WHATCOM COUNTY COUNCIL AGENDA BILL

CLEARANCES

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<th>Initial</th>
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<tr>
<td>M.A.</td>
<td>1/24/2017</td>
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<td>2/7/2017</td>
<td>Planning &amp; Development Committee</td>
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<tr>
<td>Mark Personius</td>
<td>1.24.17</td>
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<td>3/7/2017</td>
<td>COTW / Introduction</td>
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<tr>
<td>Sam Ryan</td>
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<td>Royce Buckingham</td>
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<td>Jack Lowes</td>
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TITLE OF DOCUMENT:

Comprehensive Plan amendments relating to the Cherry Point Urban Growth Area.

ATTACHMENTS:

1. Cover letter
2. Council Proposal
3. Alternative #1
4. Alternative #2 (No Action Alternative)
5. Planning Commission Findings of Fact and Reasons for Action
6. Planning Commission Recommended Cherry Point Amendments
7. Planning Commission Minutes

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

Should Clerk schedule a hearing? ( ) Yes  (X) NO

Note: A public hearing will be scheduled at a later date in accordance with the Public Participation Plan (Sec. 4.4.1).

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.)

The Whatcom County Council approved Resolution 2016-027 initiating amendments to the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan on July 26, 2016. In accordance with this Resolution, the County is reviewing proposed amendments to Whatcom County Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area.

COMMITTEE ACTION:

2/7/2017: Discussed
3/7/2017: Discussed, amended, and held in Committee

COUNCIL ACTION:

3/7/2017: Held in Committee

Related County Council File #’s:
AB2016-232 (Res 2016-027)
AB2016-047B (Comp Plan Chapter 2 Land Use)

Related File Numbers:
County Planning File #
PLN2016-00012

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.
TO: The Honorable Jack Louws, Whatcom County Executive
   The Honorable Whatcom County Council

FROM: Matt Aamot, Senior Planner

THROUGH: Mark Personius, Assistant Director

DATE: January 24, 2017

SUBJECT: Cherry Point Amendments (File # PLN2016-00012)

As you know, the Whatcom County Council approved Resolution 2016-027 initiating amendments to the Cherry Point Urban Growth Area section of the Whatcom County Comprehensive Plan on July 26, 2016. In accordance with this Resolution, the County is reviewing proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. Alternatives are also being reviewed.

The Whatcom County Planning Commission took public comments at a combined Town Hall meeting & SEPA public hearing on October 13, 2016, held work sessions on October 27 & November 10, 2016, and held a public hearing on December 8, 2016 on the proposed Cherry Point Amendments and alternatives. The Planning Commission held another work session, and issued final recommendations, on January 12, 2017. The Council Proposal, alternatives, and Planning Commission’s recommended amendments, shown below, are attached for further consideration by the County Council:

- **Council Proposal** – Council Resolution (initiated by Council under Resolution 2016-027);

- **Alternative # 1** – Council Member Alternative (proposed by an individual Council Member);

- **Alternative # 2** – No Action Alternative (maintain existing Comprehensive Plan); and

- **Planning Commission Amendments** (January 12, 2017).
We would also note that, on December 16, 2016, the Whatcom Business Alliance appealed the Determination of Non-significance (DNS) that was issued for the Cherry Point amendments under the State Environmental Policy Act (SEPA). The SEPA appeal will go to the Hearing Examiner for consideration. A representative of the County’s Prosecuting Attorney’s Office advised that the appeal of the County’s DNS does not prevent the County Council from moving forward with deliberations on the proposed Cherry Point Amendments.

Thank you for considering this information. We look forward to discussing it with you.
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.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.

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/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 there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016) and scientific findings show that the use of refined or unrefined fossil fuels overseas contribute up to 16% of the mercury in the soil in the Northwest from return air from Asian burning of those fossil fuels, and that carbon deposition in water from air emissions are the major contributor to ocean acidification. Recent studies by NOAA have found that very small amounts of hydrocarbons lead to congenital heart failure in juvenile herring and salmon, and

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may have contributed to the crash of the Cherry Point Herring stock. Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state's general leasing program, except for existing leases, and designated them as the "Cherry Point Aquatic Reserve." In December 2010, the DNR recognized the need to "protect the significant environmental resource of aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and designated the area Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.

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

The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, complying with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve. Indeed, the industries' need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species. Existing industries may continue to serve the Aquatic

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Reserve's objectives so long as they are managed according to the Plan and so long as the lessees comply with applicable legal requirements and actively work to further the goals of the Reserve (CPAR MP p. 2).

The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major existing industrial developments. While deep water access made future shipping facilities desirable in the past, recent actions by federal and state regulators denying a proposed fourth pier at Cherry Point have underscored the fact that any future industrial development will undergo scrutiny for compliance with federal and state laws, including treaty rights. Based on the public record developed during this plan review and best available science in the record, the County no longer supports construction of additional export docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a) physical interference with shoreline functions and values; (b) physical interference with traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills from increased large vessel traffic, potential collisions with tankers and other vessels serving the existing three piers at Cherry Point, and related barge traffic and support vessels.

The characteristics that make Cherry Point unique as a site for the existing major industrial developments include the following:

Port Access - The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point— and for the industrial/shipping facilities currently being proposed.

Rail Access - Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce of the existing users. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.
Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

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

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

PUD #1 purchases electricity from the Bonneville Power Administration and takes ownership of that power at the Bonneville substation in Bellingham and then transmits it over its transmission line to Cherry Point to serve the Phillips 66 Ferndale Refinery.
Cherry Point - Proposal (Council Resolution) 9/14/2016

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

The Bonneville Power Administration supplies power directly to the Alcoa Intalco Works aluminum production facility.

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

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

**Natural Gas:** Natural gas is currently available at Cherry Point.

**All-weather Roads:** Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand appropriately as opportunities present themselves. While these existing 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 unrefined fossil fuels. The best means for protecting these industries from incompatible adjoining residential uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial
development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

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

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

**Policy 2CC-2:** Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan. Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;
- 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;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

**Policy 2CC-3:** Assure that Cherry Point's unique features of large parcelization, existing port access, and rail transportation availability are maintained and protected from incompatible development.

**Policy 2CC-4:** Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

**Policy 2CC-5:** Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or
supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy: 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy: 2CC-7: Permit support activities, warehousing, rail shipments, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.

Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies mandating and supporting energy and water conservation.

Policy 2CC-10: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three approved leases identified in the Lands Commissioner's Order No. 201037 designating the Cherry Point Aquatic Reserve (BP, Intalco, and Phillips 66) to:
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and CPAR MP;
- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the
likelihood of reaching the recovery goals of the CPAR and the Puget Sound Partnership’s recovery goals for Year 2035.

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.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

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

Policy 2CC-14: 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.

Policy 2CC-15: Without delaying implementation of the foregoing policy (2CC-14), 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.
Alternative # 1

(Council Member Alternative)
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.

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.

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.

Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state's general leasing program, except for existing leases, and designated them as the "Cherry Point Aquatic Reserve." In December 2010, the DNR recognized the need to "protect the significant environmental resource of aquatic lands at Cherry Point" (CPAR Management Plan p. 1), and completed the Cherry Point Environmental Aquatic Reserve Management Plan and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area. The Reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.
The overall purpose of the Cherry Point Aquatic Reserve (AR) is to ensure long-term environmental protection for local habitats and species (CPAR MP p. 1). Specific goals include protection and recovery (as applicable) of Cherry Point herring, Nooksack Chinook salmon, ground fish, marine mammals, seabird/duck and shorebird communities, Dungeness crab, and submerged native aquatic vegetation (CPAR MP p. 2). Another goal is to cooperate with other stakeholders, "to minimize and reduce identified impacts of human activities on the species and habitats within the Reserve" (CPAR MP p. 2).

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries' need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing industries can serve the Aquatic Reserve's objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).

The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments especially where deep water access for shipping is a critical locational factor. These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County, and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The characteristics that make Cherry Point unique as a site major industrial development include the following:

Port Access - The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point—and for the industrial/shipping facilities currently being proposed.

Rail Access - Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to
foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.

Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major manufacturing, commercial or industrial uses. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954; the Alcoa Intalco Works Aluminum Smelter in 1966; and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

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

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

PUD #1 purchases electricity from the Bonneville Power Administration and takes ownership of that power at the Bonneville substation in Bellingham and then transmits it over its transmission line to Cherry Point to serve the Phillips 66 Ferndale Refinery.
PUD #1 and Puget Sound Energy have interties at Cherry Point, allowing the transmission of power in and out of Cherry Point, depending on the amount of power generated and consumed at Cherry Point.

The Bonneville Power Administration supplies power directly to the Alcoa Intalco Works aluminum production facility.

**Water:** Whatcom County Public Utility District #1 currently provides industrial process water to all major industrial facilities at Cherry Point and has additional water available contracts in place to provide process water to properties that are currently undeveloped. PUD # 1 also operates a small system to provide potable water to one industry (Praxair). Birch Bay Water and Sewer District provides potable water to the BP Cherry Point Refinery. The other industries operate their own water treatment facilities to provide potable water for their facilities. It is the County’s policy to work cooperatively with all businesses to support all efforts to reduce water consumption and quantity of discharges.

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

**Natural Gas:** Natural gas is currently available at Cherry Point.

**All-weather Roads:** Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand appropriately as opportunities present themselves. These existing 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 unrefined fossil fuels. The best means for protecting these industries from incompatible adjoining residential uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development, and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.
Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location, and characteristics, and its significant contribution to the overall industrial land supply and Whatcom County's tax base.

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

Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan. Work cooperatively with all businesses to increase environmental protection as they expand and/or upgrade refining operations at Cherry Point.

Policy 2CC-3: Assure that Cherry Point's unique features of large parcelization, port access, and rail transportation availability are maintained and protected from incompatible development.

Policy 2CC-4: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy 2CC-5: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy 2CC-7: Permit support activities, warehousing, rail shipments/shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay:
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.
Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with County policies supporting energy and water conservation.

Policy 2CC-10: It is the policy of Whatcom County to limit the number of piers at Cherry Point. Any 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. It is also the policy of Whatcom County to:

- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills;
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery goals of the CPAR and the Puget Sound Partnership’s recovery goals for Year 2035; and
- Support environmental upgrades when expanding refining operations.

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.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year, are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.
Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

Policy 2CC-14: 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.
Cherry Point - Alternative #1 (Council Member Alternative) 9/14/2016

Whatcom County Comprehensive Plan

Map UGA-10

- Cherry Point Urban Growth Area

Major Port/Industrial UGA
Alternative # 2
(No Action Alternative)
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.

Because of the special characteristics of Cherry Point, this area has regional significance for the siting of large industrial or related facilities. Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period.

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for what once was the largest herring stock in Washington State. This herring stock has supported important commercial fisheries in the past and provides forage for salmonids and other important marine species. In 2010, the DNR recognized the need to “protect the significant environmental resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), completed the Cherry Point Environmental Aquatic Reserve Management Plan, and designated the Cherry Point Aquatic Reserve to ensure long-term environmental protection of the area. The reserve extends from the southern boundary of Birch Bay State Park to the northern border of the Lummi Indian Nation Reservation. The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.

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

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing industries can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).
The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments especially where deep water access for shipping is a critical locational factor. These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

The characteristics that make Cherry Point unique as a site for major industrial development include the following:

Port Access – The marine waters off Cherry Point provide deep water access for shipping. Deep water access for shipping was a major siting consideration for the three major industries currently located at Cherry Point and for the industrial/shipping facilities currently being proposed.

Rail Access – Cherry Point is served by a branch line of the Burlington Northern mainline serving western Washington from Blaine to Portland. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. The BP refinery at Cherry Point uses the railroad to ship calcined coke to U.S. markets and to other port facilities for transshipment to foreign markets. Both the BP and Phillips 66 refineries receive crude oil shipments by rail.

Proximity to Canada, Alaska and Foreign Ports - Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to Alaska and to other Pacific Rim locations. The Cherry Point Industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.
**Presence of Necessary Utilities and Infrastructure**

Cherry Point is a major industrial area in Whatcom County. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

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

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

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

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

The Bonneville Power Administration supplies power directly to the Alcoa Intalco Works aluminum production facility.

**Water:** Whatcom County Public Utility District #1 currently provides industrial process water to all major industrial facilities at Cherry Point and has contracts in place to provide process water to properties that are currently undeveloped. PUD #1 also operates a small system to provide potable water to one industry (Praxair).

Birch Bay Water and Sewer District provides potable water to the BP Cherry Point Refinery. The other industries operate their own water treatment facilities to provide potable water for their facilities.

**Sewer:** Sewer service is not typically required for large industrial developments. Most of the existing industrial users provide their own on-site sewage treatment and waste water treatment. Sewer service for domestic wastewater is provided to the BP Refinery by the Birch Bay Water and Sewer District. If and when sewer service should become necessary for other industries, service could be provided on a contractual basis with the Birch Bay Water and Sewer District, which borders the Cherry Point industrial area on the north.
Cherry Point - Alternative # 2 (No Action Alternative)  9/14/2016

1 **Natural Gas:** Natural gas is currently available at Cherry Point.

2 **All-weather Roads:** Grandview and Slater roads, the major east-west connectors between Cherry Point and Interstate-5, provide all-weather road access to Cherry Point.

3 The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand as opportunities present themselves. These industries need to be protected from the inappropriate encroachment of incompatible uses; particularly residential uses that could affect their ability to expand. The best means for protecting these industries from incompatible adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

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

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

6 **Policy 2CC-2:** Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan.

7 **Policy 2CC-3:** Assure that Cherry Point's unique features of large parcelization, port access, and transportation availability are maintained and protected from incompatible development.

8 **Policy:** 2CC-4: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

9 **Policy:** 2CC-5: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

10 **Policy:** 2CC-6: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

11 **Policy:** 2CC-7: Permit support activities, warehousing, shipping, machine repair and service, educational services, food service and
conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-8: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.

Policy 2CC-9: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential.

Policy 2CC-10: 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.

Policy 2CC-11: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-12: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

Policy 2CC-13: Cooperate with the DNR and existing industries to monitor the effects of industrial activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.
- Cherry Point Urban Growth Area

Major Port/Industrial UGA
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.


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 101-1 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.

11
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**


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**


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

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. The Cherry Point UGA contains the second-largest emitter of carbon pollutants (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016). Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20-year planning period.
Environmental

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

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

The Management Plan acknowledges that the existing industries, complying with laws and regulations, do not conflict with the Aquatic Reserve although their activities may pose risks for the Aquatic Reserve. Indeed, the industries’ need for buffer space and their compliance with shoreline management requirements means that much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff processes proceed without interference. Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes undeveloped intertidal wetlands with importance to juvenile salmon and other species. Existing industries can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).
The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major industrial developments. Based on the public record developed during this plan review and best available science in the record, the County supports a limit on the construction of additional export docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a) physical interference with shoreline functions and values; (b) physical interference with traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills from increased large vessel traffic, potential collisions with tankers and other vessels serving the existing three piers at Cherry Point, and related barge traffic and support vessels (see Policy 2CC-11).

These characteristics were articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County Comprehensive Economic Development Strategy.

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

... 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.

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

**Cherry Point UGA Features**

The characteristics that make Cherry Point unique as a site for major industrial developments include the following:
Port Access—

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

Rail Access—

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

Proximity to Canada, Alaska and Foreign Ports—

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

Presence of Necessary Utilities and Infrastructure

Cherry Point is a major industrial area in Whatcom County. The Phillips 66-Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in
1966, and the BP-Cherry Point Refinery in 1971. The infrastructure to support these industries and future industrial users at Cherry Point is in place and includes the following:

**Electric Power:**

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

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

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

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

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

**Water:**

Whatcom County Public Utility District #1 currently provides industrial process water to all major industrial facilities at Cherry Point and has additional water available contracts in place to provide process water to properties that are currently undeveloped. PUD #1 also operates a small system to provide potable water to one industry (Praxair). Birch Bay Water and Sewer District provides potable water to the BP-Cherry Point Refinery. The other industries operate their own water treatment facilities to provide potable water for their facilities. *Existing industries consume large quantities of water, in many cases drawn from the Nooksack River.*

**It is the County’s policy to support renewed efforts to reduce both water consumption levels and the quantity of discharges, in favor of recycled water use (see Policy 2CC-3 and Policy 2CC-10).**
Sewer:

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

Natural Gas:

Natural gas is currently available at Cherry Point.

All-weather Roads:

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

Use Compatibility and Land Use Designation

The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom County and the region and the economic welfare of the county is strongly tied to the health of these industries and their ability to flourish and expand as opportunities present themselves. 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. The best means for protecting these industries from incompatible adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use designation of these lands and adjoining properties currently designated for industrial development. The Cherry Point industrial lands have been designated for industrial development and as a direct result of the industrial designation, incompatible and inappropriate residential development has been curtailed.

Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location, and characteristics and its significant contribution to the overall industrial land supply and Whatcom County’s tax base.

Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major users that need to be located away from concentrated urban residential areas and that can manage their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management Plan.
Policy 2CC-2: Ensure that developments in the Cherry Point UGA maintain management plans to accomplish the goals of the Aquatic Reserve Management Plan.

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; and
- Water recycling technology to minimize water use.

Policy 2CC-43: Assure that Cherry Point's unique features of large parcelization, port access, and pipeline, vehicular and rail transportation availability are maintained and protected from incompatible development.

Policy: 2CC-54: Require the master planning of each large parcel in advance of any development or subdivision at Cherry Point.

Policy: 2CC-65: Require the designation and site plan for a major user (generally 40 acres or more) before the development of accessory or supporting uses to assure that accessory or supporting uses are compatible with and will not interfere with the major industrial user.

Policy: 2CC-76: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel for a major user (40 acres or more, singularly or as a cluster or group).

Policy: 2CC-87: Permit support activities, warehousing, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Policy 2CC-98: Exclude Cherry Point as part of any future incorporation of Birch Bay.
- to protect interests of the property owner in terms of taxation and urban regulations;
- to preclude urbanism near "smokestack" industries;
- to preserve county government tax base.
Policy 2CC-109: Continue to work with service providers that serve Cherry Point to ensure the delivery of services and to allow it to develop to its fullest potential, consistent with other County policies supporting energy and water conservation.

Policy 2CC-11±0: 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;
- 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.

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.

Policy 2CC-12±1: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM) programs for the designating of a Major
Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous months during the year are required to meet the TDM requirements of WCC 16.24.

Policy 2CC-13: Work with the Cherry Point industries to maximize public access to the Cherry Point beaches without compromising industrial security.

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

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.

Policy 2CC-16: The County shall undertake a study to be completed by December of 2018 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 crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016, and attract and support clean and low carbon industry. 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.
Whatcom County | Comprehensive Plan

Map UGA-10

- Cherry Point Urban Growth Area

Major Port/Industrial UGA
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmane

Staff Present: Mark Personius, Matt Aamot, Jessie Roberts

Department Update
Mark Personius updated the commission on the following:
The Supreme Court decision regarding water.

Open Session for Public Comment
Carole Perry, Whatcom County: Stated that on most occasions the Planning Commission has very few people attending. She was pleased to see the large crowd. At a previous meeting one of the commissioners said that the Pledge of Allegiance should not be said at the meetings. She felt that was wrong.

Chet Dow, Whatcom County: Addressed a letter he had sent to the Planning Commission regarding the changes to the Council districts and how it affects the members of the Planning Commission. The letter originated from the non-profit group Common Threads. The legitimacy of the commission’s deliberations was called into question.

Royce Buckingham-Whatcom County Prosecuting Attorney’s Office addressed Mr. Dow’s concerns. He stated the county will not be removing all of the current members and replacing them. The transition is complicated and is being worked through.

Commissioner Comments
Commissioner McClendon asked the members of the public that have comments be very specific what their concerns are.

Commissioner Hunter addressed his previous comments regarding the Pledge of Allegiance. He asked the commission to think about what it means to be an American and what it means to be patriotic. There are lots of different ways to demonstrate patriotism. Saying the Pledge of Allegiance is a very easy way to appear to be patriotic. There are hard day to day jobs which embody patriotism.

Commissioner Rowlson asked that boarding of horses be added to the list of pending business items. The commission agreed.
Approval of Minutes

September 8, 2016: Commissioner Rowlson amended page 7, line 1 to add: Commissioner Rowlson asked Mr. Personius if the Planning Department supported the proposed amendment. Mr. Personius stated the Planning Department does not.

Commissioner Knapp moved to approve as amended. Commission Vekved seconded. The motion carried.

Town Hall Meeting/SEPA Review

File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two - Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

Matt Aamot presented the staff report and background of the proposal.

In 1997 Whatcom County designated Cherry Point as an urban growth area (UGA) under the Growth Management Act (GMA). The Cherry Point boundaries did not change in the 2009 or 2016 UGA review.

The Cherry Point UGA is approximately 7,035 acres in size. There are about 6,565 acres of Heavy Impact Industrial zoning and about 470 acres of Light Impact Industrial zoning.

On August 9, 2016 the Whatcom County Council approved an ordinance updating the Whatcom County Comprehensive Plan as required by the GMA. The Cherry Point section had some policy changes, including changes relating to the Department of Natural Resources Cherry Point Environmental Aquatic Reserve Management Plan, public access and monitoring water quality and habitat. These changes have been approved. Also that night, the Council approved an emergency ordinance that prohibited permits that would facilitate exports of unrefined fossil fuels through Cherry Point. That moratorium was good for 60 days. On September 27, 2016 the Council approved an interim ordinance which basically did the same thing as the emergency ordinance. This ordinance was good for six months. The interim ordinance also includes a definition of unrefined fossil fuels. The Council may want the Planning Commission to take a closer look at that definition.

On July 26, 2016 the Council approved a resolution requesting the Planning Commission review some additional proposed policies in the Cherry Point UGA. These policies are the subject of tonight’s meeting. They include provisions relating to environmental protection, prohibiting additional industrial piers, prohibiting permits that would allow increased crude oil exports by ship and studying legal ways to limit unrefined fossil fuel exports. The Council would like the Planning Commission to develop recommendations on these issues by mid January 2017.
On September 13, 2016 the Council approved the Public Participation Plan for the Comprehensive Plan amendments. These Cherry Point amendments were classified as Level 3, which means that we are to consider and develop alternatives. Alternative 1 was proposed by an individual Council member. It includes: Encouraging environmental protection, no additional piers, except one already permitted in the 1990’s, and study legal ways to limit unrefined fossil fuel exports. Alternative 2 is the no action alternative and would retain the exiting Comprehensive Plan language with no changes.

The purpose of the meeting was to have the town hall meeting, as required by the Public Participation Plan and to seek public input on the proposal and alternatives. Another purpose of the meeting was to seek public comments under the State Environmental Policy Act (SEPA) requirement. It requires the county to make a threshold determination on the proposed amendments. This could be a determination of non-significance; a mitigated determination of non-significance or a determination of significance, which would require an Environmental Impact Statement (EIS). The county is seeking information from the public, agencies and tribes prior to making the threshold determination.

The Commission will hold meetings October 27, November 10, December 8 and January 2017 (if needed). The Council will review the Planning Commission proposal in 2017.

The hearing was opened to the public.

Sandy Lawrance, Whatcom County: Spoke in favor of the proposal by Council. Several weeks ago, at another public meeting, he heard someone comment that the planet has been changing for millions of years, which he agrees with. The implication of that sort of statement is that it is hyper-variable, it is chaotic, and is totally unpredictable. That is far from the truth. There is lots that is known about climate science. There are two basic pitfalls regarding Earth’s climate. One is greenhouse gases and the other is variations in the planet’s orbit. Fossil fuels use have led to an increase in carbon dioxide, methane and nitrous oxide. We have known about the effect of greenhouse gases since the 1800’s. If we were not changing the Earth’s atmosphere what would be going on right now is a very gradual cooling. Instead we are going in the opposite direction at a rapid pace. We now have the highest surface temperatures in over 100,000 years. If we stop burning fossil fuels now we would still get to the highest temperature in over two million years. Anything that will hinder the continued use of fossil fuels is something that should be supported.

Dena Jensen, Whatcom County: This meeting is being held on land that was the traditional territory of the Lummi and Nooksack peoples. They nurture a relationship with the Coast Salish neighbors. She supported the Council resolution. She asked the commission to consult with the Lummi Nation in a comprehensive and meaningful way to understand and support the protections that they are seeking regarding their historic, cultural and spiritual resources at Cherry Point. The Lummi Nation was not
consulted when the proposal before you was originally drafted even though the proposal seeks to take into consideration requests the Lummi Indian Business Council made in letters to Whatcom County during the Comprehensive Plan process. At this time we are fortunate to have some new studies done in areas close to ours that have come forward. She asked the commission to review these studies in order to gain more insights into ways to protect the valuable resources at Cherry Point. Take action to offer the strongest investment possible for the wellbeing of our land, air, water and landforms for these things keep our human community alive on Earth. It takes a great deal of effort to do this. The necessary effort to enhance and protect the resources creates jobs and will enhance and strengthen our existing lands. These are the types of jobs that will truly support us as a strong and vibrant community.

Warren Sheay, Whatcom County: Supported the Council proposal. One reason to do this is for homeland security. By preventing crude oil from being shipped overseas from Cherry Point we will protect our land and our citizens from oil train derailments and explosions which have occurred all over the country and which have resulted in death and destruction of property and significant damage to the environment. Think about denying this proposal. By allowing more train traffic how would you feel if we suffered a deadly crude oil train accident, an accident that you could have helped prevent. He would not want that on his conscious. Another very important reason to pass the Council proposal is that by preventing crude oil from going to overseas refineries it actually protects the existing refinery jobs at Cherry Point. There has been a lot of hysteria and misinformation about this. He was suspicions that much of it comes from the oil company management that is misleading workers into believing their job security is being threatened. In fact, thanks to the Council proposal, it is being protected. Many are on the side of the refinery workers.

