

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator: Matt W. Aamot	MA	10-15-99	RECEIVED OCT 19 1999 WHATCOM COUNTY COUNCIL	10-26-99	Council Introduction
Division Head: Sylvia Goodwin	SG	10-15-99		11-9-99	Planning & Development Committee
Dept. Head: Michael T. Knapp	MK	10-15/99		11-23-99	P&D / COUNCIL
Prosecutor: Dave Grant	DG	10-15-99			
Purchasing/Budget:	DL	10/19/99			
Executive: Pete Kremen	PK	10-19			

SUBJECT: Ordinance adopting Comprehensive Plan amendments, along with associated Shoreline Program amendments, relating to pier development at Cherry Point (File # CMP99-00014).

ATTACHMENTS:

(1) Proposed Ordinance.

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

Should Clerk schedule a hearing? () Yes (x¹) NO
 Requested Date:

¹ The Council must hold a hearing if they want to change the Planning Commission's recommendation (WCC 20.10.110 and WCC 20.90.090).

SUMMARY STATEMENT: The request is to adopt amendments to the Whatcom County Comprehensive Plan and associated changes to the Whatcom County Shoreline Management Program that would provide for economic development and address environmental impacts by limiting future port and industrial pier development in the Cherry Point area.

The Growth Management Act requires that Comprehensive Plan amendments be considered only once per year, with certain exceptions. All amendments must be considered concurrently. In 1999, the County Council initiated 13 amendments for review under Resolution No. 99-012. The Planning Commission held multiple hearings to consider these amendments. The Planning Commission took a final vote on the package of the 13 amendments on October 14, 1999. The Council is requested to adopt the Planning Commission's recommendations or, alternatively, to hold a hearing and adopt modifications to the Commission's recommendations. The Council can not adopt the amendments until 60 days after they were sent to the State Department of Community, Trade & Economic Development, which occurred on September 23, 1999 (RCW 36.70A.106/WAC 365-195-620). Additionally, the amendments have to be adopted prior to or along with the budget (WCC 20.10.040). Therefore, it appears that the request should be voted on at the Council's November 23, 1999 meeting.

Distribution Request

Indicate those who should receive a copy after Council action. List specific names to the right.

ADS Facilities Management	
ADS Finance	
ADS Human Resources	
ADS Info Services	
Assessor	
Auditor	
Cooperative Extension	
District Court	
Executive	
Health	
Hearing Examiner	Michael Bobbink
Jail	
Juvenile	
Parks	
Planning	Michael T. Knapp
Prosecutor	
Public Works	
Sheriff	
Superior Court	
Treasurer	
Other	

COUNCIL ACTION TAKEN:

1999 - 403 10/26/99: Introduced
 11/9/99: Held/Committee
 11/23/99: Adopted 7-0, Ord. #99-079

dl

Related File Numbers: AB99-074

Ordinance or Resolution Number (this item): **ORD. # 99-079**

SPONSORED BY: Consent
PROPOSED BY: Planning & Development Services
INTRODUCTION DATE: 10/26/99

ORDINANCE NO. 99-079

**AMENDING THE WHATCOM COUNTY
COMPREHENSIVE PLAN TEXT AND SHORELINE MANAGEMENT PROGRAM
TEXT REGARDING CHERRY POINT PIER DEVELOPMENT**

WHEREAS, The Whatcom County Council passed Resolution 99-012 on March 23, 1999 initiating 13 Comprehensive Plan amendments, and related amendments to the Official Whatcom County Zoning Ordinance (Title 20), for review in 1999; and

WHEREAS, One of the proposed amendments is a request to amend the Comprehensive Plan and Shoreline Management Program to limit future port and industrial pier development in the Cherry Point area; and

WHEREAS, The Deputy SEPA Official for Whatcom County issued a determination of non-significance on May 5, 1999; and

WHEREAS, Pursuant to RCW 36.70.390, RCW 36.70.590, and WAC 173-16-040, legal notice was published in the Bellingham Herald on May 6, 13 and 20, 1999; and

WHEREAS, The Planning Commission held a public hearing on the subject amendment on May 27, 1999 and considered all testimony;

WHEREAS, The Planning Commission held a work session on October 14, 1999 to consider all the amendments concurrently, as required by WCC 20.10.100, WCC 20.90.070, and WCC 20.90.040; and

