

ORDINANCE NO. _____

IMPOSING AN 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

WHEREAS, on July 12, 2016, the County received a letter from Chairman Ballew of the Lummi Business Council which included the statement that they "hope that the amendments to the Comprehensive Plan not unfairly impact the current employers within Cherry Point."; and

WHEREAS, the Whatcom County Council previously adopted Title 20 zoning code which regulates land use within unincorporated areas of Whatcom County; and

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

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

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

WHEREAS, the refining of fossil fuels at Cherry Point provides high wage jobs which could be lost if the existing refineries were converted to crude oil export facilities; and

WHEREAS, the Whatcom County Council supports the development of Renewable Fuels Facilities and Transshipment Facilities within the CP District; and

WHEREAS, multiple trains carrying crude oil from the Bakken formation moving through the United States and Canada have derailed and exploded causing damage to property and the environment, one derailment caused significant fatalities, which is the reason regulations must be improved; and

WHEREAS, a unit train carrying Bakken crude traveling through Mosier, Oregon, on June 3, 2016, derailed and exploded causing damage to property and the Columbia River, demonstrating that recently adopted state and federal policies and corporate investment intended to reduce the risks associated with oil by rail have proven insufficient to protect communities along the rail corridor; and

WHEREAS, the Washington State Department of Natural Resources has designated waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure long-term protection of this unique aquatic environment; and

1 **WHEREAS**, the United States recently lifted a ban on the export of crude oil from
2 the country, increasing pressure on deep water ports such as Cherry Point to develop into
3 crude export terminals; and
4

5 **WHEREAS**, existing refineries at Cherry Point have recently increased their ability to
6 accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;
7 and
8

9 **WHEREAS**, existing and proposed pipeline facilities have increased, or proposed to
10 increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point;
11 and
12

13 **WHEREAS**, Title 20 currently does not explicitly prohibit transshipment, transport,
14 and transfer of unrefined fossil fuels and construction of infrastructure to facilitate
15 expanded shipment of unrefined fossil fuels not to be processed at Cherry Point; and
16

17 **WHEREAS**, according to the June 27, 2016, Land Capacity Analysis report produced
18 by Planning and Development Services, Cherry Point contains only 1,072.6 acres of
19 developable land that is zoned Heavy Impact Industrial (HII) for the purposes of "supplying
20 a reasonable amount of land, commensurate with demand, for the location and grouping of
21 heavy impact industrial uses" and to "minimize the scope of impacts generated within the
22 HII District and to provide protection for nonindustrial districts situated outside thereof..."
23 (WCC 20.68.010); and
24

25 **WHEREAS**, expansion of existing facilities for purposes of shipping unrefined fossil
26 fuels not to be processed or consumed at Cherry Point will increase the transport of
27 dangerous fuels through our community and increase the risk of possible derailment, spills,
28 explosions, and the fallout will pose a serious threat to the community; and
29

30 **WHEREAS**, pursuant to the Washington State Constitution, the general police
31 powers granted to counties empower and authorize Whatcom County to adopt land use
32 controls to provide for the regulation of land uses within the County and to provide that
33 such uses shall be consistent with applicable law; and
34

35 **WHEREAS**, on August 9, 2016, the Council adopted Ordinance 2016-031, an
36 emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and
37 processing of new applications for conversion of land or water, new building or structure
38 permits, or other County permits or authorizations in the Cherry Point Urban Growth Area
39 for new or expanded facilities whose purpose is to facilitate the increased shipment of
40 unrefined fossil fuels not to be processed or consumed at Cherry Point; and
41

42 **WHEREAS**, the Council adopted interim measures on September 27, 2016
43 (Ordinance 2016-039), March 21, 2017 (Ordinance 2017-011), September 26, 2017
44 (Ordinance 2017-049), February 27, 2018 (Ordinance 2018-007), August 8, 2018
45 (Ordinance 2018-044), January 29, 2019 (Ordinance 2019-010), July 9, 2019 (Ordinance
46 2019-049), December 3, 2019 (Ordinance 2019-083), June 2, 2020, (Ordinance 2020-030),
47 and November 24, 2020 (Ordinance 2020-069), prohibiting the filing, acceptance, and
48 processing of new applications for conversion of land or water, new building or structure
49 permits, or other County permits or authorizations in the Cherry Point Urban Growth Area
50 for new or expanded facilities whose purpose is to facilitate the increased shipment of
51 unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the
52 applications:
53

- 54 1. Were filed and complete prior to the effective date of the ordinance and vested
55 pursuant to Washington statutes;
56