Matt Krough, Whatcom County: Supported the Council proposal. Regarding Policy 2CC-2 the statement: *Clean energy and low carbon emitting industries are favored*; there should be a definition of what *favored* means. The final bullet refers to water. We have heard about the lawsuit against the county regarding water. Any water restrictions or any issues having to do with water should address that. He does support the language in Alternative 1 regarding existing development which states: *Work cooperatively with all businesses to increase environmental protection.* He does not agree with the expansion but does agree making improvements to refineries to make them safer for workers and the environment. Being allowed to export crude overseas could be the route to outsourcing jobs. He supports the proposed Council language in 2CC-10. Policy 2CC-14 is a statement of federal law. It is not taking federal authority from the county. It simply states county regulations should be consistent with federal law. Regarding Policy 2CC-15, in Alternative 1 the final bullet point is removed. It should remain in the Council proposal.

Eddy Ury, Whatcom County: Representing Resources for Sustainable Communities. In looking at these policies let’s stay with the details. What are the issues and goals? Is there anything in them where we don’t achieve the goals in the best way that we can? Write development regulations that are consistent with the County’s due authority consistent with overriding state and federal law. That’s what these policies are about.
The people that are here need to take a hard look at what is in the policies. He would like to hear from the representatives from the industries, if they are going to speak against them, what specifically is wrong. What in these policies is a threat to anything they are planning to do? You think these policies are a big threat and somehow this is going to threaten the jobs at Cherry Point. We know these industries are a huge part of our economy and are really in no danger of going away anytime soon as long as we continue to use fossil fuels. There is no way that the county could preemptively shut down refineries. Nothing the county can do will regulate out industries at Cherry Point. These policies bring the county into compliance with what the state and feds have already decided in regards to respecting the Lummi Nation's treaty rights. It has been determined that there will not be a fourth pier at Cherry Point. That would have to be overturned in a federal court of appeals. There are people who do want to overturn that decision. The fact that they want to change the law is not an argument for the county. They do not have that authority so should the Comprehensive Plan be inconsistent with the law? When we talk about jobs being threatened what actually is being threatened. BP is saying we are threatening to shut down the refineries and send off-shore jobs overseas by exporting crude oil, skipping the refining process and doing it somewhere that is cheaper.

Ron Colson, Whatcom County: Speaking on behalf of the Sierra Club. The Sierra Club fully endorses the inclusion of all aspects of the Weimer amendments. They issued this endorsement for two reasons. First, the Sierra Club is dedicated to protecting our environment and second, they want to protect the existing jobs at Cherry Point. You will hear comments from hardworking citizens who have been told that their jobs are threatened by these amendments. However, the exact opposite is true. Fossil fuel companies are claiming that if they are not allowed to export crude oil they will no longer be profitable and will be forced to close the refineries. If they are so unprofitable, without exporting unrefined fossil fuels, how are they able to afford to make such large philanthropic contributions to so many local non-profits? If crude oil exports are allowed it will be the fossil fuel companies themselves that will close the refineries and lay off most workers because it is cheaper to refine crude oil overseas and reimport the refined products back here. Remember that the primary obligation of all corporations is to increase shareholder value. In this case this would be best accomplished by laying off highly paid Whatcom County workers and shipping jobs to low paid foreign workers where environmental restrictions are virtually nonexistent.

From an environmental perspective the Sierra Club recognizes that environmental damage would be inevitable if we allow the export of unrefined fossil fuels from Cherry Point. The damage will include the inability of emergency vehicles to cross railroad tracks due to the huge increase in oil train traffic through the county. There is the noise and air pollution caused by diesel locomotives. The constant danger of train derailment and damaging spills. The cumulative damage from unavoidable small spills and the risk of immediate damage due to large spills while moving unrefined fossil fuels from train cars into the transfer facilities. There is huge risk to the environmentally sensitive Cherry Point Aquatic Reserve. It is not a question of if it will happen, but when. The Sierra Club recognizes the hard working refinery workers by stating they are on their side. Don't believe the wealthy and powerful fossil fuel
companies that want to fool you into believing that this is a choice between well paying
jobs or a clean environment. We can have both.

Dirk Vermeren, Whatcom County: Supported the Weimer proposal. He recently retired
from the oil drilling industry. Upon retiring he chose to live in Bellingham for the
quality of life and what it has to offer. His professional background includes 35 years of
industry experience in refinery operations, environmental safety, marketing, sales, and
business development. He empathized with the refinery workers. He had been
impacted with downsizing and has been involved in downsizing studies. From his
experience marketing helps drive decisions in global industries. The regional market is
study and strong and oil will continue to be in demand. Do we want to build an export
refinery? Is that what we want in Whatcom County? What is the overall risk and the
cost benefit? Increasing exports does not require more man power. Increasing the risk
on land by rail and water is a major issue. He urged the Comprehensive Plan to take
into account holistic long term goals of life in the county and consider the impacts on
all stakeholders. There should be consideration of the integration with the Washington
State Shoreline Management Act of 1971 which states: Shoreline use for all,
environmental protection-increased risk from shipping and rail along the shore, and
public access. How will increased rail traffic impact the economic viability of the Port of
Bellingham development? People will not be able to access the facilities along the rail
corridor.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance. They have
a Cherry Point coalition which is made up of industry workers, land owners, contractors
and their employees, non-profits, school districts, fire districts, etc. Recently Carl
Weimer invited the Cherry Point stakeholders to attend a meeting in order to better
look at the issues. This was encouraging. They asked the commission to establish a
period in which the public may submit alternative proposals for 2016 Comprehensive
Plan amendments. They would like to work collaboratively to create a compromise.
They asked that a SEPA threshold of significance be issued. There needs to be a
supplemental EIS.

Michael Wolf, Senior Vice President of Asia Energy Services: They provide turnaround
services to the oil and gas industries. They employ more than 2,000 workers on the
west coast, many of which are Whatcom County residents. Oil is a commodity that
many hate. He realized there have been incidents that have caused concern. The oil
industry is highly regulated. There are many agencies and authorities overseeing the
safe and reliable use of it. Given the strong economic benefits and responsible use of
oil he supports the industry and encouraged the commission to do the same. We
should focus our attention on safe, reliable and responsible use of oil that has proven
to enhance the quality of life. We should not support unreasonable destruction of the
industry.

Jessica Spiegel, Representing the Western States Petroleum Association: They are a
paid group comprised of 25 companies that explore development transport of
petroleum in five states. She addressed Councilmember Weimer's proposal. Page 2,
line 34 states: The Cherry Point UGA contains the second largest emitter of carbon air
pollution in Washington State. This section has a lot of environmental references that require more study before being put in the Comprehensive Plan. The Cherry Point area is unique in that it supports industry. Export of crude retains jobs...(inaudible).

Pete Romero, Whatcom County: His company employees 80 to 100 people at Cherry Point and over 500 during turnarounds. A lot of people here rely on the industrial work at Cherry Point. To say that the jobs will still be there if this proposal happens is a farce. There is no way to maintain these quality jobs if you limit production and export.

Jill Macyntire-Witt, Whatcom County: Representing 7 billion people, the animals and plants. She was happy to see the BP workers present so they could hear the messages. It is true their jobs are threatened by climate changes. Worldwide renewable energy has employed over eight million people.

Jeff TenPas, BAI Environmental Services: He encouraged the commission to continue to promote the original language submitted earlier this year and remove all language proposed by the council in recent months that negatively impacts the economic vitality of the Cherry Point region. When the businesses of Cherry Point are affected the rest of the local and regional economy are impacted. These businesses help provide the quality of life we enjoy in Whatcom County and ultimately here in the United States. They support the transportation network linking family and friends. They provide heat for homes in Custer or on Alabama Hill and electricity to keep St. Joe’s operating rooms lit. They continue to provide a stable source of energy for the West Coast limiting the need for imports from other unstable global regions. The recent proposed ban will devastate local jobs and the economy. Employees of the businesses located on Cherry Point as well as contract companies like ours will be impacted. Cherry Point refineries are the catalyst to this community’s economy. Let me remind you of the jobs multiplier computed by the study done by staff from Western Washington University and the University of Washington, published in October of 2014, that shows that for one job in the Cherry Point area 3-5 others are supported. The study also showed that the wages paid in the Cherry Point area supports directly or indirectly 15% of the wages paid in Whatcom County. The economic decision to limit or restrict future expansion could be devastating to the local economy and the region. A few examples of the “ripple effect” when contemplating restricting or prohibiting activities on Cherry Point - the industrial base at Cherry Point contributes to increased occupancy rates at the numerous Bellingham hotels, it brings diners to the local restaurants and establishments, the businesses buy millions of dollars’ worth of goods made or sold by local manufacturers and distributors. They seek loans from local banks, the employees purchase and build new homes to keep the real estate sector vibrant, and they buy food from local farm stands and grocery stores. I have personally worked inside all the industrial sites at Cherry Point over the years. I have also run, biked, hiked, mowed, planted and fished in this area for the past two decades. These businesses are good neighbors to have in Whatcom County. They operate world-class operations and continue to abide by high environmental standards. I ask that you flat out reject this extreme proposal of the fuel export ban and eliminate all negative language in the comprehensive plan.
Mike Levine, Whatcom County: Works for AirGas. There are a lot of people on both sides of the issue but remember those stuck in the middle. There are thousands of people who work at businesses that support the refineries. These people help build our community. Everyone in the room has benefited from these industries. This issue is not about right or wrong or all or nothing. This issue is about the importance of working together as a community to find an agreeable stance that allows people to maintain their employment which is vital to our economy and community. Our children hope to remain in this community and earn a family wage with good benefits. By keeping these industries here the county will have the tax resources necessary to support so much of what they do.

Pete Sim, Whatcom County: Employee of BP. Supports Alternative 2. The Weimer proposal does not analyze, under the current EIS that was done for the Comprehensive Plan, accordingly. The county should issue a determination of significance and should prepare a supplemental EIS. There is a good relationship between BP and Whatcom County and was built as a result of transparent cooperation. BP works very hard to maintain trust with county staff and the community. BP is looking forward to working in cooperation with the Planning Commission to develop Chapter 2 language that addresses their concerns and limits adverse impacts on their ability to do business in Whatcom County today and in the future.

Pat Simons, Whatcom County: Employee of BP. He was not in favor of the Weimer proposal. He could be in favor of a mutually agreed upon collaboration that has yet to be printed. Collaboration is essential. Industry has a lot to offer and should be a full part of the collaboration. Is the County Council interested in collaboration? He hoped so. Do not discourage local investment. The refinery has spent over 750 million dollars over the past decade to modernize the refinery.

Todd Taylor, Whatcom County: Speaking on behalf of the NW Building and Constructions Trades Council. They are the workers that do not work full time for the refinery. They are the ones that perform routine maintenance, etc. These jobs pay good wages and are essential to the members being able to provide for their families and help support the community. If the commission were not to adopt the Comprehensive Plan updates as originally written it would harm future opportunity and prosperity in Whatcom County and interfere with the legal property rights of Cherry Point land owners. Please support Alternative 2.

Kent Murray, Whatcom County: Since 1998 he has worked at four refineries and different engineering firms. Georgia Pacific has been closed, Intalco has been reduced and CH2M-Hill has closed their doors. A lot of this is due to regulations, crude prices, etc. Most of the work he has done has been projects to reduce emissions and OSHA issues. The 1,000 living-wage jobs from Georgia Pacific have not been replaced. The proposed language that intends to stop all export of unrefined crude products is very confusing. The list contains butanes, propane and other refined products. This language needs to be cleaned up. The Council has said they can replace the refinery jobs with high-tech clean industry jobs. Put your money where your mouth is. Show that those jobs have been invited to site here.
Ann Serwold, Whatcom County: Executive Director of the Ferndale Chamber of Commerce. Their organization’s mission is to encourage and support economic development in their community by supporting their businesses and creating a means to help them grow. She spoke in support of these businesses. Take into consideration allowing the input from the land owners at Cherry Point. Without their input and the chance to come to an agreement that works for everyone it forces these companies to conduct business in a way that inhibits their ability to grow and prosper. One of the council members had stated they had no idea if this moratorium was legal. That is a problem. We need to bring all investors to the table in making a decision of this magnitude. If we don’t what are we saying to all businesses who may want to come here in the future?

Alyssa Willis, Whatcom County: If this proposal goes through it will not allow for growth. She has an issue with what is listed as unrefined fuels. Refined fuels are listed which they should not be. This does not allow export of refined fuels which is a problem. If these businesses can’t export their product then they won’t stay here. If the businesses aren’t here the people who are employed there will also leave. She supports Alternative 2.

Tom Robins, King County: His company works at the refineries. The refineries trust his judgment in regards to environmental issues. The proposal affects what he does. It will make it difficult for him to get permits to do the work that needs done. This will kill these businesses.

Tyson Green, Whatcom County: Representing Williams and Northwest Pipelines. Williams Pipeline has been part of the community for over 60 years. They transport natural gas. Encouraged the commission to work with the land owners at Cherry Point to develop a plan that will support future opportunities and prosperity for the county. All of their pipelines meet or exceed safety requirements. They operate in a way that makes their company an asset to the community. They try to do this in a way that will not affect the environment. A healthy environment and healthy economy are not mutually exclusive. Economic ability and prosperity are the best tool in the community to ensure a healthy environment. When county government and businesses have a good relationship we can achieve wonderful things for the county.

Rick Stumph, Whatcom County: Works for JH Kelly, a contractor for the refineries. The businesses at Cherry Point are critical to the economic health of our community. They make numerous charitable donations to the county. Work should be done to come up with language that would allow them to stay competitive in a highly competitive global market. Asked the commission to not adopt any changes to the Comprehensive Plan until an EIS is done. Broad changes should not be made, but rather look at each proposal on a case by case basis. Asked the commission to look into the true impact of oil trains. A lot of those trains are coming here to refine product.

Max Perry, Whatcom County: Worked at Intalco. He spoke against the Weimer amendment. This issue came about because the Executive would not sign the
ordinance relating to the Comprehensive Plan if the Weimer proposal was part of it. So they waited until the Executive was on vacation. They then passed the emergency ordinance. There is no emergency. The proposal prevents propane and butane from being exported. The Council needs to talk with the people that work out there to work out a good plan.

Nathaniel Maddux, Whatcom County: Representing the local chapter of the International Association of Machinists. They have over 600 employees in Whatcom County. Whatcom County is the land of No. We are sending messages to businesses both here and those potentially coming here that they can't do what they want here. We need to let them know that they can do what they are wanting to do here. By doing this we end up eating the costs of the environmental impacts because we will be paying for them one way or another.

Daryl Graves, Whatcom County: By limiting the number of train cars that can go through the county the railroads will just make the cars bigger. Look at the terminology.

Lee Newgent, Executive Director of Washington Building and Construction Trades. Has seen a lot of business leave. Other communities have taken industry for granted, especially paper mills. The regulations make businesses go elsewhere. We need to support the 200 million dollars in tax revenue here. Bellingham has long been known as an industrial town and maritime port. We need to get back to that idea and have local people working in their community. There has been comments that the environment and businesses at Cherry Point can't work together. They have worked together for 60 years. The businesses are the first responders on any incident. They take safety seriously. They have the highest environmental standards in the U.S. None of the employers have a problem with any EIS. They know they can mitigate anything that may come up.

Brad Owen, Whatcom County: President of the Northwest Jobs Alliance. They promote the growth of family wage jobs in the context of sound environmental practice. Cherry Point industries have been good neighbors. They have provided thousands of family wage jobs with health care and pensions. They contribute more than a million dollars annually to local charitable organizations. Whatcom County Council's proposed changes to the Comprehensive Plan significantly threaten these socio-economic benefits that are so critical to the welfare of Whatcom County. The adverse impacts on jobs, housing, land use, economy, etc. must be studied. They ask that the county prepare a supplemental EIS that addresses these matters. The subject of a fourth industrial pier is not a dead issue. Until the property owners appeal rights have been exhausted there is still a possibility that a fourth pier may be constructed. The property rights of Cherry Point land owners must be respected. The Council resolution would de-value property values by millions of dollars in the Cherry Point UGA. Like it or not fossil fuels provide the only path to reduce emissions and a cleaner environment. The whole world relies on fossil fuels for energy. Adding unnecessary regulations to the fossil fuel industry only impedes the process to a cleaner environment and adds unnecessary costs to the cost of living to those that can least afford it. The industries, for many years, have
been constantly working to improve our environment. They continually improve the
facilities to reduce emissions, they have been involved in restoring over 200 acres of
wetlands at Cherry Point, along with many other accomplishments. At this point the
Cherry Point landowners are working on alternatives to the options on the table and
they must be heard. They support Alterative 2. If, however, additional alternatives are
submitted as part of a mission statement they reserve the right to move their support
in that direction. The commission should only consider updates to the Comprehensive
Plan that balance environmental concerns with economic opportunity.

Dustin Hoffman, Whatcom County: Family wage jobs for unskilled workers are very
scarce. He had to work elsewhere to make enough money to afford to buy a home. In
order to get a job locally he had to go to school. He got a degree in process technology
from Bellingham Technical College in order to get a job at one of the industries at
Cherry Point. He supports keeping the processing of hydrocarbons at the local
refineries but the new proposal covers more than this and all growth at Cherry Point
will be stifled. This is jobs people have been trained for. Those jobs will be affected by
the proposal. The oil industry is a very competitive market and if companies can’t
expand to meet that demand and build newer, safer and environmentally friendly
structures the refining of fossil fuels will have to go elsewhere. There was once a paper
processing plant in Bellingham that was a main source of local heavy manufacturing
jobs that paid good wages. This company closed its doors in 2001. It appears as
though it was becoming the policy not to invest in additional resources. He hopes this
scenario isn’t being played out again in Cherry Point by politically ambitious individuals
on the County Council who disregard people and families. The businesses at Cherry
Point are not some nameless companies. They are made up of people who take pride
in what they do and are good stewards to the communities and environment.

Karen Shorten, Whatcom County: She encouraged the commission to listen to the
residents of Whatcom County and recognize who their decisions will impact most. She
is the manager of Phillips 66 Refinery in Ferndale. She is proud to be providing energy
and improving lives for all of their customers. She urged the commission to support
the current and future viability of Cherry Point industries, protect the ability of the
existing businesses to remain flexible and to adopt their operations to future market
conditions. They recognize that the market is slowly changing and in order to remain
competitive in the global market all businesses, not just refineries, need the freedom
to respond to those changing market conditions, consumer demands as well as
environmental regulations and continual improvement opportunities. Their Ferndale
refinery has a strong history of safe, reliable and environmentally responsible
operations. They have reduced their energy usage by 10 percent over a 10 year
period. They have reduced their greenhouse gas emissions by 24 percent between
2011 and 2015. They are recognized by the U.S. EPA as an Energy Star refinery in
three of the last four years. Their clean fuels projects will continue to yield benefits to
air quality. Phillips 66 has a substantial positive impact on Whatcom County and
northwest Washington. They are a proud corporate citizen. They provide jobs for over
400 employees and contractors. These jobs average over $100,000 per year.

According to a 2014 study done by the Whatcom Business Alliance and United Way 24
percent of households are below the federal poverty level and struggle to find and
afford basic housing, food costs, etc. They ask that individual projects be evaluated based on the merit of the specific proposals. Avoid blanket prohibitions that place unnecessary restrictions on the refineries and limit their future flexibility. Exclude the Weimer proposal from the Comprehensive Plan.

Gerry Arney, Whatcom County: Has worked at the Cherry Point refinery for almost 30 years. Businesses that are not allowed to expand and grow wither away and go away. Once they go away they don’t come back and aren’t replaced by something else. He is in favor of Alternative 2. If you restrict the refineries from expanding the county will lose major industry. If you lose these industries you won’t have much left.

Todd Mitchell, Whatcom County: We now have middle class jobs in Whatcom County because of the refineries. A new pier would allow for many of his coworkers to continue to earn a middle class wage in a county that doesn’t have many other options. Many workers who work in the construction of ship building, maintenance of ships, pilots, seafarers, etc. are also are middle class residents of Whatcom County that have chosen to live here and have come here since the refineries have been built. They continue to come here because of the great things this county produces. Without the tax base here we would not have the building they are in and the other amenities that make it a great county. We have to continue to ensure that we are able to responsibly steward our county.

Joe Wilson, Vice President of Pederson Brothers: They do heavy industrial steel fabrication. They do a lot of work at the refineries. They support Alternative 2 mainly because of the jobs issue. He stated he wanted to address how poorly written the resolution is. There are unrefined by-products that are in the refining process. His understanding of the proposal is that they could not get a permit to build a project related to safety if it had anything to do with the unrefined by-products. His company also builds equipment for air pollution control and water pollution control but they could not get a permit for that as stated in the proposal. This resolution needs to be thrown out.

Mike Culley, Representing Carpenters Local 70 and the workforce at Cherry Point: He works in the scaffolding industry which is a support industry for the refineries. To have good family wage jobs in the county is a blessing. A lot of places don’t have that privilege. When certain industries go away they don’t come back. The contractors and refineries have a strong bond. They have a safe business and if safety wasn't involved they would not be in business. Safety is always a priority. His company has affected schools, charities, other businesses, etc. How do you calculate the thousands of other people that have worked there and how they have affected the county? The refineries give back millions in the form of charities. This has continued only because Cherry Point has successfully grown safely and efficiently through the decades. Whatcom County is an environmentally friendly and safe area. They find it egregious that their local government seems to be putting limits on their livelihood.

Brian Ferguson, Whatcom County: Is in favor of Alternative 2. Is also in favor of another pier. We need to grow the economy, not restrict it. He compared Cherry Point
and the refineries to the Boeing plant in Everett. They continue to grow even though there is a risk of a plane crashing. Our refineries are some of the cleanest and safest. If we try to push these industries away it will happen.

Matthew Hepner, Executive Director of Certified Electrical Workers of Washington State. Proposals like this drive away economic investment. Investments like this here can lead real solutions in climate change. The definition of unrefined fossil fuels needs to be thrown out. There is a concept called Just Transition. It revolves around getting away from fossil fuels and ensuring that workers keep their jobs. He supports Alternative 2.

Jerry James, Whatcom County: Supported the no action alternative. Asked the commission to not forget about the wages the refinery workers are making.

Joe Murphy, Whatcom County: Works at Phillips 66. Supports Alternative 2 because there is not a problem that needs to be solved. If the Council proposal is to go through there needs to be a determination of significance and an EIS done. Someone had stated these industries and jobs are not going away. That is naive. 20 years ago there was a lot of fear mongering in the timber industries and a lot of jobs were lost as the sawmills disappeared. The refineries compete for corporate support in order to keep running. This support helps modernize the plants, make it safer, cleaner and more efficient. They don’t do projects that make these things go backwards. There are over two billion people in the world that do not have access to electricity. We can’t get rid of fossil fuels because if we do that number will go up. Those people burn wood and charcoal for their energy. What we should be talking about is how do we more responsibly use the fossil fuels that are have. The refineries at Cherry Point are some of the safest in the world. If we restrain those businesses they will end up leaving.

Pam Brady, Whatcom County: Works at BP. Asked the commission to clarify the process by which they will be accepting public input. It is an unusual process to have a town hall meeting to review SEPA. It is unclear what the county’s process will be in the future. The county should accept Alternative 2 which has already received a full public process. Absent that the commission should postpone the Cherry Point UGA amendments until 2017 to be in alignment with the GMA requirement that counties update comprehensive plans once a year. Or they could take action to establish a period within this process were the public may submit its own alternatives and proposals. The county should issue a SEPA threshold determination of significance and prepare a supplemental EIS. It is clear the Council did not contemplate the proposal. She stated concern that the process is moving too quickly and the pace will prevent the county from getting meaningful input from effected citizens and the companies and may expose the county to challenges regarding non-compliance of public notice and comment requirements. There is no need to amend the Comprehensive Plan on an emergency basis. She recommended the Planning Commission appoint a technical work group regarding this issue that includes all stakeholders. The proposed language does not reflect the technical aspects of the energy business, its infrastructure or its statutory authorities of the existing regulatory bodies. The jobs supported by these
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
October 13, 2016

Regular Meeting

1 industries are vitally important to Whatcom County. It is false to say the restricting
2 exports and expansion of these industries protects jobs.

3

4 Bob Allendorfer, Whatcom County: Stated Alternative 2 is superior to Alternative 1.
5 There is the opportunity to create a better alternative by collaborating with a cross
6 section of the county. Establish an advisory board to ensure that any potential changes
7 are inclusive of the diversity and the hopes, concerns and aspirations of all our
8 citizens. Make a full and transparent cost benefit analysis before any decisions are
9 made. Make it clear what tradeoffs are being considered. Economic and social justice
go hand in hand. We can’t put extraordinary burdens on the businesses at Cherry
11 Point. The rules of supply and demand won’t allow it. Our neighbors to the north and
down south will gladly fill any void created here. If these businesses disappear who will make
up the lost wages and charitable contributions? 22 percent of our population is earning
less than the basic cost of living. These businesses contribute to charities for those in
need.

16 June Coover, King County: An environmental engineer who has been working at
17 Cherry Point for over 25 years. She supports Alternative 2. We need to support the
18 industries here and let them grow.

20 Chris Colon, Whatcom County: Employee of BP. The no action alternative is a little
21 disingenuous because there has been a lot of work done on this issue in the past. The
22 original language presented includes all of the environmental concerns and regulations.
23 There is no reason for the Weimer proposal to be adopted. When we start to look at
25 sustainability it is disingenuous to say that the proposal includes sustainability. A 2012
26 report regarding the timber industry on the Olympic Peninsula shows good economic
27 recovery but it is non-sustainable. He stated his concern for that here. People are here
28 to support their livelihood and freedoms which are being threatened by the Weimer
29 proposal. Even those not in favor of the industries at Cherry Point have to look at the
30 way the Council is saying they know best how to run these industries. That could
31 happen to anyone in the room.

