

| <b>CLEARANCES</b>  | <b>Initial</b> | <b>Date</b>    | <b>Date Received in Council Office</b> | <b>Agenda Date</b> | <b>Assigned to:</b> |
|--------------------|----------------|----------------|--|--------------------|---------------------|
| Originator:        | Donovan        | 4/17/2018      |  | 4/24/2018          | SCOTW/Council       |
| Division Head:     |                |                |  |                    |                     |
| Dept. Head:        |                |                |  |                    |                     |
| Prosecutor:        | <i>RNF</i>     | <i>4/19/18</i> |  |                    |                     |
| Purchasing/Budget: |                |                |  |                    |                     |
| Executive:         |                |                |  |                    |                     |

**TITLE OF DOCUMENT:**

Res. requesting Executive draft legislation re Cherry Point UGA permits

**ATTACHMENTS:**

|   |  |
|---|--|
| SEPA review required?    (    ) Yes    (    ) NO<br>SEPA review completed?    (    ) Yes    (    ) NO | Should Clerk schedule a hearing?    (    ) Yes    (    ) NO<br>Requested Date: |
|---|--|

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)**

Resolution requesting the County Executive direct staff to draft legislation relating to processing and approval of major project permits in the Cherry Point Urban Growth Area

**COMMITTEE ACTION:**

4/24/2018: Amended and forwarded to Council for approval

**COUNCIL ACTION:**

4/24/2018: Substitute Approved 5-1, Brenner opposed, Byrd absent, Resolution 2018-015

**Related County Contract #:**

**Related File Numbers:**

**Ordinance or Resolution Number:**  
Res.2018-015

**Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).**

RESOLUTION NO. 2018-015

**REQUESTING THE COUNTY EXECUTIVE DIRECT STAFF TO DRAFT  
LEGISLATION RELATING TO PROCESSING AND APPROVAL OF MAJOR PROJECT  
PERMITS IN THE CHERRY POINT URBAN GROWTH AREA**

**WHEREAS**, on August 9, 2016, the Whatcom County Council adopted Ordinance 2016-031, an emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

**WHEREAS**, on September 27, 2016, March 21, 2017, and September 26, 2017, the Whatcom County Council adopted interim measures (Ordinance 2016-039, Ordinance 2017-011, and Ordinance 2017-049) prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

**WHEREAS**, on February 27, 2018, Whatcom County Council extended the interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point Urban Growth area the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point; and

**WHEREAS**, the interim moratoria are intended to provide time for the County to assess how to improve the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point Urban Growth to better protect public health, safety, transportation, and the environment; and

**WHEREAS**, the County Council previously adopted Title 20-Zoning of Whatcom County Code which regulates land use within unincorporated areas of Whatcom County; and

**WHEREAS**, the County Council adopted the Whatcom County Comprehensive Plan on May 20, 1997, which contains goals, objectives, and policies regarding land use compatibility and environmental considerations; and

**WHEREAS**, the Whatcom County Council recently updated the Whatcom County Comprehensive Plan as required by Revised Code of Washington (RCW) 36.70A; and

**WHEREAS**, during the Comprehensive Plan review process the Whatcom County Council received many individual public comments on fossil fuel transshipment, transport, and transfer from Cherry Point related to the protection of the safety and health of Whatcom County's environment, economy, and residents; and

1           **WHEREAS**, the County recognizes that the existing refineries have for decades been  
2 significant shippers of refined fossil fuels such as jet fuel and calcined coke used in  
3 manufacture of aluminum while providing substantial local employment; and  
4

5           **WHEREAS**, multiple trains carrying crude oil from the Bakken formation moving  
6 through the United States and Canada have derailed and exploded causing damage to  
7 property and the environment; and  
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9           **WHEREAS**, on July 6, 2013, a single derailment in Quebec caused 47 fatalities and  
10 destroyed half of the downtown of Lac-Megantic, leaving a town heavily contaminated with  
11 benzene, which are major reasons that local zoning regulations must be improved; and  
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13           **WHEREAS**, a unit train carrying Bakken crude traveling through Mosier, Oregon, on  
14 June 3, 2016, derailed and exploded causing damage to property and to the Columbia River,  
15 demonstrating that recently adopted state and federal policies and corporate investment  
16 intended to reduce the risks associated with oil by rail have proven insufficient to protect  
17 communities along the rail corridor; and  
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19           **WHEREAS**, the Washington State Department of Natural Resources has designated  
20 waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure  
21 long-term protection of this unique aquatic environment; and  
22