WHEREAS, The Planning Commission evaluated the merits of each amendment in relationship to the County Wide Planning Policies and the goals, policies and objectives of the Comprehensive Plan, as required by WCC 20.10.100 and WCC 20.90.070; and

WHEREAS, The Planning Commission issued Findings of Fact & Reasons for Actions, Conclusions and Recommendations on the amendments; and

WHEREAS, the County Council has considered the Planning Commission's Findings of Fact & Reasons for Action, Conclusions, and Recommendations for all the amendments, as required by WCC 20.10.110 and WCC 20.90.080; and

WHEREAS, the County Council has considered all the amendments concurrently so that the cumulative effect of the various proposals can be ascertained, as required by the Growth Management Act (RCW 36.70A.130) and WCC 20.10.010; and

WHEREAS, the County Council finds that the Comprehensive Plan amendments recommended by the Planning Commission conform to the Growth Management Act and that the Whatcom County Shoreline Management Program amendments recommended by the Planning Commission are consistent with and implement the Shoreline Management Act of 1971 and its implementing guidelines; and

WHEREAS, the County Council finds the Comprehensive Plan and Shoreline Program amendments in the best interest of the public health, safety, and welfare, based on the following findings and conclusions:

FINDINGS

1. On March 23, 1999, the Whatcom County Council initiated an amendment to "Revise the Comprehensive Plan to include the consideration of only one additional industrial multi-use pier to provide for economic development while preserving the environmentally sensitive shoreline and marine life at the Cherry Point Management Area" (Resolution 99-012).
2. A determination of non-significance was issued on May 5, 1999 under the State Environmental Policy Act.
3. Notice of the hearing was mailed to shoreline property owners and other interested parties on May 4, 5, and 6, 1999. Notice of the hearing was published in the Bellingham Herald on May 6, 13, and 20, 1999. The public hearing was held on May 27, 1999.
4. The Planning Enabling Act states that when changed conditions or further studies by the planning agency indicate a need, the Comprehensive Plan may be amended (see RCW 36.70.410). The listing of Puget Sound Chinook salmon as "threatened" under the Endangered Species Act on March 24, 1999 constitutes a changed condition.
5. The Cherry Point herring stock is unique in that it begins spawning approximately 4 to 6 weeks later than the other Puget Sound herring stocks. Though the Cherry Point herring stock has been one of the largest in Puget Sound, the stock has been declining since 1977. The eelgrass and marine vegetation along the Cherry Point shoreline provide critical spawning substrate for the Cherry Point herring stock. Eelgrass and marine vegetation are dependent upon adequate light to survive and as such are susceptible to shade related impacts associated with over water structures.
6. Surf smelt and pacific sandlance utilize the native substrates along select reaches of the upper intertidal beach along the Cherry Point shoreline for spawning.
7. Adult herring, surf smelt and pacific sandlance are an important food source for a variety of marine fish species including Chinook salmon.
8. Along the Cherry Point shoreline, organisms grow on the aquatic vegetation that are primary food sources for Chinook salmon.
9. The intertidal and shallow subtidal habitat along the Cherry Point shoreline provides a shallow water migratory corridor for a variety of juvenile marine fish species including juvenile chinook salmon. The shallow water migratory corridor provides important rearing habitat and predator avoidance habitat.
10. Because of its location, juvenile salmon including chinook from both the Nooksack River and the Fraser River utilize the Cherry Point shoreline.