32 Richard Tewes, Whatcom County: The businesses at Cherry Point make many
33 charitable contributions to the county. They help a lot of people. A lot of people in this
34 room use the fuels we make.

36 Chris McGary, Whatcom County: He works for one of the contractors at the refineries.
37 The Cherry Point refineries are in the business of refining oil, not shipping it elsewhere
38 to be refined. If you do not allow businesses to move products, materials and
39 resources, as needed, you create potentially unsafe and harmful situations. If Cherry
40 Point industries wish to pursue building export facilities that should be dealt with at
41 that time through permitting and environmental review. To put a broad ban on refined
42 fossil fuel exports is impracticable and irresponsible. This ban is not about the
44 environment, the economy or jobs. This ban is about deindustrializing Cherry Point one
45 little piece at a time making it harder for current and future industries to operate
46 there. The future is about green clean energy but we can’t shut our current industries
47 as they currently fuel the items we use.
Tim Fitz, Jr., Skagit County: Supports Alternative 2.

John Kaller, Whatcom County: Works at Phillips 66. This is not just about the economy and jobs. It is hypocritical for the county to put restraints on the local industry, whereupon your competitors, such as the Asian market, don’t have these restrictions. They don’t care about the economy or environment, they are built to produce jobs. These other markets want us to have additional restrictions and costs they don’t have. What is being proposed is bad business and you are just pushing the problem elsewhere. The refineries overseas are terrible. The refineries here are world class, first rate facilities.

Lindsay Cerise, Whatcom County: Employee at BP. 24 percent of the citizens in Whatcom County have no safety net, no backup income. 18 percent of our community is making less than the federal poverty limit. This is why a strong economy is so important. The industries at Cherry Point are part of that.

Linda Murphy, Whatcom County: They live near the refinery which they chose to do because they wanted a clean environment for their family. They purposely did not look for a house near the berry fields, which get sprayed. She does not have to worry about that near the refineries. She has confidence in that. They are very safe.

Carole Perry, Whatcom County: She has often said that if the people in the county knew what was really going on they would be here and they are finally here. These proposed amendments came in through the back door to the commission. They were brought in the wrong way. This may be our Brexit. There are so many regulations the lawyers can’t even figure them out.

Maureen Cleveland, Whatcom County: She was in support of Carl Weimer’s amendments. She does believe BP has high standards but she was concerned about an increase in coal train or oil train traffic which is a risk. Whatcom County does not have the ability to handle oil train accidents.

Ms. Lewis: Supports Alternative 2.

The meeting was closed to the public.

Commissioner Hencoop asked the managers from the two refineries if they currently export unrefined products, as listed, from Whatcom County to other refineries.

Karen Shorten, Phillips 66: Stated there are circumstances where they need to import or export certain materials. This proposal would restrict what they could do in order to maintain their ongoing operations. They do not bring crude through the refinery for the purposes of export. There are materials, under the proposal, that they do export. The future of the industry may involve importing or exporting different materials. Each individual project needs to be based on its merits.
Bob Allendorfer, BP: Stated they are governed by federal law. Butane and propane are not unrefined products. Products travel across the globe, as needed. They bring in crude but they do not export it.

Commissioner Deshmane asked what they are currently allowed to do in regards to bringing in raw material and exporting.

Ms. Shorten stated she could not say what they are able to legally export because that is not their primary business.

Commissioner Hunter asked for clarification regarding unrefined products. He asked if that were a concern.

Mr. Allendorfer stated it is a concern.

Commissioner Hunter asked if we were to have a definition, of unrefined fossil fuels, that works if that would take care of the issue.

Ms. Shorten stated that she was not in a position to negotiate that. What is in the proposal is very unclear and absolutely can't stay as it is. Even if that issue is clarified it still does not resolve her issue which is the long term viability of the facility. That means not encumbering them with restrictions that might impact their future opportunities to utilize the assets they have.

Mr. Allendorfer stated all three proposals have the language allow Cherry Point industries flourish and expand. But do they really have the option to do this? If the county puts in any language that adds additional restrictions, beyond the local, state and federal restrictions you are only hurting Whatcom County. It will only remove investment from this county and put it somewhere else. Who is going to make up that shortfall? 42 percent of the population already can't afford to live here.

Commissioner Honcoop asked for clarification regard the SEPA process.

Mr. Personius stated the threshold determination will probably be made in November. PDS needs to look at the alternatives more closely along with any other alternatives presented. Anyone can submit an alternative proposal.

Commissioner Knapp stated nothing has been mentioned regarding alternative energy sources. He would like the refineries to take on the challenge of finding alternative energy sources. This would bring more family wage jobs to the county.

Commissioner McClendon urged those with alternatives to get them in before the next commission meeting so they can be discussed. The commission agreed.

Commissioner Honcoop stated the time frame given by the County Council may not be realistic. This is a major issue that may take a while to look at.
Commissioner Vekved stated he had no background or knew what the options were regarding a fourth pier at Cherry Point. He would like information on that. He would also like more information on the Magnuson Amendment.

Commissioner Rowlson wanted direction from the county legal staff if these restrictions are even legal.

Mr. Aamot stated there will be a memo regarding these issues for their next meeting.

The meeting was adjourned at 10:30 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmane
Absent:

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor's Office and Becky Boxx

Department Update

Mark Personius updated the commission on:
- Update on the Supreme Court water use issue
- There were two appeals to the 2016 Comprehensive Plan update

Open Session for Public Comment

Kate Blystone, Whatcom County: She teaches the Introduction to Planning class at Western Washington University. 55 of her students were in attendance to observe the Planning Commission process.

Wendy Harris, Whatcom County: Addressed air quality. It is not addressed anywhere even though it is the number one environmental health risk to the residents of the county. The primary risks are coming from the burning of petroleum fuel and wood. It is unfortunate that there is no section on air quality in the recently passed Comprehensive Plan. It is also unfortunate that some of these things are beyond our control. There is a gap in the clean air act in regards to idling trains. Near where she lives is a mile long train that will sit there and idle all night long. It has coal dust in it that will end up in her window sills. We have no way to stop this. Something we do have control over is wood smoke and we don’t do anything about it. She has a problem with outdoor fire pits. It used to be that wood smoke was more of an issue in the winter because people were heating their homes. Now people are burning wood all the time for some of the very worst reasons, which is recreation. We need to look for opportunities where we can do things to control air pollution. She would like to see the county take a more proactive stance on it.

Max Perry, Whatcom County: Stated that 2,200 acres of timberland in the reconveyance that went through. That will be a loss in taxes. The Hirst water case will affect about 20 percent of the building permits. That will be a tax loss. Farms are going to be affected by the wilding of the rivers. That will be a tax loss. Looking at the Cherry Point issue that will affect 9,000 jobs. That will be a tax loss if it goes through.

Commissioner Comments
Commission Oliver reminded the commissioners to speak up so the audio recording can be easily heard.

Work Session

File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two - Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

The commission took comments from the public.

Brad Owens, President of the Northwest Jobs Alliance: They are going on record as being in full support of the subject matter contained in the letter from Pacific International Terminals, dated October 26, 2016. In so much as Native American treaty rights must be honored, so must the 1999 settlement agreement, section 4 regarding the Whatcom County Plan amendments relating to a fourth pier at Cherry Point. As we have previously stated the property rights of Cherry Point land owners, as well as all land owners in Whatcom County, must be respected and honored. The Cherry Point proposed amendments would devalue property values by millions of dollars in the Cherry Point Urban Growth Area. How does this respect Cherry Point land owners? In regards to the letter from Royce Buckingham, dated October 14, 2016, nearly all of the comments pertaining to the Cherry Point proposed amendments indicate an improper attempt to insert regulation into a policy document, that being the Comprehensive Plan. They understand Cherry Point land owners are working on alternatives. Absent additional alternative options at this time they could only support Alternative 2. If however, additional alternative are submitted that support their Mission Statement they reserve the right to move their support in that direction.

Sandy Robson, Whatcom County: Addressed the issue of collaborating with industry. It is upsetting that she hasn’t heard anything about collaborating with the tribes. She felt they were being ignored by the county government. If they will be reaching out to the industries this also needs to be applied to the tribes. On January 26, 2016, at the County Council meeting, Councilman Barry Buchanan addressed the audience saying that upon the advice of the county’s legal counsel the county would defer any type of action on the proposed Cherry Point amendments. She found that to be egregious because there was some proposed language from the Lummi Nation. This appears unfair. Their suggestions have been ignored.

Tony Larsen, President of the Whatcom Business Alliance: They represent a number of Cherry Point stakeholders. They would like to open up communication to make sure they know they have the Alliance as a resource for information. They will be submitting an alternative for consideration. They are suggesting a collaborative approach that balances economic development and environmental protection. Their approach will also acknowledge existing local, state and federal procedures, processes and jurisdictions. They would like guidance from the commission on communication with the County.
Council. The Council has reached out to their coalition for enhanced communication with Cherry Point industries. They want to engage but want to make sure they respect the Planning Commission's authority and the Comprehensive Plan process.

Wendy Harris, Whatcom County: Stated her concerns regarding how this matter was handled procedurally. It was done in a way that was agenda driven and inappropriate. What people need to understand is what we are talking about now is isn't the Comprehensive Plan. That is done. What we are talking about is an amendment to the existing plan. That is a whole different process. There are certain procedures that need to be followed when making amendments to the Comprehensive Plan. There are legal standards that need to be met. You have to show there has been a change in facts and circumstances that justify the change to the Comprehensive Plan. She did not see any change that would justify this. The way the County Council went into executive session and deemed that the Weimer amendments were being severed from the Comprehensive Plan update was not appropriate. When she questioned staff about it she was told that there was no application or fees needed. She was also told the Council was not subject to legal standards. She had a problem with that. One of the big goals of the GMA is to ensure public input. Keeping the public out of this is wrong. Consider the fact that there is an important marine reserve there. She was not worried about the voices of industry and those seeking a profit. The voices that aren't going to be heard are those of the fish, wildlife and marine ecosystem. That is why we have to objectively keep that in the forefront of everything we do.

Erin Haverson, Speaking on behalf of the Whatcom Business Alliance and the Coalition of Industrial Members: She is one of their attorney's. There are an incredible host of local, state and federal laws and regulations that already regulate the Cherry Point industries. It is important for the commission to understand the types of laws that apply there and the ones that they are being asked to act on. There is the Clean Air Act which has been in effect for over 40 years. There is an abundance of federal and state agencies which oversee this act. Congress retains the right to decide what kinds of products can be exported among states and our relations with foreign countries. Trying to restrict trade among states and foreign countries is a violation of the U.S. Constitution. Also, there are a host of state acts, such as the Shoreline Management Act, the GMA, etc. Consult with the county's legal staff regarding these proposals.

Eddy Ury, Whatcom County: From Resources for Sustainable Communities. There are already a lot of existing state and federal laws addressing this issue. He was happy to hear that new language and alternatives are being asked for. If this is not done correctly the issue will go to court and cost everyone a lot of time and money. This time would be better spent working on something more proactive. Let's not bog down the county with permits that are going to be embattled for years.

The public comment was closed.

Mr. Buckingham addressed his memo to the commission and staff dated October 14, 2016. When he looked at the council proposal he noticed there were policies being put in the text section. His recommendation for that was to cite the actually policies or not
put them in the text section. It gets confusing when you bury policies somewhere else.

The next issue he noticed was that there were a number of things that were regulations masquerading as policies. Policies should be a general guideline not what the rule is. He pointed out those items in his memo. Some are debatable so he stated he would leave it up to staff and the commission to figure them out. Regarding Policy 2CC-10 relating to limiting the number of piers; he was concerned about the fact that there is a vested application and settlement agreement for a fourth pier. It would be awkward to have a policy that states we can't have those when there is one pending.

Regarding the Magnuson Amendment, his concern was that the language in the proposal is not policy, but regulations. That is inappropriate to put in the Comprehensive Plan. Also the proposal is to adopt a local regulation in parallel with a federal regulation. The federal regulation is a regulation of import/export, not only inter-state but internationally. This raises a red flag for the Commerce Clause. The county and the state don't have the power to regulate commerce between states or internationally. There are a number of complicated tests for whether you are doing that. It is pretty clear that if you limit the amount of a commodity that can move through your county that you are interfering with commerce. If you adopt a federal law and try to enforce it locally you are going to run into a lawsuit. We would face a lawsuit based on the fact that we would adopt a regulation that made our Planning Department interpret the Magnuson Act locally and try to enforce it. If we try to enforce something in parallel with the federal government and we have a different view of it we are then in the awkward position of enforcing the same law a different way. We can already enforce the Magnuson Act, as a federal law, without subjecting the county to lawsuits. He asked anyone who may have a different opinion on the subject to let him know in order to gain more information on the issue.

Commissioner Knapp addressed Policy 2CC-2 in regards to clean energy. There will be a need for clean energy in the future. Alternative 1 does no address that issue.

Commissioner McClendon stated her opinion was that Councilmember Weimer wrote the proposal with the intention to make the federal law obvious. She asked Mr. Buckingham how they should make it obvious in an appropriate way.

Mr. Buckingham stated it was his thought that what the council wanted is that if we have something happening at a local level we want to notice it and make sure it complies with the Magnuson Act. If it doesn't the county could take some action. Implementing a local regulation to examine every project would be one way to do that. We could put in a policy that says we are obligated to follow it and file lawsuits if we see a violation. If something comes through that meets that criteria we would notify federal agencies and consider a lawsuit. I like that approach because it puts us in the driver's seat.

Commissioner Oliver asked for clarification. The county would not deny a permit on the basis that it violated the Magnuson Act, it would not be able to under this proposal. It would not be requiring that it obey the Act for a huge permit, but it would have to and then sue?
Mr. Buckingham agreed and stated the county would have to notify the federal agencies as well. Under his analysis you would not have the right to deny it even if you had your own regulations that said you could. The local regulations would not be any good. For example, if we find a Magnuson Act violation and we have to approve a permit, because we can't deny it, and we tell federal agencies, environmental concerns, etc. it is very likely we don't have to sue because then the lawsuit happens without us being involved. We are only involved in so far as we approved the permit.

Commissioner Rowlson stated the environmental proposal has a study in it. What is the value of putting it into the Comprehensive Plan?

Mr. Buckingham stated he did not study the value of it he only stated it was okay to put in if they want. It's just policy, not regulation.

Commissioner Rowlson stated it is a good way to get studies into the Comprehensive Plan that the County Council needs to address.

Commissioner Rowlson asked for Mr. Buckingham's opinion on the legal aspects of the Planning Commission reviewing this issue.

Mr. Buckingham stated he was not prepared to answer that and suggested Karen Frakes, the County Council's attorney, answer that. Mr. Buckingham will follow up on the issue and report back.

Commissioner Deshmune stated guidance regarding the Magnuson Act somewhat overlaps with the guidance relating to the Commerce Clause. He wanted clarification of what the implications of the Magnuson Act are apart from the implications of the Commerce Clause.

Mr. Buckingham stated the Magnuson Amendment is a federal law that restricts certain imports and exports. Can the county restrict state and international trade? His interpretation of the Commerce Clause is that no we can't.

Commissioner Deshmune noted there are examples of local governments not honoring federal or state laws. People have challenged regulations based on the Commerce Clause.

Mr. Buckingham agreed. His job is to keep the county from risk so he recommends not violating the laws in order to keep the county out of lawsuits. There is a way to enforce this without putting our heads on the chopping block.

Mr. Aamot stated there are four main policy issues which staff needs direction on.

Council's proposed language in Policy 2CC-2. This refers to favoring clean energy, strict avoidance of wetlands, avoiding and prohibiting bulkheads or shoreline armoring, requiring an archeological study, and requiring water recycling.
Commissioner McClendon stated that at the public hearing they heard a lot of testimony that these regulations are going to harm the industries at Cherry Point. We need to address that. She asked the Planning staff to state where that language is.

Mr. Aamot addressed Policy 2CC-14. The Magnuson Amendment says the Federal government can’t approve permits, of any type, that would increase the ability of a facility to handle crude oil; except if refined for use in Washington State. This means refineries can’t bring in more crude oil to refine and ship it elsewhere. There was also concern about the study and how it would impact the refineries. In Policy 2CC-2, regarding a plan to address the Cherry Point Aquatic Reserve Management Plan we would need to ask the refineries how they are impacted by that.

Commissioner Honcoop addressed Policy 2CC-10 which refers to the three existing piers. It is important to remember that there is a fourth permitted pier. That should not be ignored. There is no doubt that these proposed regulations will have an impact on the refineries and Whatcom County. The whole proposal has been written in a past-tense position, which is not planning, it is editorializing. It is supposed to be a planning tool not a growth limiting tool. If a business can’t grow it will die.

Commissioner Hunter stated policy is about editorializing. It is saying what we care about and these are our issues.

Commissioner Hunter stated the commission should start work on the Council proposal.

Commissioner Honcoop stated he would rather work on Alternative 1.

The commission reviewed the Council proposal.

Commissioner Hunter moved to change page 2, line 13 to read: Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has long had regional significance for the siting of large industrial or related facilities. The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971.

Commission Vekved seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved stated every time a particular refinery is mentioned by name or ownership it has the potential to be wrong. The two refineries can be referred to as the Ferndale Refinery and the Cherry Point Refinery. This way the text does not need to be changed every time the ownership changes.

Commissioner Vekved moved to change page 2, lines 14-16 which reads: The Phillips 66 Ferndale Refinery was constructed in 1954, the Alcoa Intalco
Works Aluminum Smelter in 1966, and the BP Cherry Point Refinery in 1971. The wording should be changed to identify the original constructor and to somehow note that for the rest of the document they will be identified in the general terms as stated above along with the smelter.

Commissioner Deshmane seconded.

Commissioner Hunter asked why the name of who constructed it was needed.

Commissioner Vekved stated they are in close enough proximity that they may be confused. If there is a baseline name from when they were constructed it will delete that confusion.

Commissioner Rowlson asked if it was even necessary to identify them at all. We could just say two refineries and one smelter.

No vote was taken on this motion. Staff will draft language to present at the next meeting.

Commissioner Vekved addressed page 2, lines 18-20 which states: 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. Is Cherry Point more significant Coast Salish people than Pt. Roberts, Birch Bay, Drayton Harbor, etc.?

Commissioner Honcoop stated the context of this is Cherry Point is the major industrial growth area whereas the other areas aren’t.

Commissioner Rowlson moved to delete the language on page 2, lines 21-22 which reads: The Lummi Nation and Western Washington University have identified an ancestral village dating back over 3,000 years ago in this area.

Commissioner Honcoop seconded.

Commissioner Rowlson stated the reason being it is just an interesting factoid.

Commissioner Honcoop stated this is what he had been talking about earlier. These types of statements don’t need to be in the Comprehensive Plan.

Commissioner Hunter stated there are lots of factoids which are history and should be in the plan. Nothing is gained by deleting the language.

Commissioner Rowlson stated nothing is gained by adding it.

Commissioner Knapp stated he would not support the motion.

Commissioner McClendon stated she would not support the motion.
The vote on the motion failed (ayes-4, nays-5).

Commissioner Vekved moved to change page 2, lines 25-29 to read: 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.

Commissioner Deshmane seconded.

Commissioner Vekved stated he had researched this and found that the Salish Sea is not the correct name for the waters off of Cherry Point.

Commissioner Honcoop asked why this entire paragraph is even necessary. It is editorializing again.

Commissioner Deshmane stated it is introducing what is being done in the document. There are these different factors to take into consideration when creating a planning document.

Commissioner Honcoop stated if that is the case they need to put broad based sentiments on the table that recognize more than one thought. This doesn’t do that.

The vote on the motion carried (ayes-7, nays-0, abstain-2).

Commissioner Honcoop moved to delete page 2, lines 31-40 and page 3, line 1 which reads: Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016) and scientific findings show that the use of refined or unrefined fossil fuels overseas contribute up to 16% of the mercury in the soil in the Northwest from return air from Asian burning of those fossil fuels, and that carbon deposition in water from air emissions are the major contributor to ocean acidification. Recent studies by NOAA have found that very small amounts of hydrocarbons lead to congenital heart failure in juvenile herring and salmon, and may have contributed to the crash of the Cherry Point Herring stock.

Commissioner Rowlson seconded.

Commissioner Honcoop stated the reason was this was again editorializing and scientific statements don’t belong here.
Commissioner Vekved spoke in favor of the motion.

Commissioner Rowlson stated the language doesn’t make sense with the intent of the policies that come later. The language is making it very clear that we are not shipping fossil fuels overseas to be refined because apparently they do it poorly. We are also limiting the expansion of the facilities here where he would rather have the refining done.

Commissioner Oliver made an amendment to retain the language which reads: Since adoption of earlier versions of this Comprehensive Plan there has been an increasing recognition of the impacts that fossil fuel use and transportation has on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016).

Commissioner Deshmance seconded.

Commissioner Oliver stated this language is facts that should be retained.

The vote on the amendment carried (ayes-5, nays-4).

The vote on the main motion, as amended carried (ayes-8, abstain 1).

Commissioner Honcoop addressed the language on page 3, lines 1-4 which reads: Because of the large acreage demands of the types of industries likely to locate there, the remaining undeveloped acreage at Cherry Point will likely be absorbed during the 20 year planning period. This question is related to designation of UGAs. For the Growth Management Hearings Board you had to have some justification for size of the UGAs. By removing the language (as proposed by Council) does that potentially put the county in jeopardy because we are not showing the need for that size UGA?

Mr. Aamot stated he did not believe so because there were employment and population projections done along with a land capacity analysis for all the UGAs. This statement has been in the plan since 1997. We are showing that demand matches the supply for the next 20 years. The language says this is what we anticipate, based on the studies, but we really don’t know what will happen. His opinion was it is fine to take it out.

Commissioner Vekved addressed page 3, lines 10-13 which states: In August 2000 and again in November 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” As it’s written it is not clear that the statement, except for existing leases, includes not only the leases for the existing piers but for the GPT pier.

Commissioner Vekved moved to change the language to read: In August 2000 and again in November 2010, the State Lands Commissioner ordered the
Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program, except for existing leases, and designated them as the “Cherry Point Aquatic Reserve.” The following DNR Use Authorizations were exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific Terminals), and 20-010521 (Birch Bay Water and Sewer District).

Commissioner Knapp seconded.

Commissioner Honcoop asked if they were going beyond policy to regulatory by being that specific.

Mr. Buckingham stated that it is only stating what the situation is, it is not declaring policy.

Commissioner McClendon asked Commissioner Vekved why he felt it was necessary to call out each individual lease.

Commissioner Vekved stated as it is written right now it is not clear if existing leases are an application or lease.

Commissioner Deshmane asked if the leases are reassignable.

Mr. Aamot stated it was his belief that when Intalco sold their pier it included the lease too.

Commissioner Hunter felt the language was excessive and unnecessary.

Commissioner McClendon stated she understood Commissioner Hunter’s point but it is important considering the high interest in what happens at Cherry Point. By naming the leases it makes it very clear to the reader that those are the leases being discussed.

Commissioner Rowlson agreed with the statements made by Commissioner Hunter. The language does not add significant value.

The vote on the motion carried (ayes-7, nays-2).

Commissioner Vekved addressed page 3, lines 32-35 which reads: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries comply with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve. The language seems to be a little patronizing and conditional. It was fine as is.
Commissioner Honcoop agreed. There are plenty of laws in regards to this so the language isn’t needed.

Commissioner Vekved moved to change the wording to read: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, complying with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may do pose risks for the recovery of species and other goals of the Aquatic Reserve.

Commissioner Honcoop seconded.

Commissioner Hunter made a friendly amendment to delete the language: The Aquatic Reserve Management Plan acknowledges that so long as the existing industries, comply with all federal, state and local laws and regulations, they may not conflict with the Aquatic Reserve although their activities may pose risks for the recovery of species and other goals of the Aquatic Reserve.

Commissioner Oliver seconded.

The vote on the amendment carried (ayes-6, nays-1, abstain-2).

Commissioner Vekved addressed page 3, lines 41-43 which reads: The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species. This is more statistics without baselines or comparison. If we are going to keep the language we need to add some sort of baseline or number to compare against. Otherwise delete it.

Commissioner Vekved moved to delete the language. Commissioner Barton seconded.

Commissioner Hunter stated he does not see the need for that. The sentence is self-explanatory. It doesn’t compare with anything it’s just a piece of information that is useful to have. He won’t support the motion.

Commissioner Knapp agreed with Commissioner Hunter’s statements.

Commissioner Barton stated he would rather see a comparison added rather than deleted.

Commissioner Barton withdrew his second.

Commissioner Vekved moved to add some sort of baseline. Commissioner Barton seconded.

Commissioner Rowlson stated he is not sure it’s important to compare it to something else. We could have language that simply says: the area includes an undeveloped
intertidal wetland of importance to juvenile salmon and other species. He didn’t think it was important to note it was one of the last.

Commissioner Hunter stated it is important to note that it is one of the last. It is calling into question whether the Council has accurately reflected what has been said here. Is it a fact that it is one of the last? Does staff or Council know if it is accurate?

Mr. Aamot stated he has not investigated the statement.

Commissioner Deshmane noted that the entire sentence was messy and suggested it be rewritten.

Mr. Aamot suggested staff reword the section and bring it back at the next meeting for review. The commission agreed.

Commissioner Vekved moved to change page 3, line 43 through page 4, line 3 back to the original text to read: Existing industries may continue to serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees comply with applicable legal requirements and actively work to further the goals of for the Reserve (CPAR MP p. 2).

Commissioner Honcoop seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Vekved moved to delete the wording on page 4, lines 8-11 which reads: While deep water access made future shipping facilities desirable in the past, recent actions by federal and state regulators denying a proposed fourth pier at Cherry Point have underscored the fact that any future industrial development will undergo scrutiny for compliance with federal and state laws, including treaty rights.

