

EXHIBIT A

Planning Commission Recommended Cherry Point Amendments

January 12, 2017

1 **Major Industrial Urban Growth Area / Port Industrial**

2
3 **Cherry Point**

4
5 The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of
6 industrial land. The land has long been planned and designated by Whatcom County
7 for industrial development and is currently the site of three major industrial
8 facilities including two oil refineries and an aluminum smelter. Together, these
9 three existing industries own about 4,400 acres of the total Cherry Point industrial
10 lands. A fourth large tract of undeveloped land constituting approximately 1,500
11 acres is designated for industrial development.

12
13 Because of the special characteristics of Cherry Point, including deep water port
14 access, rail access, and proximity to Canada, this area has regional significance for
15 the siting of large industrial or related facilities. General Petroleum constructed the
16 Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum
17 Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point
18 Refinery in 1971.

19
20 Cherry Point is also important historically and culturally to the Coast Salish people,
21 and part of the usual and accustomed fishing area for five treaty tribes, reserved
22 under the Treaty of Point Elliot of 1855. The Lummi Nation and Western
23 Washington University have identified an ancestral village dating back over 3,000
24 years ago in this area. The Cherry Point UGA contains sites of primary
25 archeological and cultural significance.

26
27 Since the designation of this area for industrial development years ago, newer
28 scientific study of the shoreline ecology has identified Cherry Point’s unique function
29 as part of the Fraser River/Georgia Strait and greater Salish Sea ecosystem and the
30 associated Cherry Point Aquatic Reserve has been designated by the state
31 Department of Natural Resources to recognize the ecological importance of the
32 aquatic lands in this area.

33
34 Since adoption of earlier versions of this Comprehensive Plan, governments have
35 increased their recognition of the observed and projected effects that fossil fuel
36 extraction, transportation and use have on human health and the environment. The
37 Cherry Point UGA contains the second-largest emitter of carbon pollutants
38 (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in
39 Washington State (Ecology, June 2016). Because of the large acreage demands of
40 the types of industries likely to locate there, the remaining undeveloped acreage at
41 Cherry Point will likely be absorbed during the 20-year planning period.

1 **Environmental**

2
3 The Cherry Point shoreline ~~also~~ has great importance to the fisheries and ecology of
4 Northern Puget Sound because it provides essential spawning habitat for what once
5 was the largest herring stock in Washington State. This herring stock has supported
6 important commercial fisheries in the past and provides forage for salmonids and
7 other important marine species. In 2000, 2010, and 2017 the State Lands
8 Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the
9 state's general leasing program and designated them as the "Cherry Point Aquatic
10 Reserve." The following DNR Use Authorizations are exempted from withdrawal:
11 Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66),
12 20-A08488 (Intalco Aluminum Corporation), and 20-010521 (Birch Bay Water and
13 Sewer District). In December 2010, the DNR recognized the need to "protect the
14 significant environmental resource of aquatic lands at Cherry Point" (CPAR
15 Management Plan p. 1), and completed the Cherry Point Environmental Aquatic
16 Reserve Management Plan ~~and designated the Cherry Point Aquatic Reserve~~ to
17 ensure long-term environmental protection of the ~~area~~Aquatic Reserve. The
18 ~~r~~Reserve extends from the southern boundary of Birch Bay State Park to the
19 northern border of the Lummi Indian Nation Reservation. ~~The site excludes three~~
20 ~~existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one~~
21 ~~proposed aquatic land lease.~~

22
23 The overall purpose of the Cherry Point Aquatic Reserve (CPAR) is to ensure long-
24 term environmental protection for local habitats and species (CPAR MP p. 1).
25 Specific goals include protection and recovery (as applicable) of Cherry Point
26 herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck
27 and shorebird communities, Dungeness crab, and submerged native aquatic
28 vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders "to
29 minimize and reduce identified impacts of human activities on the species and
30 habitats within the Reserve" (CPAR MP p. 2).

