


WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2018 76 D

<i>CLEARANCES</i>	<i>Initial</i>	<i>Date</i>	<i>Date Received in Council Office</i>	<i>Agenda Date</i>	<i>Assigned to:</i>
<i>Originator:</i>	Council	7/2/2018		7/10/2018	SCOTW
<i>Division Head:</i>				7/24/2018	SCOTW
<i>Dept. Head:</i>		7.2.18		9/11/2018	SCOTW
<i>Prosecutor:</i>				10/9/2018	SCOTW
<i>Purchasing/Budget:</i>				10/23/2018	SCOTW
<i>Executive:</i>					

TITLE OF DOCUMENT:

Discussion of Preliminary Draft Comp Plan and Zoning Code Amendmnts-Cherry Point

ATTACHMENTS:

SEPA review required? () Yes () NO
 SEPA review completed? () Yes () NO

Should Clerk schedule a hearing? () Yes () NO
 Requested Date:

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE: (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Discussion of preliminary draft Comprehensive Plan and Zoning Code amendments - Cherry Point

COMMITTEE ACTION:

7/10/2018: Discussed and amended
 7/24/2018: Held in Committee
 9/11/2018: Held in Committee
 10/9/2018: Discussed and held in committee

COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: www.co.whatcom.wa.us/council.

Exhibit A

Whatcom County Comprehensive Plan Amendments

Amend the Whatcom County Comprehensive Plan (Chapter 2 – Land Use) as follows:

Major Industrial Urban Growth Area / Port Industrial

Cherry Point

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

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA, which provide significant employment, have produced and shipped refined fossil fuels and other products for decades.

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

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

Since adoption of earlier versions of this Comprehensive Plan, governments have increased their recognition of the observed and projected effects that fossil fuel extraction, transportation and use have on human health and the environment.

Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to:

- ~~Honor any existing vested rights or other legally enforceable agreements for an additional dock/ pier;~~
- Update the Whatcom County Shoreline Master Program to conform with this policy;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

Policy 2CC-16: The County ~~will, through applicable permitting processes, shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to~~ limit the negative impacts on public safety, transportation, the economy, and environment from ~~new or expanded~~ crude oil, coal, liquefied petroleum gases, ~~and~~ natural gas, ~~and radioactive substance~~ exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

~~To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.~~

~~The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.~~

- ~~Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.~~
- ~~Until the above mentioned amendments are implemented, t~~The Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

Policy 2CC-17: Policy 2CC-16 shall not limit existing operations or maintenance of existing facilities as of March 1, 2017.

Amend the Whatcom County Comprehensive Plan (Appendix A – Glossary) as follows:

Hazardous Substance: Any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the physical, chemical or biological properties described in WAC 173-303-090 and/or 173-303-100.

Exhibit B
Whatcom County Code Title 20 Amendments
Light Impact Industrial (LII) District

Amend WCC 20.66.050, LII Permitted Uses, as follows:

- .063** Rail, truck and freight terminals; warehousing and storage; parcel delivery service; freight forwarding; inspection weighing services; and packaging and crating; except that new or expanded crude oil, other unrefined fossil fuel, liquefied petroleum gas, and natural gas facilities require a conditional use permit.

- .067** Construction contractors' business offices and related storage and equipment yards.

- .068** Wholesale trade or storage of durable and nondurable goods including automobile parts and supplies; tires and tubes; furniture and home furnishings; lumber and other construction materials; sporting goods, toys and hobby goods; metal service centers and offices; electrical goods; hardware, plumbing and heating equipment; machinery equipment and supplies; jewelry, watches and precious stones; other durable goods; paper and paper products; drugs, proprietaries and sundries; apparel, piece goods and notions; groceries and related products; beer, wine and distilled beverages; waste bottles; waste boxes; rags; waste paper; wiping rags and miscellaneous nondurable goods; provided, however, except that:
 - (1)** trade, sStorage or processing of sulphur shall be prohibited. Storage or processing of bulk coal shall be prohibited.
 - (2)** New or expanded crude oil, other unrefined fossil fuel, liquefied petroleum gas, and natural gas facilities require a conditional use permit.

- .081** Freight railroad switching yards and terminals; except that new or expanded crude oil, other unrefined fossil fuel, liquefied petroleum gas, and natural gas facilities require a conditional use permit.