Commissioner Deshmane seconded.

Commissioner Honcoop agreed with the motion. Anyone should have the right to apply for a permit even if it is challenging. He also stated that the fourth pier has not been denied so that language should be stricken.

The vote on the motion carried (ayes-5, nays-0, abstain-4).

Commissioner Honcoop moved to delete the remainder of the paragraph. Commissioner Vekved seconded.

Commission Honcoop stated the reason being it’s editorializing.
Commissioner Oliver stated it was her understanding of the language that the Army Corps of Engineers and the Department of Natural Resources have now said no to the additional pier and are proposing to get rid of the cutout for that pier. What the county is trying to do is lay the groundwork so that we don’t have to evaluate these at the level we have been if we know that they probably won’t be allowed anymore.

Commissioner Honcoop stated the permit for the pier still exists.

Commissioner McClendon stated she did not know enough about the issue to vote on it. This section was mentioned by Mr. Buckingham in that it should be moved to the policies or referenced to a policy.

Commissioner Hunter stated this is a policy that states the county no longer supports construction. Either way you vote it is editorializing.

Commissioner Rowson addressed the first sentence which reads: The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the existing industrial developments. The reality is there are only going to be three or four piers, not five. He suggested staff rewrite this section to indicate that the county does not support more piers.

Commissioner Vekved stated that various shoreline functions and values can possibly be mitigated or engineered around so those need to be evaluated on a case by case basis. Regarding fishing access, that will also be addressed on a case by case basis. The percent of loss, related to shellfishing, etc. is not compelling in spite of some and the opinion is ripe for appeal based on the fact we are dealing with a very small footprint related to a very large area of water. The area is very heavily utilized for crab fishing.

The vote on the motion failed (ayes-4, nays-5).

Commissioner Hunter moved to reference the language in Policy 2CC-10. Commissioner Knapp seconded.

Commissioner Rowson did not like the idea of referencing policies. He would rather have a phrase which leads to the policy.

Commissioner Deshmane made a friendly amendment to read: the county is evolving its position on construction of additional export docks and piers. Commissioner Knapp seconded.

The commission agreed the motion to amend had no relation to the original motion. Commissioner Deshmane withdrew the motion.

The vote on the main motion carried (ayes-6, nays-1, abstain-2).
Commissioner Honcoop moved to change page 4, line 7 back to the original language to read: The County and industrial users have long recognized that the Cherry Point area exhibits a unique set of characteristics that makes land there not only locally but regionally important for the siting of major existing industrial developments.

Commissioner Knapp seconded.

Commissioner Honcoop stated it is important as a site to remain an area for major industrial industry. That doesn't mean it has to be refineries. It could be wind towers, etc.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Hunter moved to change page 4, lines 30-31 back to the original language to read: The characteristics that make Cherry Point unique as a site for the existing major industrial developments includes the following.

Commissioner Vekved seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change page 4, line 42 to read: Rail service is particularly important in relation to water borne commerce of the existing users.

Commissioner Honcoop seconded.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Barton asked staff to correct page 4, line 38 to read: Rail Access - Cherry Point is served by a branch line of the Burlington Northern/Santa Fe. The commission agreed.

Commissioner Honcoop addressed page 5, lines 4-7 which reads: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. His concern was that it seems that one of the tests for siting industry there would be that it has to be sustainable and clean energy.

Mr. Aamot stated it is only text and not a policy. It doesn't say they have to be one of those.

Commissioner Deshmane moved to change page 5, lines 1-18 back to the original language to read: Proximity to Canada, Alaska and Foreign Ports -
Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada and because of its shorter travel distance than other regional port facilities for shipping to and from Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major sustainable, clean-energy manufacturing or production of other commercial or industrial products. The Cherry Point industrial area benefits from proximity to Canada, as trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets. Additionally, just as other port facilities in Washington are constrained by lack of extensive upland areas to support major industrial development, Canadian port facilities are likewise constrained. There are limited expansion sites available at Roberts Banks and in the Vancouver Harbor, and development sites further up the Fraser River are constrained by limitations on vessel draft. Marine terminals at Cherry Point could serve a portion of the potential growth in Canadian marine cargo.

Commissioner Vekved seconded.

Commissioner Oliver was not in favor of the change because the intention of the council language was to be a little more protective of what we want to happen at Cherry Point.

Commissioner Deshmane stated there is a lot in this preamble discussing concerns and constraints. It is fine, regardless of what the policies say. There are a lot of important issues on the table.

Commissioner Vekved stated the block of text is not needed as proposed. He would support restoring the original language.

Commissioner Rowlson suggested language be added referencing a policy. He also suggested language that reads: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major commercial or industrial production with sustainable industries preferred. There are two ways to encourage industry. One, is to make it harder on other industries and two, is to make it easier on the preferred industry.

Commissioner Knapp was not in favor of removing the language regarding clean energy.

Commissioner Hunter stated he would not support the motion because he wants the proposed text left in. He was okay with the proposed deleted language being reinstated.
Commissioner Vekved made a friendly amendment to read: Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by extensive upland development or vessel draft limitations. This would replace the delete text which was moved to be restored.

Commissioner Knapp seconded.

Commissioner McClendon addressed comments made by Commissioner Rowlson. She was not in favor of making any of the language policy.

The vote on the amendment carried (ayes-6, nays-2, abstain-1).

The vote on the main motion, as amended, carried (ayes-5, nays-4).

Commissioner Rowlson made a motion to page 5, lines 4-7 to read: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for major commercial or industrial production with an emphasis on clean energy.

Commissioner Hunter seconded.

Commissioner McClendon stated she was not in favor of putting in some language that is actual policy. The old language was not policy but the new language is.

Commissioner Vekved made a friendly amendment to read: The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for commercial or industrial production, with emphasis on major sustainable clean energy manufacturing or production.

Commissioner Knapp seconded.

Commissioner Honcoop stated he would not support the amendment. It is picking winners and losers and picking businesses by emphasizing a type.

Commissioner Hunter stated he favored giving advantages to sustainable energy because that's what we are concerned about if we go forward with this. We aren't trying to prevent something from happening only try to create preferences.

The vote on the amendment carried (ayes-6, nays-3).

The commission discussed whether or not this was a policy.

Commissioner McClendon moved to add reference to Policy 2CC-2. Commissioner Deshmane seconded. The motion carried (ayes-7, nays-1, abstain-1).

The meeting was adjourned at 10:00 p.m.
Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
November 10, 2016

Regular Meeting

Call To Order: The meeting was called to order, by Whatcom County Planning
Commission Chair, Nicole Oliver, in the Whatcom County Council Chambers at 6:30
p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Nicole Oliver, Michael
Knapp, David Hunter, Kelvin Barton, Andy Rowison, Atul Deshmane

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor’s Office,
Becky Boxx

Department Update
Mark Personius updated the commission on the following:
• County Council schedule
• Planning Commission schedule

Commissioner Rowison reminded Mr. Personius of the pending business items on the
agenda.

Mr. Personius thanked Commissioner Rowison for the reminder and stated staff has
been putting together the work program for next two years. These can be added to it.

Open Session for Public Comment
Carole Perry, Whatcom County: When this process first started she had asked the
commission to be sure it was the way it should be. She asked that some of the
meetings not be held in the Council chambers. Many people are intimidated to speak in
the chambers because they are large and too formal. The Commission works better at
the Annex. Make sure the process really reflects the people they represent. We will
have a Brexit in this county because the people don’t feel that they are being
represented.

Sandy Robson, Whatcom County: She appreciates that the meetings are held at the
Council chambers because of the large crowds that sometimes attend.

Brooks Anderson, Whatcom County: Stated Bellingham is part of the county too. She
was offended by the idea that people are feeling they are not represented because you
are not holding your meetings out at another part of the county. This is part of the
county. It is not the space that intimidates her. The intimidation is to do with the guys
that show up in their suits representing a particular aspect of Cherry Point. The
Commission needs to pay attention to the whole county, not just the rural part. She
can’t picture a Brexit in Whatcom County.
John Strong, Whatcom County: Asked the Commission how many members they had. Asked if any of them had ever worked at Resources. Where do they receive their legal advice?

**Commissioner Comments**
Commissioner Deshmane asked the other commissioners to give a quick description of their associations with the industries at Cherry Point. He wanted a full disclosure from each commissioner.

Commissioner Rowlson stated he was not comfortable with the request. It makes him want to indicate that he has no dealings with them or he will be shamed if he doesn’t. The Commission deals with the entire county on all of their regulations so why is this one different?

Commissioner Deshmane stated it would be beneficial because if there are specific business interests associated with the industries at Cherry Point it could affect the perspective of the Commission members.

Commissioner Oliver stated it should be an individual decision as to whether or not the commissioners want to answer that question. She did not have any dealings at Cherry Point.

Commissioner Honcoop stated the Business Rules require them to disclose to the Commission any conflict and recuse themselves if necessary. The majority of people there have some association with Cherry Point whether they know it or not. To what degree do they have that requirement to disclose something?

Commissioner McClendon stated she was bothered by the discussion because it becomes some type of shadow over them that they are somehow not wanting to tell people something that doesn’t exist.

**Approval of Minutes**
October 13, 2016: Commissioner Knapp moved to approve as written. Commissioner Rowlson seconded. The motion carried.

**Work Session**
File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

The Commission took comments from the public.
Judith Akins, Chairperson of the Mount Baker Sierra Club: The Sierra Club Mount Baker Group fully endorses all provisions of the Weimer Amendment to the Whatcom County Comprehensive Plan. They also acknowledge that these lands are the lands of the Lummi People. They appreciate the non-partisan analysis provided by Matt Aamot, Senior Planner for the Whatcom County Planning & Development Services. In light of his analysis, they believe that nothing in the Weimer Amendments would create conflicts that could cause any reasons for litigation. The Magnuson Amendment already protects our shoreline and waterways. Our Comprehensive Plan should not create conflicts with that existing Federal law. However, the Magnuson Amendment does not address the existing or planned upland facilities at Cherry Point however the County Council Amendments clearly address this issue in Policy 2CC-2 (Addendum 1 attached further delineates these points). As Sierra Club has addressed the power needs of our country in the "Power Past Coal" campaign we believe that the Comprehensive Plan should limit any new construction or expansion of fossil fuel facilities that would require new pipelines and/or increased rail transport either to or from the existing refineries. They encourage these existing businesses to continue their current operations without expanding fossil fuel input or output. Additionally, any growth of their business operations at Cherry Point should be limited to their expansion into new renewable energy industries that are not related to fossil fuels. Any such expansion would require the hiring or retraining of additional workers at those new facilities without any reduction of employees at existing facilities. In closing, the Mount Baker Group of the Sierra Club wishes to encourage continued operations of the existing facilities at Cherry Point. However, any new development at Cherry Point should not result in the ability of the refineries to import crude oil. Further, they believe that there should be no increase in the existing oil-by-rail and pipeline transport of dangerous fossil fuels. Their goal is to keep Whatcom County safe from the risks posed by the processing and transport of dangerous fossil fuels until such time as they can be certain that rail cars will not derail and explode and that pipelines will not rupture. Thank you for your hard work and dedication to making the future of Whatcom County a great place to live, work and recreate.

Laura McKinney, representing the Whatcom Business Alliance: They are a broad group of stakeholders that have an interest in promoting economic opportunities, prosperity, community investment and environment stewardship in the county. While they maintain their position that this process should be delayed and re-docketed in 2017 the coalition has worked diligently, with many hours and lots of input, to draft and submit an alternative Comprehensive Plan amendment.

Dena Jensen, Whatcom County: Thanked the commissioners for their work. She stated she wanted to acknowledge that the meeting was being held on land that was the traditional territory of the Lummi and Nooksack peoples. May we nurture our relationship with our Coast Salish neighbors and the shared responsibility to their homelands where we all reside today. She voiced her objection to the assertion that has been made by coal terminal proponents, SSA Marine, PIT and the Whatcom Business Alliance, that the Planning Commission should not be reviewing the Council proposal for inclusion in the 2016 Comprehensive Plan update. After months and months of public input on the Cherry Point UGA section of the Comprehensive Plan and
after the GPT permit was denied by the Army Corps because it was found that
construction of the facility would violate Lummi Nation’s treaty fishing rights. In June
2016 County Council members presented their amendments to the Cherry Point
section of chapter 2. That was five months ago that everyone was made aware of the
proposal. In July Council members voted 6-1 to send the proposal to the Planning
Commission for further review and public input. That was four months ago. She favors
public input and participation in order to accomplish the goal of providing additional
time for public input on the proposal that the Council endorsed. The commission should
be evaluating that proposal only and should be considering all the input they are
getting in relation to that proposal. That way there will have been a good additional six
months’ worth of input after the many months of input that went into forming it. This
will help inform and evaluate those aspects of that proposal before it is sent back to
the Council to review and vote on. To her knowledge there is nothing that actually
requires the review of alternatives in a process of making a threshold determination on
a proposal undergoing SEPA review. She believed that alternative proposals, after the
Council submitted their proposal, are the ones that should be held for the 2017 review.

Brad Owens, representing Northwest Jobs Alliance: Spoke in regards to the November
8, 2016 letter from the Whatcom Business Alliance which included the Alternative 3
collaborative draft. The Northwest Jobs Alliance is a local, non-partisan organization
whose growing membership includes business, civic and labor leaders, as well as
elected officials. Collectively they represent thousands of likeminded individuals all of
whom rally around their mission to promote the growth of family wage jobs in the
context of sound environmental practice. The Northwest Jobs Alliance is in full support
of the positions stated in the November 8, 2016 letter and proposed alternative. The
proposed Alternative 3 collaborative alternative draft is a well written, responsible and
positive document. It honors various stakeholder interests in the Cherry Point UGA and
port industrial area of Whatcom County as a whole.

Eddie Ury, representing Resources for Sustainable Communities: Regarding the
proposed Alternative 3, they were happy to see the Commission was considering the
input of the stakeholder industries at Cherry Point. He was puzzled as to why it was
being considered an alternative. If the Commission is going to reopen the process, and
deviate from what they were originally asked to do, then other stakeholders should
also be invited to submit alternatives. The original proposal was just as much a
surprise to them as it was to everyone else when it was released. However, they do
support the original proposal and asked the Commission to do the same. In regards to
the changes made at the Commission’s last work session, they do not have any
substantive problems with them. He did take issue with some of the changes that were
proposed and voted down by a 5-4 margin. They do need to address the suggestion to
strike two lines from the preamble of the document which stated “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 language does not have any effect on policy, however, it is deeply
offensive that they would think it was important to strike that language. It seeks to a
mindset that is in problematic.
Bert Kotres, Whatcom County: Addressed the issue of commissioners recusing themselves if they had any conflict of interest regarding the proceedings. He stated he noted no one said they had a conflict. He believed the Weimer proposal was written by Resources. He lives 3 ½ miles from Cherry Point so he sees what is going on out there. All the statements that this issue is killing their fishing industry isn’t true because they don’t fish out there. They are fishing out in the Gulf Islands. People are talking about the coal industry. What was proposed at Cherry Point was a dry bulk shipping facility. The first one who stepped up and wanted to ship out of that place was Peabody Coal but that doesn’t preclude others from shipping there. Everyone is ignoring that because of the word coal. He had a real problem with that. Everyone needs to step back and look at what the facility could actually do for Whatcom County. The three industries at Cherry Point have been good corporate neighbors. They have done a lot for the county.

Mike Sennett, Whatcom County: Corrected the statements of the previous speaker by stating that according to GPT’s own documents the only thing that would be shipped for the first 20 years would be coal. His concern with the proceedings is there seems to be a false impression of litigation at both the County Council and Planning Commission meetings. At the previous meeting Mr. Buckingham was asked if there was pending litigation regarding the Cherry Point fourth pier. He replied in the affirmative. According to both the Army Corps of Engineers and the Washington State Department of Natural Resources there is no litigation. Any future reference by the county’s attorneys that there is currently litigation regarding the GPT terminal should be ignored and corrected.

Sandy Robson, Whatcom County: At the October 27, 2016 Planning Commission meeting one of the Commissioners asked Mr. Buckingham if there is currently a pier that is in litigation. Mr. Buckingham replied yes to that and he referenced the GPT permit application litigation. She was able to get clarification on that issue. She contacted Executive Louws seeking clarification. She asked him is PIT’s 2011-2012 shoreline substantial development permit application and/or its major development permit application, for the GPT project, currently under litigation with Whatcom County? Executive Louws response was “Not to my or Deputy Executive Schroeder’s knowledge.” She also informed the Commission that on November 1, 2016 she checked with the Army Corps of Engineers asking if PIT/SSA Marine had filed an appeal. According to the email she received from them no appeal has been filed. She also checked with the Washington State Department of Natural Resources asking if there was or is a potential for appeal by PIT. The response was “The decision by DNR to deny the lease application for the GPT proposal is final and no longer subject to appeal. The application has been canceled.” As such there does not appear to be any current litigation so Mr. Buckingham’s statements regarding it should be cleared up because his remarks could potentially influence the Commission. She stated she continues to support all of the important protections contained in the proposed Cherry Point amendments of Councilmember Weimer and urged the Commission to recommend approval.
John Strong, Whatcom County: He had attended a County Council meeting and listened to Councilmember Mann share his dream of a world where any fossil fuel would not be allowed to leave the ground ever. Many of the other councilmembers shared his dream. He was sure they already have a plan to replace gasoline, jet fuel, butane, heating oil, etc. and all the other nasty fuels we use. He wondered about the thousands of byproducts made from petroleum. There are over 6,000 common ones. Plastic is one of the items. What will we do without that? There are also organic pharmaceuticals, lubricants, etc. He was baffled why there is discussion of coal terminals. The discussion should be about industries and family wage jobs. If some people kill fossil fuels, as they would like, it would solve our housing problems because we would be living in caves. The discussions are sort sighted and comical.

Amy Glasser, Whatcom County: We need to look at what the planet is going through and if we continue to burn and produce fuels we are warming up the planet and we are going to have floods that take care of Birch Bay and Cherry Point and they won’t be around anymore. The point is that land is not ours. It is Lummi Nation territory. If we respect the treaty we won’t be doing anything there. It is all very simple. This nonsense of fighting about it needs to end.

Mr. Buckingham spoke in regards to comments about litigation. He asked the Commission if they were under the impression the county was involved in a lawsuit. The Commission responded they were not under that impression. He had not meant to give that impression.

Commissioner Rowlson asked for clarification regarding a fourth pier. Is it appealable or is it a dead issue?

Mr. Buckingham stated the appeal period is for six years so it can be appealed for a long time. This is a problem because we don’t want permits sitting around for years and years. The county has sent out letters regarding the wait for the appeal period to end. The decision about the fishing grounds is appealable.

Brooks Anderson, Whatcom County: The testimony being given that evening was not staying on point. It's about the charge they were given which was to look at the Weimer proposal as well as the alternatives. It is not about what is going to happen when we do or don’t get rid of fossil fuels. She asked the Commission to limit their attention to what they have been asked to do.

Lynn Murphey, representing Puget Sound Energy: They have two electric generating facilities at Cherry Point. They burn natural gas to create electricity. They are only on demand generation for electricity. They also have wind, solar and hydro power facilities. She invited the Commission to tour their facility.

Commissioner Deshmane asked Ms. Murphey about policy concerns as stated in the comment letter she submitted.
Ms. Murphey stated there are no direct impacts to their facilities but they want to
continue to monitor the process to ensure there are no unintended consequences from
the amendments. They want to protect their use of natural gas that comes in to their
facilities. They did have concerns about the repeated language referring to excessive
water usage. They would like clarification and quantification of what that means. They
do use a large amount of water that does go through a recycling process. The water
goes back up into the atmosphere. It is a very efficient process.

The public comment period was closed.

Mr. Aamot gave a summary of the memo submitted to the Commission.

Policy 2CC-2 has five bullet points. Three of the bullets relate to the protection of
wetlands, bulkheads and water recycling. Mr. Buckingham’s memo indicated that these
are more of a regulatory nature and they should be more policy oriented or have
regulations that implement the policies. Staff also put in the memo some of the
existing regulations. The Shoreline Management Program (SMP) addresses wetlands
and bulkheads. The Critical Areas Ordinance also addresses wetlands. There are no
county regulations, that staff could find, relating to water recycling. They also asked
the DOE and they were not aware of any such regulations or requirements at the state
level.

There is also a bullet point on clean energy. Low carbon emitting industries are
favored. From a legal perspective, Mr. Buckingham said that would be an appropriate
policy direction. It would need to be implemented with regulations. The Heavy Impact
Industrial regulations do not have much regarding the issue. It does have a regulation
on thermal power plants up to a certain kilowatt limit. There is no such limit on solar,
wind and other types of renewable resources.

There is a bullet referring to archeological study. In the SMP there are some good rules
on that already, however, they only apply within 200 feet of the shoreline. Outside of
the shoreline jurisdiction two things come into play. One is if a person is filling or
grading then the building code requires the applicant be notified they are near an
archeological site and that federal and state rules may apply. Also, if a project requires
a SEPA review a SEPA notice is sent to the Tribes and the State Department of
Archaeology and Historic Preservation. Typically, if the tribes or state wants an
archeological study that would be a condition on the mitigated determination of non-
significance. The vast majority of the time that recommendation is followed.

Policy 2CC-10 as stated in the existing policy, says there is a moratorium and there will
be no more piers, except the one that was approved in the 1990’s. The Council
proposal will change that to say no more piers. Mr. Buckingham has stated that would
be subject to the existing permit and also the settlement agreement. The settlement
agreement states the Whatcom County administration agrees to actively support an
amendment to the Whatcom County Comprehensive Plan which would prevent further
piers, with the exception of the PIT project and existing piers. There is also language
which was adopted into the Whatcom County Shoreline Program in 1999. There is also
language that states the parties agree that to carry out the agreement they are
operating in a relationship of trust and confidence and, except as provided herein,
have neither done, nor will do, any acts that will diminish the value of this settlement
agreement, etc. PDS feels that they would support the existing policy.

Policy 2CC-14 relates to the Magnuson Amendment. There are two issues relating to
this. One is risk of violating the Commerce Clause. The other is that if we have a local
regulation that was parallel to the federal regulation and the county came to a different
interpretation of the federal regulations it could open the county up to a lawsuit. Staff
has proposed some alternative language. Basically the policy would say Whatcom
County would encourage federal agencies to enforce the Magnuson Amendment and if
necessary Whatcom County could initiate legal action to enforce the Magnuson
Amendment. This would not create a new county law, but it would recognize there was
an existing federal law and the county, or any other party, could seek to enforce that
through the court system.

Policy 2CC-15 would require the county to do a study to look for legal ways to limit
unrefined fossil fuel exports by December 2017. Staff does not have any objections to
that. They noted that the study was not funded at this time. The commission may also
want to consider if the December 2017 date is appropriate or not. Mr. Buckingham
noted in his memo that there is some language that is more regulatory than policy.
Commissioner Rowlson asked if the study would be done by staff or a consultant.

Mr. Personius stated it would have to be funded and the county would hire a
consultant.

Regarding a definition for Unrefined Fossil Fuel staff had asked the refineries for some
assistance. Staff received some information from BP which included a definition from
the EPA. It indicates that propane and butane are refined products, so they should not
be in the definition. There is also a comment that natural gas may not be a refined
product. Instead of a definition there could be language referring to crude oil, coal,
natural gas, etc.

Commissioner Deshmane suggested staff use the definitions from the American

Commissioner McClendon asked if there is ever an instance when something can be
enforceable through the Comprehensive Plan.

Mr. Aamot stated there is language that is more regulatory than policy so staff has
tried to identify those and propose alternatives. The Comprehensive Plan has to be
internally consistent with the Shoreline Program.

Commissioner Deshmane stated he is frustrated that Washington State is the least
clean energy friendly state on the west coast. Whatcom County is one of the least
friendly clean energy counties in the state. There is a moratorium on wind energy that
was passed by the County Council. The words he sees about clean energy don’t mean
anything. This county has a long way to go in order to do anything significant.

The commission continued their review of the Council proposal (as modified by the
Planning Commission on October 27, 2016).

Commissioner Vekved addressed page 5, lines 45-27 and page 6, lines 1-2 which
reads: Existing industries consume large quantities of water, in many cases drawn
from the Nooksack River. It is the County’s policy to support renewed efforts to
reduce both water consumption levels and the quantity of discharges, in favor of
recycled water use. He stated there is no attempt made at quantification. He suspected
that was deliberate. It could be made very general but was not done.

**Commissioner Vekved moved to strike the text. Commission Honcoop seconded.**

Commissioner McClendon stated her concern was more with the text that states: it is
the County’s policy... There should not be policy language in the narrative.

Commissioner Rowlson stated it should be stated as a policy for the county not just
this small area of the county. If it is something that the county wants to pursue it
seems like it should be on the work plan to address for a much larger area.

Commissioner Honcoop agreed with Commissioner McClendon that he doesn’t like the
policy language. If it is the county’s policy where is it? Don’t just make a broad
statement. As far as water, there is a Coordinated Water System Plan the county just
passed.

Commissioner Vekved stated he was not trying to make the water issue go away. He
was trying to put it in the appropriate place.

Commissioner Barton stated the paragraph does not flow very well with the proposed
language.

Commissioner Deshmane stated he was frustrated with the language in the
Comprehensive Plan. There is a lot of language regarding environmental objectives but
there is no tool to accomplish them.

Commissioner Hunter stated it is easy to take language and tear it apart. This
language is not confusing. The intent is very clear and does not create any problems.

**The vote on motion failed (ayes-2, nays-7).**
Commissioner McClendon moved to amend Policy 2CC-2, bullet 5 to read:

Encourage new water-intensive development shall to utilize state-of-the-art water recycling manufacturing technology to minimize water use.

Commissioner Vekved seconded.

The motion carried (ayes-7, nays-1, abstain-1).

