

WHATCOM COUNTY PLANNING COMMISSION

Amendments to the Cherry Point UGA section of the Whatcom County Comprehensive Plan

FINDINGS OF FACT AND REASONS FOR ACTION

1. The Cherry Point Major/Port Industrial Urban Growth Area (UGA), and associated goals & policies, were established in 1997 when the Whatcom Comprehensive Plan was adopted. The Cherry Point UGA boundaries did not change in the 2009 UGA review or the 2016 UGA review.
2. The Cherry Point UGA is currently zoned for Heavy Impact Industrial and Light Impact Industrial land uses. The Cherry Point UGA zoning generally does not allow residential development.
3. The Whatcom County Council approved Resolution 2016-027 initiating amendments to the Cherry Point UGA section of the Whatcom County Comprehensive Plan on July 26, 2016. In accordance with this Resolution, the County is reviewing proposed amendments to the Cherry Point section of Chapter Two – Land Use of the Comprehensive Plan including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed.
4. Growth Management Act (GMA) Planning Goal 11, relating to citizen participation and coordination, is to “Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts” (RCW 36.70A.020(11)).
5. The GMA requires the County to establish and broadly disseminate a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans (RCW 36.70A.140). Whatcom County developed a Public Participation Plan to guide the planning process and has followed that Plan.

6. The County Council's Proposal and two alternatives were posted on the County website on September 14, 2016.
7. The Whatcom County Planning Commission and Whatcom County Planning & Development Services Department held a combined town hall meeting/SEPA public hearing regarding the County Council Proposal and alternatives on October 13, 2016.
8. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on October 27, 2016.
9. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on November 10, 2016.
10. The Whatcom County Planning Commission held a public hearing on December 8, 2016.
11. The Whatcom County Planning Commission conducted a work session, which allowed public comment, on January 12, 2017.
12. Notices of these public meetings were sent to citizens, media, cities, Skagit County, Tribal governments, and other groups on the County's e-mail list on September 14, 2016, October 20, 2016, November 2, 2016, November 16, 2016, and December 9, 2016.
13. Notices of the public hearings were published in the Bellingham Herald on September 23, 2016 and November 25, 2016.
14. Notice of proposed amendments was submitted to the Washington State Department of Commerce on November 16, 2016 pursuant to RCW 36.70A.106.
15. A Determination of Non-Significance was issued under the State Environmental Policy Act on November 22, 2016.

Whatcom County Code - Approval Criteria

16. Pursuant to Whatcom County Code 2.160.080, in order to approve comprehensive plan amendments, the County must find the following:

- a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
- b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
- c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
- d. The amendment does not include or facilitate spot zoning.
- e. Amendments that propose the expansion of an urban growth area boundary are required to acquire development rights from a designated Transfer of Development Rights sending area, with certain exceptions including UGA expansions initiated by a government agency.

Growth Management Act

17. The GMA establishes planning goals in RCW 36.70A.020 to guide adoption of comprehensive plans.

18. GMA Planning Goal 1, relating to urban growth, is to "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner" (RCW 36.70A.020(1)).
19. GMA Planning Goal 5, relating to economic development, is to:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities (RCW 36.70A.020(5)).
20. GMA Planning Goal 7, relating to permits, states "Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability" (RCW 36.70A.020(7)).
21. GMA Planning Goal 9, relating to open space and recreation, is to "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities" (RCW 36.70A.020(9)).
22. GMA Planning Goal 10, relating to the environment, is to "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water" (RCW 36.70A.020(10)).
23. GMA Planning Goal 13, relating to historic preservation, is to "Identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance" (RCW 36.70A.020(13)).
24. The GMA requires that a comprehensive plan must be an internally consistent document (RCW 36.70A.070). Shoreline management program goals and policies are considered part of the County's Comprehensive Plan (RCW 36.70A.480(1)).

25. The GMA requires consistency between the comprehensive plan and development regulations (RCW 36.70A.040(3)). Development regulations include shoreline management program regulations and zoning ordinances (RCW 36.70A.030(7)).