23           **WHEREAS**, the United States recently lifted a ban on the export of crude oil from  
24 the country, increasing pressure on deep water ports such as Cherry Point to develop to  
25 increase the amount of fuels transported through Whatcom County that arrive at Cherry  
26 Point; and  
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28           **WHEREAS**, existing refineries at Cherry Point have recently increased their ability to  
29 accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;  
30 and  
31

32           **WHEREAS**, existing and proposed pipeline facilities have increased, or proposed to  
33 increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point;  
34 and  
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36           **WHEREAS**, expansion of existing facilities for purposes receiving and shipping fossil  
37 fuels into and out of Cherry Point will increase the transport of dangerous fuels through our  
38 community and increase the risk of possible harmful emissions, train derailment, spills,  
39 explosions, and the fallout of these will pose serious threats to the community's public  
40 health and safety, and to the local environment; and  
41

42           **WHEREAS**, pursuant to the Washington State Constitution, the general police  
43 powers granted to counties empower and authorize Whatcom County to adopt land use  
44 controls to provide for the regulation of land uses within the County and to provide that  
45 such uses shall be consistent with applicable law; and  
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47           **WHEREAS**, in 2017, the Whatcom County Council entered into a contract with  
48 Cascadia Law Group for assistance in examining existing County laws and developing  
49 recommendations for recommendations about how the County may further limit the  
50 negative impacts on public safety, transportation, the economy, and environment from  
51 crude oil, coal, liquefied petroleum gases, natural gas, and other fuels transported through  
52 Whatcom County to Cherry Point and shipped from the Cherry Point UGA above levels in  
53 existence as of March 1, 2017; and  
54

1           **WHEREAS**, in 2018, a Cascadia Law Group study provided guidance on the County's  
2 legal rights, responsibilities, and limitations regarding interpretation and application of  
3 project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County  
4 Code; and

5  
6           **WHEREAS**, the above study will assist in developing proposed Comprehensive Plan  
7 amendments and associated code and rule amendments for Council consideration, and

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9           **WHEREAS**, Whatcom County Council finds the public interest is best protected by a  
10 permitting process for major projects at Cherry Point that provides the County clear  
11 authority for requiring mitigation of project impacts on the community and the environment,  
12 and that provides clear requirements that project proponents assume financial responsibility  
13 for potentially hazardous activities that present risks to the community; and

14  
15           **WHEREAS**, the Cascadia study determined that zoning codes of other local  
16 jurisdictions provide examples of discretionary decision-making criteria; and

17  
18           **WHEREAS**, in RCW 90.58.020 the legislature found that the shorelines of the state  
19 are among the most valuable and fragile of its natural resources and that there is great  
20 concern relating to their utilization, protection, restoration, and preservation. In addition it  
21 found that increasing pressures of additional uses are being placed on the shorelines, and  
22 that that unrestricted construction on the privately owned or publicly owned shorelines of  
23 the state is not in the best public interest, and that local governments play a role in  
24 preventing harm to the state's shorelines; and

25  
26           **WHEREAS**, WAC 173-27-160 states that conditional use permits provide local  
27 governments flexibility in the application of use regulations in a manner consistent with the  
28 policies of RCW 90.58.020, and that special conditions may be attached to the permit by  
29 local government to prevent undesirable effects of the proposed use; and

30  
31           **WHEREAS**, WAC 197-11-660 states that proposals may be conditioned or denied  
32 under the State Environmental Protection Act to mitigate the environmental impact, subject  
33 to limitations, and that proposal can be denied if they are likely to result in significant  
34 adverse environmental impacts that cannot be mitigated.

35  
36           **NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that the  
37 Council requests the County Executive have Planning staff draft code amendments to the  
38 County's Major Project Permit Review Process, and other related zoning code, that  
39 strengthen the discretionary authority of County staff, and the County Council, with respect  
40 to processing and approving major project permits, and with respect to mitigating the  
41 impacts of proposed major projects, and with respect to mitigating changes in existing uses,  
42 in the Cherry Point UGA.