Commissioner Vekved moved to change page 6, lines 21-22 to read: ...and expand appropriately as opportunities present themselves. While these existing industries need to be protected from the inappropriate encroachment of...

Commissioner Knapp seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change page 6, line 25 to read: ... ways that do not significantly impact the ecology of the Salish Sea Georgia Strait or encourage...

Commissioner Deshmane seconded.

Commissioner Hunter stated there is a context for using Salish Sea rather the Strait of Georgia, which has to do with our larger community. Salish Sea is a term that has gained some credibility.

The motion failed (ayes-4, nays-5).

Commissioner Vekved moved to change page 6, line 26 to read: ... expanded export of unrefined fossil fuels crude oil, coal and natural gas.

Commissioner McClendon seconded.

Commissioner Hunter stated he was not sure it was only those three items that should be listed. The definition of unrefined fossil fuels has not been clarified.

The motion carried (ayes-7, nays-1, abstain-1).

Commissioner Vekved addressed page 6, lines 26-27 which reads: The best means for protecting these industries from incompatible adjoining residential uses and to assure their... He stated there is no need to add the word residential because there are other adjoining uses which may be incompatible.

Commissioner Vekved moved to strike the word residential. Commissioner Deshmane seconded.
The motion carried (ayes-9, nays-0).

Commissioner Vekved addressed Policy 2CC-2 which states: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Oliver felt it was very important to leave the word in because the policy is differentiating between existing and any new industry.

Commissioner Vekved asked what is preventing management plans being created for the new ones.

Commissioner Oliver stated new development would be held to higher standards.

Commissioner Honcoop stated the existing industries are working quickly to meet current regulations. They have to in order to remain competitive.

Commissioner Vekved moved to change the language to read: Ensure that existing developments in the Cherry Point UGA maintain and operate under management plans that to accomplish the goals of the Aquatic Reserve Management Plan.

Commissioner Honcoop seconded.

Commissioner Vekved stated that inadvertently this has been made less prescriptive. It makes no sense to state on existing development conforms to the regulations. Throughout the document there has been an attempt to draw some dateline of existing and new. It makes no sense in this case.

Commissioner McClendon stated all the industries are grandfathered in and no one is going to have to go back and change things.

Commissioner Hunter asked staff, if this language, regarding development, was found in regulations as well, are they satisfied that it would include any new effort to get a permit of any kind.

Mr. Aamot stated that development is broadly defined in the zoning code so it would be a fair assumption.

The vote on the motion carried (ayes-9, nays-0).

Commissioner Oliver stated she liked the Whatcom Business Alliance proposal to separate this section from the Aquatic Reserve Management Plan.

Commissioner Oliver moved to remove the following, from Policy 2CC-2 and make it a new policy:
Ensure that future developments or expansions within the Cherry Point UGA are consistent with the following:

- Clean-energy and low-carbon emitting industries are favored;
- 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;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

Commissioner Vekved seconded

The motion carried (ayes-9, nays-0).

Commissioner Honcoop stated he had trouble with this policy because it is picking winners and losers. That is not what government should be doing. He also did not like bullet point three regarding hardening of the shorelines. It does not take into consideration repairs, protections, etc. With this policy are we restricting reasonable fixes?

Commissioner Deshmane stated he did not see it as picking winners or losers because the language is general enough. His main concern was how is PDS going to respond according to the type of qualitative factors in the Comprehensive Plan?

Commissioner McClendon moved to reword the new policy to read:

Ensure Enact programs that future developments or expansions within the Cherry Point UGA are consistent with the following that:

- Encourage clean-energy and low-carbon emitting industries are favored;
- 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;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

The motion failed for lack of a second.
Commissioner Hunter stated the clean energy and low carbon emitting industries are not only favored but we would not want them to only be limited to regulation. Governments find all types of ways to encourage and favor certain kinds of industries over others. It would be nice if our county and state were in fact really working hard at trying to turn around our reliance on fossil fuels for creating energy. He was not in favor of getting rid of that language or changing it in any way.

Commissioner Vekved moved to read:

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

- Clean-energy and low-carbon emitting industries are favored;
- 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;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling manufacturing technology to minimize water use.

He also added that staff search the regulations to see if they are addressed elsewhere. If not they are to reword them to be policies not regulations.

Commissioner Honcoop seconded.

Commissioner Oliver stated that the staff memo has a very thorough assessment of exactly where each of those bullets currently exist in regulation.

Commissioner Deshmane made a friendly amendment to read:

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

- Clean-energy and low-carbon emitting industries technology are favored;
- 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;
- Additional hardening of the shoreline through bulkheads or other methods at Cherry Point is prohibited;
- Any proposed new development is consistent with an archeological study reviewed designed in cooperation with the Lummi Nation and reviewed by the Lummi Nation as part of the record for any permitting review;
- Any new water-intensive development shall utilize state-of-the-art water recycling technology to minimize water use.
Commissioner Rowlson seconded.

Commissioner Knapp stated all of this is very confusing. Staff should have rewritten this in a policy context rather than trying to do this here.

Mr. Aamot stated staff will make the changes and bring it back to the next meeting so the commission can review them.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-3 to read: Assure that Cherry Point's unique features of large parcelization, existing port access, and rail transportation availability are maintained and protected from incompatible development.

Commissioner Honcoop seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-7 to read: Permit support activities, warehousing, rail shipments, shipping, machine repair and service, educational services, food service and conveniences, to locate on a parcel only after the completion of a master plan, and the identification and site plan approval for the major user.

Commissioner Knapp seconded.

The motion carried (ayes-9, nays-0).

Commissioner Vekved moved to change 2CC-10 to read:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three approved leases identified in the Lands Commissioner's Order No. 201037 designating the Cherry Point Aquatic Reserve (BP, Intalco, and Phillips 66) to:

- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and species recovery goals of the Cherry Point Aquatic Reserve designation and CPAR MP;
- Further public health and safety;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills; and
- Adhere to best available science documenting species decline in the Salish Sea and at Cherry Point and enhance the likelihood of reaching the recovery
goals of the CPAR and the Puget Sound Partnership’s recovery goals for Year 2035 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.

Commissioner Honcoop seconded.

Commissioner Oliver stated she opposed the motion because it is an important part of the proposal. The collaborative alternative Policy 2CC-10 reiterates the existing regulations that are consistent with what staff has also articulated, including best available science and the Magnuson Act. The one thing that is missing is the recognition of treaty rights.

Commissioner Vekved stated that regarding the federal actions and treaty rights, they are what they are and they are part of whatever county approval process that might be in place anyway. Regarding the Magnuson Act, are we at risk of putting ourselves, with the language as it is, in some sort of legal quandary?

Commissioner Oliver stated she did not think so. There are regulations that exist right now and they were able to apply them to be consistent with the regulations, without imposing the authority to regulate on a federal level, on the county regulations.

Commissioner McClendon stated she would support the motion. The concern about treaty rights can be addressed elsewhere.

Commissioner Oliver made a friendly amendment to read as presented in the proposal from the Whatcom Business Alliance:

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;
- 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
ingcluding 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.

Commissioner Barton seconded.

The motion carried (ayes-9, nays-0).

Commissioner Honcoop moved to change Policy 2CC-9 to read: Continue to
work with service providers that serve Cherry Point to ensure the delivery of
services and to allow it to develop to its fullest potential, consistent with
other County policies mandating and supporting energy and water
conservation.

Commissioner Vekved seconded.

Commissioner Hunter stated it is not mandating anything. It is just saying it is
consistent with other policies that mandate and support these things.

The motion carried (ayes-7, nays-2).

Commissioner McClendon moved to change Policy 2CC-14 and add the
preamble to read as presented in the proposal from the PDS staff:

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

... 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.

Whatcom County does not enforce the Magnuson Amendment through the
local permitting process. However, the County can encourage federal
agencies to enforce the Magnuson Amendment and may, if necessary, seek to
enforce the Magnuson Amendment through the court system.
**Policy 2CC-14:** 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.

Commissioner Rowlson seconded.

The motion carried (ayes-9, nays-0).

Commissioner Deshmane addressed Policy 2CC-15. It should be a standalone item, not part of the Comprehensive Plan.

Commissioner Rowlson agreed with the comments of Commissioner Deshmane. Why doesn’t the County Council just order a study? Why does it need to go through this group?

Commissioner Honcoop stated it needs to be a docketed item. It doesn’t belong in the Comprehensive Plan. The date of December 2017 is most likely not realistic.

Commissioner Oliver stated there are policies such as this in the Comprehensive Plan. We don’t want this to get lost and not get done.

Commissioner Hunter stated this is the main issue and the commission should not change it. All the rest of the language doesn’t change anything.

Commissioner Hunter move to change the language in Policy 2CC-15 to read:

Without delaying implementation of the foregoing policy (2CC-14), 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 crude oil, coal and natural gas 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.

Commissioner Knapp seconded.

Mr. Personius suggest the Commission remove the date of December 2017 because of the limitation it puts on getting the work done.

Commissioner Hunter stated he saw no reason to change the date. If Council wants to change it later they can.

Commissioner Honcoop made a friendly amendment to read: The County shall undertake a study to be completed by December of 2017 to examine existing County laws, including those related to public health...

Commissioner Barton seconded.

The motion carried (ayes-6, nays-3).

Commissioner Hunter made a friendly amendment to read: The County shall undertake a study to be completed by December of 2018 to examine existing County laws, including those related to public health...

Commissioner Oliver seconded.

The motion carried (ayes-6, nays-3).

The vote on the original motion, as amended, carried (ayes-7, nays-1, abstain-1)

Commissioner Honcoop stated that the staff memo states that the second bullet is clearly not policy and may not be enforceable thorough the Comprehensive Plan. Regulations would need to be added to implement this language.

Commissioner Honcoop moved to strike the second bullet.

Commissioner Vekved seconded.

Commissioner McClendon asked staff what the impact of the language is.

Mr. Aamot stated it would be an additional workload for staff. Staff has no issues with it.

Commissioner Oliver stated it is unusual for staff direction to be put in the Comprehensive Plan. Can't they just direct staff to do it without if being in the plan?
Mr. Aamot stated they are the Executive Branch so Council could request that, but staff takes direction for the Executive.

Mr. Buckingham stated it would not be enforceable through the Comprehensive Plan. It is awkward to have here. If shall was replaced with should it would be okay.

Commissioner Deshmane made a friendly amendment to read: Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration shall 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.

Commissioner Oliver seconded.

The motion carried (ayes-8, nays-1).

The meeting was adjourned at 9:45 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Nicole Oliver, Chair

Becky Boxx, Secretary
Call To Order: The meeting was called to order, by Whatcom County Planning Commission Vice-Chair, Kelvin Barton, in the Whatcom County Council Chambers at 6:30 p.m.

Roll Call
Present: Natalie McClendon, Jerry Vekved, Gary Honcoop, Michael Knapp, David Hunter, Kelvin Barton, Andy Rowlson, Atul Deshmane
Absent: Nicole Oliver

Staff Present: Mark Personius, Matt Aamot, Royce Buckingham-Prosecutor's Office, Becky Boxx

Department Update
Mark Personius updated the commission on water issues.

Open Session for Public Comment
Max Perry, Whatcom County: Cautioned the commissioners to keep an open mind. The moratorium on the wells is really impacting people. At the County Council meeting the entire room was filled with people this has impacted. He noted the Planning Commission meeting was full of people that will be impacted by the Cherry Point decisions.

Commissioner Comments
Commissioner Barton stated that earlier this year the commission had added small lots to the Birch Bay UGA through the Comprehensive Plan update.
Commissioner Barton moved to add development of regulations for small lots in Birch Bay to the Pending Business Items.
Commissioner Vekved seconded.
The motion carried.

Approval of Minutes
October 27, 2016: Commissioner McClendon moved to approve as written. Commissioner Honcoop seconded. The motion carried.

November 10, 2016: Commissioner Rowlson moved to approve as written. Commissioner Vekved seconded. The motion carried.

Public Hearing
File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

Matt Aamot gave an overview of the proposal.

In 1997 Whatcom County designated Cherry Point as an Urban Growth Area (UGA) under the Growth Management Act (GMA). The Cherry Point boundaries did not change in the 2009 or 2016 UGA reviews. The Cherry Point UGA is approximately 7,035 acres. There are about 6,565 acres of Heavy Impact Industrial (HII) and approximately 470 acres of Light Impact Industrial (LII). On August 9, 2016 the County Council approved an ordinance updating the Comprehensive Plan as required by the GMA. The Cherry Point section had some policy changes, including changes relating to the Department of Natural Resources (DNR) Cherry Point Aquatic Reserve Management Plan, public access and monitoring water quality and habitat. On July 26, 2016 the County Council passed a resolution requesting the Planning Commission review additional proposed policies for the Cherry Point UGA. These policies included provisions relating to environmental protection, prohibiting additional piers, prohibiting county permits that would allow increased crude oil export by ship and studying legal ways to limit unrefined fossil fuel exports in the future. Council requested Planning Commission recommendations by January 2017. On September 13, 2016 the County Council approved the Public Participation Plan. The Cherry Point amendments are classified as Level 3 which means alternatives are to be considered. Alternative 1 utilizes amendments that were put forward by an individual County Council member. This alternative encourages environmental protection; does not allow additional piers, except one that was already permitted in the 1990’s; and provides for studying legal ways to limit unrefined fossil fuel exports in the future. Alternative 2 was the no action alternative which retains the existing Comprehensive Plan language. Prior to this meeting the Planning Commission held three meetings on this issue. These meetings included a combined town hall meeting and SEPA public hearing and two work sessions. After listening to public testimony the Planning Commission has formulated preliminary draft changes. The commission’s draft policies encourage environmental protection, support a limit on the number of proposed industrial piers (the Shoreline Management Plan currently allows only one additional pier), encourage federal agencies to enforce the Magnuson Amendment and state that the county may, if necessary, initiate legal action to enforce the Magnuson Amendment. The Magnuson Amendment is a federal law that does not allow federal permits for handling more crude oil except if refined for use in Washington State. The Planning Commission draft also includes studying legal ways to limit crude oil, coal and natural gas exports in the future. After approval of a proposal by the Planning Commission County Council review would commence in the first quarter of 2017.

Staff had some suggested amendments.
Modify the text on p. 3 as follows:

Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species.

Staff contacted the Department of Ecology (DOE) who stated that this proposed deletion better reflects reality as there are other important intertidal wetlands.

Modify the text on pp. 3-4, for consistency with Policy 2CC-11, as follows:

Based on the public record developed during this plan review and best available science in the record, the County no longer supports a limit on the construction of additional export docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a) physical interference with shoreline functions and values; (b) physical interference with traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills from increased large vessel traffic, potential collisions with tankers and other vessels serving the existing three piers at Cherry Point, and related barge traffic and support vessels (see Policy 2CC-11).

This language was discussed at two different meetings which resulted in conflicting text and policies. This proposed language corrects this.

Modify the text on p. 4 as follows:

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

Modify the text on p. 5 as follows:

The large acreage, good rail access and proximity to Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for commercial or industrial production with emphasis on major sustainable clean energy manufacturing or production (see Policy 2CC-3).

Modify the text on p. 6 as follows:

Existing industries consume large quantities of water, in many cases drawn from the Nooksack River. It is the County's policy to support renewed efforts to reduce both water consumption levels and the quantity of discharges, in favor of recycled water use (see Policy 2CC-3 and Policy 2CC-10).

These last three relate to citing policies that support the text.

The hearing was opened to the public.
Warren Sheay, Whatcom County: Stated he wants all of the children in Whatcom County to grow up in a clean and safe environment. The time has come. We can no longer sweep genuine environmental threats under the rug by pretending they don’t exist or by simply deferring action to future generations. Our planet is dying. Now, more than ever, it is up to local governments to lead the battle against climate change. We need to prevent Cherry Point from becoming an international export highway for unrefined fossil fuels. It bears repeating that by preventing crude oil from being exported we are protecting existing refinery jobs and ensuring that the refining process meets high environmental standards. Most of the people he talks to, in the environmental community, want to protect existing refinery jobs. Do not be fooled by claims to the contrary. To keep Cherry Point clean, safe, healthy and economically viable he requested the following improvements to the draft recommendations: Policy 2CC-2: Please consult with the Lummi Nation, especially for review of archeologically significant sites at Cherry Point. Please respect the 1855 treaty. Policy 2CC-11: Please indicate that we want no new piers in the aquatic reserve. Policy 2CC-15: This needs to be strengthened so there is no piecemealing of expansions for crude export. Please keep the original 2017 completion date for the study to discourage more unrefined fossil fuel exports. He supported the Weimer amendments.

Jean Carmean, Whatcom County: Representing the Bellingham/Whatcom County League of Women Voters. They support the Weimer amendment. The League of Women Voters has long been involved in advocating for the protection of the ecology in Cherry Point. They joined in a successful lawsuit by the DOE, Washington State Department of Fish and Wildlife and several environmental groups, in 1997, to gain federal protection for the area. Their position on deep water ports is that Cherry Point’s ecosystem should not be altered or destroyed, that numbers of vessels plying the Salish Sea should be limited and that cargo with high risk to harm the environment or health should not be allowed. Several arguments against the Weimer amendments focus on jobs. Certainly the League is supportive of family wage jobs. In point of fact, however, these amendments do not affect current Cherry Point industries shipping finished products. They may even protect jobs, since there is precedent for the elimination or reduction of refinery jobs in other locations after they have established bulk shipping ports. Some claim that the amendments are anti-industry, but is should be noted that the amendments actually commit to the development of Cherry Point via clean industries which use state of the art water recycling manufacturing technology to minimize water use. They assume that these would provide long term family wage jobs as opposed to the short term jobs that would be created during the construction phase of any fossil fuel project. Since they would minimize the number of additional fossil fuel tankers and barges navigating the narrow passages and sharp turns in the Salish Sea the risk of destroying an ecosystem is reduced. The more vessels, the more likely it is that a large spill or even several small ones, could destroy our four billion dollar native and other commercial fishing and shellfish industries and our two billion dollar tourist industry which depends on activities like fishing, orca watching and beach combing. The amendments also recognize the treaty rights of Native Americans to protect their sacred sites and fishing rights. It has been argued by some that wording to urge enforcements of the Magnuson Amendment by federal agencies would have the same effect as these amendments. The law against the export of fossil fuels, which Senator
Magnuson championed to protect the jobs of American refinery workers, was recently repealed after intense lobbying by big oil. The chances of the Magnuson Amendment surviving in the current climate are nil. Finally, since fossil fuel resources are finite we need to think about preserving them for future generations to manufacture clothing, hospital plastics and other necessary products rather than extract them for short term profits for export to Asia. Fossil fuel burning in Asia comes back to us as air pollution and ocean acidification and pushes us toward the tipping point on climate change. Fossil fuel burning is a serious threat to all of us.

Virginia Malmquist, Whatcom County: One thing constantly going on is this concept of a problem between jobs versus the environment. She suggested we protect our local jobs by not allowing the export of fossil fuels in their raw form. It provides no guarantee that we will have a safe environment or the current jobs will stay here. She recently spent time with a young girl who felt her future had no hope. Part of the reason she thought that was because our world is dying. We have an obligation to our youth, to our Earth, our life forms and ourselves to do everything in our power to keep this world safe. We have not been doing that which needs to be turned around. We need to honor the Lummi Tribe and their treaty. We need to enforce the Magnuson Amendment. We need to prevent Cherry Point from becoming just an opportunity to dump raw fossil fuels into Puget Sound. Please help keep our community and world safe.

Elizabeth Hines, Whatcom County: This is not an us and them situation. This is an all of us situation. Everybody wants a win and can win. The first thing we have to do is protect our environment. She supports the Lummi People and their sacred site. She supports their ancestral burial grounds. They were here long before the rest of us. She wants her grandchildren to have a beautiful world. She doesn’t want to see their world destroyed by greed and lust for oil, coal and foolish decisions. She would like to see oil jobs replaced by clean energy jobs. Water catchment is done in many parts of the world. We have lots of water here so let’s do this.

Seth Owens, Whatcom County: He worked in the oil fields for many years, the solar energy field and now the commercial fishing industry. He supports the Weimer amendment. The fishing industry is huge to Whatcom County. When a treaty is made with the Lummi People it should be honored.

Dena Jensen, Whatcom County: Stated this meeting was being held on land that is the traditional territory of the Lummi and Nooksack People. May we nurture our relationship with our Coast Salish neighbors. She supports the Weimer proposal because it offers the strongest language for our county taking responsibility to protect our land, waters and lifeforms. It indicates that we will adopt protective regulations and enforce them. If we want air to breath, water to drink and land to exist on we have to start taking responsibility and not leave it to corporations and business advocates that put money first. Workers try hard to protect us and themselves, but accidents happen. She was disappointed to hear members of the County Council try to shake off some forms of responsibility for the compromised flow of water in our rivers resulting in what ultimately amounts to the theft of water from our wildlife, senior
water rights holders and our community has a whole. The county is responsible, as is she. We need to be role models for each other. We all have to work with coming up with solutions and stop relying or insisting on or passively waiting for other entities to fix things for us. If we all work together we will have truly reliable prosperity for future generations.

Sandy Robson, Whatcom County: Supports the Weimer proposal. Regarding the Planning Commission draft, page 3: In 2000 and again in 2010, the State Lands Commissioner ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program and designated them as the Cherry Point Aquatic Reserve. The following DNR Use Authorizations were exempted from withdrawal:

- Lease application numbers 20-A09122 (British Petroleum), 20-A11714 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), 20-013265 (Gateway Pacific Terminals), and 20-010521 (Birch Bay Water and Sewer District). She urged the commission to make an edit, actually more of a correction, in the excerpt just cited. Lines eight and nine of the draft specifically reference lease application 20-013265 (Gateway Pacific Terminals). There is no reason to make that reference unless it is acknowledged by the fact that the lease application, which once had been exempted from withdrawal, is no longer a viable or active lease application with DNR. According the DNR Commissioner Peter Goldmark’s July 11, 2016 letter sent to Skip Sahlin, of Pacific International Holdings, and her email communications with DNR the language stated in the Planning Commissioner draft does not accurately reflect the current status of lease application 20-013265 (Gateway Pacific Terminals) with DNR. Commissioner Goldmark’s letter states the DNR has denied the lease application for the Gateway Terminal Project. Pacific International Holding or its affiliated entities no longer have an application with DNR and there will be no further consideration of the past application. So, due to the fact that DNR has officially stated that the lease application for the Gateway Pacific Terminal project has been denied and that there will be no further consideration of the past lease application, coupled with the fact that DNR’s lease denial cannot be appealed by applicant PIH/PIIT, the language inserted by you commissioners in your 11/10/2016 Draft document on lines # 8 and # 9, specifically referencing lease application number “20-013265 (Gateway Pacific Terminals),” then does not appear to be completely accurate or adequate. She asked the language to be removed from the draft.

Paula Rotondi, Whatcom County: Like everyone there she depends on the fuel that the people at the refineries make. Refinery jobs are good jobs, but they are dangerous and they are done to take care of families which is everyone’s first obligation. Whatever else you give your family doesn’t matter if they can’t drink the water or the air isn’t safe to breath. It is an obligation to provide our families with clean water and air. The first obligation of corporations is not providing jobs it is maximizing profits. Corporations can and will increase profits, when they have the opportunity, by sending crude oil and refining jobs overseas. If we allow new pipelines, trains and ships to export unrefined fuels to Asia we increase the risk to our families health and safety and to our air and water. Pipelines are going to keep rupturing, trains are going to keep derailing and ships are going to keep capsizing. We accept these risks for the fuel we need here ourselves. It is unacceptable to risk our health, safety, air and water to
Mike Sennett, Whatcom County: Stated the Division Manager of the Aquatic Resources has written the decision by DNR to deny the lease application for the GPT proposal is final and no longer subject to appeal. The application has been canceled. As such, there should be no mention of GPT in the Comprehensive Plan. In connection to this request he asked the commission to state that the county opposes any additional piers at Cherry Point in Policy 2CC-11. This brings the Comprehensive Plan into line with the DNR's closing of the fourth pier cut-out and to protect the Aquatic Reserve from any future shoreline disruption. As we all know Pacific International Terminal committed illegal destruction and desecration at Cherry Point. To prevent any such outrage again he asked the commission to strengthen Policy 2CC-3 by adding language supporting collaboration with the Lummi Nation in any future development at Cherry Point.

David Kershner, Whatcom County: Used to work as a commercial fisherman near Cherry Point alongside members of the Lummi Nation. He values salmon as a significant contributor to our economy and the way of life of his Lummi neighbors. The Lummi People are the original stewards of the land we call Cherry Point. He urged the commission to recommend specific language in the Comprehensive Plan that recognizes the Lummi Nation’s rights as expressed in the Treaty of 1855. He also urged them to recommend collaboration with the Lummi Nation in reviewing archeological sites at Cherry Point. He urged them to state in the revised Comprehensive Plan that an additional pier is inconsistent with honoring the Lummi Nation’s treaty fishing rights. It is critical that the county make sure that new developments at Cherry Point are reviewed in the context of the Marine Mammal Protection Act and the Magnuson Amendment. The county can’t afford to have these projects avoid thorough review because they are represented as serious but minor projects. He supports the county studying its legal powers with respect to the restrictions on fossil fuel exports. He urged them to recommend that the study be completed before the end of 2017.

Charles Bailey, Whatcom County: He is opposed to the county becoming an open highway for the shipment of unrefined fossil fuels. The risk of spillage, even in small amounts, add up to a devastating impact on our environment, our destination for tourism, our fishing industry and the general wellbeing of people here. He recommended a strong planning policy that includes no piecemealing; a number of small developments that have a cumulative effect; no new piers; collaboration with the Lummi Nation-recognizing their treaty rights as well as their participation in the archeological reviews and the legal study should be completed by December 2017.

