



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

File Number: AB2019-113

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TITLE FOR AGENDA ITEM:

Resolution requesting the County Executive provide staff resources and funding to allow Cascadia Law Group to complete Contract No. 201708008 related to legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point UGA

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution requesting the County Executive provide staff resources and funding to allow Cascadia Law Group to complete Contract No. 201708008 related to legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point UGA

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
01/29/2019	Council	APPROVED	

Attachments: Cherry Point Resolution With Proposed Amendment from Special Committee of the Whole

Final Action:	01/29/2019
Enactment Date:	01/29/2019
Enactment #:	RES 2019-004

4 RESOLUTION NO. 2019-004
5

6 **REQUESTING THE COUNTY EXECUTIVE PROVIDE STAFF RESOURCES AND FUNDING**
7 **TO ALLOW CASCADIA LAW GROUP TO COMPLETE CONTRACT NO. 201708008**
8 **RELATED TO LEGAL WAYS THE COUNTY MAY CHOOSE TO LIMIT THE NEGATIVE**
9 **IMPACTS ON PUBLIC SAFETY, TRANSPORTATION, THE ECONOMY, AND**
10 **ENVIRONMENT FROM CRUDE OIL, COAL, LIQUEFIED PETROLEUM GASES, AND**
11 **NATURAL GAS TRANSSHIPMENTS FROM THE CHERRY POINT UGA**
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13
14 **WHEREAS**, RCW 36.70A.020 (Planning goals) requires legislators to balance
15 multiple goals including (5) Economic development, and (10) Environment; and
16

17 **WHEREAS**, the Council has significant concerns about protecting our environment,
18 has spoken extensively about the need to limit the ability of the existing facilities being
19 converted into unrefined fossil fuel transshipment facilities because of the opportunity for
20 the significant health, safety and transportation impacts that would result if the amount of
21 unrefined fossil fuels transiting Whatcom County was to increase significantly; and
22

23 **WHEREAS**, the Council recognizes that the existing refineries have made recent
24 investments in facilities such as renewable fuel production and blending-which it believes
25 will continue; and
26

27 **WHEREAS**, the Council is committed to preserving the thousands of family wage
28 jobs of those employed by the refineries and their contractors while the transition from
29 refined fossil fuels to renewables is underway; and
30

31 **WHEREAS**, the Council has frequently expressed that one of its key concerns about
32 increased transshipments of unrefined fossil fuels is the resulting increase in vessel traffic
33 within the waters of Whatcom County that would expose critical species such as herring,
34 salmon and Southern Resident Orca whales to additional risks. The county wants to reduce
35 the risk of spills and collisions with marine mammals by preventing the increase in Puget
36 Sound tanker traffic that would occur if regional demand had to be augmented with refined
37 fuels brought in from other, likely less efficient and environmentally responsible refineries
38 from other parts of the world – by ensuring the refineries at Cherry Point can continue to
39 meet the demands of regional markets,.
40

41 **WHEREAS**, in the 2017 budget the County allocated \$150,000 for legal assistance
42 and contracted to spend \$75,000 with Cascadia Law Group to undertake items (1) and (2)
43 in the Scope of Work as provided in EXHIBIT "A"; and
44

45 **WHEREAS**, the first and second tasks were completed, but the third "*developing*
46 *proposed Comprehensive Plan amendments and associated code and rule amendments for*
47 *Council consideration*", was not and the relevant budget allocation has since expired, and
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49 **WHEREAS**, lacking the resources to undertake its own research, councilmembers
50 with assistance from third parties, produced a preliminary draft containing proposed
51 changes to the County Comprehensive Plan and County Code, which could have unintended
52 consequences; and
53

1 **WHEREAS**, the Council has expressed goals for a more robust permitting, SEPA and
2 EIS processes related to new and expanded fossil fuel facilities in the County Council's and
3 October 9, 2018 and January 15, 2019 proposals; and
4

5 **WHEREAS**, the County Council has summited draft Comprehensive Plan, Title 20,
6 Title 22, and Tile 16 language related to new and expanded fossil fuel facilities at Cherry
7 Point on January 15, 2019 for the Planning Commission to consider; and
8