Policy 2CC-2

26. Existing Whatcom County Comprehensive Plan Policy 2CC-2 is to "Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan."
27. The County Council Proposal would change Policy 2CC-2 to require that *existing* developments in the Cherry Point UGA maintain *and operate under* management plans that accomplish the goals of the Cherry Point Environmental Aquatic Reserve.
28. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017. The goals of this Plan (p. 2) are set forth below:

Goal One: Identify, protect, restore and enhance the functions and natural processes of aquatic nearshore and subtidal ecosystems that support endangered, threatened and sensitive species and aquatic resources identified for conservation in the Reserve.

Goal Two: Improve and protect water quality to maintain public health, support fish and wildlife species and healthy functioning habitats.

Goal Three: Protect and help recover indicator fish and wildlife species and habitats, with primary focus on Cherry Point herring, Nooksack Chinook salmon, groundfish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation.

Goal Four: Facilitate stewardship of habitats and species by working in cooperation with lessees, recreational users and federal, state and tribal resource agencies to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve.

Goal Five: Identify, respect, and protect archaeological, cultural, and historical resources within the Reserve. Continue to respect the right of Washington's tribes to use their own natural and cultural resources as recognized by treaties, statutes, executive orders, and court decisions.

29. The *Cherry Point Environmental Aquatic Reserve Management Plan* (DNR, amended January 2017) states:
- . . . there are no existing use authorizations on state-owned aquatic lands within the Cherry Point Aquatic Reserve. The existing use authorizations are located in the "cutouts" directly adjacent to or abutting the reserve. DNR cannot alter the terms and conditions of an existing lease, easement, or other use authorization without consent of the tenant or grantee.
- This management plan does not alter existing contractual rights and obligations. Existing tenants or grantees may continue to conduct their activities in conformance with their current use authorization and in compliance with other local, state and federal regulations. DNR will encourage voluntary and cooperative efforts of existing lessees to implement the elements of this plan (p. 50).
30. The Washington State DNR encourages voluntary/cooperative efforts of existing aquatic lease-holders to meet the goals of the *Cherry Point Environmental Aquatic Reserve Management Plan*. Consistent with this approach, the Whatcom County Planning Commission recommends retaining existing Policy 2CC-2 with no changes.
31. The County Council Proposal would also change Policy 2CC-2 to ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:
- a. Clean-energy and low-carbon emitting industries are favored;
 - b. Strict avoidance of estuaries and near-shore wetlands, as they play not only an important role in protecting habitat, but also serve as flood storage areas in the absorption of future sea level rise;
 - c. Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;

- d. Any proposed new development is consistent with an archaeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- e. Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

Clean Energy / Low Carbon Industries

32. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016, which reviewed the County Council Proposal. In relation to favoring clean energy and low carbon industries, this memo states that "The word 'favored' operates as a general guideline and is an appropriate statement of policy. The manner in which such industries would be favored is left to subsequently enacted regulations" (p. 3).

Near Shore Wetlands

33. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to near shore wetlands, this memo states that "'Strict avoidance' appears to be a specific regulation and likely would not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule" (p. 3).

Shoreline Hardening/Bulkheads

34. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to shoreline hardening and bulkheads, this memo states that "The absolute prohibition here is a clear regulation and likely would not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule" (p. 3).
35. Whatcom County Comprehensive Plan Policy 10L-6 is to:

Discourage shoreline armoring. Instead, encourage natural or bio-engineering solutions such as planting native vegetation, engineered log jams/LWD, and beach nourishment along eroding banks to address stream and shoreline bank erosion problems. Riparian buffers should be replanted with suitable native vegetation as a part of all bank stabilization projects.

36. Whatcom County Shoreline Management Program policy 23.100.130.A.3 states:

New or expanded structural shore stabilization should only be permitted where demonstrated to be necessary to protect an existing primary structure that is in danger of loss or substantial damage, and where mitigation of impacts would not cause a net loss of shoreline ecological functions and processes.

