



Western States Petroleum Association
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FILE UNDER AB: 2018-077
 DATE RECEIVED: 2.27.18
 SUBMITTED BY: Jessica Spiegel
 COUNCIL MEETING
 EXHIBIT: B

Jessica Spiegel
NW Region

February 27, 2018

Via hand delivery

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

Re: WSPA Comments on the Ongoing Whatcom County Unrefined Fossil Fuels Moratorium, Ordinance 2018-77

Honorable Council Members:

The Western States Petroleum Association (WSPA) appreciates the opportunity to provide comments on Ordinance 2018-77. 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 "temporary" moratorium and the additional proposal to make dramatic changes to the county comprehensive plan create grave concerns regarding the ongoing lack of transparency and apparent gamesmanship for Whatcom County council activities.

Along with other community stakeholders, WSPA opposed the initial August 9, 2016 emergency moratorium, and each extension that has taken place (Sept. 2016, March 2017, Sept. 2017). Additionally, when a moratorium is repeatedly extended, it becomes a de facto revision to a lawful land use provision. This is now the fourth "interim" moratorium action by Whatcom County on this issue. Continued extensions are an improper proxy for revising the Whatcom County zoning regulations. To legally change a zoning regulation, the action must be consistent with the Whatcom County Comprehensive Plan, the Growth Management Act, and SEPA, among many applicable legal obligations. The moratorium has not undergone any such assessment. Each extension of the moratorium that does not comply with these laws is a further failure with both the letter and the spirit of Washington's robust planning laws.

State and federal laws, including the United States Constitution and its Commerce Clause, govern state and regional energy and transportation policy. Each restriction Whatcom County imposes could lead to a bottleneck in energy supply for the state and region through zoning provisions that violate state and federal law. WSPA maintains its position that the right to regulate trade among the states and with foreign nations is vested exclusively with the United

States Congress pursuant to the Commerce Clause of the United States Constitution. Whatcom County has neither the right nor the duty to legislate what products may or may not be exported from Cherry Point to other states or nations. Further, as a matter of policy, the County may not pick winners and losers, favoring some commodities over others or local commerce over export commerce. This is discrimination and economic protectionism.

Finally, WSPA would like to express its serious concerns about the lack of governmental transparency throughout this extended series of moratoriums and rapid changes to the county agenda. WSPA strives to have a collaborative relationship with Whatcom County and hopes that moving forward it will again have an opportunity to engage with Whatcom County in a productive and open manner. Instead of working together to create energy and economic policy that will work for all of Whatcom County, WSPA must continually react to Whatcom County's decision to continue to enact an "interim" moratorium, without any of the process protections that Washington law typically affords to the enactment of such restrictions.

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,



cc: Jodie Muller, WSPA