

**Petrogas**  
West LLC

July 9, 2019

**VIA ELECTRONIC MAIL**

Whatcom County Council  
County Courthouse  
311 Grand Avenue, Suite 105  
Bellingham, WA 98225

Distribute to all CM's

FILE UNDER AB 2019-339  
DATE RECEIVED: July 9, 2019  
SUBMITTED BY: Andrew Gamble

COUNCIL MEETING  
 \_\_\_\_\_ COMMITTEE  
EXHIBIT: I

**Re: Petrogas West LLC's Comments on AB2019-339 Proposed Seventh Extension of Whatcom County Unrefined Fossil Fuels Interim Moratorium**

Dear Council Members:

Petrogas West, LLC ("Petrogas") submits this letter for the public hearing on July 9, 2019 regarding AB2019-339. On several previous occasions Petrogas has addressed this Council, and the Whatcom County Planning Commission, to express its concerns that AB2019-339's predecessor moratoria put the safety and health of Petrogas' employees and Whatcom County residents at greater risk than without the moratoria and unfairly and improperly burden Petrogas' business. After a process that has lasted nearly three years, and appears destined to last for an undetermined amount of time into the future, AB2019-339 is neither justified by existing or near-term conditions nor effective at producing policies or ordinances that protect the Whatcom County environment, economy, and residents.

**Petrogas' Business at Ferndale**

Petrogas has owned the storage and distribution for bulk shipments of liquid petroleum gases in the form of propane, butane, and iso-butane (collectively "LPGs")<sup>1</sup> at Ferndale since March 2014. Chevron and its predecessors constructed and operated the terminal for approximately 50 years before Petrogas acquired it. An affiliate, Petrogas Pacific LLC, purchased the wharf and pier adjacent to the terminal from Intalco Aluminum Corp. and has been operating that facility under the terms of the Washington Department of Natural Resources Aquatic Lands Lease No. 20-

<sup>1</sup> As Petrogas has advised the Council on several occasions, the continued use of the phrase in the moratoria, including AB2019-339, of "unrefined fossil fuels" to include LPGs is incorrect. LPGs are a *refined* product produced one of two ways: 1) removing propane and butane from raw natural gas; purifying it to remove water, carbon dioxide, nitrogen, and other impurities; and liquefied through refrigeration; or 2) refining crude oil by extracting LPGs from the top of the distillation tower during the refining process, and further separation into propane and butane components. Under no circumstances are LPGs "unrefined fossil fuels."



A08488. The term of the lease runs through 2033. Petrogas shares the wharf with Intalco and together are limited by the DNR lease to 48 vessel dockings per year.

The Cherry Point terminal has two above-ground storage tanks, along with rail, tank car, and truck facilities for unloading LPGs, and pipeline connections to the wharf for loading vessels. Petrogas has 30 full-time employees at the Terminal, all of whom are earning above-average wages and contributing significantly to the Whatcom County economy. In addition, Petrogas has had upwards of 50 contractors at the terminal performing maintenance, remedial work, and upgrades to the facility. Petrogas has spent significant amounts on initiatives at the terminal and has been committed to being a significant contributor to the local economy for many years to come.

### **Petrogas' Concerns Regarding Repeated Extensions of the Moratorium**

The continued extension of the moratorium poses serious health, safety and environmental concerns for Petrogas. Our company has a mandate to maintain the highest levels of environmental stewardship, and we operate our Ferndale Terminal in full compliance with all permits, including air emissions and stormwater management. By restricting permits to only activities that do not result in increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point, it is not clear what, if any, ongoing health, safety, and environmental activities Petrogas can perform that would be outside the scope of the moratorium. As result, Petrogas is at risk of the moratorium being used to reject a project on the grounds that it would "increase capacity," even if the primary purpose of the project were to ensure that the facility continues to operate at the highest level to protect the safety of our employees, contractors, and neighbors. This is a result that would be contrary to the Council's repeated expressions of concern for the safety of residents, and contrary to Petrogas' commitment to this community.

