

PROPOSED BY: DONOVAN
INTRODUCTION DATE: _____

RESOLUTION NO. _____

**REQUESTING THE COUNTY EXECUTIVE DIRECT STAFF TO DRAFT
LEGISLATION RELATING TO PROCESSING AND APPROVAL OF MAJOR PROJECT
PERMITS IN THE CHERRY POINT URBAN GROWTH AREA**

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

WHEREAS, on September 27, 2016, March 21, 2017, and September 26, 2017, the Whatcom County Council adopted interim measures (Ordinance 2016-039, Ordinance 2017-011, and Ordinance 2017-049) prohibiting the filing, acceptance, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, on February 2, 2018, the Whatcom County Council extended the interim moratorium on the acceptance, filing, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, the interim measures extended the interim moratorium on the acceptance, filing, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

WHEREAS, the interim measures extended the interim moratorium on the acceptance, filing, and processing of new applications for conversion of land or water, new building or structure permits, or other County permits or authorizations in the Cherry Point Urban Growth Area for new or expanded facilities whose purpose is to facilitate the shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point; and

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

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

1 **WHEREAS**, the County recognizes that the existing refineries have for decades been
2 significant shippers of refined fossil fuels such as jet fuel and calcined coke used in
3 manufacture of aluminum while providing substantial local employment; and
4

5 **WHEREAS**, multiple trains carrying crude oil from the Bakken formation moving
6 through the United States and Canada have derailed and exploded causing damage to
7 property and the environment; and
8

9 **WHEREAS**, on July 6, 2013, a single derailment in Quebec caused 47 fatalities and
10 destroyed half of the downtown of Lac-Megantic, leaving a town heavily contaminated with
11 benzene, which are major reasons that local zoning regulations must be improved; and
12

13 **WHEREAS**, a unit train carrying Bakken crude traveling through Mosier, Oregon, on
14 June 3, 2016, derailed and exploded causing damage to property and to the Columbia River,
15 demonstrating that recently adopted state and federal policies and corporate investment
16 intended to reduce the risks associated with oil by rail have proven insufficient to protect
17 communities along the rail corridor; and
18

19 **WHEREAS**, the Washington State Department of Natural Resources has designated
20 waters adjacent to the Cherry Point Urban Growth Area as an aquatic reserve to ensure
21 long-term protection of this unique aquatic environment; and
22

23 **WHEREAS**, the United States recently lifted a ban on the export of crude oil from
24 the country, increasing pressure on deep water ports such as Cherry Point to develop to
25 increase the amount of fuels transported through Whatcom County that arrive at Cherry
26 Point; and
27

28 **WHEREAS**, existing refineries at Cherry Point have recently increased their ability to
29 accept crude oil by rail by constructing new rail offloading facilities to serve the refineries;
30 and
31

32 **WHEREAS**, existing and proposed pipeline facilities have increased, or proposed to
33 increase, their capacity to move crude oil, diluted bitumen, and natural gas to Cherry Point;
34 and
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36 **WHEREAS**, expansion of existing facilities for purposes receiving and shipping fossil
37 fuels into and out of Cherry Point will increase the transport of dangerous fuels through our
38 community and increase the risk of possible harmful emissions, train derailment, spills,
39 explosions, and the fallout of these will pose serious threats to the community's public
40 health and safety, and to the local environment; and
41

42 **WHEREAS**, pursuant to the Washington State Constitution, the general police
43 powers granted to counties empower and authorize Whatcom County to adopt land use
44 controls to provide for the regulation of land uses within the County and to provide that
45 such uses shall be consistent with applicable law; and
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47 **WHEREAS**, in 2017, the Whatcom County Council entered into a contract with
48 Cascadia Law Group for assistance in examining existing County laws and developing
49 recommendations for recommendations about how the County may further limit the
50 negative impacts on public safety, transportation, the economy, and environment from
51 crude oil, coal, liquefied petroleum gases, natural gas, and other fuels transported through
52 Whatcom County to Cherry Point and shipped from the Cherry Point UGA above levels in
53 existence as of March 1, 2017; and
54