Amend WCC 20.66.150, LII Conditional Uses, as follows:

- .170** New or expanded transportation, storage, and distribution facilities for crude oil, other unrefined fossil fuel, liquefied petroleum gas, and/or natural gas.

Amend WCC 20.66.200, LII Prohibited Uses, as follows:

- .204** Storage or processing of bulk coal.

Heavy Impact Industrial (HII) District

Amend WCC 20.68.050, HII Permitted Uses, as follows:

.054 The following are permitted uses except as otherwise prohibited:

- (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill products.
- (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- (3) Refining and accessory storage of petroleum and asphalt.

On July 10, 2018, the County Council's Special Committee of the Whole provided direction to continue to allow accessory storage of refined petroleum products (such as gasoline) as a permitted use.

Question: Storage of crude oil for export would require a conditional use permit. Is it Council's intent to allow new or expanded storage facilities for crude oil that will be refined on-site as a permitted use or require a conditional use permit in the Heavy Impact Industrial zone?

- (4) The manufacture and processing of rubber and plastic products.
 - (5) Leather tanning and finishing.
 - (6) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.
 - (7) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.
- .059** Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities; except that new or expanded crude oil, other unrefined fossil fuel, liquefied petroleum gas, and natural gas facilities require a conditional use permit. Bulk coal storage facilities are prohibited.
- .081** Freight railroad switching yards and terminals; except that new or expanded crude oil, other unrefined fossil fuel, liquefied petroleum gas, and natural gas facilities require a conditional use permit.

~~**.082** Marine port facilities.~~

WCC 20.68.100, HII Accessory Uses, currently allows:

.105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

Note: No changes are currently proposed to WCC 20.68.105. It is included for informational purposes.
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Amend WCC 20.68.150, HII Conditional Uses, as follows:

.170 New or expanded transportation, storage, and distribution facilities for crude oil, other unrefined fossil fuel, liquefied petroleum gas, and/or natural gas.

Amend WCC 20.68.200, HII Prohibited Uses, as follows:

.201 New piers in the Cherry Point Urban Growth Area. Reserved.

.204 Storage or processing of bulk coal.

Public Utilities Chapter

Amend WCC 20.82.030, Conditional Uses in the Public Utilities Chapter, as follows:

20.82.030 Conditional uses.

The following uses shall require a conditional use permit ~~or major project permit and shall be subject to a threshold determination in accordance with the Whatcom County SEPA Ordinance:~~

(1) ~~Petroleum Pipelines - Pipelines carrying petroleum, petroleum products, and/or liquefied petroleum gas, except for:~~

~~(a) Replacement pipelines in the same right-of-way that do not increase the capacity of the pipelines being replaced, which are permitted.~~

~~(b) Natural gas pipelines, which are regulated as set forth in (2) below.~~

~~Transmission pipelines, or pipelines termed a distribution pipeline but having characteristics that fit the definition of a transmission pipeline, carrying petroleum and petroleum products other than natural gas when such pipelines will be located outside the zoning district classified as Heavy Impact Industrial.~~

(2) ~~Natural Gas Pipelines - Pipelines carrying natural gas, except for:~~

~~(a) Replacement pipelines in the same right-of-way that do not increase the capacity of the pipelines being replaced, which are permitted.~~

~~(b) Distribution lines that provide service directly to customers for consumption, which are permitted.~~

~~Regional transmission pipelines for the bulk conveyance of natural gas, or pipelines termed a distribution pipeline but having characteristics that fit the definition of a transmission pipeline. Except for the above conditions, natural gas pipelines which are owned and operated by a gas utility company regulated by the State Utilities and Transportation Commission and which are distribution lines owned by the utility that provide natural gas service directly to county citizens and businesses shall not be considered regional transmission lines.~~

Major Project Permits Chapter

Amend WCC 20.88.100, Major Project Permits, as follows:

.130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application based on the following criteria:

(1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.

(2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

(3) Will be consistent with applicable laws and regulations.

(4) Will not substantially interfere with the operation of existing uses.

(5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the appropriate agency or division thereof.

(6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and will not impose uncompensated costs on other property owned.

(7) Will be appropriately responsive to any EIS prepared for the project.

