

From: [Council](#)
To: [Dana Brown-Davis](#); [Jill Nixon](#); [Kristi Felbinger](#); [Marina Engels](#); [NaDean Hanson](#)
Cc: [Mark Personius](#); [Matt Aamot](#); [Becky Boxx](#); [Ashley Ubil](#)
Subject: FW: WSPA Comments on ongoing Whatcom County Moratorium and Comp Plan Amendments
Date: Tuesday, January 29, 2019 9:56:05 AM
Attachments: [image003.png](#)
[WSPA Ltr Whatcom Co 1-29-19- FINAL.pdf](#)

From: Holli Johnson [mailto:hjohnson@wspa.org]
Sent: Tuesday, January 29, 2019 9:35 AM
To: Barry Buchanan; Tyler Byrd; Carol Frazey; Todd Donovan; Barbara Brenner; Rud Browne; Satpal Sidhu
Cc: Council
Subject: WSPA Comments on ongoing Whatcom County Moratorium and Comp Plan Amendments

Dear Honorable Council Members,

Please find attached Western States Petroleum Associations comments dated January 29, 2019, on Whatcom County Council extension of the Unrefined Fossil Fuels Moratorium and Comprehensive Plan Amendments. I hope you find time to review our comments prior to this afternoon's meeting. Please contact our office if you have any additional questions.

Thank you,

Holli Johnson
SENIOR COORDINATOR, NW REGION



975 Carpenter Rd. NE, Suite 106, Lacey, WA 98516
P 360.239.2248 wspa.org



Jessica Spiegel
NW Director

January 29, 2019

Whatcom County Council
311 Grand Avenue, STE 105
Bellingham WA 98225

Re: WSPA Comments on the Ongoing Whatcom County
Unrefined Fossil Fuels Moratorium, Ordinance 2019-064

Via hand delivery and email:
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Honorable Council Members:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on Ordinance 2019-064. WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport, and market petroleum and petroleum products in five western states, including Washington. WSPA members have operated refineries along Cherry Point in Whatcom County for years. This area provides key energy and emergency infrastructure as recognized by various city, state, and federal documents and is a regional hub for energy production and distribution.

WSPA opposes the Whatcom County Council's ongoing extension of the Unrefined Fossil Fuels Moratorium. The continued imposition of this "temporary" moratorium -- now in its sixth iteration -- exceeds Whatcom County's powers under state law and likely may violate the United States Constitution as it pertains to interstate and foreign commerce. The Council's repeated extensions have rendered the moratorium unreasonable and therefore unconstitutional. The moratorium is fundamentally a breach of the compact created between Whatcom County and the Cherry Point businesses in existence when county planning policies for the Cherry Point area were enacted decades ago. Those countywide planning policies express the County's commitment to creating an area where industrial business would be fostered, and this commitment led many businesses to commit significant resources to Whatcom County. With the moratorium, the Council is turning away from these longstanding commitments, which threatens the viability of some of the most significant economic engines of Whatcom County.

The Council further breached its commitment to its industrial businesses when it made the sudden decision, without any prior notice, to consider Comprehensive Plan amendments that will restrict the ability of all "fossil fuel" businesses to obtain permits for their facilities. This is a significant departure from the Council's long-stated interest in restricting the creation of export terminals at Cherry Point, an effort that WSPA has consistently opposed as exceeding the County's power and violating the U.S. Constitution. (See WSPA's prior letters dated Sept. 2016, March 2017, Sept. 2017, Feb. 2018, and Aug. 2018.) Now the Council has determined to expand its two-year "interim" moratorium on the export of "unrefined fossil fuels" to a broader restriction on all fossil fuel facilities. This expansive restriction on existing operations flies in the

face of the Council's repeated statements that it does not intend to restrict existing businesses. The January 15 amendments will do just that: they will transform even the most modest capital improvement or maintenance project – for instance, creating a new parking lot -- into an onerous, costly, and uncertain permitting process.

WSPA has engaged in a two-year dialog with the Council in good faith and during this time, and has been assured by the Council that the purpose of the moratorium was to allow the Council time to draft limitations on export of unrefined fossil fuels, not to impact existing businesses. The Council viewed these restrictions as necessary because the federal government removed the federal restriction on the export of crude oil. The new proposed Comprehensive Plan amendments far exceed this stated intention, and the effect of these amendments on local businesses will be substantial and catastrophic. Businesses have choices on where to spend human and capital resources. This proposal sends the clear message that they should not invest in Whatcom County.

WSPA would also like to express its concerns about the lack of transparency and the haste with which the January 15 Comprehensive Plan amendments were brought forward for consideration. WSPA strives to have a collaborative relationship with Whatcom County and has endeavored to engage with Whatcom County in a productive and open manner. The sudden introduction of the January 15 amendments, without any prior notice, make it clear, however, that Whatcom County is not interested in working together with industry to create energy and economic policy, but instead prefers to work behind closed doors with special interest groups to draft restrictions to curtail industry. The Council's decision to approve to forward the proposed January 15 amendments to the Planning Commission prior to conducting a line-by-line review of the amendments is inconsistent with the longstanding practice of the Council. It is also inconsistent with the letter and spirit of the County's public participation requirements, which require the County to provide a meaningful opportunity for review of, and comment on, any proposed Comprehensive Plan amendments. The Council's actions send the plain message that the effort of industrial groups to provide input and feedback on the very real and harmful impacts of the restrictions on development has been largely ignored.

At bottom, the sixth "interim" moratorium, along with the introduction of the January 15 amendments to restrict all fossil fuel development confirm what WSPA has suspected– the moratorium is but a pretext; the County is not attempting to exercise its police powers to regulate some local concern but is instead attempting to enact national—and even global—energy policy through its development regulations.

In point of fact, while the Council states that it wants to renew the moratorium and adopt new permitting requirements to address the impacts that fossil fuel extraction, transportation and use have on human health and the environment, its other statements contradict this. The Plan Amendments also note that it is the Policy of the County to promote and ultimately achieve energy use by the public and private sectors that is 100% reliant on renewable energy. This is

the true goal of the County. In its efforts to meet this goal, the County has proposed regulatory language that potentially affects any business in the Cherry Point district that sells or uses petroleum products. This includes service stations which sell gasoline to County residents for combustion of the fuel in their vehicles and small businesses that use heating oil to heat their buildings. Ultimately it also affects local power generation plants that use natural gas to provide electricity to the area. Furthermore, the Comprehensive Plan amendments will cloud the refineries ability to invest and participate in the energy transition, including the incorporation of renewables in the production of liquid fuels.

WSPA respectfully urges Whatcom County to restore to its local stakeholders the right to apply for and have processed any land use and development permit applications that are authorized by the Whatcom County Code. To do so, the current moratorium should be allowed to expire without further renewal.

Thank you for your consideration of WSPA's comments. We welcome any questions or comments you might have. Please contact me or the Senior Coordinator for the Northwest Region of WSPA, Holli Johnson at (360) 352-4506 or by email at hjohnson@wspa.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jodie Muller', with a stylized flourish at the end.

cc: Jodie Muller, WSPA