1 **WHEREAS**, in 2018, a Cascadia Law Group study provided guidance on the County's
2 legal rights, responsibilities, and limitations regarding interpretation and application of
3 project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County
4 Code; and
5

6 **WHEREAS**, the above study will assist in developing proposed Comprehensive Plan
7 amendments and associated code and rule amendments for Council consideration, and
8

9 **WHEREAS**, Whatcom County Council finds the public interest is best protected by a
10 permitting process for major projects at Cherry Point that provides the County clear
11 authority for requiring mitigation of project impacts on the community and the environment,
12 and that provides clear requirements that project proponents assume financial responsibility
13 for potentially hazardous activities that present risks to the community; and
14

15 **WHEREAS**, the Cascadia study determined that zoning codes of other local
16 jurisdictions provide examples of discretionary decision-making criteria; and
17

18 **WHEREAS**, in RCW 90.58.020 the legislature found that the shorelines of the state
19 are among the most valuable and fragile of its natural resources and that there is great
20 concern relating to their utilization, protection, restoration, and preservation. In addition it
21 found that increasing pressures of additional uses are being placed on the shorelines, and
22 that that unrestricted construction on the privately owned or publicly owned shorelines of
23 the state is not in the best public interest, and that local governments play a role in
24 preventing harm to the state's shorelines; and
25

26 **WHEREAS**, WAC 173-27-160 states that conditional use permits provide local
27 governments flexibility in the application of use regulations in a manner consistent with the
28 policies of RCW 90.58.020, and that special conditions may be attached to the permit by
29 local government to prevent undesirable effects of the proposed use; and
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31 **WHEREAS**, WAC 197-11-660 states that proposals may be conditioned or denied
32 under the State Environmental Protection Act to mitigate the environmental impact, subject
33 to limitations, and that proposal can be denied if they are likely to result in significant
34 adverse environmental impacts that cannot be mitigated.
35

36 **NOW, THEREFORE, BE IT RESOLVED** by the Whatcom County Council that the
37 Council requests the County Executive have Planning staff draft code amendments to the
38 County's Major Project Permit Review Process, and other related zoning code, that
39 strengthen the discretionary authority of County staff, and the County Council, with respect
40 to processing and approving major project permits, and with respect to mitigating the
41 impacts of proposed major projects, and with respect to mitigating changes in existing uses,
42 in the Cherry Point UGA.
43

44 **BE IT FURTHER RESOLVED** that Whatcom County Council requests proposals for
45 code and SMP amendments that protect public health, safety, and the environment, and
46 that provide clear discretionary standards for accepting and rejecting permits. These
47 include:
48

49 **1) Require Conditional Use Permits.** Require conditional land use permits, and
50 conditional shoreline permits (per WAC 173-27-160), for certain heavy industry uses, such
51 as new petroleum tank farms, new fossil fuel distribution facilities, additional piers, new on-
52 site rail yards, new facilities that transfer fuel from rail cars, new rail car storage facilities,
53 new coal storage facilities, new coal transfer facilities, and new facilities that transfer fuels

1 from permitted or proposed facilities across existing or proposed piers. The purpose of such
2 conditional use permits is:

3
4 a) To provide a process that allows flexibility in the application or regulations,
5 consistent with RCW 90.58.020, and to allow that conditions be attached by the County to
6 prevent undesirable effects of the propose use and to assure consistency of the project with
7 the goals in the County Comprehensive Plan, County SMP, and with treaty rights, policies of
8 Washington State DNR, the Army Corps of Engineers, and the Cherry Point Aquatic Reserve
9 Plan, and

10
11 b) To ensure the project will cause no significant adverse effects to the shoreline, to
12 the environment, to air emissions, to traffic patterns, and that, broadly, the public suffers
13 no substantial detrimental effect of the cumulative impact of the proposed project, and

14
15 c) To ensure that any use must demonstrate that it is adequately served by essential
16 public facilities such as highways, roads, police and fire protection, drainage facilities, water,
17 sewer, bridges required for rail crossings, and waste disposal, and that the agents proposing
18 the use shall be able to adequately provide such services.