Dirk Vermeeren, Whatcom County: He is a retired refinery industry executive. His wife and he have been Whatcom County residents since 2014. He supports the Weimer proposal. Recognize the Lummi Nation and consult with the aquatic reserve group. Approve Policy 2CC-11 and restrict the current number of piers to three. Approve Policy 2CC-15 and strengthen the language to ensure the county does not allow developments to violate the Marine Mammal Protection Act and Magnuson.
Amendment. Retain the study completion date of 2017. The main issue we need to address is what do we want to be in 10 years? Do we want to become like Texas, who is heavily dependent on the petrochemical industry or do we want to start diversifying our economic base? How well prepared are the Cherry Point industries for an earthquake? Does the permit process require a plan for mitigating this catastrophe? Whatcom County natural resources are finite. Our land, rivers and coastal waters sustain numerous industries, including commercial and sport salmon fisheries and related businesses. Our quality of life has become a key attractor and driver for growth. Unfortunately some people are using scare tactics to achieve their agendas. Our goal is to balance growth for clean energies. Please prepare a plan that will represent all Whatcom County stakeholders.

Ron Colson, Whatcom County: He asked the commission to adopt the Weimer proposal. If we allow crude oil to be exported from Cherry Point our Whatcom County refinery jobs will end. U.S. labor costs are among the highest in the world. That is why we have watched so many well-paying U.S. jobs outsourced overseas. It costs over 25 dollars to refine one barrel of crude oil at U.S. refineries. It costs about one half that to refine the same amount in India. Exporting American crude oil does not help the U.S. achieve energy independence. The most recent data shows that the U.S. is importing foreign oil at the rate of about 242 million barrels of oil per month. Meanwhile, we are exporting American oil at the rate of about 158,000 barrels per month. As long as we are still importing so much foreign crude oil there is absolutely no reason to export American crude oil, or is there? The average U.S. refiners acquisition costs, for domestic crude, recently rose 36 cents to $44.54 per barrel. Meanwhile, the average cost of imported crude declined 39 cents to $40.82 per barrel. Therefore, it is $3.72 less, per barrel, for U.S. refineries to purchase foreign oil than to purchase domestic oil. Excerpts from a recent Bloomberg report state: The recent solar power generation will increasingly dominate. It is a technology, not a fuel. As such, the efficiency increases and prices fall as time goes on. What’s more, the price of batteries, to store solar power when the sun isn’t shining, is falling in a similarly stunning arc. U.S. oil and gas groups are falling into the insolvency zone. Oil and gas woes are driven less by competition from renewables than by a mismatch of too much supply and too little demand. With renewable energy expanding at record rates and more efficient cars, including all electric vehicles that are syphoning off oil profits, the insolvency zone of fossil fuel companies is only going to get more crowded. Natural gas will still be needed for when the sun isn’t shining and the wind isn’t blowing. Whatcom County must not allow the dying fossil fuel industry to place a long term strangle hold on our economy for the short term profits of a few wealthy corporations. Allowing crude oil exports at Cherry Point would only hasten the loss of refinery jobs and we will be saddled with filthy rusting infrastructure that will have to be cleaned up with our tax dollars. Do not allow that to happen. Adopt the Weimer proposal then let’s begin the important job of enticing new clean industries to build their businesses at Cherry Point.

Steve Garey, Skagit County: A recently retired refinery worker. He is a the Executive Board Member of the Washington State Blue Green Alliance which is a national organization that seeks to build understanding, common cause and shared goals between labor and environmental organizations. He encouraged the commission to
support Comprehensive Plan language that will effectively prohibit the export of crude oil or other feed stocks that are necessary to produce transportation fuels or any other finished products that can be produced in the refineries with the Cherry Point industrial area. Prohibiting crude oil export supports refinery workers as well as the economy of Whatcom County. We know this because we have seen oil companies, in other times and places, react to regulations, market restraints or other concerns, by shutting refinery process units down in order to turn the facility into an export terminal. They do this by laying off the great majority of production and maintenance workers while continuing to run just the tank farm, shipping pumps and the wharf with a much smaller work force. This places most workers in local unemployment lines and tends to increase the volumes of crude and other feed stocks that pass through the community and the facility without processing. It also tends to increase the price of crude oil, effecting the viability of local refiners and increases the likelihood that finished fossil fuel products are imported into our communities from off shore producers that often recognize no protections for workers or the environment. It is important to note that a local ban on crude export would be consistent with a federal ban that was in place for decades until it was overturned just recently. The federal ban, for many years, was seen as supportive of both our country's national security as well as manufacturing industries and the nation's economy. The federal ban was supported for good reason by both labor organizations, environmental groups and many others. You have an opportunity now in considering Comprehensive Plan language to support local workers, our local economy, as well as our environment for the same reasons that supported the federal ban for so long. He also pointed out an important flaw in the current moratorium language that is not supportive of our best interests. The current moratorium language defines unrefined fossil fuels by listing several forms of crude oil and other raw materials, but also lists inaccurately several finished products. Propane, butane and natural gas are finished products. Without going too deeply into organic chemistry you should know that those products do not come out of the ground all by themselves. Those products should not be listed. Those molecules must be processed in order to isolate them from each other and all the other hydro carbons, as well as many impurities, in order to be suitable for markets. While he is a person who has supported working people in some form for most all of his life he knows, the international union knows, as the Washington State Labor Council knows, that global warming and the consequences that result must be stopped. We know that in order to do that we must reduce demand for fossil fuels. We also know, however, and many of our friends in the environmental community know as well, that while the transition is underway it is our responsibility to insure that it is a fair, just and equitable transition. To be just it must, in addition to many other things, recognize and protect as much as possible those workers and communities that are most exposed to disproportional costs.

Eddy Ury, Whatcom County: Everyone in the room should find some satisfaction with the draft in that it balances so many stakeholder concerns in both the economic and industrial issues at Cherry Point as are the various laws and policies that need to be outlined in our planning document. We need these in order to be fair to business so they know what to expect during the permitting process. There are some proposals forthcoming that are not consistent with state law, federal law or county policies and
yet seem to be moving forward anyway. There is a Canadian gas pipeline that is proposed to route through rural Whatcom County farmland, through the Cherry Point Aquatic Reserve and on to Vancouver Island. This does nothing for the U.S. economy but does pose some risks. It also violates state law in terms of the Aquatic Management Plan. This shows disregard for the policies in place. At some point the county could be sued merely for enforcing the law. That is all the more reason why we need this legal study so the county can be best prepared for these types of things. He would like to see the deadline for the study be changed back to December 2017. He would like to see Policy 2CC-11 be consistant with other parts of the chapter to state we don’t encourage new piers. He submitted a petition with signatures of those who support a ban on unrefined fossil fuel exports.

Tate Garret, Whatcom County: He has friends and family who have been supported by the jobs and businesses at Cherry Point. He has seen how the opportunity to hold a family wage job so close to home provided not only a stable income but a larger amount of time to spend together with family. About a year ago, as he was starting his sophomore year in high school, he started considering what these jobs could have to offer and ended up deciding to take classes at Bellingham technical College through Running Start. After earning an Associate's Degree in 2018 he hopes to get a job at Cherry Point so he can stay local with family and friends while earning a good living. You may already know that the jobs at Cherry Point provide a large chunk of the county’s income, both directly through the employees that work there and indirectly by bringing in contractors and paying for utilities. What you might not know however, is that the industries at Cherry Point are constantly searching for ways to increase their efficiency and decrease their environmental footprint. They are also actively developing green energy solutions and more sophisticated methods to detect and contain any leaks or emissions in the atmosphere and ground. Because of this the environmental impact of the Cherry Point businesses has been reduced to an almost imperceptible level and will remain in retreat with the continued vigilance and innovation of the industries and public. The current plan for the Cherry Point Industrial Zone is often ambiguous and vague, sometimes to the point that it can be easily and perhaps unintentionally used to inhibit and restrict the industries it’s designed to help. It also makes it nearly impossible for the industries located there to upgrade their facilities and equipment to more efficient and environmentally friendly modern designs. These difficulties, along with the moratorium currently in effect, are part of why he believes the current plan for the Cherry Point Urban Growth Area should be amended in favor of the Whatcom Business Alliance’s Alternative 3, or canceled as Alternative 2 suggests. Diminishing the number of family wage jobs will drive people to seek employment elsewhere and will cause Whatcom County’s average income, which is currently 25% below the state average, to decrease even more. He hopes that he and hundreds of other students, along with thousands of current employees and their families will be able to continue counting on Cherry Point to provide this county with a reliable and sustainable source of jobs that will benefit both its people and environment.

Ricky Goss, Whatcom County: He is currently working on obtaining his Associates Science Degree from Bellingham Technical College. He currently works for Bellingham Technical College as a math, chemistry and process technology program tutor. He is
also Vice President for two Students for Local Industry clubs at the college. He lives in Snohomish County but hopes to soon become a contributing member of this community. He is enrolled in the Process Tech program to achieve a goal. That goal is to have the opportunity to work for and retire from one of these great industries. He has concerns about the Weimer proposal. These proposals will not only affect the companies that do business in the Cherry Point area but it will reach out and touch employees, contractors, sub-contractors, schools and businesses. This decision affects families. Because of the families that this decision affects the two choices he can support are Alternative 2 and Alternative 3. We need to keep these companies in Whatcom County and help them grow so they can continue to support our friends and families that live here.

James Hendrix, Skagit County: A student at Bellingham Technical College in the Process Technology Program. He had previously made a living doing turn arounds and shut downs for refineries across the U.S. but this has always been home. The regulations being considered are already enforced by different agencies. It seems like an overreach to consider enforcing them again. If you overregulate an industry it will die. We can’t afford to lose the industries that are here. With the average income in Whatcom County already 25% below the state average we can’t afford to let these jobs go. We can’t regulate them to death by putting on regulations that are already in place. There are several major cities in the country that have lost their industries. Detroit has a 39% poverty rate. Chicago has a 1.3 million people living in poverty and is one of the most dangerous places to live. This can be directly attributed to a loss of their industries. If you have no hope and no future you act out in desperation and dangerous environments happen. Living in poverty is not something we should accept. We have industries we need to support and help grow.

Joe Wilson, Whatcom County: Vice President of Pederson Brothers who are a heavy industrial steel fabricating company. They work at the refineries as well as other industrial facilities. They are a small business. They have a lot of sub-contractors who work for them. The refineries are very good neighbors in this community. They contribute a lot to the tax base. They provide very many family wage jobs. They also spend millions of dollars on air and water pollution control and safety for their employees. He was against the Weimer proposal because it is so poorly written. Right now there is a moratorium on permits. These permits may be needed for air and water pollution control. If the Weimer proposal is instituted the county will be spending a lot of tax dollars in a legal battle because it will be found unconstitutional. We all know that. This county can’t decide for the U.S. what is in our constitution.

Eileen McCracken, Whatcom County: She is employed as an engineer at Phillips 66. The collaborative proposal from the Cherry Point industries provides a lot of helpful guidance to the community in planning for the future of Cherry Point. Please reconsider proposed Policy 2CC-3, specifically requiring water recycling technology to reduce water use. Consideration should be given first to reducing overall water use. Jumping right to recycling may or may not have the same impact. Remove Policy 2CC-15. The refineries are committed in their operations here. They show it every day in the high
standards they have and their support of the community. Exporting crude could be a pathway to future viability for these facilities.

Karen Shorten, Whatcom County: Whatcom County can have both economic growth and a healthy environment and we deserve and support both of those things. Cherry Point industries have contributed by creating thousands of jobs and contributing millions in tax revenue to our community. In addition they have spent millions to improve environmental and safety performance at the facilities. Along the way they have been cleaning up their fuels. The industries support and encourage green energy businesses and responsible industry that may want to locate in Whatcom County. Their presence would further build our community. Likewise, opponents want us to believe that exporting crude oil will add to climate change are not correct. It will not because demand would merely result in the supply, from alternate sources, providing jobs elsewhere. We need energy and it is most responsible from an economic, safety and environmental standpoint to have that refined locally. There is also a misunderstanding, among some, that allowing companies to export crude would drive jobs overseas. That is not true. The way to ensure long term viability of the existing industry is to support their future potential. We have to remain competitive. She urged the commission to remove obstacles and allow the existing state and federal laws to govern. Do not add extra layers of regulations. It is important to include the local community in this process and to listen to what is said. It is important to act in the communities best interests. Approve Alternative #2 or #3.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance (WBA). The WBA represents businesses from every industry in Whatcom County, both large and small. They agree that the narrative of Whatcom County needs to be changed that the county is a difficult place to do business. Currently Whatcom County is seen as a difficult place to get new projects and expansion projects permitted. They have identified several examples of companies, including manufacturers, who wanted to locate in Whatcom County but found it too difficult. Those jobs went elsewhere. Cherry Point industries and the contractors who work there are good partners in every respect. We need them and we need to support them. The language in the document the commission sends back to the council is important, not only to the 10,000 plus family wage jobs that are impacted, the 200 million dollar tax base, the 1 million dollar plus philanthropy provided and the environmental organizations they assist, but also to the thousands of stakeholders. You have an opportunity with this amendment to send a message that Whatcom County is a great place to bring jobs. By working with the Cherry Point stakeholders we can find a balanced solution. The current draft simply falls short of that. Slow down and take them up on the offer for a day of education. They will bring in experts that can provide all of the information needed to address some of the very complicated questions that are before them. Consider the compromise language their members have provided. It was a good faith effort to protect the environment, provide economic opportunity and job growth and avoid lawsuits and legal fees that would burden Whatcom County taxpayers. The community is looking to the commission to submit language to the council that reflects the values and economic needs of the entire community.
Jessica Spiegel, Thurston County: Representing the Washington State Petroleum Association. They are a non-profit trade group that is comprised of 25 companies that explore, develop, transport, refine and market petroleum products in five states. She felt the process was rushed and not following the GMA. It requires a public process. Alternative #3 should be included as an alternative and recommended as the proposal to the council.

Erin Anderson, Whatcom County: Legal counsel for the Whatcom Business Alliance. There is no statutory mandate that the commission rush their decisions. She urged the commission to take up the offer from the WBA for a public open and transparent training session regarding the entire framework of regulations of all of the businesses at Cherry Point. Address the constitutionality of any county trying to ban the export of commercial products. Commerce has this jurisdiction. In regards to meeting the haste of the January deadline she had an email from staff dated November 8, 2016. The email states the WBA could submit an alternative if they did so by November 10, 2016. The Planning Commission will consider WBA’s proposed language. This is not being done at this meeting. It would be the appropriate that to do to slow down and respect what staff said to a significant stakeholder. This process won’t even come to the council until the entire docketing process is completed. That package of docketing items then come to the commission, SEPA gets done and only then does this issue get delivered to the County Council for action. That is law. There is no rush. Undertake the training session they have been invited to. She concurs with the County Prosecutor’s analysis that it is Commerce’s role to decide who gets to export and receive products.

Dustin Hoffman, Whatcom County: He is a student at Bellingham Technical College and President of Students for Local Industry. He recently attended one of the commission’s work sessions and some members openly admitted to not knowing who the Planning Commission serves. Mr. Deshmane even asked if it was Carl Weimer himself who the commission answers to. Nicole Oliver stated she had no knowledge of how these industries operate. He witnessed the commission’s legal representation, Royce Buckingham, explain how there are already many existing regulations and agencies that take care of these matters, such as the Interstate Commerce Commission, the EPA and the Magnuson Act and to implement the Alternative 1 policies would open Whatcom County up to expensive litigation and lawsuits which we the people would be forced to pay. After observing this he realized that not only does this seem confusing to him but also to many on the commission. Is this how we want to conduct business here in Whatcom County? As Planning Commissioners and public servants do you feel it is necessary to drive a wedge between your fellow neighbors, the industries that provide so much support for our community and the environment? Is it necessary or even good policy to ignore your own legal advice at the public’s expense? For him the answer is no, we shouldn’t. We don’t have to continue to polarize our communities with divisive issues. We can choose to be better than that and proactively seek comprehensive policy changes that brings harmony to the environment, local industry and our community that we can all agree on. Our local industries are our friends, neighbors and families. They are not out to cause us harm, they just want to be able to operate safely, efficiently and in peace. A few example of how just one company, BP, has helped our local environment and economy are: BP purchased and donated
180 acres of land to the Whatcom Land Trust to maintain the third largest blue heron
colony in the region and has actively worked to restore salmon habitat in Terrell Creek.
It is the largest contributor to the United Way of Whatcom County and has also
donated $250,000 to help rebuild the Boys and Girls Club in Ferndale after in burned
down in 2007. BP contributes more than $47 million dollars to our state and local taxes
each year. These examples are not the actions of industry that needs to be over-
regulated because of political over reach. They deserve our attention and appreciation,
for those industries are made up of the men and women of our community. For the
good of Whatcom County and its citizens please stop taking an adversarial role
between you and Cherry Point industries. Please look past the loud voices of Carl
Weimer and David Hunter. We are not their loyal subjects and neither are you. Find
your own individual voices and with research and due diligence each one of you will
find that Alternative #3 will enable our community, environment and this industry to
coexist for many more years to come.

Cary Clemenson, Whatcom County: In 1991 he went to work at Cherry Point. At the
refinery where he works it was pay day. There are 297 employees. The payroll amount
was $440,484. This is what really matters. He was opposed to the Weimer proposal. It
will kill jobs and economic growth at Cherry Point. If industry can’t adapt to the
changing market conditions they will cease to exist. The Weimer proposal will
absolutely place the Cherry Point industries at a disadvantage to their competitors.
There are 2,100 full time jobs at Cherry Point with an average annual income of
$144,000 per year. How will those jobs be replaced? Cherry Point companies pay over
$200 million in tax base in the State of Washington per year. Calculate for yourselves
how many retail cannabis businesses is it going to take to replace that. How do you
plan to pay teachers, police officers, firefighters, etc. without these industries? He
supported Alternative #3. This approach balances economic growth with environmental
stewardship.

Tyler Ryan, Whatcom County: Board member of the Western States Petroleum
Association and employee of a financial management firm. The Weimer proposal is
entirely politically motivated. The commission should take into account what the true
intentions of the proposal are. Is the goal of the Planning Commission to help plan for
responsible growth in our community or is it just to shut things down? The Weimer
proposal is designed to shut things down. The WBA proposal, which was done with
care and intent to do what is best for Whatcom County, is something the commission
should consider. We hear people talk about the refinery jobs and the services that are
provided but the commission also needs to realize that his company’s source of income
relies on the employees that work at the refineries. There are lots of other businesses
that rely on the employees of the Cherry Point industries. The demand for fossil fuels is
a constant. What we do here has no bearing on that. If we don’t do it here it will go
somewhere else. The demand isn’t going to disappear. The refineries take great care of
the environment.

Tom Robins, Whatcom County: He is a project manager at BP. He was opposed to the
Weimer proposal. Many people would look at him as a dupe of the oil companies or an
evil polluter. That is a cute debate trick. It will always bring into question the
opponents motives. There are many families that work and make their living at Cherry Point. They talk a lot about supporting people and they don’t want to chase jobs out of the areas, but the net effect of what they are doing is going to put those businesses out of business. They also say they care about the workers and they have some special insight as to the working of the industries that enables them to see how this works. They miss the point that this is a very complex industry and they don’t understand anything regarding what they are talking about. What he finds difficult to put up with in the proposed language is the talk about clean industries. What are clean industries? He is an engineer and knows that activities by humans have impacts on the environment and the systems. How are these clean industries going to get through the process these people are putting in place for them to be successful here? Will they even want to come here? It is more of a cartoon than reality.

Spencer Palmer, Whatcom County: In support of Alternative #3 from WBA. A lot of people are talking about the strong backbone that the industries at Cherry Point provide for this community. The Cherry Point Reachout Community, comprised of employees, contractors and retirees from Cherry Point, is working very hard to provide Christmas for 225 families in the county. The Christmas they will provide is not only presents but also includes food. The employees at the Cherry Point industries give a lot of money to United Way, the new soccer field, etc. The point is the community needs people like these and people like these need jobs like these.

Eric Emsky, Whatcom County: He believes in ethical and sustainable business for the future. A large overseas tanker uses 1,688,000 pounds of fuel to ship product overseas. This equates to 17,000,000 pounds of CO2 released by one tanker ship. The fuel used by these ships has a lot higher sulfur content which results in a lot higher sulfur dioxide emissions. On the economic side a dollar is not dollar. We must look at our resource usage for the future. He would like to see his children and grandchildren have a safe and healthy place to live. He is supportive of business and our economy. The refineries can create cleaner alternatives. Do not allow crude oil exports. Keep our limited resources here in North America. Employees of the refineries should urge their employers to develop and institute renewable energy sources that will provide jobs for the future. There will not always be oil in the ground to use.

Hamilton Dutcher, Whatcom County: Was worried about terminology. Trains used to come through the county and we had to wait for them at the crossings. We said we were going to limit the size of the train. The limit was 100 cars. The corporations immediately doubled the size of the cars. Now we are looking at another pier at Cherry Point. How big is it going to be? He is scared of the size of the boats coming in and where they are coming from. What are they going to bring with them? Corporations are after profits. They want to increase them. Trains coming here from other areas had been leaking all the way for three years and the companies did not have to clean it up. This leaking oil is going into the ground and water. We don’t want this.

Bill Chambers, Whatcom County: A licensed professional engineer. Was attracted here by the natural beauty balanced by the opportunity to work for and earn a living wage. The forward thinking people who offered the original Shoreline Management Plan in
1976 recognized that balance by preserving a small area around Cherry Point for heavy industrial development. They realized the value of that unique physical feature of having developable uplands in close proximity to water deep enough to accommodate ocean going ships. The idea was that the industries that built there would be the engine that would drive efficient economic development within the county. That is exactly what has happened. The last significant amendment, to the original document, was adopted in 1987 after 18 months of study and public input. It resulted in the Cherry Point Management Unit. The language supported the existing facilities and encouraged new development. The proposed amendments neither support existing facilities or encourage new development. Instead they seek to limit the existing industries ability to adapt to the changing dynamics of a complex global industry. He asked that the Weimer language be rejected.

Brad Owens, Whatcom County: Representing the Northwest Jobs Alliance (NWJA). The NWJA is a local, non-artisan organization whose growing membership includes business, civic and labor leaders as well as elected officials. Collectively they represent thousands of likeminded individuals all of whom rally around our mission to promote the growth of family wage jobs in the context of sound environmental practice. The NWJA is in full support of the legal opinions and comments contained with the December 7, 2016 letter from the WBA. Additionally, the NWJA is in full support of and recommends collaborative Alternate #3 for adoption. In the instance that the Planning Commission does not adopt Alternative #3 and for reasons set forth in the referenced document we reiterate the WBA recommendation to urge the commission to suspend the current breakneck schedule for consideration of amendments to the Cherry Point UGA section of the county Comprehensive Plan; Docket the three alternatives noticed for hearing on December 8, 2016 for consideration in January, together with Alternative #3 submitted by the WBA and any additional proposals received from interested citizens; Take advantage of the process required by Chapter 2.160 of the county code to learn more about the marine terminals operating in the Cherry Point UGA and the regulatory programs that new or modified terminal projects would need to satisfy. Focus on whether the amendments are necessary, whether they would have unintended consequence and whether they would undermine a pillar of the county’s economy.

Cliff Freeman, Whatcom County: He opposes the Weimer proposal. Its intent is to specifically restrict the existing fossil fuel industry and limit future industrial development at Cherry Point. He opposed most of the language changes the commission made. He appreciated the language in Policy 2CC-11, bullet one which recognizes the fourth dock granted under the current Shoreline Master Plan. Thank you for recognizing the importance of a fourth dock. It is absolutely critical to the future of this industrial zone. Regarding Policy 2CC-16, he opposed the use of his tax dollars for the study. Death by 1,000 cuts was a comment made by Commissioner Hencoop. He couldn't agree more. Enough with more layers of policy leading to additional regulation. The last 40 years has seen no new industry at Cherry Point, just expansion of existing operations. It is not without lack of trying. In 1976 a company started a project on about 300 acres on Gulf Road. They soon realized that they did not have deep enough pockets to run the permit gauntlet. In 1977 Chicago Bridge and Iron
spent several million dollars, produced a draft EIS and then walked away. In 1983
another company entered the picture and spent several millions and walked away. In
1992 the Cherry Point Industrial Park was proposed with a multi-use dock. After
several years and several millions spent no permit was issued.

Barbara Lewis, Whatcom County: A Lummi Tribal member. This area has such a high
literacy rate and has so many natural resources that it makes us rich. What would
happen if the economy collapsed and we are left to fend for ourselves? Is oil going to
be the first thing we are going to grab? No, we are going rely on our natural resources
and we are one of the few places in the country and world that is left where we can
still live off of the land. That is changing both here and nationally. She grew up living
off of the land, gathering plants and medicines. She felt for the people at the meeting
who wanted to protect their families and wanting to protect what they hold dear to
them. The Comprehensive Plan is going to live on longer than four years. She wants to
see us doing the best we can for the environment that we are going to be relying on
forever. We need to stop relying on oil and rely on healthy alternatives. Our economic
future relies on having more green jobs. Respect the Lummi Treaty.

Chuck LaTavec, Whatcom County: Works at Cherry Point. The Cherry Point refinery is
the largest and newest refinery in the Pacific Northwest. Without the refineries at
Cherry Point we would be relying on older refineries, in Skagit County, to import their
products to the Pacific Northwest. This is not efficient. Today the energy industry is
moving much faster than ever before. Cherry Point was built to run Alaskan crude.
Today it sources crude from all over the world. Where is our crude source going to
come from in the future? It is a very challenging problem to try and figure out. This
issue is the same for the components they use. Their products have much different
components from what they used to have. This continues to evolve and change. The
energy industry is no different from any other industry. All industries today are
moving, changing and rapidly adapting to what is going to be in front of them in the
future. Revisit collaborative Alternative #3. Slow down and work with all stakeholders
to find a balanced position.

