

Whatcom County Council Special Committee of the Whole

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Meeting Agenda

Tuesday, July 30, 2019

1 PM

Council Chambers

COUNCILMEMBERS

Barbara Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Carol Frazey
Satpal Sidhu

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Roll Call

Committee Discussion

1. [AB2019-387](#) Discussion of Cascadia Law Group's recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments

Other Business

Adjournment



Whatcom County

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Agenda Bill Master Report

File Number: AB2019-387

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File Created:	07/02/2019	Entered by:	DBrown@co.whatcom.wa.us		
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Primary Contact Email: RBrowne@co.whatcom.wa.us

TITLE FOR AGENDA ITEM:

Discussion of Cascadia Law Group’s recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Discussion of Cascadia Law Group’s recommendations for proposed Cherry Point Urban Growth Area (UGA) Comprehensive Plan and zoning code amendments

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
07/09/2019	Council Special Committee of the Whole	HELD IN COMMITTEE	Council Special Committee of the Whole
07/23/2019	Council Special Committee of the Whole	HELD IN COMMITTEE	Council Special Committee of the Whole

Attachments: July 16 - Potential Code Amendments (with expanded insurance provision) - Cherry Point, July 23 Donovan Additional Proposed Amendments, July 23 Browne Additional Proposed Amendments, Cherry Point Amendments - Memo to Council from Planning Director (July 22 2019), Draft Minutes - Special Committee of the Whole July 23 2019

Whatcom County Fossil Fuel Industrial Uses

Potential Code Amendments | Prepared by: Cascadia Law Group and BERK Consulting, Inc.

Overview

This document excerpts sections of the Whatcom County Code and proposes potential code changes to address Resolution 2019-004 and the Comprehensive Plan Cherry Point Policy 2CC-16, excerpted below:

Policy 2CC-16: The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March 1, 2017.

To provide clear guidance to current and future county councils on the County's legal rights, responsibilities and limitations regarding interpretation and application of project evaluation under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code.

The County should consider any legal advice freely submitted to the County by legal experts on behalf of a variety of stakeholder interests, and make that advice publicly available.

- 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.

27 The following table identifies major code amendment topics developed by the County Council in
 28 Resolution 2019-004. The following sections provide an overview of key elements of the proposal and
 29 preliminary draft code language.

30 **Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location**

Code Outline Topic	Location in Code Changes	
1. Prohibit New Fossil Fuel Refineries	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
2. Retain Existing Refineries as an Outright Permitted Use with Limits	20.68.050	Permitted uses.
3. Conditional Use Permit Threshold for Expansions of Existing Refineries	20.68.150	Conditional uses.
	20.68.800.	Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment
4. Conditional Use Permit Criteria and Analysis of Greenhouse Gas Impacts of Expansions of Existing Refineries	20.68.800.	Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment
5. Prohibit Crude Oil and Coal Export Facilities	20.66.200	Prohibited uses.
	20.68.100	Accessory uses.
	20.68.200	Prohibited uses.
6. Renewable Fuel Production and Blending Facilities as an Outright Permitted Use	20.68.050	Permitted uses.
		See options to treat renewable fuels like fossil fuels.
7. Prohibit New Docks and Piers	20.68.200	Prohibited uses.
	20.74.055	Prohibited uses.
	23.100.170	Cherry Point management area.
8. Prohibit Crude Oil Transshipment Facilities	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
9. Prohibit Coal Transshipment Facilities	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
10. Pipelines	Not addressed per Cascadia Law Group report to the County Council: Reducing Impacts from Fossil Fuel Projects Report to the Whatcom County Council February 23, 2018.	

Code Outline Topic	Location in Code Changes
11. Small Oil Storage and Distribution Facilities	See definitions – not included in defined uses that are prohibited (fossil fuel refinery and fossil fuel transshipment facility). Chapter 20.97 Definitions.
12. Change of Use Provisions	20.74.110 Change of Use.
13. SEPA Threshold Determination	16.08.160 Substantive authority.
14. Scrubbing the Existing Code	20.88.200 Procedure. 22.05.020 Project permit processing table.
15. Consistency with Countywide Planning Policies	See separate policy evaluation document.
16. Procedural Due Process, GMA and Shoreline WAC provisions	Co-timed policy and code amendments planned.
17. Severability Clause	Will go into the ordinance draft.
18. Insurance Provisions	Addressed in permit procedures, criteria, and conditions.