19
20 d) To ensure the proposed facility will not create excessive additional requirements,
21 at public cost, for public facilities and services and that the applicant provide mitigation for
22 added public costs, including investment into emergency response capacity, and that
23 commit the applicant to compensate Whatcom County and associated jurisdictions for costs
24 associated with emergency responses, clean-up, mitigation, and such events that are
25 associated with transporting materials, by the applicant and by third parties, to and from
26 the permitted facility.

27
28 **2) Require Master Site Planning** provisions for major project permits. This would
29 include

30 a) requirements that applicants submit a fee (up front or in increments) covering the
31 County's EIS review costs;

32
33 b) requiring a Development Agreement that obligates the developer to pay costs
34 (given a rational nexus) of all traffic, public safety, and environmental impact mitigation
35 identified in the SEPA review; and identified in the discretionary project review by staff and
36 County Council, should a Master Site Plan or conditional use be approved;

37
38 c) requiring mitigating conditions proportional with the impact of the EIS;

39
40 d) amending code to give the Planning Department and County Council the discretion
41 to require a bond or insurance policy (or combination of) to ensure that all development
42 commitments for transportation mitigation, public safety mitigation, environmental
43 mitigation, and other mitigation are followed through to completion and that safety hazards
44 to the community are insured against.

45
46 **3) Review and revise SEPA policy.** Review, and if needed to accomplish code
47 changes to advance the goals of conditional use and enhanced discretionary authority of the
48 county staff and County Council. SEPA provides that a project may be denied after an EIS
49 is completed where it is decided that adverse impacts cannot be mitigated. Code and/ or
50 SMP and / or Comp. Plan language must provide a clear basis for accepting proposals with
51 conditional requirements, and a clear basis for denial.

1 4) **Review and Revise Provisions for Change of Use and Occupancy.** Changes
2 in use of existing facilities should be consistent with current code, and with code revisions
3 requested above. Changes in use or occupancy should not result in a substantive functional
4 change in the initial permitted use of an existing facility without being subject to
5 discretionary authority and conditional requirements per, points 1, 2 & 3 as listed above.
6 Code should allow staff approval of changes or occupancy or use where new uses remain
7 consistent with current and with code adopted per this resolution. Code should also provide
8 for a clear obligation to review and properly address, and mitigate, impacts of changes in
9 use or occupancy of existing facilities.

10
11 **BE IT FURTHER RESOLVED** that:

- 12
13 • The Whatcom County Council will work with staff to develop the proposed
14 Comprehensive Plan and development regulation amendments. The proposed
15 amendments will be reviewed by the Council's Committee of the Whole, which
16 will provide for public comment.
17
18 • The proposed amendments will undergo SEPA review.
19
20 • The Whatcom County Planning Commission will hold a town hall meeting and
21 a public hearing prior to issuing recommendations on the proposed
22 amendments.
23
24 • The Whatcom County Council will hold a public hearing prior to adopting an
25 ordinance relating to the amendments.
26

27 ~~staff proposals resulting from this resolution will be reviewed by the Committee of the~~
28 ~~Whole of the Whatcom County Council in no fewer than two meetings that will provide for~~
29 ~~public comment, and, after this, a public hearing will be held on the matter.~~
30

31 **APPROVED** this _____ day of _____, 2018.

32
33 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

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35
36 _____
37 Dana Brown Davis, Clerk of the Council

Rud Browne, Council Chair

38
39
40 APPROVED AS TO FORM:

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42
43 _____
44 Civil Deputy Prosecutor
45
46
47