37. Whatcom County Shoreline Management Program regulation 23.100.130.B.1.a states:

New or expanded structural shore stabilization for existing primary structures, including roads, railroads, public facilities, etc., is prohibited unless there is conclusive evidence documented by a geotechnical analysis that there is a significant possibility that the structure will be damaged within three years as a result of shoreline erosion caused by stream processes, tidal action or waves, and only when significant adverse impacts are mitigated to ensure no net loss of shoreline ecological functions and/or processes. . .

38. Whatcom County Shoreline Management Program regulation 23.100.130.B.1.d states:

Where shore stabilization is allowed, it shall consist of "soft," flexible, and/or natural materials or other bioengineered approaches unless a geotechnical analysis demonstrates that such measures are infeasible.

39. Whatcom County Shoreline Management Program regulation 23.100.130.B.2.b states:

Bulkheads and other similar hard structures are prohibited on marine feeder bluff and estuarine shores, and on wetland and rock shores; provided, that such structures may be permitted as a conditional use where valuable primary structure(s) are at risk and no feasible alternatives exist and where ongoing monitoring, maintenance and mitigation for impacts to shoreline ecological functions and processes are provided.

40. The Whatcom County Shoreline Management Program already contains a set of policies and regulations relating to shoreline stabilization. These policies and regulations only allow shoreline hardening if specific conditions are satisfied. However, they do not

create an absolute prohibition on shoreline hardening in the Cherry Point Management Unit or other shorelines in the County. Because the Whatcom County Comprehensive Plan (Chapter 10) and the Shoreline Management Program already address shoreline hardening, an additional policy in the Comprehensive Plan (Chapter 2) is not necessary.

Archaeological Study

41. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to archaeological study, this memo states that:

This bullet point requires that development be “consistent with” the standards of a particular study. It also requires a specific procedure—review of the study by the Lummi Nation. These rules appear to be more regulation than policy, and possibly more appropriate for specific regulations than the Comprehensive Plan. . . (p. 3)

42. Archaeological resources are currently addressed in Whatcom County Comprehensive Plan Goal 2AAA and associated policies, Whatcom County Shoreline Management Program section 23.90.070, Whatcom County Building Codes section 15.040.020.B.3, and the SEPA review process.

43. Whatcom County Comprehensive Plan Goal 2AAA is to:

Recognize Whatcom County's historical and archeological attributes and identify and encourage the preservation of lands, sites, and structures that have historic or archeological significance.

44. Whatcom County Shoreline Management Program regulation 23.90.070.B.1.a states:

Upon receipt of application for a shoreline permit or request for a statement of exemption for development on properties within 500 feet of a site known to contain an historic, cultural or archaeological resource(s), the county shall require a cultural resource site assessment; provided, that the provisions of this section may be waived if the administrator determines that the proposed development activities do not include any ground disturbing activities and will not impact a known historic, cultural or archaeological site. . .

45. The Whatcom County Building Codes section 15.040.020.B.3 states:

Upon receipt of a fill and grade permit application on properties within 500 feet of a site known to contain archaeological resources that are outside of the Shoreline Management Program Jurisdiction (WCC Title 23) and/or the Point Roberts Special District (WCC 20.72), the County shall notify the applicant that the project's location is within an archaeologically sensitive area and Federal, State and Tribal Laws and Regulations pertaining to cultural resources may apply.

Water Recycling

46. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. In relation to water recycling, this memo states:

The requirement that development 'shall' utilize particular technology is clearly a specific regulation. This requirement likely is not enforceable through the Comprehensive Plan. Regulations would be required to implement this rule (p. 3).

47. Whatcom County Comprehensive Plan Goal 10-I is to "Support water conservation, reclamation, reuse measures, and education as a means to ensure sufficient water supplies in the future." Additionally, Comprehensive Plan Policy 10I-1 is to "Support and assist water users in the development of cost-effective means of improving efficiency of water use."