Furthermore, if adopted, AB2019-339 would represent the seventh extension of an "interim" moratorium on this issue. While RCW 36.70.790 allows for adoption of interim zoning controls, and RCW 36.70.795 provides for a temporary moratorium of six months' duration, subject to renewal after a public hearing and findings of fact, an interim zoning requires an "emergency." *See, Peyote Canyon, LLC v. County of Benton*, 200 Wn. App. 1001, 2017 WL 3189719 at \*5 (Wn. App., Div. III, July 27, 2017). The definition of an "emergency" is "an unexpected, serious occurrence or situation urgently requiring prompt action." WEBSTERS II NEW RIVERSIDE UNIVERSITY DICTIONARY, at 427 (1984); *see also, State ex. rel. Gray v. Martin*, 29 Wn.2d 799, 806, 189 P.2d 637 (1948) ("Purpose of emergent legislation is to enable the legislative body to provide immediate action in order to prevent or remedy a condition or situation which is such a nature that it demands immediate attention when to postpone such action would result in serious injury or damage to the people, government, or community directly concerned.")

In the nearly three years since the Council's adoption of the first moratorium, on August 9, 2016, the Planning Commission and the Council have reviewed several iterations of amendments to the Cherry Point UGA portion of the Comprehensive Plan, engaged an outside law firm to study and

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make recommendations to amendments to the Comprehensive Plan and Zoning Code, and are proposing to engage in still further reviews that have no set timeline for completion. While Petrogas does not dispute the seriousness of the issues or the Council's sincerity in addressing them, the mere fact that another moratorium is proposed nearly three years after the first of six preceding moratoria, and after protracted discussions, indicates that a) there is no unexpected, serious situation that urgently requires prompt action, and b) the issues are complex and cannot be resolved with immediate action.<sup>2</sup> Further extension of the moratorium is not justified, is unreasonable, and not appropriate to address the issues involved.

RCW 90.58.590, giving local governments authority to adopt moratoria under the Shoreline Management Act, limits such moratoria to two six-month extensions. It is inescapable that portions of the existing and proposed moratoria involve Shoreline Management Act issues, particularly to the extent they affect or impair Petrogas' use of the wharf and pier. Consequently, since the expiration of the second moratorium, Whatcom County's extensions as to shoreline issues have been contrary to law.

Finally, the moratorium favors export of LPGs produced locally at the expense of those LPGs brought in to Cherry Point. The moratorium has more than an incidental effect on interstate commerce by effectively barring Petrogas, and only Petrogas, from increasing imports of LPG, whether by rail or pipeline, for transshipment out of state. Comments by Council Members with respect to the February 27, 2018 extension of the moratorium indicated the Council is well aware of this discriminatory effect, but nevertheless adopted the moratorium then and appears to be ready to continue this discrimination in AB2019-339. In addition, the moratorium intrudes on matters that are preempted by federal law, such as those concerning railroad transportation and interstate pipelines.

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<sup>2</sup> The County's recitation of the facts supporting the moratorium are, in fact, becoming dated and belie any real "emergency." For example, the County's update of the Comprehensive Plan occurred in 2016, except for the Cherry Point UGA portion. The Mosier, OR train derailment occurred in June 2016, while the U.S. ban on export of crude oil, was lifted in October 2015.

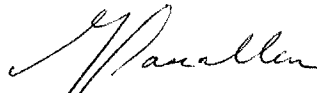
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Petrogas respectfully urges the Whatcom County Council to allow the current moratorium to expire without further renewal. Petrogas pledges that it is ready, willing, and able to work with the Council and staff to address the issues raised throughout this process to achieve a solution that meets the needs of the *all* the residents of Whatcom County.

Sincerely,

PETROGAS WEST LLC



GAVIN CARSCALLEN  
GENERAL COUNSEL