

PROPOSED BY: Donovan,
INTRODUCTION DATE: July 23, 2019

RESOLUTION NO. _____

FORWARDING CASCADIA LAW GROUP'S RECOMMENDATIONS FOR PROPOSED CHERRY POINT URBAN GROWTH AREA (UGA) COMPREHENSIVE PLAN AND ZONING CODE AMENDMENTS TO THE PLANNING COMMISSION FOR REVIEW AND RECOMMENDATION AND TO PLANNING AND DEVELOPMENT SERVICES FOR SEPA REVIEW AND DETERMINATION

WHEREAS, The Whatcom County Council recognizes that existing zoning code rarely produces adequate regulatory review of large fossil fuel projects at the Cherry Point UGA, nor produces environmental impact statements (EIS) for large scale expansions of fossil fuel facilities at the Cherry Point that are currently allowed as outright permitted uses; and,

WHEREAS, In the past few years, two separate projects permitted at Cherry Point substantially increased each refinery's capacity to receive crude oil, with subsequent increases in risks to public health, safety, and the environment. Neither project received an EIS; and,

WHEREAS, A fracked fuel shipping facility at Cherry Point recently invested hundreds of millions of dollars to increase, potentially by six-fold, the volume of product it moves through the County via rail and through local waters. No EIS was been done related to this; and,

WHEREAS, the fracked fuel shipping facility at Cherry Point recently received permits for substantial, multi-year upgrades to its pier at Cherry Point. No EIS was been done related to this; and,

WHEREAS, The Whatcom County Council has dedicated nearly three years of open public meetings working to develop Comprehensive Plan amendments, and zoning code amendments, to address the risks to public health, safety, and the environment associated with under-regulated expansion of fossil fuel facilities at Cherry Point; and,

WHEREAS, on January 29, 2019, the Whatcom County Council approved Resolution No. 2019-004, 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; and,

WHEREAS, through Resolution No. 2019-004, the Council has requested Planning and Development Services (PDS) work with Cascadia Law Group to provide the County Council with draft Comprehensive Plan and code language that addresses each of the following issues, and where possible identifies and uses established code language from other jurisdictions, to be forwarded to the Planning Commission, that:

- a. Prohibits additional new fossil fuel refineries and fossil fuel shipping facilities in Cherry Point beyond the existing British Petroleum, Phillips 66 and Petrogras facilities as our community has already taken on "our fair share" of the public health, safety and environmental risks associated with fossil fuel facilities and does not deserve any additional increase in risk that new facilities would bring; and
- b. Prohibits any new crude oil transshipment facilities that have any other purpose other than suppling raw materials to the existing refineries; and

- c. Prohibits conversion of any existing refinery into a facility primarily serving as a crude oil transshipment facility; and
- ~~d. Allows expansion of existing refining capacity in proportion to certain criteria, such as a to a rolling five year projection of the combined regional population growth of Washington State and British Columbia as determined by their respective published government forecasts; and~~
- e. Considers requiring an initial and updated greenhouse gas analysis each time a when refinery and/or storage capacity of an existing facility is expanded ~~by more than one (1) percent over the baseline ("Baseline") as of the date code changes are adopted;~~ and
- f. Requires identification of "Facility Emissions" which are defined as the greenhouse gas emissions associated with local fossil fuel facilities, including but not limited to
 - I. the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility located within the Cherry Point Heavy industrial area, and
 - II. the refining and processing of fossil fuels located within the Cherry Point Heavy industrial area; and
- g. At a minimum require local mitigation of (such as carbon offset programs that are deployed within Whatcom County's borders) Facility Emissions, above the Baseline; and
- h. Considers credits for the Net Positive environmental impacts of modifications to facilities such as programs such as energy recovery from animal waste and when calculating carbon offset obligations. "Net Positive" shall mean the net impact after factoring in:
 - I. fossil fuel inputs for transportation, as well as reduced landfill use and methane emissions in the case of animal or plant waste; and
 - II. fossil fuel inputs, environmental degradation, habit loss ect. in the case of biofuels such as palm oil or corn grown for bio fuels; and
- i. Aims to reduce the opportunity for the significant transportation, health and safety risks to the community that would likely occur should the existing refineries be converted to crude oil transshipment facilities by prohibiting the construction of additional fossil fuel storage tanks above the current ratio of Storage Capacity to Refining Capacity in existence as the date code changes are adopted. For this section "Storage Capacity" is defined as total volume of all tanks at a facility and "Refining Capacity" is defined as the average monthly volume of refining, in the preceding calendar year; and
- j. Considers that ~~any~~ expansion in storage or refining capacity ~~greater than one (1) percent above Baseline~~ shall require ongoing identification of all responsible parties involved in the transportation of crude and refined fossil fuels, the storage and refining of such, and proof of insurance great enough to cover any "Reasonable Worst Case Scenario" that could occur within the borders of Whatcom County. The insurance shall be required for as long as the particular refinery is operating and shall be increased annually to reflect any increase in the Consumer Price Index; and

- 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 not 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; and

WHEREAS, the Council also requested that the Planning and Development department ensure any changes to the county code 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; and

WHEREAS, on June 10, 2019, Cascadia Law Group submitted draft recommendations for proposed Comprehensive Plan and zoning code amendments to the County Council for consideration; and,

WHEREAS, at its June 18 2019 meeting, Council considered and discussed the June 10, 2019 Cascadia Law Group draft amendments; and,

WHEREAS, at the June 18, 2019 Council meeting, councilmembers were invited to submit questions to Cascadia Law Group regarding the June 10 2019 draft; and,

WHEREAS, on July 2, 2019, Cascadia Law Group provided additional information and updates to the draft code amendments in response to questions from Council and staff, and,

WHEREAS, on July 9, 2019, Council met to continued its discussion of the draft proposal; and,

WHEREAS, on July 10 2019, Cascadia Law Group provided additional information and updates to the draft code amendments in response to questions from Council and staff, and,

WHEREAS, on July 16 2019, Cascadia Law Group provided additional information and updates to the draft code amendments in response to questions from Council and staff; and,

WHEREAS, on July 23 2019, with the benefit of additional information and Council has further refined the proposed code amendments;

NOW, THEREFORE, BE IT RESOLVED by the Whatcom County Council that the Council's proposal, based off of Cascadia Law Group's recommendations for proposed Cherry Point UGA Comprehensive Plan and zoning code amendments, as outlined in Exhibit A to this resolution, are hereby forwarded to the Planning Commission for review and recommendation, and to Planning and Development Services for SEPA review and determination.

BE IT FINALLY RESOLVED that the Council respectfully requests review by the Planning Commission, with assistance from Planning and Development Services, commence as soon as possible upon receipt of this resolution. If its current scheduling of meetings potentially constrains the Planning Commission's capacity to consider this matter, Council respectfully requests that the Planning Commission schedule one or more additional meetings in August or September.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

Civil Deputy Prosecutor