New Policy 2CC-3

48. In response to the Civil Deputy Prosecuting Attorney's advice, and the fact that some of the above issues are already addressed by existing policies and/or regulations, the Planning Commission recommends a new Policy 2CC-3 (severed from Policy 2CC-2, as proposed by the County Council) to:

Encourage that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean and low carbon emitting technology;
- Avoidance of estuaries and near shore wetlands;
- Archeological review; and
- Water recycling technology to minimize water use.

49. This policy language is not regulatory in nature. Additionally, it does not conflict with existing policies or regulations.

Policy 2CC-11

50. Whatcom County Comprehensive Plan Policy 2CC-10 currently states:

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.

51. The County Council Proposal would change this policy to prohibit additional industrial piers in the Cherry Point area.

52. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016. This memo states:

This policy purports to limit the number of piers in the area to the three existing piers. Regulations should be developed to implement this policy. It should be noted that this policy would be subject to any vested projects or settlement agreements already in place.

53. The GMA requires internal consistency between the Comprehensive Plan and Shoreline Management Program.

54. Whatcom County Shoreline Management Program policy 23.100.170.A.1.c states:

. . . water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

55. Whatcom County Shoreline Management Program regulation 23.100.170.B.4.a, which also relates to the Cherry Point Management Area, states:

. . . Due to the environmental sensitivity of the area, Whatcom County shall limit the number of piers to one pier, in addition to those in operation as of January 1, 1998.

56. The Planning Commission recommends amending Policy 2CC-11 (formerly 2CC-10) to indicate that it is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point, consistent with “. . . existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program. . .” and other factors including local laws, state laws, federal laws, and treaties. This approach maintains consistency between the Comprehensive Plan and Shoreline Management Program policies and regulations.

Policy 2CC-15

57. The County Council's proposed new Policy 2CC-14 (re-numbered 2CC-15 in the Planning Commission version) states:

In recognition and support of the existing federal law protecting the unique ecosystem of Puget Sound/the Salish Sea, as reflected in the Magnuson Amendment to the Marine Mammal Protection Act, 33 USC Sec. 476, and to protect human and environmental health, the County shall adopt County regulations and rules such that:

No officer, employee, or other official of Whatcom County shall issue, amend, renew, grant, or otherwise approve any easement, vacation of right-of-way, permit, license, or any authorization or entitlement of any kind under County authority that could be in conflict with the 33 USC Sec. 476.

The Whatcom County zoning code, development regulations, and SEPA policies shall reflect and implement this policy directive.

58. The Magnuson Amendment (33 USC Sec. 476) 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.

59. The United States Court of Appeals for the Ninth Circuit interpreted the Magnuson Amendment in the case of *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846 (9th Cir. 2005) stating:
- . . . 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". . .
60. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016 stating:
- . . . the federal Magnuson Amendment restricts the flow of interstate commerce by erecting a barrier against the movement of interstate trade ("domestic and international traffic of tankers" 33 U.S.C.A. § 476). This is the legitimate province of federal regulation. Interstate commerce is not the province of State or County regulation. Put simply, Whatcom County . . . has very limited power to erect barriers to interstate trade. If Whatcom County were to mirror the Magnuson Amendment and thereby erect a similar local barrier against the movement of interstate trade, it would risk violating the Commerce Clause of the United States Constitution. . . (p. 4).
61. The Civil Deputy Prosecuting Attorney's memorandum dated October 14, 2016 also stated:
- . . . if a Whatcom County version of the law was applied differently from the federal version on the same facts, the resulting discrepancy could subject Whatcom County to a potential lawsuit in which the County would have a tenuous position. Note that the Magnuson Amendment is enforceable whether or not Whatcom County introduces redundant local legislation. Thus, Whatcom County can already enforce the Magnuson Amendment through the federal law without the risk of embroiling itself in a lawsuit over whether a County can enforce federal law via its own version . . . (p. 5).
62. Whatcom County Comprehensive Plan Policy 2D-1 is to "Eliminate unnecessary regulations."

