

1 **CHANGES FROM INTERIM ORDINANCE ADOPTED**
2 **JUNE 2, 2020, NOTED IN REDLINE/STRIKEOUT**
3
4

5 **PROPOSED BY: _____**
6 **INTRODUCTION DATE: NOVEMBER 10, 2020**
7

8 **ORDINANCE NO. _____**
9

10 **IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE AND PROCESSING OF**
11 **APPLICATIONS AND PERMITS FOR NEW OR EXPANDED FACILITIES IN THE**
12 **CHERRY POINT URBAN GROWTH AREA THE PRIMARY PURPOSE OF WHICH WOULD**
13 **BE THE SHIPMENT OF UNREFINED FOSSIL FUELS NOT TO BE PROCESSED AT**
14 **CHERRY POINT**
15

16 **WHEREAS**, on July 12, 2016, the County received a letter from Chairman Ballew of
17 the Lummi Business Council which included the statement that they "hope that the
18 amendments to the Comprehensive Plan not unfairly impact the current employers within
19 Cherry Point."; and
20

21 **WHEREAS**, the Whatcom County Council previously adopted Title 20 zoning code
22 which regulates land use within unincorporated areas of Whatcom County; and
23

24 **WHEREAS**, the Council adopted the Whatcom County Comprehensive Plan on May
25 20, 1997, which contains goals, objectives and policies regarding land use compatibility and
26 environmental considerations; and
27

28 **WHEREAS**, the Council recently updated the Whatcom County Comprehensive Plan
29 as required by Revised Code of Washington 36.70A; and
30

31 **WHEREAS**, during the Comprehensive Plan review process the Council received
32 many individual public comments on fossil fuel transshipment, transport, and transfer from
33 Cherry Point related to the protection of the health of Whatcom County's environment,
34 economy, and residents; and
35

36 **WHEREAS**, the County recognizes that the existing refineries have for decades been
37 significant shippers of refined fossil fuels such as jet fuel and calcined coke used in
38 manufacture of aluminum while providing substantial local employment; and
39

40 **WHEREAS**, the refining of fossil fuels at Cherry Point provides high wage jobs which
41 could be lost if the existing refineries were converted to crude oil export facilities; and
42

43 **WHEREAS**, the Whatcom County Council supports the development of Renewable
44 Fuels Facilities and Transshipment Facilities within the CP District; and
45

46 **WHEREAS**, multiple trains carrying crude oil from the Bakken formation moving
47 through the United States and Canada have derailed and exploded causing damage to
48 property and the environment, one derailment caused significant fatalities, which is the
49 reason regulations must be improved; and
50

51 **WHEREAS**, a unit train carrying Bakken crude traveling through Mosier, Oregon, on
52 June 3, 2016, derailed and exploded causing damage to property and the Columbia River,
53 demonstrating that recently adopted state and federal policies and corporate investment
54 intended to reduce the risks associated with oil by rail have proven insufficient to protect
55 communities along the rail corridor; and
56

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

4 **WHEREAS**, the United States recently lifted a ban on the export of crude oil from
5 the country, increasing pressure on deep water ports such as Cherry Point to develop into
6 crude export terminals; and
7

8 **WHEREAS**, existing refineries at Cherry Point have recently increased their ability to
9 accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;
10 and
11

12 **WHEREAS**, existing and proposed pipeline facilities have increased, or proposed to
13 increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point;
14 and
15

16 **WHEREAS**, Title 20 currently does not explicitly prohibit transshipment, transport,
17 and transfer of unrefined fossil fuels and construction of infrastructure to facilitate
18 expanded shipment of unrefined fossil fuels not to be processed at Cherry Point; and
19

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

28 **WHEREAS**, expansion of existing facilities for purposes of shipping unrefined fossil
29 fuels not to be processed or consumed at Cherry Point will increase the transport of
30 dangerous fuels through our community and increase the risk of possible derailment, spills,
31 explosions, and the fallout will pose a serious threat to the community; and
32

33 **WHEREAS**, pursuant to the Washington State Constitution, the general police
34 powers granted to counties empower and authorize Whatcom County to adopt land use
35 controls to provide for the regulation of land uses within the County and to provide that
36 such uses shall be consistent with applicable law; and
37

38 **WHEREAS**, on August 9, 2016, the Council adopted Ordinance 2016-031, an
39 emergency ordinance imposing a sixty day moratorium on the filing, acceptance, and
40 processing of new applications for conversion of land or water, new building or structure
41 permits, or other County permits or authorizations in the Cherry Point Urban Growth Area
42 for new or expanded facilities whose purpose is to facilitate the increased shipment of
43 unrefined fossil fuels not to be processed or consumed at Cherry Point; and
44

45 **WHEREAS**, the Council adopted interim measures on September 27, 2016
46 (Ordinance 2016-039), March 21, 2017 (Ordinance 2017-011), September 26, 2017
47 (Ordinance 2017-049), February 27, 2018 (Ordinance 2018-007), August 8, 2018
48 (Ordinance 2018-044), January 29, 2019 (Ordinance 2019-010), July 9, 2019 (Ordinance
49 2019-049), December 3, 2019 (Ordinance 2019-083), and June 2, 2020, (Ordinance 2020-
50 030) prohibiting the filing, acceptance, and processing of new applications for conversion of
51 land or water, new building or structure permits, or other County permits or authorizations
52 in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to
53 facilitate the increased shipment of unrefined fossil fuels not to be processed or consumed
54 at Cherry Point, unless the applications:
55