9 **WHEREAS**, the County Council recognizes the Council's proposal would benefit from
10 additional legal review and recommendations for Comprehensive Plan and Code language,
11 per the Scope of Work with Cascadia Law Group [Exhibit A], particularly with regard to
12 proposed language affecting waivers and exemptions from conditional use permitting that
13 may be too restrictive; and
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15 **WHEREAS**, the County Council also recognizes the final language should, without
16 delay, allow minor projects associated with fossil fuel facilities, such as office expansion,
17 parking lots, regular maintenance, equipment replacement, accessory buildings, safety
18 upgrades, radio communications facilities, storage buildings, guard buildings, etc. that do
19 not expand capacity for fossil fuel shipments, processing, storage, and emissions at existing
20 fossil fuel facilities, nor result in substantive changes in uses of existing fossil fuel facilities;
21 and
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23 **WHEREAS**, the County Council respectfully recognizes that the County Executive
24 and a majority of the Council have different perspectives on changes to regulations related
25 to Cherry Point, nonetheless the Council believes it is in the best interests of the community
26 to bring this issue to a conclusion sooner rather than later.
27

28 **NOW, THEREFORE, BE IT RESOLVED**, that in order for the Council to bring this
29 issue to a speedy conclusion the Council respectfully requests that the County Executive
30 approve up to an additional \$40,000 of the \$75,000 remaining of the original budget
31 allocation for the Cascadia Law Group to work with the Planning and Development Services
32 department as it assists the Council in its deliberations; and
33

34 **BE IT FURTHER RESOLVED**, that Council requests Planning and Development
35 Services (PDS) work with Cascadia Law Group to provide the County Council with draft
36 Comprehensive Plan and code language that addresses each of the following issues, and
37 where possible identifies and uses established code language from other jurisdictions, to be
38 forwarded to the Planning Commission, that:
39

- 40 a. Prohibits additional new fossil fuel refineries in Cherry Point beyond the existing
41 British Petroleum, Phillips 66 and Petrogras facilities as our community has
42 already taken on "our fair share" of the public health, safety and environmental
43 risks associated with fossil fuel facilities and does not deserve any additional
44 increase in risk that new facilities would bring; and
45
- 46 b. Prohibits any new crude oil transshipment facilities that have any other purpose
47 other than suppling raw materials to the existing refineries; and
48
- 49 c. Prohibits conversion of any existing refinery into a facility primarily serving as a
50 crude oil transshipment facility; and
51
- 52 d. Allows expansion of existing refining capacity in proportion to certain criteria,
53 such as a to a rolling five year projection of the combined regional population

1 growth of Washington State and British Columbia as determined by their
2 respective published government forecasts; and
3

4 e. Considers requiring an initial and updated greenhouse gas analysis each time a
5 refinery and/or storage capacity of an existing facility is expanded by more than
6 one (1) percent over the baseline ("Baseline") as of the date code changes are
7 adopted; and
8

9 f. Requires identification of "Facility Emissions" which are defined as the
10 greenhouse gas emissions associated with local fossil fuel facilities, including but
11 not limited to
12

13 I. the transportation within the borders of Whatcom County of refined and
14 unrefined fossil fuels to and from a facility located within the Cherry Point
15 Heavy industrial area, and
16

17 II. the refining and processing of fossil fuels located within the Cherry Point
18 Heavy industrial area; and
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20 g. At a minimum require local mitigation of (such as carbon offset programs that are
21 deployed within Whatcom County's borders) Facility Emissions, above the
22 Baseline; and
23

24 h. Considers credits for the Net Positive environmental impacts of modifications to
25 facilities such as programs such as energy recovery from animal waste and when
26 calculating carbon offset obligations. "Net Positive" shall mean the net impact
27 after factoring in:
28

29 I. fossil fuel inputs for transportation, as well as reduced landfill use and
30 methane emissions in the case of animal or plant waste; and
31