31
32 ~~The Management Plan acknowledges that the existing industries, complying with~~
33 ~~laws and regulations, do not conflict with the Aquatic Reserve although their~~
34 ~~activities may pose risks for the Aquatic Reserve. Indeed, the industries' need for~~
35 ~~buffer space and their compliance with shoreline management requirements means~~
36 ~~that m~~Much of the Aquatic Reserve shoreline is in substantially natural riparian
37 vegetation and bluff processes proceed without interference. Existing shoreline and
38 upland stream and wetland functions and values are of continuing importance to
39 the recovery and protection of species identified in the Aquatic Reserve
40 Management Plan. The area includes undeveloped intertidal wetlands with
41 importance to juvenile salmon and other species. Existing industries can serve the
42 Aquatic Reserve's objectives so long as they are managed according to the Plan and
43 so long as the lessees actively work to further goals for the Reserve (CPAR MP p.
44 2).
45

1 The County and industrial users have long recognized that the Cherry Point area
2 exhibits a unique set of characteristics that makes land there not only locally but
3 regionally important for the siting of major industrial developments. Based on the
4 public record developed during this plan review and best available science in the
5 record, the County supports a limit on the construction of additional export docks or
6 piers at Cherry Point due to environmental and treaty right concerns related to: (a)
7 physical interference with shoreline functions and values; (b) physical interference
8 with traditional, historic and commercial fishing and shellfish harvesting at the
9 Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative
10 small oil and fuel spills from increased large vessel traffic, potential collisions with
11 tankers and other vessels serving the existing three piers at Cherry Point, and
12 related barge traffic and support vessels (see Policy 2CC-11).

13 ~~_especially where deep water access for shipping is a critical locational factor.~~
14 ~~These characteristics were articulated in the Overall Economic Development Plan~~
15 ~~(OEDP) for Whatcom County adopted by the Whatcom County Council of~~
16 ~~Governments in May, 1993, in the 1997 Property Counselors Report on supply and~~
17 ~~demand for industrial land in Whatcom County and at Cherry Point, the 2002~~
18 ~~Greater Whatcom Comprehensive Economic Development Strategy, the 2003~~
19 ~~Whatcom County Industrial Land Study, and the 2015 Whatcom County~~
20 ~~Comprehensive Economic Development Strategy.~~

21
22 The United States Congress approved the “Magnuson Amendment” in 1977 in order
23 to restrict tankers carrying crude oil in the Puget Sound area. Congress found that
24 Puget Sound and the adjacent shorelines were threatened by the increased
25 possibility of vessel collisions and oil spills. Therefore, Congress restricted federal
26 agencies from issuing federal permits as follows:

27
28 . . . no officer, employee, or other official of the Federal Government shall, or
29 shall have authority to, issue, renew, grant, or otherwise approve any
30 permit, license, or other authority for constructing, renovating, modifying, or
31 otherwise altering a terminal, dock, or other facility in, on, or immediately
32 adjacent to, or affecting the navigable waters of Puget Sound, or any other
33 navigable waters in the State of Washington east of Port Angeles, which will
34 or may result in any increase in the volume of crude oil capable of being
35 handled at any such facility (measured as of October 18, 1977), other than
36 oil to be refined for consumption in the State of Washington.

37
38 Whatcom County does not enforce the Magnuson Amendment through the local
39 permitting process. However, the County can encourage federal agencies to
40 enforce the Magnuson Amendment and may, if necessary, seek to enforce the
41 Magnuson Amendment through the court system (see Policy 2CC-15).

42 Cherry Point UGA Features

43
44
45 The characteristics that make Cherry Point unique as a site for major industrial
46 developments include the following:
47

1 Port Access—

2
3 The marine waters off Cherry Point provide deep water access for shipping. Deep
4 water access for shipping was a major siting consideration for the three major
5 industries currently located at Cherry Point ~~and for the industrial/shipping facilities~~
6 ~~currently being proposed.~~

7
8 Rail Access –

9
10 Cherry Point is served by a branch line of the ~~BNSF Railway~~~~Burlington Northern~~
11 mainline serving western Washington ~~from Blaine to Portland~~. Rail service is
12 considered to be vital to statewide as well as local interests for the competitive
13 movement of freight. Rail service is particularly important in relation to water borne
14 commerce. The Cherry Point area has the rail access to support marine terminals
15 and industrial users in the area. ~~Cherry Point industries use rail to ship and receive~~
16 ~~multiple feedstocks and products. The BP refinery at Cherry Point uses the railroad~~
17 ~~to ship calcined coke to U.S. markets and to other port facilities for transshipment~~
18 ~~to foreign markets.~~ Both the ~~Cherry Point Refinery and the Ferndale Refinery~~~~BP and~~
19 ~~Phillips 66 refineries~~ receive crude oil shipments by rail.

