



# Whatcom County

COUNTY COURTHOUSE  
311 Grand Avenue, Ste #105  
Bellingham, WA 98225-4038  
(360) 778-5010

## Agenda Bill Master Report

File Number: AB2020-520

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<b>File ID:</b>	AB2020-520	<b>Version:</b>	1	<b>Status:</b>	Adopted
<b>File Created:</b>	11/02/2020	<b>Entered by:</b>			
<b>Department:</b>		<b>File Type:</b>	Ordinance Requiring a Public Hearing		
<b>Assigned to:</b>	Council	<b>Final Action:</b>	11/24/2020		
<b>Agenda Date:</b>	11/24/2020	<b>Enactment #:</b>	ORD 2020-069		

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Primary Contact Email: DBrown@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

Ordinance 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

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Ordinance 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

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### HISTORY OF LEGISLATIVE FILE

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<b>Date:</b>	<b>Acting Body:</b>	<b>Action:</b>	<b>Sent To:</b>
11/10/2020	Council	INTRODUCED FOR PUBLIC HEARING	Council
		Aye: 5 Browne, Buchanan, Byrd, Donovan, and Frazey	
		Nay: 2 Elenbaas, and Kershner	
		Absent: 0	
11/24/2020	Council	ADOPTED	
		Aye: 4 Browne, Buchanan, Donovan, and Frazey	
		Nay: 3 Byrd, Elenbaas, and Kershner	
		Absent: 0	

**Attachments:** Ordinance 11.24.2020 Intro.

ORDINANCE NO. 2020-069

**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

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

1           **WHEREAS**, existing refineries at Cherry Point have recently increased their ability to  
2 accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;  
3 and  
4

5           **WHEREAS**, existing and proposed pipeline facilities have increased, or proposed to  
6 increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point;  
7 and  
8

9           **WHEREAS**, Title 20 currently does not explicitly prohibit transshipment, transport,  
10 and transfer of unrefined fossil fuels and construction of infrastructure to facilitate  
11 expanded shipment of unrefined fossil fuels not to be processed at Cherry Point; and  
12

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

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

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

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

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

- 49           1. Were filed and complete prior to the effective date of the ordinance and vested  
50 pursuant to Washington statutes;
- 51
- 52           2. Were for building permits for remodels, maintenance, or repairs of existing  
53 structures where no increased capacity for shipping unrefined fossil fuels not to be  
54 processed or consumed at Cherry Point would result; or  
55
- 56           3. Were necessary to protect health and safety of the community; and  
57

58           **WHEREAS**, these interim measures were necessary to allow time for the Council to  
59 work with staff and Cascadia Law Group to develop proposed amendments to the

1 Comprehensive Plan and zoning code to address risks to public health, safety, and the  
2 environment associated with under-regulated expansion of fossil fuel facilities at Cherry  
3 Point; and  
4

5 **WHEREAS**, on August 8, 2019, the Council approved Resolution 2019-037,  
6 forwarding proposed Cherry Point Urban Growth Area Comprehensive Plan and zoning code  
7 amendments to the Whatcom County Planning Commission for review and recommendation;  
8 and  
9

10 **WHEREAS**, on September 12, 2019, the Planning Commission hosted a town hall  
11 meeting to provide the public an opportunity to speak on the Council's proposed  
12 amendments; and  
13

14 **WHEREAS**, on September 26, October 10, October 24, November 14, and December  
15 12, 2019, and January 16, January 30, February 27, June 25, and July 9, 2020, the  
16 Planning Commission held work sessions to discuss the Council's proposed amendments and  
17 formulate recommendations (there were no Planning Commission meetings in March, April,  
18 or May of 2020 because of the COVID-19 meeting restrictions); and  
19

20 **WHEREAS**, on August 13, 2020, the Planning Commission held a public hearing and  
21 issued final recommendations on the proposed amendments.  
22

23 **WHEREAS**, the Planning Commission considered public comments and input from a  
24 joint industry/environmental stakeholder group in the review process; and  
25

26 **WHEREAS**, the County Council is diligently reviewing the proposed amendments  
27 (including special meetings to facilitate review in the fall of 2020) and considering  
28 recommendations from a joint industry/environmental stakeholder group;  
29