63. The Federal government already regulates permits for increased handling of crude oil at marine terminals in the Puget Sound region. It is not necessary to duplicate federal regulation at the local level, especially in light of the legal risks outlined above.
64. The Planning Commission recommends text and policy language that the County will encourage federal agencies to enforce the provisions of the Magnuson Amendment and that, if necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment. This approach avoids the legal risks associated with creating a new County law that parallels federal law. Rather, it would seek enforcement of existing federal law.

Policy 2CC-16

65. The County Council's proposed new Policy 2CC-15 (re-numbered 2CC-16 in the Planning Commission version) states:

. . . the County shall undertake a study to be completed 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 can work to limit unrefined fossil fuel exports from the Cherry Point UGA above levels in existence as of July 5, 2016. The study shall review and analyze any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice public as part of the study report.

 - 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, the Prosecuting Attorney and/or the County Administration shall as soon as is practicable, and before any permissions are granted by the County, 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.
66. A Civil Deputy Prosecuting Attorney for Whatcom County issued a memorandum dated October 14, 2016 stating that "This section directs that a specific study be completed by a date certain. Though

very directory, this language is likely acceptable, as the study is not itself a regulation. . ." (p. 5). However, he also indicates that bullet point # 2 ". . . contains specific administrative direction, which is clearly not policy. It might not be enforceable through the Comprehensive Plan. Regulations would be required to implement this rule."

67. It is noted that the *Cherry Point Environmental Aquatic Reserve Management Plan* (DNR, amended January 2017) states, under the heading "Prohibited Uses," that "DNR will not authorize cross-channel cable or pipeline installations within or directly adjacent to the reserve" (p. 54).
68. The Planning Commission recommends several changes to the Council Proposal (now re-numbered as Policy 2CC-16). First, the Commission recommends that the study be completed by December 2018, rather than December 2017. Second, the Commission recommends study of crude oil, coal, and natural gas exports (as "unrefined fossil fuel" is not defined). Third, the Commission recommends that notice "should" be provided to the County Council, in order to make the language more policy oriented (rather than regulatory).

County-wide Planning Policies

69. The GMA requires counties to adopt county-wide planning policies in cooperation with cities. County-wide planning policies provide a framework from which county and city comprehensive plans are developed and facilitate consistency between comprehensive plans (RCW 36.70A.210). County-wide Planning Policies are contained in Appendix C of the Whatcom County Comprehensive Plan.
70. County-wide Planning Policy E-3 states:

Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.

71. County-wide Planning Policy I-2 states:

New business development and expansion of existing businesses are key factors in providing "family wage" jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. Industrial land designations must be sufficient to permit the concentration of industry in appropriate locations beyond 20 years. In order to attract new industry and provide for expansion of existing industries, the county and the cities will designate land supply of sufficient size and diversity to provide a range of suitable locations for industrial development. The designation of this land shall be established in a way that preserves natural resource based industries and critical areas.

72. County-wide Planning Policy I-5 states ". . . Economic development shall be coordinated with environmental concerns to protect the quality of life. . ."

73. County-wide Planning Policy I-8 states:

Economic development should be encouraged that:

- a. Does not adversely impact the environment;
- b. Is consistent with community values stated in local comprehensive plans;
- c. Encourages development that provides jobs to county residents;
- d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
- e. Promotes reinvestment in the local economy;
- f. Supports retention and expansion of existing businesses.

74. County-wide Planning Policy I-11 states:

Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the international border.

75. County-wide Planning Policy N-1 states:

The cities, and the county, in cooperation with other municipal corporations, tribal governments, federal and state agencies, and public and private utilities shall cooperate in the protection of water resources and in drawing upon said water to support growth.

76. The Cherry Point UGA goals and policies, including the subject amendments, recognize the importance of both industrial development and the environmental assets of the area. The Comprehensive Plan amendments are consistent with the County-wide Planning Policies.

Interlocal Agreements

77. Inter-local agreements between Whatcom County and the cities were approved in 2012. These agreements, which are valid through 2022, address a number of growth management planning issues including inter-jurisdictional coordination, urban growth area review, land capacity analysis, population and employment projections, and capital facility planning. These inter-local agreements do not specifically address Cherry Point.