Bob McCarthy, Whatcom: Director of Safety and Risk at the Cherry Point refinery. The
emphasis of his job is to identify risk. The common source of risk in his and any other
business is moving too fast. This issue is happening too fast. People don’t really
understand all of the details and the unintended consequences are not being fully
seen. He encouraged members of the commission to visit the industries at Cherry
Point. In order to operate safely and provide living wage jobs requires the flexibility to
respond to changing conditions in a changing world. Many may not fully understand
what the impacts of the proposals are. There does not need to be a tradeoff between
economic development and a healthy environment. The Cherry Point businesses
support the collaborative draft because it provides the right balance of economic
opportunity and environmental stewardship. The Cherry Point workers will provide food
for over 225 families. The magnitude of this effort is immense. It is the economic
power of these industries that make this possible. The wages of the employees are
shared with the community.
Lucas Burdick, Whatcom County: Existing laws are important for any government. The Magnuson Amendment was created in the 1970s and has been a safeguard for the state. It is not a new detriment to the industry. Making sure that law is not undermined by piecemeal progress would be keeping with federal law and the law of the constitution. The Lummi Treaty is also law. There are a lot of ways for counties to regulate industry that is within constitutional boundaries. Commissions throughout the country make regulations regarding trucking, rail, etc. in the name in tourism, zoning, etc. and including climate change and energy policy. The idea that it would be unconstitutional to regulate industry because it affects imports is a generalization of U.S. law.

June Coover, Whatcom County: Supported Alternative #3 and the comments made by WBA.

Pete Romero, Whatcom County: A contractor who works at the refineries. He opposed the Weimer proposal. If the industries at Cherry Point can't make decisions to adapt to the changing market conditions they will eventually cease to exist. The Weimer proposal may not even be legal. To spend taxpayer's money to get legal counsel seems ridiculous. Supported Alternative #3. A lot of clean fuel projects have been built at the facilities. All of this federally mandated. These refineries are super clean. He has worked at other refineries, in other states, that aren't as clean.

Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry club at Bellingham Technical College. It is not known what will happen with passing of the proposed Weimer amendments but significant evidence has already been presented which suggests it will not positively impact Whatcom County. This proposal is redundant. There has been some confusion regarding the Magnuson Amendments. The Amendment states "no officer, employee, or other official of the Federal Government shall, or shall have authority to, issue, renew, grant, or otherwise approve any permit, license, or other authority for constructing, renovating, modifying, or otherwise altering a terminal, dock, or other facility in, on, or immediately adjacent to, or affecting the navigable waters of Puget Sound, or any other navigable waters in the State of Washington east of Port Angeles, which will or may result in any increase in the volume of crude oil capable of being handled at any such facility (measured as of October 18, 1977), other than oil to be refined for consumption in the State of Washington." This bill has already been enacted. She does not want to see the industries at Cherry Point be subject to excessive red tape and ambiguous language. Supported Alternative #3 or #2 and urged the commission to work with the WBA because they are more impartial.

Randy Ambuehl, Whatcom County: Supported Alternative #3. The industrial base at Cherry Point provides a disappearing commodity in this country, which is jobs with family wages and disposable income which supports the local economy. Undermining the ability to maintain businesses that can provide these kinds of jobs will undermine the ability to have a good quality of life for Whatcom County citizens. Supported having a fourth dock. It is important to preserve the industrial base there.
Robert Larson, Whatcom County: Supported Alternative #2 or #3 by the WBA. Asked the commission to take the time to make resolutions that will benefit the county as a whole, not only special interest groups or political agendas. Do not make regulations that are beyond the federal regulations already in place. They would handicap the industries from being able to improve their facilities and remain competitive. They need to be viable and safe in their operations. They are environmental stewards. They take the local communities needs seriously, make charitable donations and pay hundreds of thousands of taxes and payrolls.

Erica Charbonneau, Whatcom County: Works for a non-profit agency in the county. Asked the commission to consider the impacts of the proposals to the non-profit agencies in the county. The businesses and employees at Cherry Point donate over one million dollars to the community every year. That does not take into consideration all of the volunteer hours of the employees and their families.

Christopher Grannis, Whatcom County: Supported the Weimer proposal. It would not have a negative impact on the jobs that are here now. It may help to preserve them. If you can export crude you can the export jobs that refine the crude. There is a disconnect between people that believe that preventing crude export is going to hurt the jobs that we have here and the very likely reality that the opposite would happen. Recognize the Lummi Nation and their treaty rights. Protect Whatcom County’s aquatic ecology by preventing any additional piers at Cherry Point. When the first refinery was being built the herring fisheries were thriving. The three piers that went in coincided with the demise of the herring fisheries. Another pier would very likely wipe it out. In the Salish Sea there is the risk of oil spills. Just one spill would do tremendous damage. He supported the study with a completion date of 2017. Do not allow anything that would violate the Magnuson Amendment.

Pam Brady, Whatcom County: Works at BP. She supported the amendments from WBA. There needs to be land use policies that support a robust industrial sector in the county. These policies should support investment by existing and future companies so that these companies may grow, expand and flex to meet future business needs. If Cherry Point companies, or other businesses, are restricted so they do not have the flexibility to adapt to changing market conditions they will not remain competitive and eventually cease to exist. The loss of Cherry Point businesses is not confined to the oil industry. The economic loss would be felt throughout the community and the county will suffer severe setbacks in its job growth and tax revenue. The companies at Cherry Point have offered to meet and educate the commission. Anyone is welcome to tour the refinery to learn more. It is important to understand the complex industry as policies are contemplated. Reconsider Policy 2CC-16 requiring a study of the legal ways the county can work to limit fossil fuels. This reference has no place in a land use planning document. The county can ask for a study any time they want. Encouraged adoption of Alternative #3. It recognizes a middle of the road approach.

Amy Glasser, Whatcom County: Supported the Weimer proposal. Allowing any shipment of unrefined fuels overseas will no doubt result in corporations moving refinery jobs overseas where labor is cheaper and environmental safeguards are not in
place. The jobs here are less stable if unrefined fossil fuels are shipped overseas. The
land we are talking about is Lummi Nation Treaty land and they have made it very
clear they will not support any projects that will result in increased risk in
environmental accidents. Treaty rights need to be respected. Our planet is warming
faster than we actually imagined and the increased fossil fuel projects ignore the facts
that we must move away from fossil fuels, not increase them. Jobs in the industry will
remain but they won’t last forever. She felt the people in the asbestos manufacturing
industry were anxious about losing their jobs also. However, they moved on and got
new jobs. They realized the future should be safer. We don’t need to be dealing with
dangerous materials in order to be a successful economy. Humans are imperfect and
accidents happen. The environment is never the same after they do. Corporations fight
cleanup, we know that. They always have and always will. They don’t want to pay for
it. They are not invested in anything that is going to cost them more money. They are
invested in making profit. We can’t afford to pay for the spills, lose our tourists and the
reason why many of us came to live in this area.

Darrell Johnson, Whatcom County: Years ago he had taken a tour of a chemical plant.
When they put new lines in they did not remove the old ones because they did not
have the money, resources or motivation to do so. The chemical plant could get away
with that because there was only a little something still in the ground. In the refineries
you find very few abandoned lines because they realize that putting something new in,
without taking out the old, leads to confusion, dangerous situations and other
unintended consequences. The same thing happens with laws. If a law is already in
place and another law comes along and tries to enforce a law that is already not being
enforced people start getting confused. What happens is you are always wrong and
you are never wrong because of the conflicting laws. The Weimer proposal was put
together quickly as are the new proposals. Step back and take time to look at these.
What is driving the new proposals? There are already a lot of laws already in place that
are not being enforced.

Chris McGary, Whatcom County: Contractor at the refineries. Those supporting the
Weimer amendment are either those nearing retirement or young people with no
children. These people have no young families they are supporting. Bellingham is an
industrial town with lots of good paying jobs to go around. He is not a fan of having a
true export facility but the current industries need to be allowed to adjust to the
changing demands. He is tired of needless regulations chipping away at the future
possibilities for jobs at Cherry Point especially when it is more economically viable, via
the Magnuson Amendment, to build an export facility outside of Puget Sound where
supertankers are allowed should anyone choose to build one there. We still import
crude for domestic use. He refuses to stand idly by and let Weimer destroy the
possibility for future industrial jobs at Cherry Point. Each individual issue should be
looked at and given proper environmental review and permitting process. A broad ban
is inappropriate and irresponsible.

Andrew Eckels, Whatcom County: Part of the reason there are good paying jobs in the
oil industry is because the oil industries are organized, have unions and they force the
oil companies to give them wages and benefits that they deserve. If the oil companies
had the opportunity to pay less they would shift refining somewhere else, out of the U.S. if they were able to export to unrefined oil. While we need an economy that supports people. Oil is not the only industry here that provides good paying jobs. The fishing industry, tourist industry, etc. are massive parts of our economy. Fishing is the livelihood and cultural way of life for the Lummi and Nooksack Nations. Their entire way of life could be destroyed with a single oil spill from any of these new projects. How many people are really looking at the analysis of climate change? The federal government will not do anything in line with what climate scientists say. They say we need to dramatically cut emissions or we will experience runaway warming. Climate change is happening much faster than anyone thought it would. There will be dramatic changes in his lifetime. If we are really serious about our future we have to look at things honestly and move away from dependence on fossil fuels.

Ann Douglas, Whatcom County: Supports the Weimer proposal. Overregulation does cause problems, especially when there are conflicting laws. BP was not clean until there were lawsuits that forced them to be clean. They are clean because they are highly regulated. She has leukemia which is associated with high levels of benzene in the water. She lived in an area in California where she was probably exposed to the benzene. There needs to be intelligent regulation on industry. Although BP is a relatively recently built refinery, if they are allowed to export oil you will find their next newest refinery in a foreign land. The jobs will leave here. This country isn’t just about money but also about taking care of human beings. We need to look at regulations that will help jobs stay here and keep the country clean.

Rich Stump, Whatcom County: Refinery worker. Supports the WBA proposal or the option to do nothing. He did not see what the problem was with the original language in the Comprehensive Plan. The refineries are not currently exporting oil and he does not see that happening. If they have to do that in order to keep their doors open that should be allowed to happen. If these businesses go away they will never come back. The more regulations we add will make things harder. Think carefully about what they do and what regulations we add to these businesses. Someday there will be another source of cheap heat and they won’t have their jobs.

Bob Burr, Whatcom County: He has heard about preserving jobs for his grandkids but he is concerned about preserving life for his grandkids. Planning is about the future. You have to read the future in order to make decisions. His reading of the future, along with many scientists, is mass extinction. In considering the future you have to consider that we now have a new administration for this country that is going to put in charge of the EPA a person who does not believe in climate change. It is very possible that the regulations that exist now are going to be taken away. The effort to preserve our planet now has to shift to the local level since we will not have support at the federal level. Therefore, the Weimer proposal is very important.

Carole Perry, Whatcom County: All politics are local. She and her husband were in attendance when Councilmember Weimer proposed his amendments. When he proposed them there were no other public around. The entire Comprehensive Plan had been gone through and then he did this at the very end. Even other members of the
council said it was not proper procedure. Days later PDS put out a statement asking for input. The process is not going right. Did the commission notice at the meeting who the first 10 people were that testified? There was some manipulation there too. This was brought in through the back door at the last minute. The commission had already done their work.

Jeff Hallender, Whatcom County: Encouraged the commission to do more research. Tour the refineries to get more information. He commented about testimony he heard regarding cleanup of spills. He stated that the industry has made tremendous strides in terms of reliability and safety. They have extensive drills to try and be prepared to respond to accidents. There is a state law that taxes the refineries and takes that money to put in a fund that the state can then use to help pay for spills.

Chris Johnson, Whatcom County: Representing the NW Washington Central Labor Council. They oppose the Weimer proposal. They could support Alternative #1 if language was changed to simply refer to export of unrefined crude oil. He personally supported the WBA proposal. He supported his family on wages he earned at the refinery. With this hurried process to push this through it feels like the people that make their living at the Cherry Point refineries are getting the bum’s rush. They deserve a fair and open hearing and the ability to have back and forth with their government.

Natalie Chavez, Whatcom County: Encouraged the commission to watch documentaries. March Point is a documentary that investigates the impact of the two oil refineries. The two refineries were built in the late 1950’s on land that was once part of the Swinomish Tribal lands. Wasted Waters is a far reaching investigation into the U.S. great water ways. There is a portion that explains how the water pollution has affected our orcas as well. Dead zones are a local problem. Every 10 years the dead zones double in size and number around the world. In the Gulf of Mexico there is a dead zone that is as large as the state of Massachusetts. Some of our worst pollution is invisible. The water may look okay but science tells us that it’s not. There are over 100 chemicals on scientists watch lists. Many of these chemicals include “endocrine disrupters”. These kill fish, cause mutations, threaten human health, raise the risk of breast cancer, lower sperm count, etc. Approving a Comprehensive Plan with the Weimer amendments does not put people at risk in the county. This is not about shutting down anyone. This is not about people losing their local jobs, volunteers not being involved anymore or donations not being donated. This about using common sense, integrity, creating space to reach our highest potential, protecting our health, our children’s health and the health of our environment. This needs to be about balance and having a harmonious transition into healthier industries and a healthier way of life. Many people may not be aware that ?? swimming pools have been in regular use for over 50 years in European countries. People there would not even conceive of swimming in toxic chlorinated swimming pools. It is time for us to evolve.

Rick Poitress, Whatcom County: Lives on Point Whitehorn about three miles from Cherry Point. The Weimer amendment was not well thought out. He supports the proposal from the WBA or Alternative #2. There has been a lot of comments about the
refineries leaving. There is nothing to stop BP from going other places. They are an international company. They can go where they want. He addressed the fourth pier. This is the last deep water port on the west coast where there is an opportunity to make that an economic driver in Whatcom County.

Max Perry, Whatcom County: Encouraged the Cherry Point workers to keep paying attention. Go to the County Council meetings. That is where the Weimer amendment came up out of the blue. They bring these types of things up when no one is there. The process at the commission meeting was manipulated. The signup sheets were manipulated. The first 10 to 15 speakers were the environmentalists. He has seen that happen at the County Council meetings. Be aware of these people doing this.

Mike Kimmick, Whatcom County: Takes exception to the statements of the previous speaker regarding the manipulation of the signup sheets. For the business association to say they have a collaborative proposal is not true. It was a special interest business group that put it together. He supports the Weimer amendment because the export of crude oil is wrong. It will also export jobs and resources.

Anastacia Lancombe, Whatcom County: In support of the Weimer amendments. Planners need to do the planning that is consistent with the best interest in the county. Not just for the next 5, 10 or 20 years but also for the next 50 to 75 years. She supported the Weimer amendments because right now there is a balance of industry, agriculture, fishing and tourism. If we build a fourth pier we might approach a tipping point in the bay where we eradicate the herring. If we eradicate the herring we will kill the salmon and then the orcas. The refineries are a very clean, but that is not usually where the really big problems are. It is getting the oil and the crude to and from the refineries. Look to the future to figure out what will be the best balance for the county. Limiting the fourth pier would force them to become agile by moving into the next century and cultivating wind farms, solar farms, etc. which is going to be more needed as time goes by. Expanding the uses at Cherry Point would diversify the economic base in the county.

Terry Montanye, Whatcom County: All indications show that the herring depletion is not due to the piers but to herring seining in the early 1980’s which was authorized by the state. The key issue the commission needs to find is someone who has intimate knowledge of what has happened to the herring over the last 30 years. It is a mistake to presume that a fourth pier will have any impact on the herring.

Tyler Headman, Whatcom County: Works at the refinery. The refineries have been very mischaracterized. They have proven themselves to be good neighbors. They take care of their spills. Accidents do happen, but they are taken care of. This is no more than a property rights issue. The companies have legally purchased the land and legally permitted everything they have done. They have the right to do what they can with their business. It is not the right of the county to stop that while the other agencies, that actually regulate, do not stop it. They are great neighbors and great employers. This does not need to be made an issue.
Lindsay McDonald, Whatcom County: Stated that as she spoke the artic was melting, which is changing the global atmospheric patterns and global ocean patterns. The ocean is becoming acidified because of carbon dioxide emissions which is affecting our ability to raise oysters in our region. Coastal cities are in risk of swamping. We have to see the big picture. We are on the front lines of a huge bubble. The old companies have assets in the ground which need to be removed. The forests of the west are burning, Pacific islands are becoming inundated and the country is in a huge drought. She would like to see who can connect the dots, including the workers at Cherry Point who need to face the fact that the oil industry has to leave their product in the ground for us to stay under two degrees. We need to go through a transition that addresses the needs of everyone, including the workers at Cherry Point. We are on the front lines of the planet's struggle. Isn't BP the one that had the Deepwater Horizon issue? How did they fix it? With a bunch of dispersements that caused more problems. Is that what they will do here if one of their tankers collides?

Alex Bergsma, Whatcom County: Is a refinery worker. Through his work he has learned how to do a lot of unsafe things. He does not feel unsafe in his work at the refinery. There is no lack of safety. He urged the commission to visit the refineries. They do the best they can with the environment.

Jeff Hedricks, Whatcom County: Everyone agrees this is a beautiful place and no one wants to make it go away. The businesses at Cherry Point have been very responsible. There are federal mandates and regulations that they often go above and beyond because that is good business. If they export things that cause damage it will cost them money which is not good business. If these amendments are allowed who is going to be next? These businesses are a great asset to the community. How are we repaying them by changing the rules? That is not fair or good business practices. Supported Alternative #2 or to communicate with the businesses to find a good solution.

The hearing was closed to the public.

Commissioner McClendon asked Mr. Buckingham if the county has a legal right to ban exports.

Mr. Buckingham stated no.

Commissioner McClendon stated there seems to be some confusion that is what the county is trying to do, which is incorrect. She then asked Mr. Buckingham if there are instances, in what they have recommended, which ignored his legal advice.

Mr. Buckingham stated yes. The commission continues to put policy in the text, which is bad form but does not cause any problems.

Commissioner McClendon asked staff if there is anything in the proposal that restricts upgrades to existing industrial facilities.
Mr. Aamot stated that Policy 2CC-3 relates to future development or expansions. Policy 2CC-11 supports a limit on the number of industrial piers. 2CC-15 encourages enforcement of the Magnuson Amendment, which is already federal law. 2CC-16 would study legal ways to limit exports. In summary the existing proposal does not have anything that would restrict upgrades. He stated he did not know where the study may lead.

Commissioner McClendon asked if any of the language makes the regulations stronger than the federal language.

Mr. Aamot stated they are only policies, not regulations. The study may lead to potential regulations.

Commissioner McClendon stated a number of people commented on the moratorium, which is temporary. When does that go away?

Mr. Aamot stated he did not know what the council will do but the moratorium will expire about April 2017.

Commissioner Deshmame asked what would happen if the council passes what the Planning Commission has currently drafted and then the Magnuson Amendment was repealed.

Mr. Aamot stated that in 2015 congress lifted the general ban on crude oil exports but that did not change the Magnuson Amendment so the Puget Sound has different rules. If congress repealed the Magnuson Amendment there would not be any prohibitions on export of crude oil exports.

Commissioner Honcoop asked for clarification on expansion. Right now they can’t apply because of the moratorium. Does the proposal allow for future expansion or just maintenance?

Mr. Aamot stated after the moratorium expires, if a refinery wants to expand it is encouraged in Policy 2CC-3 consistent with the 4 point in the policy but that is not regulatory.

Commissioner Honcoop stated that is true but regulations could be developed based on policies.

Commission Knapp asked why the proposal from the WBA, stated as Alternative #3, wasn’t part of the other alternatives presented and considered.

Mr. Aamot stated the process is that proposals get docketed early in the year. There is a Public Participation Plan that classifies projects at different levels. Level 3 has the greatest amount of review which this proposal is. Level 3 states the county is to come up with alternatives that are reviewed. The WBA was invited to submit a proposal which Mr. Personius said would be reviewed like any other comment received from the
public. The commission decided to incorporate some of that language which they can
do along with comments from others.

Commissioner Knapp addressed the suggested conspiracy regarding the way people
signed up to speak. He stated he did not think it was really a conspiracy.

Mr. Aamot stated the signup sheet to speak was put in the back of the room and
people sign up when they come in. He was not aware of any issues with it.

Commissioner Vekved stated it would be useful to get some understanding of how
many barrels of oil are shipped and if they are stuck at a certain amount.

Commissioner McClendon asked where in the policy does it matter if we know whether
they can export or import more crude.

Commissioner Vekved stated he is concerned because it has been stated by the public
that there is a great deal of concern regarding the notion of exporting in general so it
would be useful to know.

Commissioner Honcoop addressed the proposal by the WBA. He took issue with the
staff’s statement that it was just another public comment. The Planning Commission
requested alternatives which they would then consider. Their alternative should have a
fair hearing which is no different than any of the other alternatives. If it needs to be
docketed it should be. They had not really had any time to review it.

Commissioner Honcoop moved to give the WBA proposal, Alternative #3, fair
presentation by staff to the commission and that it be given fair consideration
as the other alternatives were.

Commissioner Knapp seconded.

Commissioner McClendon agreed with staff that it should be considered as public
comment. To hold a public hearing on this one alternative does not make sense. The
commission agreed from the beginning of the process to work from the Weimer
proposal which could have items pulled into it.

Commissioner Hunter stated the commission did not request it. The commission simply
said that any public comment was welcome until November 10th. It is only public
comment, it is not special. Public comment from some people is not entitled to special
attention. It clearly got attention since the commission adopted some of it.

Commissioner Rowlson agreed that the WBA proposal is only public comment like all of
the rest they have received. It is worthy of thorough review.

The vote on the motion failed (ayes-4, nays-4).
Commissioner Deshmane referred to a previous comment regarding data collection. He stressed that it be done in a way that holds the presenter of the data accountable. It should be done in a forum that is very transparent because data can be skewed and controlled in a certain way.

Commissioner Hunter stated he was opposed to collecting that type of data. It does not contribute anything.

Commissioner Rowlson would like staff to restructure the commission proposal to reflect the structure of the WBA proposal because he likes that structure better. There would not be any word changes, structure only.

Commissioner Hunter was not in favor of that. If the commission is not happy with the organization that needs to be addressed at the next meeting.

The meeting was adjourned at 10:15 p.m.

Minutes prepared by Becky Boxx.

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Kelvin Barton, Vice-Chair

Becky Boxx, Secretary
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
January 12, 2017

Regular Meeting

1 Call To Order: The meeting was called to order, by Natalie McClendon-acting Chairperson, in the Whatcom County Council Chambers at 6:30 p.m.

2 Roll Call
Present: Natalie McClendon, Jerry Vekved (by phone), Gary Honcoop, David Hunter, Andy Rowlson, Atul Deshmane
Absent: Nicole Oliver, Kelvin Barton, Michael Knapp

3 Staff Present: Mark Personius, Matt Aamot, Becky Boxx

Due to the absence of both the Chair and Vice-Chair Commissioner Rowlson nominated Commissioner McClendon as acting Chair. Commissioner Honcoop seconded. The motion carried.

4 Department Update
Mark updated the commission on:
• The Planning Commission schedule
• Reappointment to the Commission of Andy Rowlson and Atul Deshmane. There is still one vacancy which can be filled from either district 1 or 4.
• There was an appeal of the Cherry Point SEPA determination which will be heard by the Hearing Examiner.

5 Open Session for Public Comment

Carole Perry, Whatcom County: She attended a County Council meeting the previous Tuesday. In one of the committee meetings they were discussing fire flow. Because two of the council members had been affected by fire flow they were very concerned. Because they were not sure of all of the regulations one of them made a motion to take the issue back to the commission in order for them to gather more information. She had never seen that happen before. The motion failed because some of the council members didn’t want it going back to the commission. The council does know that the commission does have some experience to forward to the council.

6 Commissioner Comments
There were no commissioner comments.

7 Approval of Minutes
December 8, 2016: Commissioner Deshmane addressed page 13, line 28. A member of the public made a comment regarding something Commission Deshmane had said in the past. Commissioner Deshmane stated he did not believe he had made that comment.

Commissioner Rowlson moved to approve the minutes as written. Commissioner Deshmane seconded. The motion carried.
Work Session

File #PLN2016-00012: Proposed amendments to Comprehensive Plan Chapter Two – Land Use including provisions relating to environmental protection, water usage, fossil fuel exports, and the number of piers allowed in the Cherry Point area. The proposed amendments and alternatives are also being reviewed under the State Environmental Policy Act or SEPA.

Matt Aamot presented an update including proposed staff changes.

Wetlands

The Department of Ecology (DOE) indicated that there are other important intertidal wetlands in the region, therefore staff is recommending the text be modified as shown: Existing shoreline and upland stream and wetland functions and values are of continuing importance to the recovery and protection of species identified in the Aquatic Reserve Management Plan. The area includes one of the last undeveloped intertidal wetlands of any size in Northern Puget Sound, with importance to juvenile salmon and other species.

Piers

The Planning Commission recommended text from the council proposal that the county no longer supports additional piers. At a subsequent meeting the commission recommended Policy 2CC-11 stating the county supports a limit on the number of piers consistent with vested rights, approvals or agreements. The text and the policy need to be reconciled.

Citing Policies

This relates to citing applicable polices in the text to direct the readers to the policies. The policies are what guide the county’s actions.

DNR Aquatic Reserve

The Department of Natural Resources (DNR) issued an order on January 3, 2017 expanding the Cherry Point Aquatic Reserve to include the 45 acres which is the site of the fourth proposed pier. Staff recommended revising the text in accordance with the order.

There are proposed findings in the packet which support the Planning Commission’s recommendation. Staff proposed changes relating to the order by the Commissioner of Public Lands and the DNR update of the Cherry Point Environmental Aquatic Reserve Management Plan.

