Proposed Council Changes

Comprehensive Plan, Chapter 2 – Cherry Point Amendments

Page and line numbers reflect Planning Commission Recommended Draft (1/12/17). To improve clarity of Councilmember requested changes, previous edits (i.e. staff and Planning Commission) are included, but not show as edits.

1) p. 1-11  Replace with “Alternative # 1” considered by the Planning Commission (Brenner)

2) p. 4; lines 38-41:  Whatcom County does not enforce the Magnuson Amendment through the local permitting process. However, the County can does encourage federal agencies to enforce the Magnuson Amendment and will strive to consult with federal agencies on whether proposed development at Cherry Point may conflict with the Magnuson Amendment before issuing local permits when possible may, if necessary, seek to enforce the Magnuson Amendment through the court system (see Policy 2CC-15). (Weimer)

3) p. 7; lines 25-29:  These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand, at the same time, the expansion of these industries needs to be done in ways that do not significantly impact the ecology of the Salish Sea or encourage expanded export of refined fossil fuels. (Weimer)

4) p. 8; Policy 2CC-2:  Ensure that developments in the Cherry Point UGA maintain and operate under management plans to that accomplish the goals of the Aquatic Reserve Management Plan. (Donovan)

5a) p. 8; Policy 2CC-3:  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 done in cooperation with the Lummi Nation; and
- Water recycling technology to minimize water use.

(Weimer)
5b) p. 8; Policy 2CC-3: 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;
- Water recycling technology to minimize water use; and
- **Enhance existing industries.**

(Donovan)

6a) p. 9; Policy 2CC-11: It is the continuing policy of Whatcom County to **support** a limit on the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to, consistent with:

- **Honor any** existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program;
- **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;
- **Prevent conflicts with** vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills;

- Whatcom County's application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;
- State agencies' application of state laws and regulations including, without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan, and the federal Clean Water Act as delegated to the State of Washington; and
- Federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act,
6b) p. 9; Policy 2CC-11: It is the continuing policy of Whatcom County to support a limit on the number of industrial piers at Cherry Point to the existing three piers,

- existing vested rights, approvals or agreements granted under Whatcom County's Shoreline Master Program;
- continued agency use of best available science;
- Whatcom County's application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;
- state agencies' application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and
- federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.

(Donovan)

7a) p. 10; Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). To accomplish this the County will seek consultation with appropriate federal agencies if applications for development permits are submitted to the County that staff thinks may conflict with the Magnuson Amendment. If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment. (Weimer)

7b) p. 10; Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). If necessary, Whatcom County may initiate legal action to enforce the provisions of the Magnuson Amendment.

Whatcom County will only consider shoreline permits for conditional use, or for substantial shoreline developments, that are consistent with, and not violating, federal laws, Washington's Coastal Zone Management Act, and Washington's Shoreline Management Act. (Donovan)
8) p. 10; Policy 2CC-16: The County 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 can work to limit crude oil, coal, liquefied petroleum gases and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017. 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 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.

(Weimer)

9) New Policy 2CC-17: New text and amendments in this Comprehensive Plan regarding piers at Cherry Point, and regarding [fossil fuels / crude oil, coal, and natural gas/ exports] shall not limit the expansion of existing facilities nor limit the expanded operations of existing facilities, nor limit maintenance of existing facilities, not limit the development of new facilities related to existing industries at Cherry Point. (Donovan)