Further Studies/Changed Conditions

78. The Washington State DNR originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.
79. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:
- . . . protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality. . . (p. 4).
80. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:
- . . . the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values. . . (pp. 4 and 5).
81. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:
- . . . A number of species and habitats addressed in this plan have experienced declines over the past 40 years, such as the

Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. . . (p. 1).

82. Additionally, Puget Sound Partnership's *2015 State of the Sound – Report on the Puget Sound Vital Signs* indicates that "The Cherry Point herring stock in North Puget Sound, once the largest stock in the Sound, has declined by more than 90 percent since the earliest sampling date in 1973" (p. 45).
83. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (p. 11).
84. The Washington State Commissioner of Public Lands, who leads the DNR, issued an order on January 3, 2017 expanding the Cherry Point Environmental Aquatic Reserve to include an additional 45 acres, the site of a proposed fourth pier.

Public Interest

85. The Cherry Point area contains valuable aquatic ecosystems and fish & wildlife habitat (*Cherry Point Environmental Aquatic Reserve Management Plan*, DNR, amended 2017).
86. The Cherry Point UGA is a unique location, with important attributes, for industry. Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges and Beyers, 2014).
87. The Cherry Point UGA goals and policies, including the subject amendments, recognize the value of industrial uses and the importance of marine waters, fish and wildlife habitat, air quality, and archeological sites.
88. The amendments should not adversely affect the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
89. The amendments should not adversely affect ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.

90. The subject amendments will not adversely impact designated agricultural, forest and mineral resource lands.
91. Whatcom County Charter Section 1.11 states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened." The subject policy amendments do not unduly burden a property owner by leaving him or her without a reasonable use of his or her property, or otherwise deprive him or her of legally recognized rights.
92. GMA Planning Goal 6, relating to property rights, states "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions" (RCW 36.70A.020(6)). The subject policy amendments do not take private property for public use.
93. The Cherry Point UGA goals and policies, including subject amendments, continue to allow industrial uses in the Cherry Point UGA, which provide family wage jobs and contribute to the tax base of the County and special purpose districts, while seeking to protect the environment of the area. Such planning is in the public interest.

Spot Zoning

94. "Illegal spot zoning" means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).
95. The subject proposal does not involve nor facilitate illegal spot zoning.

U.S. Constitution – Commerce Clause

96. The U.S. Constitution, Article I, Section 8 (the “Commerce Clause”) states “The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”
97. The Whatcom Planning Commission has been briefed by legal counsel from the Whatcom County Prosecuting Attorney’s Office on the Commerce Clause.
98. The Whatcom County Planning Commission has made changes to the proposal, and finds that the recommended amendments are not inconsistent with the Commerce Clause.

CONCLUSIONS

1. The Planning Commission’s recommended amendments are consistent with the GMA planning goals.
2. The Planning Commission’s recommended amendments satisfy the approval criteria of WCC 2.160.080.

RECOMMENDATION

Based upon the above findings and conclusions, the Whatcom County Planning Commission recommends:

1. Approval of Exhibit A, amendments to the Whatcom County Comprehensive Plan.

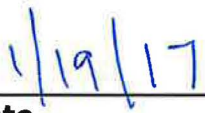
WHATCOM COUNTY PLANNING COMMISSION



Natalie McClendon, Acting Chair



Becky Boxx, Secretary



Date



Date

Commissioners present at the January 12, 2017 meeting when the vote was taken:
Atul Deshmane, Gary Honcoop, David Hunter, Natalie McClendon, Andy Rowilson,
and Gerald Vekved.

**Vote: Ayes: 5, Nays: 1, Abstain: 0, Absent: 3. Motion carried to adopt the
above amendments.**

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).