20
21 Proximity to Canada, Alaska and Foreign Ports—

22
23 Cherry Point occupies a unique location for the siting of industry because of its close
24 proximity to Canada and because of its shorter travel distance than other regional
25 port facilities for shipping to ~~and from~~ Alaska and to other Pacific Rim locations. ~~The~~
26 ~~large acreage, good rail access and proximity to Washington State and Canadian~~
27 ~~ports makes the remaining upland area at Cherry Point suitable for commercial or~~
28 ~~industrial production with emphasis on major sustainable clean energy~~
29 ~~manufacturing or production (see Policy 2CC-3).~~ The Cherry Point industrial area
30 benefits from proximity to Canada, as trade between the U.S. and Canada grows in
31 response to the lifting of trade barriers under the Free Trade Agreement. Canadian
32 exports to the U.S. are expected to increase and Canadian firms exporting to the
33 U.S. are expected to seek locations in the U.S. as a way of improving access to U.S.
34 markets. ~~Compared to other port facilities in Washington and Canada, Cherry Point~~
35 ~~is not constrained by extensive upland development or vessel draft limitations.~~
36 ~~Additionally, just as other port facilities in Washington are constrained by lack of~~
37 ~~extensive upland areas to support major industrial development, Canadian port~~
38 ~~facilities are likewise constrained. There are limited expansion sites available at~~
39 ~~Roberts Banks and in the Vancouver Harbor, and development sites further up the~~
40 ~~Fraser River are constrained by limitations on vessel draft. Marine terminals at~~
41 ~~Cherry Point could serve a portion of the potential growth in Canadian marine~~
42 ~~cargo.~~

43
44 **Presence of Necessary Utilities and Infrastructure**

45
46 Cherry Point is a major industrial area in Whatcom County. The ~~Phillips 66~~ Ferndale
47 Refinery was constructed in 1954, the ~~Alcoa Intalco Works~~ Aluminum Smelter in

1 1966, and the ~~BP~~Cherry Point Refinery in 1971. The infrastructure to support these
2 industries and future industrial users at Cherry Point is in place and includes the
3 following:

4
5 Electric Power:

6
7 Electric Power is available from three providers in the Cherry Point area: Puget
8 Sound Energy, Public Utility District #1 (PUD #1), and Bonneville Power
9 Administration.

10
11 Puget Sound Energy owns two electrical generating facilities at Cherry Point. The
12 electricity generated by these two facilities can be transmitted outside the region
13 into the grid for supply to Puget’s customers or some of it can be consumed by
14 Cherry Point customers through interties with the PUD #1. Puget Sound Energy
15 also acquires power from outside the region and transmits it via their transmission
16 grid into Cherry Point. The ~~BP~~Cherry Point Refinery purchases electrical supply on
17 the market and pays Puget Sound Energy to transmit the power and operate
18 distribution systems to provide that power to the refinery.

19
20 PUD #1 purchases electricity from the Bonneville Power Administration and takes
21 ownership of that power at the Bonneville substation in Bellingham and then
22 transmits it over its transmission line to Cherry Point to serve the ~~Phillips-66~~
23 Ferndale Refinery.

24
25 PUD #1 and Puget Sound Energy have interties at Cherry Point allowing the
26 transmission of power in and out of Cherry Point depending on the amount of power
27 generated and consumed at Cherry Point.

28
29 The Bonneville Power Administration supplies power directly to the ~~Alcoa-Intalco~~
30 ~~Works~~aluminum production facility.

