

**PROPOSED BY:** \_\_\_\_\_  
**INTRODUCTION DATE:** NOVEMBER 19, 2019

**ORDINANCE NO.** \_\_\_\_\_

**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**, 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

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

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

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

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

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

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

**WHEREAS**, on August 9, 2016, the 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**, the Council adopted interim measures on September 27, 2016 (Ordinance 2016-039), March 21, 2017 (Ordinance 2017-011), September 26, 2017 (Ordinance 2017-049), February 27, 2018 (Ordinance 2018-007), August 8, 2018 (Ordinance 2018-044), January 29, 2019 (Ordinance 2019-010), and July 9, 2019 (Ordinance 2019-049), 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 increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of the ordinance and vested pursuant to Washington statutes;

2. Were for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point would result; or

3. Were necessary to protect health and safety of the community; and

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

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

**WHEREAS**, the Council anticipated that the Planning Commission would return findings and conclusions to the Council prior to the end of 2019; and

**WHEREAS**, the Council has been notified that the Planning Commission needs additional time to prepare its recommendations; and

**WHEREAS**, the Council finds that extending the moratorium imposed by Ordinance 2019-049 is necessary to allow adequate time for the Planning Commission to complete its work; and

**WHEREAS**, the Council further finds that extending the moratorium imposed by Ordinance 2019-049 is necessary for the protection of public health and safety; and

**WHEREAS**, RCW 36.70.790 and RCW 36.70.795 allow for adoption of interim official controls as long as a public hearing is held within sixty (60) days of adoption; and

**WHEREAS**, the Whatcom County Council is scheduled to hold a public hearing on this issue on December 3, 2019, or a later date; and

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

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

**BE IT FURTHER ORDAINED** by the Whatcom County Council that an interim moratorium is hereby imposed 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 increased shipment of unrefined fossil fuels not to be processed or consumed at Cherry Point, unless the applications:

1. Were filed and complete prior to the effective date of this ordinance and vested pursuant to Washington statutes;

2. Are for building permits for remodels, maintenance, or repairs of existing structures where no increased capacity for shipping unrefined fossil fuels not to be processed or consumed at Cherry Point will result; or
3. Are necessary to protect health and safety of the community.

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

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

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

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

**APPROVED** 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:**

**WHATCOM COUNTY EXECUTIVE  
WHATCOM COUNTY, WASHINGTON**

\_\_\_\_\_  
Civil Deputy Prosecutor

\_\_\_\_\_  
Jack Louws, County Executive

(    ) Approved      (    ) Denied

Date Signed: \_\_\_\_\_