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

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

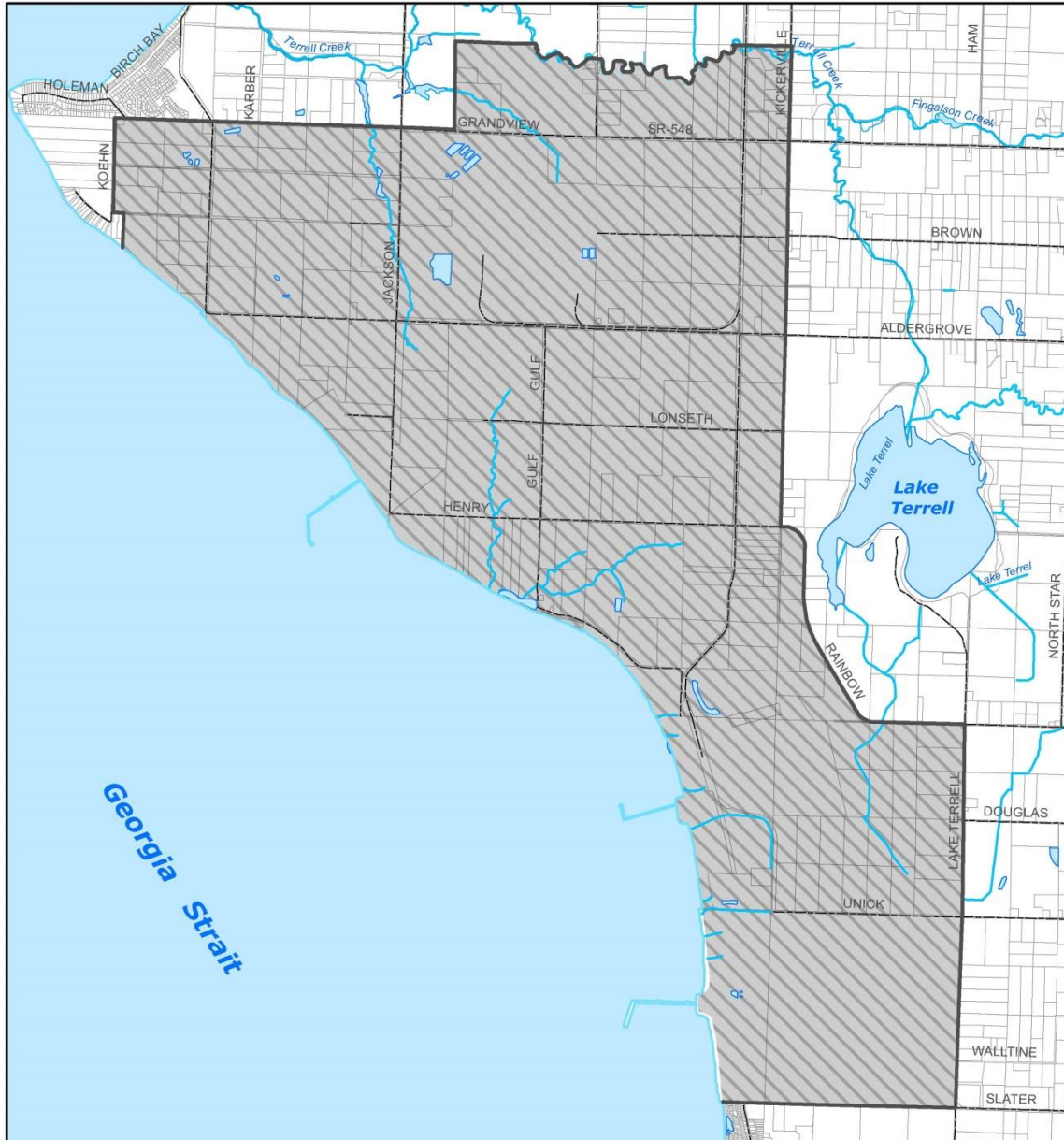
22 Policy 2CC-16: The County shall undertake a study to be completed by
23 December of 2018 to examine existing County laws, including
24 those related to public health, safety, development, building,
25 zoning, permitting, electrical, nuisance, and fire codes, and
26 develop recommendations for legal 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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