- 1 1. Were filed and complete prior to the effective date of the ordinance and vested
2 pursuant to Washington statutes;
- 3
- 4 2. Were 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 would result; or
- 7
- 8 3. Were necessary to protect health and safety of the community; and
- 9

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

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

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

24
25 **WHEREAS**, on September 26, October 10, October 24, November 14, and December
26 12, 2019, and January 16, January 30, ~~and~~ February 27, June 25, and July 9, 2020, the
27 Planning Commission held work sessions to discuss the Council's proposed amendments and
28 formulate recommendations (there were no Planning Commission meetings in March, April,
29 or May of 2020 because of the COVID-19 meeting restrictions); and

30
31 **WHEREAS**, on August 13, 2020, the Planning Commission held a public hearing and
32 issued final recommendations on the proposed amendments.

33
34 **WHEREAS**, the Planning Commission considered public comments and input from a
35 joint industry/environmental stakeholder group in the review process; and

36
37 **WHEREAS**, the County Council is diligently reviewing the proposed amendments
38 (including special meetings to facilitate review in the fall of 2020) and considering
39 recommendations from a joint industry/environmental stakeholder group;

40
41 ~~**WHEREAS**, it was anticipated that the Planning Commission would return~~
42 ~~recommended findings and conclusions to the Council in early 2020; and~~

43
44 ~~**WHEREAS**, due to the COVID-19 pandemic and issuance of a stay-at-home order~~
45 ~~by the Washington State Governor, the Planning Commission was required to cancel all~~
46 ~~scheduled meetings until further notice; and~~

47
48 ~~**WHEREAS**, the Planning Commission needs additional time to hold meetings and~~
49 ~~prepare its recommendations; and~~

50
51 ~~**WHEREAS**, the Council finds that extending the moratorium imposed by Ordinance~~
52 ~~2019-083 is necessary to allow adequate time for the Planning Commission to complete its~~
53 ~~work; and~~

54

1 **WHEREAS**, the Council further finds that extending the moratorium imposed by
2 Ordinance ~~2019-083~~ 2020-030 is necessary for the protection of public health and safety;
3 and
4

5 **WHEREAS**, the Whatcom County Council is scheduled to hold a public hearing on
6 this issue on _____, or a later date; and
7

8 **WHEREAS**, the County Council fully recognizes the limits to its authority over
9 transportation of certain goods imposed by federal statutes and the US Constitution, and
10 finds that this action is within its authority;
11

12 **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts
13 the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW
14 36.70A.390
15

16 **BE IT FURTHER ORDAINED** by the Whatcom County Council that an interim
17 moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new
18 applications for conversion of land or water, new building or structure permits, or other
19 County permits or authorizations in the Cherry Point Urban Growth Area for new or
20 expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil
21 fuels not to be processed or consumed at Cherry Point, unless the applications:
22

- 23 1. Were filed and complete prior to the effective date of this ordinance and vested
24 pursuant to Washington statutes;
- 25 2. Are for building permits for remodels, maintenance, or repairs of existing
26 structures where no increased capacity for shipping unrefined fossil fuels not to be
27 processed or consumed at Cherry Point will result; or
28 3. Are necessary to protect health and safety of the community.
29
30

31 **BE IT FURTHER ORDAINED** by the Whatcom County Council that this interim
32 ordinance shall be effective for not longer than six months following its effective date, but
33 may be renewed for one or more six-month periods if subsequent public hearings are held
34 and findings of fact are made prior to each renewal.
35
36

37 **BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence,
38 clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by
39 any court of competent jurisdiction; such decision shall not affect the validity of the
40 remaining portions of this ordinance, and if the provisions of this ordinance are found to be
41 inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.
42

43 **BE IT FURTHER ORDAINED** that for the purpose of this ordinance the definition of
44 "unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized
45 or not; raw bitumen, diluted bitumen, or syncrude; coal; methane propane, butane, and
46 other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of
47 refinery processes in the Cherry Point UGA; and condensate.
48

49 **BE IT FURTHER ORDAINED** to prevent any misunderstanding the Whatcom County
50 Council affirms that consistent with previous Interim Moratoriums, the refining, storage,
51 blending, and manufacture of renewable fuels shall remain an outright permitted use,
52 unaffected by this Interim Moratorium, subject to the existing provisions of the current
53 County Code.
54
55
56

1 **BE IT FINALLY ORDAINED** that for the purpose of this ordinance, the definition of
2 "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail
3 loading and offloading facilities, road spurs, or any other such physical infrastructure
4 intended to receive, transfer, or store unrefined fossil fuels;
5

6 **APPROVED** this _____ day of _____, 2020.
7

8 **ATTEST:**

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

9
10 _____
11 Dana Brown Davis, Clerk of the Council

Barry Buchanan, Council Chair

12
13
14 **APPROVED AS TO FORM:**

WHATCOM COUNTY EXECUTIVE
WHATCOM COUNTY, WASHINGTON

15
16 _____
17 Civil Deputy Prosecutor

Satpal Sidhu, County Executive

() Approved () Denied

Date Signed: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25