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44           **BE IT FURTHER RESOLVED** that Whatcom County Council requests proposals for  
45 code and SMP amendments that protect public health, safety, and the environment, and  
46 that provide clear discretionary standards for accepting and rejecting permits. These  
47 include:

- 48  
49           **1) Require Conditional Use Permits.** Require conditional land use permits, and  
50 conditional shoreline permits (per WAC 173-27-160), for certain heavy industry uses, such  
51 as new petroleum tank farms, new fossil fuel distribution facilities, additional piers, new on-  
52 site rail yards, new facilities that transfer fuel from rail cars, new rail car storage facilities,  
53 new coal storage facilities, new coal transfer facilities, and new facilities that transfer fuels

1 from permitted or proposed facilities across existing or proposed piers. The purpose of such  
2 conditional use permits is:

3  
4 a) To provide a process that allows flexibility in the application or regulations,  
5 consistent with RCW 90.58.020, and to allow that conditions be attached by the County to  
6 prevent undesirable effects of the propose use and to assure consistency of the project with  
7 the goals in the County Comprehensive Plan, County SMP, and with treaty rights, policies of  
8 Washington State DNR, the Army Corps of Engineers, and the Cherry Point Aquatic Reserve  
9 Plan, and

10  
11 b) To ensure the project will cause no significant adverse effects to the shoreline, to  
12 the environment, to air emissions, to traffic patterns, and that, broadly, the public suffers  
13 no substantial detrimental effect of the cumulative impact of the proposed project, and

14  
15 c) To ensure that any use must demonstrate that it is adequately served by essential  
16 public facilities such as highways, roads, police and fire protection, drainage facilities, water,  
17 sewer, bridges required for rail crossings, and waste disposal, and that the agents proposing  
18 the use shall be able to adequately provide such services.

19  
20 d) To ensure the proposed facility will not create excessive additional requirements,  
21 at public cost, for public facilities and services and that the applicant provide mitigation for  
22 added public costs, including investment into emergency response capacity, and that  
23 commit the applicant to compensate Whatcom County and associated jurisdictions for costs  
24 associated with emergency responses, clean-up, mitigation, and such events that are  
25 associated with transporting materials, by the applicant and by third parties, to and from  
26 the permitted facility.

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28 **2) Require Master Site Planning** provisions for major project permits. This would  
29 include

30 a) requirements that applicants submit a fee (up front or in increments) covering the  
31 County's EIS review costs;

32  
33 b) requiring a Development Agreement that obligates the developer to pay costs  
34 (given a rational nexus) of all traffic, public safety, and environmental impact mitigation  
35 identified in the SEPA review; and identified in the discretionary project review by staff and  
36 County Council, should a Master Site Plan or conditional use be approved;

37  
38 c) requiring mitigating conditions proportional with the impact of the EIS;

39  
40 d) amending code to give the Planning Department and County Council the discretion  
41 to require a bond or insurance policy (or combination of) to ensure that all development  
42 commitments for transportation mitigation, public safety mitigation, environmental  
43 mitigation, and other mitigation are followed through to completion and that safety hazards  
44 to the community are insured against.

45  
46 **3) Review and revise SEPA policy.** Review, and if needed to accomplish code  
47 changes to advance the goals of conditional use and enhanced discretionary authority of the  
48 county staff and County Council. SEPA provides that a project may be denied after an EIS  
49 is completed where it is decided that adverse impacts cannot be mitigated. Code and/ or  
50 SMP and / or Comp. Plan language must provide a clear basis for accepting proposals with  
51 conditional requirements, and a clear basis for denial.

1 4) **Review and Revise Provisions for Change of Use and Occupancy.** Changes  
2 in use of existing facilities should be consistent with current code, and with code revisions  
3 requested above. Changes in use or occupancy should not result in a substantive functional  
4 change in the initial permitted use of an existing facility without being subject to  
5 discretionary authority and conditional requirements per, points 1, 2 & 3 as listed above.  
6 Code should allow staff approval of changes or occupancy or use where new uses remain  
7 consistent with current and with code adopted per this resolution. Code should also provide  
8 for a clear obligation to review and properly address, and mitigate, impacts of changes in  
9 use or occupancy of existing facilities.

10  
11 **BE IT FURTHER RESOLVED** that:


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- 14 • The Whatcom County Council will work with staff to develop the proposed  
15 Comprehensive Plan and development regulation amendments. The proposed  
16 amendments will be reviewed by the Council's Committee of the Whole, which  
17 will provide for public comment.
  - 18 • The proposed amendments will undergo SEPA review.
  - 19
  - 20 • The Whatcom County Planning Commission will hold a town hall meeting and  
21 a public hearing prior to issuing recommendations on the proposed  
22 amendments.
  - 23
  - 24 • The Whatcom County Council will hold a public hearing prior to adopting an  
25 ordinance relating to the amendments.
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27 **APPROVED** this 24<sup>th</sup> day of April, 2018.

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29 ATTEST

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33 Dana Brown Davis, Clerk of the Council

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WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

  
Rud Browne, Council Chair

APPROVED AS TO FORM:

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Civil Deputy Prosecutor