11. The Washington Department of Fish and Wildlife (WDFW), in a letter of May 18, 1999, stated that “. . . The marine environment along the Cherry Point shoreline is biologically rich and diverse. The Washington Department of Fish and Wildlife supports Whatcom County’s efforts to limit new pier construction at Cherry Point to only one additional pier structure because this policy significantly reduces the risk that the natural resources at Cherry Point will be impacted by future industrial development . . .”
12. The State of Washington asserted its ownership of the beds and shores of navigable waters in the State under Article XVII of the Washington Constitution. The State has not sold any aquatic lands waterward of extreme low tide in the Cherry Point area. A lease would be required from the Commissioner of Public Lands in order to construct a pier on State owned aquatic lands.
13. The Commissioner of Public Lands issued a letter on October 5, 1995 to the County Executive indicating that the State Department of Natural Resources would consider an aquatic lands lease for only one additional pier in the Cherry Point area. The Commissioner of Public Lands confirmed this position in a letter of May 14, 1999 in which she stated “. . . The Department has long been on record that we will consider the construction of only one new pier in the area . . .”
14. A planning goal of the Growth Management Act is to “Encourage economic development throughout the state that is consistent with adopted comprehensive plans . . .” (RCW 36.70A.020(5)). The subject amendment would facilitate construction of one more pier in the Cherry Point area, thereby encouraging economic growth.
15. A planning goal of the Growth Management Act is to “. . . conserve fish and wildlife habitat . . .” (RCW 36.70A.020(9)). The subject amendment would limit the number of piers allowed in the Cherry Point Management Unit, thereby reducing impacts to fish habitat.
16. The Shoreline Management Act of 1971 seeks to foster all reasonable and appropriate uses, including ports, while protecting the marine environment. The subject amendment fosters reasonable shore-dependant uses by allowing one more pier in the Cherry Point area. Additionally, it protects the marine habitat because no piers, which may impact this habitat, would be allowed except those currently permitted by the County, provided they are able to obtain all State and Federal approvals. If, however, neither is approved, one additional pier could be allowed.*
17. Department of Ecology guidelines for development of Shoreline Programs state that “The cooperative use of docking, parking, cargo handling and storage facilities should be strongly encouraged in waterfront industrial areas” (WAC 173-16-060(10)(d)). The subject amendment would limit the number of piers allowed in the Cherry Point Management Unit, thereby increasing the potential for multi-use.*
18. In a letter of April 22, 1999, Washington State Assistant Attorney General Steven J. Thiele stated: “On behalf of the Department of Ecology Shorelands and Environmental Assistance Program, I have reviewed the . . . proposed amendment to the Whatcom County Shoreline Master Program. The proposed amendment, as currently drafted, is consistent with the Shoreline Management Act, the SMA rules and the standards for master program amendments found in RCW 90.58.090. . .”*

* Indicates findings that only apply to the Shoreline Program Amendment.

CONCLUSIONS

1. The subject amendment would be in the public interest because it would provide reasonable economic growth and protection of the marine environment. Additionally, it would provide greater consistency between State and County policy.
2. The Growth Management Act, Whatcom County Comprehensive Plan and County-Wide Planning Policies all seek to promote both economic growth and environmental protection. The subject amendment promotes economic development by facilitating construction of one more pier in the Cherry Point area. Additionally, it protects the marine habitat because multiple piers, which may impact this habitat, would not be allowed unless both of the piers currently permitted by the County are able to obtain all other State and Federal approvals. Therefore, it is concluded that the subject amendment is consistent with these goals and policies.
3. The listing of Puget Sound Chinook salmon as “threatened” under the Endangered Species Act constitutes a changed condition that warrants a Comprehensive Plan amendment under RCW 36.70.410.
4. The subject amendment is consistent with the Shoreline Management Act of 1971 and Department of Ecology guidelines because it fosters appropriate shore-dependent use of the shoreline by facilitating one more pier in the area while minimizing potential impacts to the marine environment that could occur with the construction of multiple piers, which would not be allowed unless both of the piers currently permitted by the County are able to obtain all other State and Federal approvals.*
5. The policy of the Commissioner of Public Lands to consider an aquatic lands lease for only one more pier in the Cherry Point area constitutes a changed condition that warrants a Shoreline Program amendment under RCW 36.70.410.*

* *Indicates conclusions that only apply to the Shoreline Program Amendment.*

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

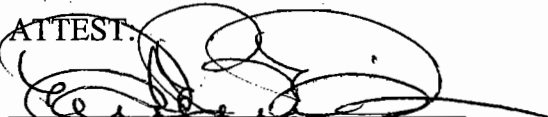
Section 1. The text of the Whatcom County Comprehensive Plan is hereby amended as shown on Exhibit 1.

Section 2. The text of the Whatcom County Shoreline Management Program (Title 23) is hereby amended as shown on Exhibit 2.


Section 3. Adjudication of invalidity of any of the sections, clauses, or provisions of this Ordinance shall not affect or impair the validity of the Ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this 23 day of November 1999.

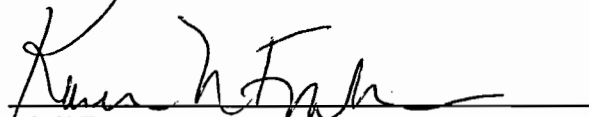
ATTEST:


Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON


Marlene Dawson, Chairperson

APPROVED as to form:


Civil Deputy Prosecutor

Approved Denied


Pete Kremen, Executive

Date: 12-2-99

Exhibit 1

Add the following paragraph after the second paragraph on p. 2-50 of the Whatcom County Comprehensive Plan:

The Cherry Point shoreline also has great importance to the fisheries and ecology of Northern Puget Sound because it provides essential spawning habitat for the largest herring stock in Washington State. This herring stock has supported important commercial fisheries and provides forage for salmonids and other important marine species.

