses” section of the Heavy Impact Industrial District, as shown in red below:*

~~.153 Expansion of existing legal fossil or renewable fuel refineriesy operations and the primary manufacturing of products thereof or expansion of existing legal fossil or renewable fuel transshipment facilities. For purposes of this section, an expansion is any fossil fuel refinery and/or transshipment facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following thresholds:~~

- 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
- Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000 gallons) per day; or
- Cumulatively increases the maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day; or
- Cumulatively increases fossil fuel storage tank capacity of the facility by more than 200,000 barrels (or 8,400,000 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing.

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, except for the criteria on uses (provisions 1-4);
- (2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;
- (3) The applicant has documented ~~to the satisfaction of the County decision maker~~ all of the anticipated ~~sources~~, types, and volumes of substances transferred in bulk 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) Prior to issuance of any site preparation or construction permits, and prior to occupancy and/or operation of the expanded facility, the applicant shall provide verifiable documentation to the county that the facility has been constructed consistent with any applicable federal or state requirements, including but not limited to water rights and use.~~
- (8) Plans for stormwater and wastewater releases have been approved.

(9) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for any piers or aquatic lands improvements. To the extent practicable the County shall support enforcement of any federal or state permit requirements addressing tribal treaty rights or the provisions of the Magnuson Amendment., ~~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 properly addressing tribal treaty rights or the provisions of the Magnuson Amendment through state and federal permitting decisions; and~~

~~(10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and~~

~~(11) Demonstration that the proposal will retain or add living wage jobs or contribute to the Whatcom County economy.~~

COMMISSIONER MABERRY PROPOSAL: *Amend proposed WCC 20.88.100(3), in the “Major project permits” section of the code, as shown in red below. The language in blue is in the existing Code. The Council proposal would delete it. The Maberry amendment would re-instate it.*

.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 hearing examiner’s recommendation and county council’s decision 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.

(3) Will be consistent with applicable laws and regulations.

~~(3) Will obtain, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the “Magnuson Amendment” under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act,~~

~~including but not limited to a federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, prior to issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project permit.~~

(4) Will not substantially interfere with the operation of existing uses.

(5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.

(6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

(7) Will be appropriately responsive to any EIS prepared for the project.

COMMISSIONER MABERRY PROPOSAL: Amend proposed WCC 20.97.160.3, in the Definitions Chapter of the Zoning Code, as shown in red below.

20.97.160.3 Fossil or renewable fuel transshipment facilities.

“Fossil or Renewable Fuel Transshipment Facility” is the storage of liquid fossil fuels in Whatcom County for the purpose of shipment to a destination outside of Whatcom County without value added processing. ~~a facility engaging in the process of off-loading of fossil or renewable fuel materials, refined or unrefined, refinery feedstocks, products or by products, from one transportation facility and loading it onto another transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.~~

NOTES: Renewable fuel transshipment facilities are allowed by the proposed amendments, so should be included in the definitions. The last sentence relating to Small Fossil or Renewable Storage and Distribution Facilities was intended to ensure that small businesses did not come under this definition (and the associated permitting requirements).

INDUSTRY PROPOSAL - Western States Petroleum Association (WSPA) e-mail dated 2/18/2020: Amend WCC 20.97, the “Definitions” section of the Zoning Code, by adding the following definition:

20.97.446 Value added processing.

“Value added processing” is the modification of material through:

1. Processing to meet product specifications and/or local, regional, national, or international standards and regulations;
2. Processing to meet shipment or pipeline specifications, standards and regulations;
3. Alteration of physical or chemical properties or conditions;
4. Removal of impurities;
5. Blending;
6. Refining;
7. Vapor pressure control or adjustment; or
8. Other similar modifications of material;

Provided, however, value added processing does not include export of unrefined crude oil which is not processed or consumed at Cherry Point.

NOTE: Recodify existing WCC 20.97.446 to WCC 20.97.446.1.

Rationale for Change Above: The Planning Commission approved motions to amend proposed WCC 20.68.153 (Exhibit C, p. 15) relating to expansion of existing legal fossil fuel refineries or transshipment facilities. The motions further define what activities constitute an “expansion” that requires a conditional use permit. One of the motions was to require a conditional use permit for development that:

Cumulatively increases fossil fuel storage tank capacity of the facility by more than 200,000 barrels (or 8,400,000 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing.

At that time, it was understood that industry would submit a proposed definition of “value added processing.” This proposed definition was submitted in an e-mail from Holli Johnson of the Western States Petroleum Association dated February 18, 2020.

Exhibit D – Project Permit Procedure Code Amendments

COMMISSIONER MABERRY PROPOSAL: *Amend WCC 22.05.120, in the “Recommended and final decisions Type IV applications” section of the Project Permit Procedures code, as shown in red below:*

(6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by the hearing examiner, the recommendations of the hearing examiner and the criteria set forth ~~in county code applicable state laws and regulations,~~ county code, the county comprehensive plan if applicable, and the county shoreline management program, including ~~but not limited to~~ compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the county code, and the county’s adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

Notes on Commissioner Maberry's Proposed Changes (attached, and previously forwarded to the Planning Commission in an e-mail of 3/4/2020)

- 1. Line numbers referenced in Commissioner Maberry's comments are from the February 13, 2020 Planning Commission packet (rather than the most recent packet for the June 25, 2020 meeting).*
- 2. Questions or statements that do not suggest proposed language changes are not included in this document.*