31
32 Water:

33
34 Whatcom County Public Utility District #1 currently provides industrial process
35 water to all major industrial facilities at Cherry Point and has additional water
36 available contracts-in-place to provide process water to properties that are currently
37 undeveloped. PUD # 1 also operates a small system to provide potable water to
38 one industry (Praxair). Birch Bay Water and Sewer District provides potable water
39 to the ~~BP~~Cherry Point Refinery. The other industries operate their own water
40 treatment facilities to provide potable water for their facilities. Existing industries
41 consume large quantities of water, in many cases drawn from the Nooksack River.
42 It is the County’s policy to support renewed efforts to reduce both water
43 consumption levels and the quantity of discharges, in favor of recycled water use
44 (see Policy 2CC-3 and Policy 2CC-10).

1 Sewer:
2

3 Sewer service is not typically required for large industrial developments. Most of the
4 existing industrial users provide their own on-site sewage treatment and waste
5 water treatment. Sewer service for domestic wastewater is provided to the **BP**
6 **Cherry Point** Refinery by the Birch Bay Water and Sewer District. If and when sewer
7 service should become necessary for other industries, service could be provided on
8 a contractual basis with the Birch Bay Water and Sewer District, which borders the
9 Cherry Point industrial area on the north.

10
11 Natural Gas:
12

13 Natural gas is currently available at Cherry Point.

14
15 All-weather Roads:
16

17 Grandview and Slater roads, the major east-west connectors between Cherry Point
18 and Interstate-5, provide all-weather road access to Cherry Point.

19
20 **Use Compatibility and Land Use Designation**
21

22 The industries currently located at Cherry Point are a substantial part of the
23 economic base of Whatcom County and the region and the economic welfare of the
24 county is strongly tied to the health of these industries and their ability to flourish
25 and expand as opportunities present themselves. These industries need to be
26 protected from the inappropriate encroachment of incompatible uses; particularly
27 residential uses that could affect their ability to expand. at the same time, the
28 expansion of these industries needs to be done in ways that do not significantly
29 impact the ecology of the Salish Sea. The best means for protecting these
30 industries from incompatible adjoining uses and to assure their continued
31 regulatory conformity is to maintain the industrial land use designation of these
32 lands and adjoining properties currently designated for industrial development. The
33 Cherry Point industrial lands have been designated for industrial development and
34 as a direct result of the industrial designation, incompatible and inappropriate
35 residential development has been curtailed.

36
37 **Goal 2CC: Maintain Cherry Point as an unincorporated urban growth**
38 **area based on its unique location, ~~and~~ characteristics and**
39 **its significant contribution to the overall industrial land**
40 **supply and Whatcom County's tax base.**
41

42 Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area
43 to accommodate major users that need to be located away from
44 concentrated urban residential areas and that can manage their
45 activities in such a way that they do not conflict with the goals
46 of the Aquatic Reserve Management Plan.
47

- 1 Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain
2 management plans to accomplish the goals of the Aquatic
3 Reserve Management Plan.
4
- 5 Policy 2CC-3: Encourage that future developments or expansions within the
6 Cherry Point UGA are consistent with the following:
7 • Clean and low carbon emitting technology;
8 • Avoidance of estuaries and near shore wetlands;
9 • Archeological review; and
10 • Water recycling technology to minimize water use.
- 11 Policy 2CC-~~43~~: Assure that Cherry Point's unique features of large parcelization,
12 port access, and pipeline, vehicular and rail transportation
13 availability are maintained and protected from incompatible
14 development.
15
- 16 Policy: 2CC-~~54~~: Require the master planning of each large parcel in advance of
17 any development or subdivision at Cherry Point.
18
- 19 Policy: 2CC-~~65~~: Require the designation and site plan for a major user (generally
20 40 acres or more) before the development of accessory or
21 supporting uses to assure that accessory or supporting uses are
22 compatible with and will not interfere with the major industrial
23 user.
24
- 25 Policy: 2CC-~~76~~: Specify 160 acres as a minimum area for planning, prior to the
26 commitment of a parcel for a major user (40 acres or more,
27 singularly or as a cluster or group).
28
- 29 Policy: 2CC-~~87~~: Permit support activities, warehousing, shipping, machine repair
30 and service, educational services, food service and
31 conveniences, to locate on a parcel only after the completion of
32 a master plan, and the identification and site plan approval for
33 the major user.
34
- 35 Policy 2CC-~~98~~: Exclude Cherry Point as part of any future incorporation of Birch
36 Bay.
37 • to protect interests of the property owner in terms of
38 taxation and urban regulations;
39 • to preclude urbanism near "smokestack" industries;
40 • to preserve county government tax base.
41
42

1 Policy 2CC-~~109~~: Continue to work with service providers that serve Cherry Point
2 to ensure the delivery of services and to allow it to develop to
3 its fullest potential, consistent with other County policies
4 supporting energy and water conservation.