- 1 2. Were for building permits for remodels, maintenance, or repairs of existing
2 structures where no increased capacity for shipping unrefined fossil fuels not to be
3 processed or consumed at Cherry Point would result; or
4
5 3. Were necessary to protect health and safety of the community; and
6

7 **WHEREAS**, these interim measures were necessary to allow time for the Council to
8 work with staff and Cascadia Law Group to develop proposed amendments to the
9 Comprehensive Plan and zoning code to address risks to public health, safety, and the
10 environment associated with under-regulated expansion of fossil fuel facilities at Cherry
11 Point; and
12

13 **WHEREAS**, on August 8, 2019, the Council approved Resolution 2019-037,
14 forwarding proposed Cherry Point Urban Growth Area Comprehensive Plan and zoning code
15 amendments to the Whatcom County Planning Commission for review and recommendation;
16 and
17

18 **WHEREAS**, on September 12, 2019, the Planning Commission hosted a town hall
19 meeting to provide the public an opportunity to speak on the Council's proposed
20 amendments; and
21

22 **WHEREAS**, on September 26, October 10, October 24, November 14, and December
23 12, 2019, and January 16, January 30, February 27, June 25, and July 9, 2020, the
24 Planning Commission held work sessions to discuss the Council's proposed amendments and
25 formulate recommendations; and
26

27 **WHEREAS**, on August 13, 2020, the Planning Commission held a public hearing and
28 issued final recommendations on the proposed amendments.
29

30 **WHEREAS**, the Planning Commission considered public comments and input from a
31 joint industry/environmental stakeholder group in the review process; and
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33 **WHEREAS**, the County Council is diligently reviewing the proposed amendments
34 (including holding numerous special meetings to facilitate review) and considering
35 recommendations from a joint industry/environmental stakeholder group;
36

37 **WHEREAS**, the Council further finds that extending the moratorium imposed by
38 Ordinance 2020-069 is necessary for the protection of public health and safety; and
39

40 **WHEREAS**, the Whatcom County Council is scheduled to hold a public hearing on
41 this issue on May 4, 2021, or a later date; and
42

43 **WHEREAS**, the County Council fully recognizes the limits to its authority over
44 transportation of certain goods imposed by federal statutes and the US Constitution, and
45 finds that this action is within its authority;
46

47 **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts
48 the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW
49 36.70A.390
50

51 **BE IT FURTHER ORDAINED** by the Whatcom County Council that an interim
52 moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new
53 applications for conversion of land or water, new building or structure permits, or other
54 County permits or authorizations in the Cherry Point Urban Growth Area for new or
55 expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil
56 fuels not to be processed or consumed at Cherry Point, unless the applications:
57

- 1 1. Were filed and complete prior to the effective date of this ordinance and vested
2 pursuant to Washington statutes;
3
4 2. Are for building permits for remodels, maintenance, or repairs of existing
5 structures where no increased capacity for shipping unrefined fossil fuels not to be
6 processed or consumed at Cherry Point will result; or
7
8 3. Are necessary to protect health and safety of the community.
9

10 **BE IT FURTHER ORDAINED** by the Whatcom County Council that this interim
11 ordinance shall be effective for not longer than six months following its effective date, but
12 may be renewed for one or more six-month periods if subsequent public hearings are held
13 and findings of fact are made prior to each renewal.
14

15 **BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence,
16 clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by
17 any court of competent jurisdiction; such decision shall not affect the validity of the
18 remaining portions of this ordinance, and if the provisions of this ordinance are found to be
19 inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.
20

21 **BE IT FURTHER ORDAINED** that for the purpose of this ordinance the definition of
22 "unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized
23 or not; raw bitumen, diluted bitumen, or syncrude; coal; methane propane, butane, and
24 other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of
25 refinery processes in the Cherry Point UGA; and condensate.
26

27 **BE IT FURTHER ORDAINED** to prevent any misunderstanding the Whatcom
28 County Council affirms that consistent with previous Interim Moratoriums, the refining,
29 storage, blending, and manufacture of renewable fuels shall remain an outright permitted
30 use, unaffected by this Interim Moratorium, subject to the existing provisions of the current
31 County Code.
32

33 **BE IT FINALLY ORDAINED** that for the purpose of this ordinance, the definition of
34 "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail
35 loading and offloading facilities, road spurs, or any other such physical infrastructure
36 intended to receive, transfer, or store unrefined fossil fuels;
37

38 **APPROVED** this _____ day of _____, 2021.
39

40 **ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

41 _____
42 Dana Brown Davis, Clerk of the Council
43

Barry Buchanan, Council Chair
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45
46
47 **APPROVED AS TO FORM:**

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

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49
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51 Approved by Karen Frakes via email / LB
52 Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

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57 Date Signed: _____