

Cherry Point Amendments - Proposal and Alternatives Comparison (October 4, 2016)

The chart below provides a summary of the major policies in the proposal and alternatives being considered for the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan:

- Proposal – Council Resolution (initiated by Council under Resolution 2016-027)
- Alternative # 1 – Council Member Alternative (proposed by an individual Council Member)
- Alternative # 2 – No Action Alternative (maintain existing Comprehensive Plan)

	Proposal	Alternative # 1	Alternative # 2
Policy 2CC-2	<p>Changes existing policy:</p> <p><u>Existing Development</u> Must maintain <i>and operate under</i> management plans that accomplish the goals of the Cherry Point Environmental Aquatic Reserve Management Plan (Department of Natural Resources, 2010).</p> <p><u>Future Development & Expansions</u></p> <ul style="list-style-type: none"> • Clean-energy and low-carbon emitting industries are favored. • Strict avoidance of estuaries and near-shore wetlands. • Additional hardening of the shoreline through bulkheads or other methods is prohibited. • Archeological study, designed in cooperation with the Lummi Nation, required. • New water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use. 	<p>Changes existing policy:</p> <p><u>All Development</u> Must maintain <i>and operate under</i> management plans that accomplish the goals of the Cherry Point Environmental Aquatic Reserve Management Plan (Department of Natural Resources, 2010).</p> <p><u>Existing Development</u> Work cooperatively with all businesses to increase environmental protection as they expand and/or upgrade refining operations at Cherry Point.</p>	<p>Retains existing policy:</p> <p>“Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan.”</p>
Policy 2CC-10	<p>Changes existing policy:</p> <p>Prohibits additional industrial piers at Cherry Point, in order to:</p> <ul style="list-style-type: none"> • Support and remain consistent with the state Department of Natural Resources’ withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and Cherry Point Environmental Aquatic Reserve Management Plan; • Further public health and safety; • Recognize federal actions upholding treaty rights; • Protect traditional commercial and tribal fishing; • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and • Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery goals of the Cherry Point Environmental Aquatic Reserve Management Plan and the Puget Sound Partnership’s recovery goals for Year 2035. 	<p>Changes existing policy:</p> <p>Any moratorium limiting the number of piers at Cherry Point doesn’t apply to any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.</p> <p>It is also the policy of Whatcom County to:</p> <ul style="list-style-type: none"> • Further public health and safety; • Recognize federal actions upholding treaty rights; • Protect traditional commercial and tribal fishing; • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; • Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery goals of the Cherry Point Environmental Aquatic Reserve Management Plan and the Puget Sound Partnership’s recovery goals for Year 2035; and • Support environmental upgrades when expanding refining operations. 	<p>Retains existing policy:</p> <p>“It is the policy of Whatcom County to limit the number of piers at Cherry Point by establishing a development moratorium. Notwithstanding the above, this moratorium shall not affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its Shoreline Management Program prior to adoption of the moratorium.”</p>

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	Proposal	Alternative # 1	Alternative # 2
Policy 2CC-14	<p>New policy:</p> <p>Adopt County regulations that prohibit the County from issuing permits or other approvals that could be in conflict with 33 USC Sec. 476 (the Magnuson Amendment). Amend County codes to implement this policy.</p> <p><i>Note: The Magnuson Amendment states “. . . no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington.”</i></p> <p><i>The U.S. Court of Appeals for the Ninth Circuit interpreted the Magnuson Amendment as follows:</i></p> <p><i>“. . . When analyzing capacity, courts should therefore not look to the capacity of the refinery, but rather to the capacity of the terminal. Such an understanding is supported by the legislative history of the amendment; just before passage of the amendment, Senator Magnuson remarked: ‘In fact, the amendment only applies to construction or alteration of dock facilities in the Puget Sound region, not to refineries as such’ . . .” (Ocean Advocates v. U.S. Army Corps of Engineers, 402 F.3d 846 (9th Cir. 2005)).</i></p>	No comparable policy in Alternative 1	No comparable policy in the existing Comprehensive Plan
Policy 2CC-15	<p>New policy:</p> <p>The County shall undertake a study to be completed by December of 2017 to examine existing County laws and develop recommendations for legal ways the County can work to limit unrefined fossil fuel exports from the Cherry Point UGA above levels in existence as of July 5, 2016.</p> <p>Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.</p> <p>Notify the County Council of proposals to expand fossil fuel exports from Cherry Point.</p>	<p>New policy:</p> <p>The County shall undertake a study to be completed by December of 2017 to examine existing County laws and develop recommendations for legal ways the County can work to limit unrefined fossil fuel exports from the Cherry Point UGA above levels in existence as of July 5, 2016.</p> <p>Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.</p> <p><i>NOTE: This is Policy 2CC-14 in Alternative 1, but is essentially the same as Policy 2CC-15 in the proposal, except that it does not require Council notification of proposals to expand fossil fuel exports.</i></p>	No comparable policy in the existing Comprehensive Plan

Note: The above provides a *summary* of the draft major policies. See the proposal and alternatives for the full text of these policies, other policies not shown in the chart above, and text changes.