5
6 Policy 2CC-~~1110~~: It is the continuing policy of Whatcom County to support a limit
7 on the number of industrial piers at Cherry Point, consistent
8 with:

9
10 • existing vested rights, approvals or agreements granted
11 under Whatcom County's Shoreline Master Program;

12 • continued agency use of best available science;

13 • Whatcom County's application of the Shoreline
14 Management Act, the Whatcom County Shoreline Master
15 Program, Whatcom County Comprehensive Plan,
16 Whatcom County Critical Areas Ordinance and other
17 applicable local plans, laws and regulations including,
18 without limit, the fire, mechanical and electrical codes
19 adopted by Whatcom County;

20 • state agencies' application of state laws and regulations
21 including without limit the State Environmental Policy Act,
22 Washington Indian Graves and Records Act, the
23 Washington Archaeological Sites and Resources Act, the
24 state Energy Facility Site Location Act, limitations
25 imposed by the Cherry Point Aquatic Reserve
26 Management Plan; and the federal Clean Water Act as
27 delegated to the State of Washington; and

28 • federal agencies' application of federal laws, regulations,
29 and treaties including without limit the National Historic
30 Preservation Act, Clean Water Act, Clean Air Act,
31 Endangered Species Act, U.S. Coast Guard regulations
32 regarding vessel operations, and the Magnuson
33 Amendment to the Marine Mammal Protection Act.

34
35 ~~by establishing a development moratorium. Notwithstanding the~~
36 ~~above, this moratorium shall not affect, nor otherwise apply to,~~
37 ~~any proposed pier that Whatcom County approved under its~~
38 ~~Shoreline Management Program prior to adoption of the~~
39 ~~moratorium.~~

40
41 Policy 2CC-~~1211~~: RCW 36.70A.365 requires the implementation of Traffic Demand
42 Management (TDM) programs for the designating of a Major

1 Industrial Urban Growth Area. Any employer in the Cherry Point
2 Urban Growth Area that employs one hundred or more full-time
3 employees at a single worksite who begin their regular work day
4 between 6:00 am and 9:00 am on weekdays for at least twelve
5 continuous months during the year are required to meet the
6 TDM requirements of WCC 16.24.
7

8 Policy 2CC-~~1312~~: Work with the Cherry Point industries to maximize public access
9 to the Cherry Point beaches without compromising industrial
10 security.
11

12 Policy 2CC-~~1413~~: Cooperate with the DNR and existing industries to monitor the
13 effects of industrial activities on water quality and habitat
14 functions in and adjacent to the Cherry Point Aquatic Reserve.
15

16 Policy 2CC-15: Whatcom County will encourage federal agencies, including the
17 U.S. Army Corps of Engineers, to enforce the provisions of the
18 Magnuson Amendment (33 USC Sec. 476). If necessary,
19 Whatcom County may initiate legal action to enforce the
20 provisions of the Magnuson Amendment.
21

