

RESOLUTION NO. _____

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

WHEREAS, RCW 36.70A.020 (Planning goals) requires legislators to balance multiple goals including (5) Economic development, and (10) Environment; and

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

WHEREAS, the Council recognizes that the existing refineries have made recent investments in facilities such as renewable fuel production and blending-which it hopes will continue; and

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

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

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

WHEREAS, the first and second tasks were completed, but the third *"developing proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration"*, was not and the relevant budget allocation has since expired, and

1 **WHEREAS**, lacking the resources to undertake its own research, councilmembers
2 with assistance from third parties, produced a preliminary draft containing proposed
3 changes to the County Comprehensive Plan and County Code, which could have unintended
4 consequences; and
5

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

10 **WHEREAS**, the County Council has summited draft Comprehensive Plan, Title 20,
11 Title 22, and Tile 16 language related to new and expanded fossil fuel facilities at Cherry
12 Point on January 15, 2019 for the Planning Commission to consider; and
13

14 **WHEREAS**, the County Council recognizes the Council's proposal would benefit from
15 additional legal review and recommendations for Comprehensive Plan and Code language,
16 per the Scope of Work with Cascadia Law Group [Exhibit A], particularly with regard to
17 proposed language affecting waivers and exemptions from conditional use permitting that
18 may be too restrictive; and
19

20 **WHEREAS**, the County Council also recognizes the final language should, without
21 delay, allow minor projects associated with fossil fuel facilities, such as office expansion,
22 parking lots, regular maintenance, equipment replacement, accessory buildings, safety
23 upgrades, radio communications facilities, storage buildings, guard buildings, etc. that do
24 not expand capacity for fossil fuel shipments, processing, storage, and emissions at existing
25 fossil fuel facilities, nor result in substantive changes in uses of existing fossil fuel facilities;
26 and
27

28 **WHEREAS**, the County Council respectfully recognizes that the County Executive
29 and a majority of the Council have different perspectives on changes to regulations related
30 to Cherry Point, nonetheless the Council believes it is in the best interests of the community
31 to bring this issue to a conclusion sooner rather than later.
32

33 **NOW, THEREFORE, BE IT RESOLVED**, that in order for the Council to bring this
34 issue to a speedy conclusion the Council respectfully requests that the County Executive
35 approve up to an additional \$40,000 of the \$75,000 remaining of the original budget
36 allocation for the Cascadia Law Group to work with the Planning and Development Services
37 department as it assists the Council in its deliberations; and
38

39 **BE IT FURTHER RESOLVED**, that Planning and Development Services (PDS) be
40 instructed to work with Cascadia Law Group to provide the County Council with draft
41 Comprehensive Plan and code language that addresses each of the following issues, and
42 where possible identifies and uses established code language from other jurisdictions, to be
43 forwarded to the Planning Commission, that:
44

- 45 a. Prohibits additional new fossil fuel refineries in Cherry Point beyond the existing
46 British Petroleum, Phillips 66 and Petrogras facilities as our community has
47 already taken on "our fair share" of the public health, safety and environmental
48 risks associated with fossil fuel facilities and does not deserve any additional
49 increase in risk that new facilities would bring; and
50