32 II. fossil fuel inputs, environmental degradation, habit loss ect. in the
33 case of biofuels such as palm oil or corn grown for bio fuels; and
34

35 i. Aims to reduce the opportunity for the significant transportation, health and
36 safety risks to the community that would likely occur should the existing
37 refineries be converted to crude oil transshipment facilities by prohibiting the
38 construction of additional fossil fuel storage tanks above the current ratio of
39 Storage Capacity to Refining Capacity in existence as the date code changes are
40 adopted. For this section "Storage Capacity" is defined as total volume of all
41 tanks at a facility and "Refining Capacity" is defined as the average monthly
42 volume of refining, in the preceding calendar year; and
43

44 j. Considers that any expansion in storage or refining capacity greater than one (1)
45 percent above Baseline shall require ongoing identification of all responsible
46 parties involved in the transportation of crude and refined fossil fuels, the storage
47 and refining of such, and proof of insurance great enough to cover any
48 "Reasonable Worst Case Scenario" that could occur within the borders of
49 Whatcom County. The insurance shall be required for as long as the particular
50 refinery is operating and shall be increased annually to reflect any increase in the
51 Consumer Price Index; and
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k. Recognizes that the term "Reasonable Worst Case Scenario" shall mean the derailment and subsequent explosion, fire and extensive contamination of air, soil, marine environments, all local public and private infrastructure, including but limited to roads, buildings, parks and sewer systems. The scenario shall assume the event occurs in high wind conditions, during an earthquake, in the downtown core of Bellingham, involves a train of maximum possible operating length train, travelling three times faster than normal, fully loaded with the most volatile cargo transported to or from Cherry Point, transported in the least safe tankers in use anywhere in North America, that the cleanup shall take a minimum of ten years, require the relocation of all businesses and residents within a minimum of a five mile radius and include the cost of fully compensating all the individuals and businesses directly and indirectly affected. Please note this scenario is in direct proportion to what happened during the Lac-Mégantic rail disaster which involved a train of less than maximum size that occurred in Quebec, Canada on July 6, 2013 and which five years on the community has yet to recover from.

BE IT FURTHER RESOLVED that Council requests the Planning and Development department ensure any changes to the county code do NOT cause any of the following:

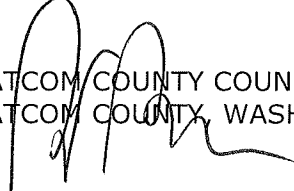
1. Unnecessarily delay the implementation of future safety upgrades that if not made could potentially place the workers or environment at any risk.
2. Unnecessarily delay improvements that would have a positive impact on climate change, such as increased efficiency, reduced pollution or greenhouse gas emissions; and
3. "Catch 22's" where the County withholds permits until other agencies have issued theirs, such as the Army Core of Engineers which will traditionally refuse to issue a permit until the local government has approved the project; and
4. Contradictory language such as providing exemptions from the Conditional Use Permit "CUP" for minor projects, but which later language then forbids being issued because they are located in Cherry Point or are related to fossil fuels.

ADOPTED this 29th day of January, 2019.

ATTEST:


Dana Brown-Davis, Clerk of the Council

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Rud Browne, Council Chair

APPROVED AS TO FORM:


Civil Deputy Prosecutor

EXHIBIT "A"
(SCOPE OF WORK)

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4 The Contractor shall represent Whatcom County and assist in (1) examining existing
5 County laws including those related to public health, safety, development, building, zoning,
6 permitting, electrical, nuisance, and fire codes and develop recommendations for legal ways
7 the County may choose to limit the negative impacts on public safety, transportation, the
8 economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas
9 exports from the Cherry Point UGA above levels in existence as of March 1, 2017; (2)
10 providing clear guidance to current and future county councils on the County' s legal rights,
11 responsibilities and limitations regarding interpretation and application of project evaluation
12 under Section 20. 88. 130 (Major Projects Permits) of the Whatcom County Code; and (3)
13 based on the above study, developing proposed Comprehensive Plan amendments and
14 associated code and rule amendments for Council consideration as soon as possible.