The commission took comment from the public.
Sandy Robson, Whatcom County: The lease application for a fourth pier is definitely no
longer in existence. That language regarding the pier should be removed from the
draft. She did not think that the comment from the Whatcom Business Alliance (WBA),
described by the organization as a collaborative alternative, should be given any higher
level of consideration than any other submitted comments. The fact that the WBA met
with the Planning Department staff is inappropriate. She hoped that the commission
did not try to place the WBA suggestions at any higher level. There should not have
been any alternatives at all generated by PDS before any SEPA checklist was made. It
confused things for the public. The council directed one proposal only for review by the
commission. The other alternatives were pushed by the county administration. She
contacted the DOE who replied stating that the county has a fair amount of flexibility
when conducting SEPA review on their Comprehensive Plan updates. They also said
that usually the analysis of alternatives is better suited for an EIS rather than a SEPA
checklist. She asked that the commission only look at the council proposal and treat
the other alternatives as comments.

Tony Larson, Whatcom County: President of the Whatcom Business Alliance. There was
a lot of effort put into their recommendation and it was done in good faith. The intent
of the preamble, in the policy sections, was to create language that is factually
accurate and created a balance between the environment, the quality of life and
business. These are things we all share and are important to everyone. They share the
goal to improve the quality of life for everyone in the county as do the industries at
Cherry Point. The industries do this through their environmental stewardship and
economic opportunities that are extraordinary in the county. There was a study done
by the University of Washington and Western Washington University that shows that if
the industries at Cherry Point sneeze the Whatcom County economy will catch a cold.
The final product recommended to the council should recognize the Cherry Point
industries as a good community partner, which is what they are. It should allow them
to thrive and adapt to the changing marketplace. That is what is fair and what any
business requires. It should require environmental stewardship and community review.
Alternative 3 does exactly that. Alternative 3 was written as a compromise. This was
done at the request of the commission.

Ron Coleson, Whatcom County: Representing the Mt. Baker Group of the Sierra Club.
The club appreciates all of the revisions made and feel that the final additions to 2CC
should be further scrutinized. 2CC-3, as maintained in draft, it is important to
acknowledge the history of Cherry Point and the Treaty of 1855. This policy should
support collaboration with the Lummi Tribe, specifically for archeological review of sites
at Cherry Point. This is respectful to the Lummi Nation and is absolutely necessary.
2CC-11, states, existing vested rights, approvals or agreements, is meant to exempt
Gateway Pacific Terminal (GPT) and must be removed. All proposals on the site must
be held to the same standard for approval and GPT should not be given any leverage
over other companies. This policy could also be improved by indicating that since the
marine preserve is now closed to any new piers the county no long supports additional
piers. In policy 2CC-15 the staff recommendation does not protect against
piecemealing of expansions that would not require public permits. The original
proposal’s intent is to ensure that the county does not allow minor developments that
Violate the Marine Mammal Protection Act and Magnuson Amendment. The study on fossil fuel export should not take two years. The information can be readily available and a deadline in 2017 is ample time.

Alex Ramel, Whatcom County: Representative for STAND. Urged the commission to pass the draft. Policy 2CC-3 ideally would include reference to making bulkheads the last alternative. It should include reference of consultation with the Lummi Nation as part of the archeological review. Encouraged the commission to update the narrative in Policy 2CC-11 to reflect the fact that both the Army Corps of Engineers and Washington State Department of Natural Resources have effectively precluded the possibility of a fourth pier being constructed at Cherry Point. Encouraged them to change the conclusion date of the study to December 2017. Encouraged them to change back the two references to coal, oil and natural gas back to the original unrefined fossil fuels.

Eddy Ury, Whatcom County: Representing ReSources. There are different legal opinions regarding the Magnuson Amendment. He stated they were happy to see language in the draft that asks agencies to enforce the Magnuson Amendment but would like it to go a little further. There are cases were certain projects may not be automatically triggering Magnuson review or there might be change in uses. Whatcom County may receive minor permit applications for piecemeal upgrades that will facilitate increased outbound shipping of bitumen and crude oil through existing piers arriving by existing pipelines. There may not be any significant federal review of these applications. Regarding the rewritten chapter by the WBA it is nice to see their attempts at compromise. They did agree with them on some language, specifically Policy 2CC-2 which states: Ensure that developments at Cherry Point UGS maintain and operate under management plans that accomplish the goals of the Aquatic Reserve Management Plan.

Wendy Harris, Whatcom County: Supported the comments made by Sandy Robson and STAND. She expressed her distaste for the fact that this process is even taking place. It is inappropriate. She was not criticizing the Planning Commission. This issue should never have come to them. The County Council issued a resolution with one person against. That one person argued extensively for their position which was rejected. The council knew what they wanted and were told by legal counsel that it had to come back to the commission. Once it came to the commission it turned into a three ring circus because the Planning staff decided that they were going to set this up as some sort of EIS type review with alternatives. She has never seen a resolution treated in this manner. The council knows what they want. They discussed it extensively. They weren't asking for anyone's input because they had already received it. A lot of time has been wasted. This has been nothing more than an opportunity for the administration to allow businesses at Cherry Point to come in and get some extra words in and try to get the community riled up. It is completely political and inappropriate. What would be appropriate would be for the commission to make changes that have to do with circumstances that have changed since this first came to them for review. There is no need for any major changes. There was no change in
facts or circumstances here, it was just manipulation. More and more that has come to
define what is happening in county politics. Someone needs to say it’s wrong.

Erin Anderson, Whatcom County: Speaking on behalf of the WBA. The comprehensive
plan process is driven by the people. It is a bottoms up process that requires counties
to adopt a public participation process. It is not a process to be conducted outside of
the public. Regarding changing circumstances, changes to the comprehensive plan or
zoning can be docketed for amendment every year whether there is a change in
circumstances or not. It is not a change in circumstances test. Regarding Policy 2CC-3,
you have been encouraged to enunciate a preference for the Lummi Nation, however,
she did not think it was a wise move to identify one tribe and not others because they
all have different rights and they are recognized as separate governments. There is a
process for them to establish their rights. It is a worrisome path to call out one for
rights and not others. As for consultation, consultation with tribes is a federal a
process. Washington State does not have a similar process. The Washington State
Historical Preservation Office does consult with the tribes and jurisdictions as needed.
As far as bulkheads and hardening, that is already taken care in the Whatcom County
Shoreline Master Program. She encouraged the county to spend taxpayer’s money
wisely, including money spent on the study. To take taxpayer’s money to fund a study
that prevents the county from growing their businesses and adapting to the future
seems unreasonable.

Alyssa Willis, Whatcom County: Secretary for the Students for Local Industry Club at
the Bellingham Technical College. It is really important to have a forum for the public
to interact and get involved in politics, etc. As a person who studies process
technology, there is a difference between crude oil and refined oils. Don’t change the
language. She supports the WBA alternative.

Carole Perry, Whatcom County: Explained why this issue came to the commission.
During a work session the council slipped in these amendments. There was no one left
at the meeting. Gradually people heard about what was happening and began to pay
attention and attend meetings. There were a lot of business people at one of the
meetings and Councilmember Weimer told them the council wanted their input. At the
meeting in December there was no mention of any other alternatives.

Dena Jensen, Whatcom County: As far as the acknowledgement of the Lummi Tribe,
she did not feel this gave them any super rights. The Cherry Point area is an area that
is sacred territory to them which we need to acknowledge. Native American nations
historically have not been properly consulted. There traditional territories have been
taken from them and abused. It would be proper to stand up against that. If we need
to mention other tribes we should certainly do that. It is in no way harmful to
recognize the importance and significance that Cherry Point has to the Lummi Nation.

The public comment period was closed.
Commissioner Honcoop moved to adopt the staff proposed changes, as outlined in the memo dated January 3, 2017. Commissioner Rowlson seconded. The motion carried (ayes-6, nays-0).

Commissioner Honcoop asked where things are in regards to the proposed study. Has it been funded?

Mr. Personius stated the council adopted a budget of $150,000 for the study which will be done by the council office.

Commissioner Honcoop stated the language is not policy so what is the need to have it in the Comprehensive Plan. The council is moving ahead with the study regardless. Don’t they have the ability at any time to request a study?

Mr. Personius stated they do have that jurisdiction.

Commissioner Honcoop moved to delete Policy 2CC-16. Commissioner Vekved seconded.

Commissioner Deshmane asked staff if the council has indicated a timeline for the study.

Mr. Personius stated he did not believe the budget adoption established a timeline.

Commissioner Deshmane asked if any parameters have been established.

Mr. Personius stated he was not aware of any.

Commissioner Rowlson asked if the study has started yet.

Mr. Personius stated it has not started yet.

Commissioner Honcoop spoke to his motion. The language does not fit in the Comprehensive Plan. This policy will still be in the plan after the study is done which it shouldn’t be.

Commissioner Deshmane spoke in opposition to the motion. He stated this is the opportunity to prioritize the study. The purpose of the study should be discovery and understanding rather than specifying an outcome. In the current language there is somewhat of an implied outcome. They know what the objectives of the council are. Some of the questions that would be great to have answered in the study would be: Has export happened in our region? Has this been a concern? What is the real cause of the herring decline? What type of industrial activities harm habitat in general? What would be the impact of a Magnuson Amendment repeal? How do treaty rights impact commercial development in general? What kind of heavy industry will be welcomed at Cherry Point?
Commissioner Hunter stated he felt there was confusion about the real purpose of Policy 2CC-16. Now, more than ever, those places in our nation that have a genuine interest in environment concerns and the health and welfare of the American people are wanting to be sending out messages that they intend to remain, in spite of whatever has happened in the country, attentive to and concerned about the ways in which we are, as a people, degrading our environment, particularly through carbon burning. The policy is simply a statement that he is happy to have in a place where it is apparently getting a good deal of attention. We need to create a living environment which is open for employment that is healthy and closed to processes which are unhealthy. This is a good focus. It may not fit the general rule as to what goes into the Comprehensive Plan but it does not make it unreadable, inoperable or hard to understand.

Commissioner Rowlson asked staff if the language adds value. Is there legal recourse to point to it? Does it help the county in some way regarding the process?

Mr. Personius stated yes, because it clearly shows intent, whether you disagree with that intent or not. It also shows the rational for the other amendments to the chapter.

Commissioner Rowlson stated that the study is going to happen and having it in the chapter is not super relevant, but leaving it in would leave them the option to do another study to counterbalance it. Since the commission can recommend studies he would like to see a study done which looks at ways the county can support economic development in the Cherry Point UGA.

Commissioner Deshmane asked why have two different studies. The commission can add language to the current recommended study.

Commissioner Rowlson stated he was open to that idea. He proposed adding a second study.

Commissioner Honcoop stated the first study is definitely designed to find legal ways the county can work to limit crude oil, etc. It has already been predetermined what the result will be. We know what the council’s goal is. He did not see putting two studies together working.

Commissioner Vekved stated this is a case of where the cart if before the horse. One would expect to read the results of this study, in the preamble text, as justification for policy. The policy might be what is currently in the preamble text. He was opposed to the premise of the study because it is kind of a witch hunt. However, the council is going to do what they want to do. He wants to have the study reflect the language in the preamble text and policies as a result of the study. He supported the motion.

Commissioner Hunter stated he remains amazed that we imagine that the degradations that are being put upon our planet by far too heavy use of fossil fuels is still a witch hunt. We don’t have to guess about this any longer. We don’t have time to ponder whether it is true or not. We know it’s true. We seem shocked to be asked to
do something about it. This is only a note to us that we need to take a step back. He
didn’t know if there were any foregone conclusions about what the study will bring. He
was not optimistic that they would find legal ways of avoiding the Commerce Clause,
although he would like to believe they could. He did not think there was anyone in
Whatcom County that imagines they can just tear down the industries at Cherry Point
to the extent that they are no longer able to produce. This is a call they need to pay
attention to. It should not be so difficult. Businesses do not need our help. They are in
the business of making profits. If they can’t do it they will stop doing it. He was not
interested in developing an economic plan. Cherry Point does not need them for that.
When they figure out it is going to profit them more by moving abroad than it does to
stay they will do that and drop every single employee they have to do it. That is all
they care about. It is time to stop pretending.

Commissioner Deshmane stated he did not like the way Policy 2CC-16 currently read.
Regarding a second study it is currently not funded. If we recommend a second study
may be that will force the council to fund it.

Commissioner McClendon stated she would vote against the motion. Whether the
commission adopts it or not this is what was adopted by the council and they will
proceed with a study. We don’t need to spend time on the issue. She agreed with
Commissioner Hunter regarding anyone finding legal ways to get around the
Commerce Clause but we have to go through the process to make it clear to everyone,
on both sides of the issue, what the federal laws are that have to be dealt with.

Commissioner Honcoop stated a study is not a good way to spend taxpayer money. We
will also be spending taxpayer money to defend it which will be a long expensive
process.

The vote on the motion failed (ayes-3, nays-3).

Commissioner Rowlson moved to add a new Policy, 2CC-17, to read: While
conducting a study as outlined in Policy 2CC-16 to limit some exports from
the Cherry Point UGA the county shall also undertake a study, to be completed
by December 2018, to examine ways the county can work to support
economic development of the Cherry Point UGA and other industrial areas
throughout the county. Based on the study develop or update economic
development strategies, programs and initiatives.

Commissioner Deshmane seconded.

Commissioner Rowlson stated during the Great Recession nothing happened regarding
economic development. This is the opportunity to make something happen.

Commissioner Deshmane proposed an amendment to the motion. Assess, in
the Cherry Point UGA, the impacts of industrial activity and what can be done
to support clean, low carbon development.
Commissioner Rowlson stated he was not in favor of the amendment. It should be treated as two different issues.

**Commissioner Deshmane withdrew the motion.**

Commissioner McClendon asked staff if the motion duplicated what is already happening with economic development and low carbon development.

Mr. Aamot stated the county just updated the Comprehensive Economic Development Strategy in 2015. The Port of Bellingham is one of the agencies responsible for promoting development in the county. There are a number of initiatives in process.

Commissioner Deshmane asked if the proposed language should be limited to just the Cherry Point area, not all industrial areas in the county.

Commissioner Rowlson stated he would like it to apply to all industrial areas.

Mr. Aamot stated the meeting was advertised for the Cherry Point area, which is something to keep in mind.

Commissioner Hunter asked what the purpose of the motion was. Was Commissioner Rowlson interested in promoting clean economic development?

Commissioner Rowlson stated he had a preference for clean economic development.

Commissioner Hunter stated that the proposed language is just a repeat of what is already in the Comprehensive Plan.

Commissioner Rowlson stated the language in Policy 2CC-16 addresses exploring things such as Comprehensive Plan amendments, etc. for the council to consider in order to eliminate the export of fossil fuels from Cherry Point. The economic development study may help them study ways they can propose changing rules to help with economic development. He stated he did not want to go as far as proposing certain codes, etc. He wanted to leave the study more open.

Commissioner Honcoop stated he would support the motion because it provides a better balance to 2CC-16 which is on a direct path for the purpose of restricting activity at Cherry Point. If we are going to restrict activity there and we still have it designated as a heavy industrial UGA we should provide some answers as to what Whatcom County will accept. There have been multiple industries that have tried to come here and every one of them has not been allowed.

Commissioner McClendon stated she opposed the motion because the entire section being considered does not need balanced. Everything about the section states what the parameters are.

The vote on the motion failed (ayes-3, nays-3).
Commissioner Honcoop moved to change 2CC-13 to read: Work with the Cherry Point industries industrial land owners to maximize public access to the Cherry Point beaches without compromising industrial security.

The motion failed for lack of a second.

Commissioner Deshmane moved to change Policy 2CC-16 to read: The County shall undertake a study to be completed by December of 2018 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 crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016 enhance clean and low carbon industry. 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.

Commissioner Honcoop seconded.

Commissioner Deshmane stated the refineries do not need Whatcom County’s help with planning. This proposal would actually help create a template for other businesses to come here. Instead of saying what they can and can’t do this would encourage them to come here and create change.

Commissioner Hunter stated he had nothing against adding the language, however he did not want to get rid of the other language. Why get rid of what is the heart of the policy?

Commissioner Hunter made an amendment to read: The County shall undertake a study to be completed by December of 2018 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 crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016, and enhance clean and low carbon industry. 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.

Commissioner Vekved seconded.

Commissioner McClendon stated similar language is already in Policy 2CC-3. Do we need to duplicate it in the study?

Commissioner Vekved stated the study will reveal more than what is stated in Policy 2CC-3.
The vote on the amendment carried (ayes-5, nays-1).

Commissioner Rowlson moved to change Policy 2CC-16 to read: The County shall undertake a study to be completed by December of 2018 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 crude oil, coal, and natural gas exports from the Cherry Point UGA above levels in existence as of July 5, 2016, and enhance attract and support clean and low carbon industry. 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.

Commissioner Honcoop seconded.

The motion carried (ayes-4, nays-2).

Commissioner Vekved moved to change page 2 (of the Planning Commission draft), line 26-35 to read: Since adoption of earlier versions of this Comprehensive Plan governments have increased their recognition of the observed and projected effects there has been an increasing recognition of the impacts that fossil fuel extraction use and transportation and use has have on human health, and both the local and global environment. The Cherry Point UGA contains the second-largest emitter of carbon air pollution in Washington State (Ecology, June 2016).

Commissioner Hunter seconded.

The motion carried (ayes-6, nays-0).

Commissioner Vekved moved to change page 2, line 35-37 to read: The Cherry Point UGA contains the second-largest emitter of carbon pollution pollutants (primarily CO2, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016).

Commissioner Rowlson seconded.

The motion carried (ayes-5, nays-1).

Commissioner Honcoop moved to change page 2, lines 5-10 to read: 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 4,650 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.

Commissioner Rowlson seconded.

Commissioner McClendon asked staff if they knew what the correct acreage was.

Mr. Aamot stated they would have to check on it through the GIS staff.

Commissioner Honcoop amended his motion to read: 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.

Commissioner Rowlson agreed to the amendment.

The motion carried (ayes-6, nays-0).

Commissioner Vekved addressed the Rail Access section. The WBA proposal clarifies that the rail is used for items other than crude oil. There was concern, from Petrogas, about this issue.

Commissioner Vekved moved to replace this section with the WBA language which reads: Cherry Point is served by a branch line of the BNSF Railway mainline serving western Washington. Rail service is considered to be vital to statewide as well as local interests for the competitive movement of freight. Rail service is particularly important in relation to water borne commerce. The Cherry Point area has the rail access to support marine terminals and industrial users in the area. Cherry Point industries use rail to ship and receive multiple feedstocks and products. Both the Cherry Point Refinery and the Ferndale Refinery receive crude oil shipments by rail.

Commissioner Rowlson seconded.

The motion carried (ayes-4, nays-1, abstain-1).

Commissioner Vekved moved to replace Policies 2CC-4, 2CC-5, 2CC-6 with the WBA language to read:

2CC-4: Assure that Cherry Point's unique features of large parcelization, port access, and pipeline, vehicular and rail transportation availability are maintained and protected from incompatible development.

2CC-5: Support development regulations that require master site
planning of large parcels in advance of new major development or
subdivision at Cherry Point.

2CC-6: Support development regulations that require site planning for new
major users (generally 40 acres or more) before the development of
accessory or supporting uses to assure that accessory or supporting uses are
compatible and coordinated with the major industrial use.

Commissioner Honcoop seconded.

Commissioner Vekved stated the WBA language is less regulatory and more policy.

Commissioner Rowlson referred to Policy 2CC-6. The change in language is from a
major user to a new major user. Would a site plan be required for a major user or only
new major users?

Mr. Aamot stated it would be for new users.

Commissioner McClendon asked what the development regulations now, requiring a
master site plan. Are they only for new major development?

Mr. Aamot stated a permit could be issued for an addition to something existing or
something new. The way it is worded now it would be in advance of any development
or subdivision.

Commissioner McClendon asked if a minor change was asked to be permitted would it
fall under an existing master site plan.

Mr. Aamot stated is would just be a building permit.

Commissioner McClendon asked if all of the Cherry Point industries currently have a
master site plan.

Mr. Personius stated some of the developments were done before there was zoning so
those regulations were not in place. The purpose of the proposed language is to
require any new development to have a master plan.

Commissioner McClendon stated she would vote no on the motion simply because she
was not clear on the impacts. The existing language seems to have been working.

Mr. Personius stated he would be nervous to have the wording changed without staff
being able to compare them against the existing regulations.

The motion failed (ayes-0, nays-6).

Commissioner Honcoop moved to change Policy 2CC-4 to read: Assure that
Cherry Point's unique features of large parcelization, port access and pipeline.
vehicular and rail transportation availability are maintained and protected from incompatible development.

Commissioner Vekved seconded.

The motion carried (ayes-5, nays-1).

Commissioner Honcoop addressed Policy 2CC-3. The policy wording does not work. You either encourage or make sure it is consistent with, you can’t do both.

No action was taken.

Commissioner Honcoop moved to add language from the WBA proposal to the preamble on page 2 of the Planning Commission draft to read: There is a variety of stakeholders with interest in the Cherry Point UGA/Port Industrial Area. These stakeholders include, but are not limited to, the citizens of Whatcom County who are dependent on jobs, human services, housing, utilities, and public infrastructure that support a healthy economy; industry; a diverse group of Native American tribes; and environmental interests. Whatcom County has long planned for industry at Cherry Point.

Commissioner Vekved seconded.

Commissioner Rowlson stated he would not support the language because it does not add much more than is already stated elsewhere.

The motion failed (ayes-3, nays-3).

Commissioner Honcoop moved to change page 3, line 38 to read: Existing industries Industrial uses, within the Cherry Point UGA, can serve the Aquatic Reserve’s objectives so long as they are managed according to the Plan and so long as the lessees actively work to further goals for the Reserve (CPAR MP p. 2).

Mr. Aamot stated the current language is quoted from the CPAR MP. To be consistent with the document it should use that current language.

Commissioner Honcoop withdrew the motion.

Commissioner Vekved addressed the proposed language on page 7, lines 20-23 which reads: 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 crude oil, coal and natural gas.

Commissioner Vekved stated this language would be appropriate if we had the results of the study. If the study shows that we would run afoul of Commerce what is the effect of the proposed language?
Mr. Aamot stated the text isn’t policy. The Prosecuting Attorney had warned about putting policy into text.

Commissioner Vekved stated the words chosen end up being an assertion, not so much policy.

Commissioner McClendon stated this is a judgement that needs to be stated. Regardless of what is being done it needs to be done in a way that does not significantly impact the ecology of the Salish Sea.

Commissioner Honcoop stated the title of this section refers to use compatibility and land use designation. That is what we are after. The land use designation is heavy industrial. That’s what it is used for. By saying “or encourage expansion” you are effectively discouraging expansion on the very land you have designated for that use.

Commissioner Honcoop moved to change the language to read: 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 crude oil, coal and natural gas.

Commissioner Vekved seconded.

Commissioner Vekved stated he would be okay with leaving the language in if there was a study to back it.

Commissioner McClendon stated it is only a value statement. We either adopt it as our value or we don’t.

Commissioner Vekved stated it shapes the intent of policy which shapes the intent of regulation.

Commissioner Hunter stated all of this refers to a business and it is a business which creates a lot of problems and is a business we need to be moving away from. There is nothing about the language that says we are going to tear down the industries or restrict them in ways that make it impossible for them to do business, but we are not going to encourage expanded use of that. We should be restricting the use of carbon based fuels in every way. This language is a judgement about where we are in the world today.

Commissioner Vekved stated that judgment has already been made, well in advance of this.

Commissioner Deshmane stated all of the language is addressed in other sections. The language does not flow well in this section.

Commissioner Deshmane made an amendment to remove the language from this section.
Commissioner Vekved seconded.

Commissioner Vekved stated the proposed deleted language is dealt with in the policies.

Commissioner Deshmane stated the language is too much like policy.

Commissioner Honcoop supported his motion stating retaining some of the language is important to retain. It provides balance to the paragraph.

The vote on the amendment failed (ayes-2, nays-4).

The vote on the main motion carried (ayes-4, nays-2).

Findings of Fact and Reasons for Action

Commissioner Honcoop asked if any of the changes made that evening would impact the Findings of Fact.

Mr. Aamot stated he could not say for sure. Staff will review them and if something needs changed it could be brought back to the commission.

Mr. Aamot pointed out amendments to the findings (emailed to the Commission on January 10, 2017) regarding the update to the Cherry Point Environmental Aquatic Reserve Management Plan. It was amended in January 2017. Also, on January 3, 2017 the Washington State Commissioner of Public Lands announced expansion of the Cherry Point Environmental Aquatic Reserve, by 45 acres, previously considered for a coal export terminal.

Commissioner Hunter moved to approve the amendments to findings.

Commissioner Deshmane seconded.

The motion carried (ayes-5, nays-0, abstain-1)

Commissioner Rowlson moved to adopt the findings and recommend approval of the language, as amended, in the Planning Commission draft.

Commissioner Hunter seconded.

Roll Call Vote: Ayes-Deshmane, Hunter, McClendon, Rowlson, Vekved; Nays-Honcoop; Abstain-0; Absent-Barton, Knapp, Oliver. The motion carried.

The meeting was adjourned at 10:05 p.m.

Minutes prepared by Becky Boxx.
RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
January 12, 2017

Regular Meeting

WHATCOM COUNTY PLANNING COMMISSION ATTEST:

Natalie McClendon, Acting Chair

Becky Boxx, Secretary
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,
Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act.

(Weimer)

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 Plan, 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 2018 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. July 5, 2016, and attract and support clean and low carbon industry. 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)
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- 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;

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• 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.  

(Weimer)

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The county shall undertake a study to be completed by December of 2018 to ensure our industries prosper while providing adequate protection of the environment.

(Brenner)

6) 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)
Previously Approved Changes

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