- 1 b. Prohibits any new crude oil transshipment facilities that have any other purpose
2 other than supplying raw materials to the existing refineries; and
3
4 c. Prohibits conversion of any existing refinery into a facility primarily serving as a
5 crude oil transshipment facility; and
6
7 d. Allows expansion of existing refining capacity in proportion to certain criteria,
8 such as a to a rolling five year projection of the combined regional population
9 growth of Washington State and British Columbia as determined by their
10 respective published government forecasts; and
11
12 e. Considers requiring an initial and updated greenhouse gas analysis each time a
13 refinery and/or storage capacity of an existing facility is expanded by more than
14 one (1) percent over the baseline ("Baseline") as of the date code changes are
15 adopted; and
16
17 f. Requires identification of "Facility Emissions" which are defined as the
18 greenhouse gas emissions associated with local fossil fuel facilities, including but
19 not limited to
20
21 I. the transportation within the borders of Whatcom County of refined and
22 unrefined fossil fuels to and from a facility located within the Cherry Point
23 Heavy industrial area, and
24
25 II. the refining and processing of fossil fuels located within the Cherry Point
26 Heavy industrial area; and
27
28 g. At a minimum require local mitigation of (such as carbon offset programs that are
29 deployed within Whatcom County's borders) Facility Emissions, above the
30 Baseline to compensate for the climate changes caused by such emissions
31 including but not limited to: dryer summers, reduced rainfall and snow pack,
32 increased forest fires and reduced habitat for wildlife (especially endangered
33 species). Which collectively are degrading our quality of life, impacting the
34 economic viability of our fishing, forestry, recreational and agricultural industries,
35 significantly affecting summer air quality that is in turn increasing health care
36 costs and health risks, especially for the young and elderly. While also
37 considering the prospects for mitigating the broader consequences of greenhouse
38 gas emissions; and
39
40 h. Considers credits for the Net Positive environmental impacts of modifications to
41 facilities such as programs such as energy recovery from animal waste and when
42 calculating carbon offset obligations. "Net Positive" shall mean the net impact
43 after factoring in:
44
45 I. fossil fuel inputs for transportation, as well as reduced landfill use and
46 methane emissions in the case of animal or plant waste; and
47
48 II. fossil fuel inputs, environmental degradation, habit loss ect. in the
49 case of biofuels such as palm oil or corn grown for bio fuels; and
50

- 1 i. Aims to reduce the opportunity for the significant transportation, health and
2 safety risks to the community that would likely occur should the existing
3 refineries be converted to crude oil transshipment facilities by prohibiting the
4 construction of additional fossil fuel storage tanks above the current ratio of
5 Storage Capacity to Refining Capacity in existence as the date code changes are
6 adopted. For this section "Storage Capacity" is defined as total volume of all
7 tanks at a facility and "Refining Capacity" is defined as the average monthly
8 volume of refining, in the preceding calendar year; and
9
- 10 j. Considers that any expansion in storage or refining capacity greater than one (1)
11 percent above Baseline shall require ongoing identification of all responsible
12 parties involved in the transportation of crude and refined fossil fuels, the storage
13 and refining of such, and proof of insurance great enough to cover any
14 "Reasonable Worst Case Scenario" that could occur within the borders of
15 Whatcom County. The insurance shall be required for as long as the particular
16 refinery is operating and shall be increased annually to reflect any increase in the
17 Consumer Price Index; and
18
- 19 k. Recognizes that the term "Reasonable Worst Case Scenario" shall mean the
20 derailment and subsequent explosion, fire and extensive contamination of air,
21 soil, marine environments, all local public and private infrastructure, including but
22 limited to roads, buildings, parks and sewer systems. The scenario shall assume
23 the event occurs in high wind conditions, during an earthquake, in the downtown
24 core of Bellingham, involves a train of maximum possible operating length train,
25 travelling three times faster than normal, fully loaded with the most volatile
26 cargo transported to or from Cherry Point, transported in the least safe tankers in
27 use anywhere in North America, that the cleanup shall take a minimum of ten
28 years, require the relocation of all businesses and residents within a minimum of
29 a five mile radius and include the cost of fully compensating all the individuals
30 and businesses directly and indirectly affected. Please note this scenario is in
31 direct proportion to what happened during the Lac-Mégantic rail disaster which
32 involved a train of less than maximum size that occurred in Quebec, Canada on
33 July 6, 2013 and which five years on the community has yet to recover from.
34

35 **BE IT FURTHER RESOLVED**, that the Planning and Development department be
36 instructed to ensure any changes to the county code do NOT cause any of the following:
37

- 38 1. Unnecessarily delay the implementation of future safety upgrades that if not
39 made could potentially place the workers or environment at any risk.
40
- 41 2. Unnecessarily delay improvements that would have a positive impact on climate
42 change, such as increased efficiency, reduced pollution or greenhouse gas
43 emissions; and
44
- 45 3. "Catch 22's" where the County withholds permits until other agencies have issued
46 theirs, such as the Army Core of Engineers which will traditionally refuse to issue
47 a permit until the local government has approved the project; and
48
49

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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 ____ day of _____, 2019.

ATTEST: WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

WHATCOM COUNTY EXECUTIVE
APPROVED AS TO FORM:

Civil Deputy Prosecutor

WHATCOM COUNTY, WASHINGTON

Jack Louws, County Executive

() Approved () Denied

Date Signed: _____

1 EXHIBIT "A"
2 (SCOPE OF WORK)
3

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.