Add Policy 2AA-10 to the Cherry Point Major Industrial Urban Growth Area/Port Industrial section of the Whatcom County Comprehensive Plan as follows:

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.

Exhibit 2

Amend the Whatcom County Shoreline Management Program, Cherry Point Management Unit policy 23.100.210.21, as follows:

23.100.210.21 Port Development

- (a) ~~The d~~Development of a limited number of piers on piling and floating public and private marine cargo transfer terminal facilities is encouraged as the preferred use in the Cherry Point Management Unit. Port development that requires dredge and fill not associated with the construction and operation of the preferred uses has not been permitted in the Cherry Point Management Unit due to its potentially adverse effects on the natural environment, including fish and shellfish habitat and geo-hydraulic processes. ~~Further~~ However, Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry Point Management Unit as a herring spawning bed and have prohibited dredge and fill activities therein due to their potentially adverse effects on the natural environment, including fish and shellfish habitat and geo-hydraulic processes. Moreover, the State of Washington Department of Natural Resources has indicated that it will not consider issuance of more than one aquatic lands lease for port development in the Cherry Point Management Unit in addition to the three piers already in operation as of January 1, 1998.
- (b) Consequently, it is the policy of Whatcom County that port facilities which require dredge and fill not associated with the construction and operation of the preferred uses should be prohibited until such time that it can be demonstrated that the impact of such development will avoid adverse effects to the shoreline environment.
- (c) Consequently, it is the policy of Whatcom County to limit the number of piers at Cherry Point by establishing a development moratorium. The goal of the moratorium is to ensure that only one pier in addition to those in operation as of January 1, 1998, is constructed at the Cherry Point Management Unit. 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.

Amend the Whatcom County Shoreline Management Program, Cherry Point Management Unit regulation 23.100.210.31, as follows:

23.100.210.31 Permitted Development

The following listed uses and activities are permitted within the Cherry Point Management Unit subject to the development standards contained in Section 23.100.210.40.

- (a) Port development and shore-dependent or shore-related industrial development together with any or all of the following components and restrictions:
 - 1. ~~File supported or floating piers or expansion of existing piers.~~ There is hereby established a moratorium precluding issuance of any shoreline permit allowing development of new pile supported or floating piers, except that this moratorium shall not have any application to those that have obtained shoreline approval from Whatcom County prior to adoption of this moratorium. If all of the unexercised shoreline approvals in existence at the time of imposition of this moratorium expire or are abandoned, a single exception to the moratorium may be granted and shoreline approval may be given for one additional pile supported or floating pier.
 - 2. Expansion of existing piers.
 - 32. Landfill or excavation necessary to the access and construction of any pile supported or floating piers permitted following expiration or abandonment of the unexercised permits.
 - 43. Dredging for maintenance or expansion of operations at existing piers.
 - 54. Dredging necessary for the construction of new pile supported or floating piers.
 - 65. Roads and railways.
 - 76. Utilities.
 - 87. Shore defense works: revetments, bulkheads, floating breakwaters and seawalls only.
 - 98. Over-water structures and buildings that are intrinsic to the operation of the primary development, provided that they are elevated on pilings or on floating structures.
- (b) Recreational development for public or quasi-public shoreline access.
- (c) Archaeological excavation.
- (d) Fish and wildlife habitat research and/or enhancement.

Amend the Whatcom County Shoreline Management Program, Cherry Point Management Unit regulation 23.100.210.32, as follows:

.32 Conditionally Permitted Development

Port development and shore-dependent or shore-related industrial development which includes the following components may be considered under the Shoreline Conditional Use Permit process defined in WAC 173-2714; EXCEPT to the extent restricted in Section 23.100.210.31, and EXCEPT where prohibited along the accretion shoreform and natural wetland areas described in Section 23.100.210.27 (g) and Appendix E.

- (a) Landfill or excavation associated with pier or floating structures which does not meet the development standards for such activities.
- (b) Dredging for purposes associated with pier or floating structures which does not meet the development standards for such activities.
- (c) Shore defense works, floating breakwaters and seawalls which do not meet the development standards for these structures.