30 **WHEREAS**, the Council further finds that extending the moratorium imposed by  
31 Ordinance 2020-030 is necessary for the protection of public health and safety; and  
32

33 **WHEREAS**, the Whatcom County Council is scheduled to hold a public hearing on  
34 this issue on November 24, 2020, or a later date; and  
35

36 **WHEREAS**, the County Council fully recognizes the limits to its authority over  
37 transportation of certain goods imposed by federal statutes and the US Constitution, and  
38 finds that this action is within its authority;  
39

40 **NOW, THEREFORE, BE IT ORDAINED** that the Whatcom County Council adopts  
41 the above "WHEREAS" recitals as findings of fact in support of its action as required by RCW  
42 36.70A.390  
43

44 **BE IT FURTHER ORDAINED** by the Whatcom County Council that an interim  
45 moratorium is hereby imposed prohibiting the filing, acceptance, and processing of new  
46 applications for conversion of land or water, new building or structure permits, or other  
47 County permits or authorizations in the Cherry Point Urban Growth Area for new or  
48 expanded facilities whose purpose is to facilitate the increased shipment of unrefined fossil  
49 fuels not to be processed or consumed at Cherry Point, unless the applications:  
50

- 51 1. Were filed and complete prior to the effective date of this ordinance and vested  
52 pursuant to Washington statutes;  
53
- 54 2. Are for building permits for remodels, maintenance, or repairs of existing  
55 structures where no increased capacity for shipping unrefined fossil fuels not to be  
56 processed or consumed at Cherry Point will result; or  
57
- 58 3. Are necessary to protect health and safety of the community.  
59

1 **BE IT FURTHER ORDAINED** by the Whatcom County Council that this interim  
2 ordinance shall be effective for not longer than six months following its effective date, but  
3 may be renewed for one or more six-month periods if subsequent public hearings are held  
4 and findings of fact are made prior to each renewal.  
5

6 **BE IT FURTHER ORDAINED** that if a section, subsection, paragraph, sentence,  
7 clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason by  
8 any court of competent jurisdiction; such decision shall not affect the validity of the  
9 remaining portions of this ordinance, and if the provisions of this ordinance are found to be  
10 inconsistent with other provisions of the Whatcom County Code, this ordinance shall control.  
11

12 **BE IT FURTHER ORDAINED** that for the purpose of this ordinance the definition of  
13 "unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized  
14 or not; raw bitumen, diluted bitumen, or syncrude; coal; methane propane, butane, and  
15 other "natural gas" in liquid or gaseous formats excluding those that are the byproduct of  
16 refinery processes in the Cherry Point UGA; and condensate.  
17

18 **BE IT FURTHER ORDAINED** to prevent any misunderstanding the Whatcom County  
19 Council affirms that consistent with previous Interim Moratoriums, the refining, storage,  
20 blending, and manufacture of renewable fuels shall remain an outright permitted use,  
21 unaffected by this Interim Moratorium, subject to the existing provisions of the current  
22 County Code.  
23


24 **BE IT FINALLY ORDAINED** that for the purpose of this ordinance, the definition of  
25 "facility" includes but is not limited to piers, wharfs, buildings, tank farms, pipelines, rail  
26 loading and offloading facilities, road spurs, or any other such physical infrastructure  
27 intended to receive, transfer, or store unrefined fossil fuels;  
28

29 **APPROVED** this 24th day of November, 2020.  
30

31 **ATTEST:**

32   
33 \_\_\_\_\_  
34 Dana Brown Davis, Clerk of the Council  
35  
36  
37


31 **WHATCOM COUNTY COUNCIL**  
32 **WHATCOM COUNTY, WASHINGTON**

33   
34 \_\_\_\_\_  
35 Barry Buchanan, Council Chair  
36

38 **APPROVED AS TO FORM:**

39  
40  
41 Approved by Karen Frakes via email / LB  
42 \_\_\_\_\_  
43 Civil Deputy Prosecutor  
44

38 **WHATCOM COUNTY EXECUTIVE**  
39 **WHATCOM COUNTY, WASHINGTON**

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41 \_\_\_\_\_  
42 Satpal Sidhu, County Executive  
43

44 (  ) Approved (  ) Denied  
45  
46  
47

48 Date Signed: 12/01/2020