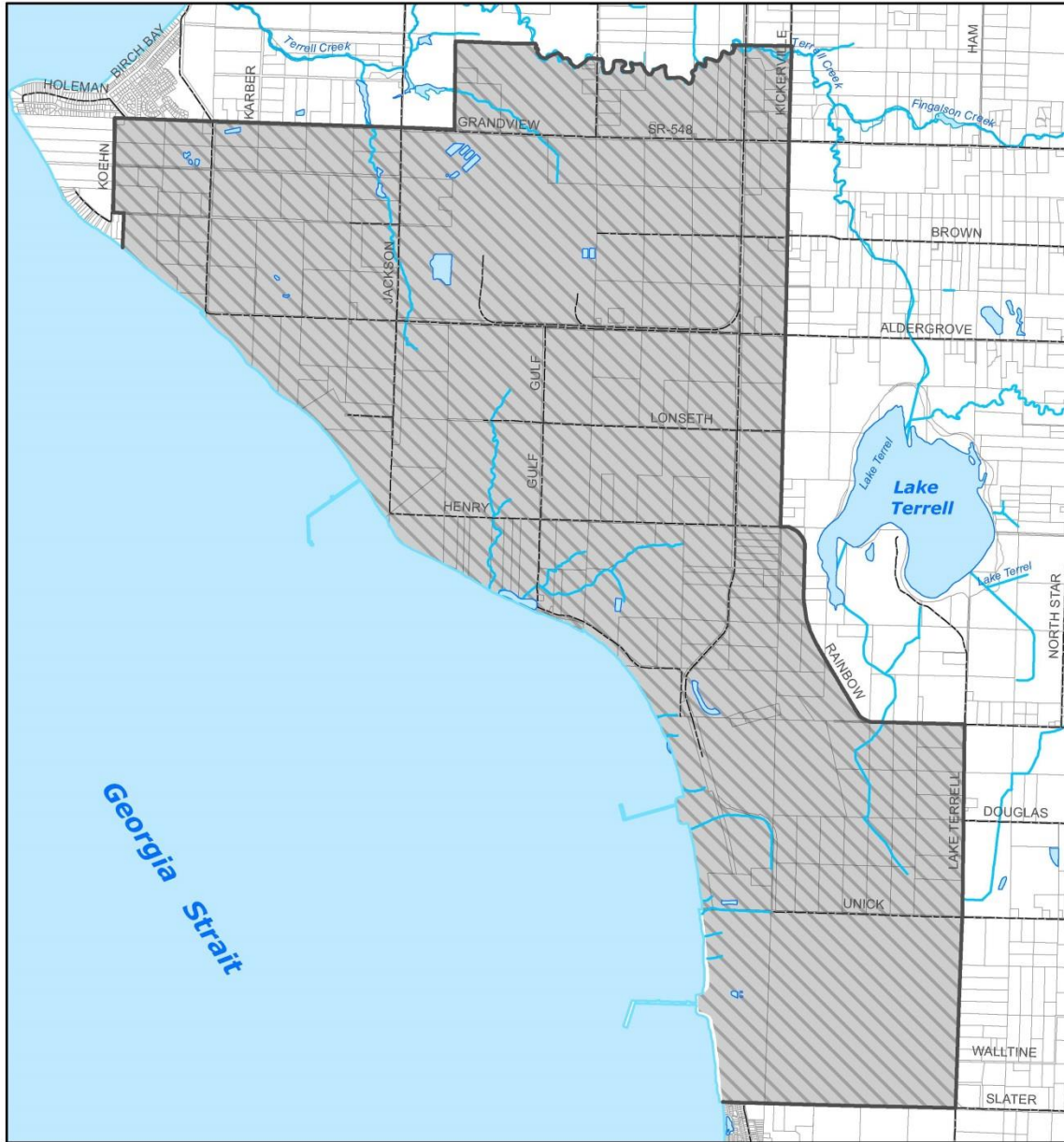
22 Policy 2CC-16: The County shall undertake a study to be completed by
23 December of 2018 to examine existing County laws, including
24 those related to public health, safety, development, building,
25 zoning, permitting, electrical, nuisance, and fire codes, and
26 develop recommendations for legal ways the County can work to
27 limit crude oil, coal, and natural gas exports from the Cherry
28 Point UGA above levels in existence as of July 5, 2016, and
29 attract and support clean and low carbon industry. The study
30 shall review and analyze any legal advice freely submitted to the
31 County by legal experts on behalf of a variety of stakeholder
32 interests, and make that advice public as part of the study
33 report.
34

35 • Based on the above study, develop proposed Comprehensive
36 Plan amendments and associated code and rule amendments
37 for Council consideration as soon as possible.
38

39 • Until the above mentioned amendments are implemented,
40 the Prosecuting Attorney and/or the County Administration
41 should provide the County Council written notice of all known
42 pre-application correspondence or permit application
43 submittals and notices, federal, state, or local, that involve
44 activity with the potential to expand the export of fossil fuels
45 from Cherry Point.

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Map UGA-10



- Cherry Point Urban Growth Area

 Major Port/Industrial UGA

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