(8) Will have obtained, if required, a state aquatic lands lease, a federal permit under Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), and/or a federal permit under Section 404 of the Clean Water Act (for fill into waters of the U.S.) prior to approval of the major project permit.

Amend WCC 20.88.215, Major Project Permit Procedures, as follows:

.215 Procedures. Major project permit Master plan review shall be conducted under current review procedures. Other land use reviews may be conducted concurrently with the major project permitmaster plan review.

(a) Any ~~modifications, additions or~~ changes to an approved major project permitmaster plan are subject to the following:

(i) Minor changes require approval of the zoning administrator, upon consultation with the technical committee. Minor changes are those amendments which may affect the dimensions, location and type of improvements of facilities; provided, the amendment maintains the basic character of the major project permit application approved by the county council including general type and location of dwellings and other land use activities, arrangement of buildings, density of the development, and provisions of the project to meet density bonus and open space requirements; and provided further, the standards of this chapter are met.

~~Minor changes shall be reviewed for compliance and compatibility with the approved master plan. A determination is made by the director.~~

(ii) Major changes require approval of the county council. Major changes are those amendments which, in the opinion of the zoning administrator, upon consultation with the technical committee, substantially change the basic land use, design, density, open space or other requirements of the major project permit. No building or other permit shall be issued without prior review and approval of major changes by the county council~~Major changes shall be subject to the original procedural application type,~~ subject to the fees as contained in the unified fee schedule.

(iii) Major project permitsMaster plans may include, as a condition of their approval, a requirement for periodic progress reports and mandatory updates on a predetermined interval.

Definitions Chapter

20.97.434.1 Technical committee.

“Technical committee” or “technical review committee” means the designated representatives of the Whatcom County Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and the Whatcom County Health Department Director.

Exhibit C

Whatcom County Code Title 22 Amendments

Amend WCC 22.05, Project Permit Procedures, as follows:

22.05.110 Final decisions – Type I, II, and III applications.

- (1) The director or designee’s final decision on all Type I or II applications shall be in the form of a written determination or permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to comply with all applicable codes.

- (2) The hearing examiner’s final decision on all Type III applications per WCC 22.05.020 or appeals per 22.05.160(1) shall either grant or deny the application or appeal.
 - (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.

 - (b) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

 - (c) Insurance Placeholder

 - (~~d~~e) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions based on the record to support the decision.

 - (~~e~~d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as provided herein.

(fe) The applicant, any party of record or any county department may appeal any final decision of the hearing examiner to superior court, except as otherwise specified in WCC 22.05.020.

**22.05.120 Recommendations and final decisions – Type IV applications.
Recommended decisions to county council.**

- (1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions, modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the objectives and goals of the Comprehensive Plan, statutes, ordinances and regulations as well as other official policies and objectives of Whatcom County.
- (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC 20.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out and conforms to the county’s Comprehensive Plan and complies with the applicable statutes, ordinances or regulations.
- (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and Chapter 42.36 RCW.
- (4) For planned unit developments and major project permits the following shall apply:
 - (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.
 - (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days following the conclusion of the open record hearing.
 - (c) The county council shall conduct the following within the specified timeframes, except as provided in subsection (iii):
 - (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28 calendar days after receiving the hearing examiner’s recommendation.

(ii) Issue a final written decision within 21 calendar days of the public meeting.

(iii) The county council may exceed the time limits in subsection (i) or (ii) if the county council meeting schedule does not accommodate a meeting within the above timeframes, or if the county council makes written findings that a specified amount of additional time is needed to process a specific application or project type, per RCW 36.70B.080(1).

- (5) The county council's final written decision may include conditions when the project is approved and shall state the findings of fact upon which the decision is based.

(a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance with the conditions, modifications and restrictions.

(b) Insurance Placeholder

- (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code.

Exhibit D
Whatcom County Code Title 16 Amendments

Amend WCC 16.08, State Environmental Policy Act (SEPA), as follows:

16.08.121 Preparation of EIS – Greenhouse gas analysis.

If a draft EIS and final EIS or draft and final SEIS is required for new or expanded transportation, storage, or distribution facilities for crude oil, liquefied petroleum gas, or natural gas, the EIS or SEIS shall include a greenhouse gas analysis.