31

Key Elements of Code Proposal

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Restrict New Fossil Fuel Refineries and Transshipment Facilities

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The code proposal prohibits new fossil fuel refineries and fossil fuel transshipment facilities. It also prohibits new piers consistent with the Cherry Point Aquatic Reserve Management Plan.

35

Allow Current Uses and Limited Expansions

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The code proposal outright permits existing, legally established fossil fuel refineries and fossil fuel transshipment facilities. Expansions of refinery capacity and associated storage capacity would be allowed based on service area population growth. The current relationship between refinery capacity and storage tank capacity would need to be maintained for both refinery expansions and offsite transshipment facility storage.

41

A Conditional Use Permit and Major Project Permit review by the County Council would be required for production expansions at existing refineries that exceed the population-based growth thresholds. The reviews are discretionary and would only allow an expansion above the population-based growth thresholds where certain compatibility criteria are met, and greenhouse gas impacts are analyzed, and local mitigation is provided.

46

A threshold of expansions above a 1% baseline would require staff review and mitigation (see “Address Impacts and Mitigation” below). Any expansion above the average of the annual percent change in

47

48

49 population for the prior 5-year period will need discretionary land use permits and greenhouse gas
 50 mitigation would be required. (see “Consider Permit Review Options” below).

51 Other site improvements that do not involve expansions of production capacity would be permitted with
 52 less procedural requirements, e.g. safety improvements or establishing an accessory office.

53 *Service Area Population Growth*

54 Limited expansions would be based on a rolling five-year average of the combined regional percent
 55 change in population of the states of Washington and Oregon and the Province of British Columbia.

56 There would be a relationship between growth and demand and the proposed refinery expansion level.
 57 With historic population calculations, there is more certainty about results and ease in tracking given
 58 annual estimates.

59 Annual population totals, annual change, and annual percent change are illustrated on Exhibit 2.

60 **Exhibit 2. Annual Population Estimates by State or Province**

State/Province	Estimate									
	Month	2010	2011	2012	2013	2014	2015	2016	2017	2018
Washington	1-Apr	6,724,540	6,767,900	6,817,770	6,882,400	6,968,170	7,061,410	7,183,700	7,310,300	7,427,570
Oregon	1-Jul	3,837,300	3,857,625	3,883,735	3,919,020	3,962,710	4,013,845	4,076,350	4,141,100	4,195,300
British Columbia	1-Apr	4,453,744	4,488,508	4,548,438	4,611,648	4,684,490	4,757,759	4,832,155	4,899,725	4,967,375
Total		15,015,584	15,114,033	15,249,943	15,413,068	15,615,370	15,833,014	16,092,205	16,351,125	16,590,245
Annual Change			98,449	135,910	163,125	202,302	217,644	259,191	258,920	239,120
Annual Percent Change			0.7%	0.9%	1.1%	1.3%	1.4%	1.6%	1.6%	1.5%

61 Sources: [Washington OFM](#), June 2018; [Oregon Annual Population Estimate](#), Portland State University Annual Population
 62 Estimates, July 1, 2018; [British Columbia \(BC Stats\) Population Estimates](#), June 2019; BERK Consulting, Inc. 2019.

64 The rolling average is the average of the annual percent change in population for the five-year period
 65 preceding the year of application. The period rolls forward depending on the date of application and
 66 drops the base year and adds a new year. The average of the annual percent change is 1.5% for the
 67 years 2014-2018 (averages 1.3%, 1.4%, 1.6%, 1.6%, and 1.5%).

68 *Other Population Options*

69 In lieu of historic population estimates, a rolling average based on population projections could be used.
 70 For a simple approach, each state or province forecasts through 2040 are presented in Exhibit 3. The
 71 annual change in population between 2020-2025 is forecasted to be 1.1%.

72 **Exhibit 3. Population Forecasts by State or Province: 2010-2040**

State/Province	Source	2010	2015	2020	2025	2030	2035	2040
Washington	2017 Medium OFM	6,724,540	7,061,410	7,638,415	8,085,043	8,503,178	8,894,306	9,242,022
Oregon	2019 Forecast	3,837,300	4,013,845	4,288,000	4,497,000	4,694,000	4,878,000	5,044,000
British Columbia	2018 Forecast	4,453,744	4,757,759	4,980,100	5,282,100	5,586,700	5,870,100	6,129,100
Total		15,015,584	15,833,014	16,906,515	17,864,143	18,783,878	19,642,406	20,415,122

74 Source: [Washington OFM](#), 2017; Oregon [Population Forecast Program](#), Portland State University, July 1, 2018; British
 75 Columbia (BC Stats) [Population Projections](#), September 2018; BERK Consulting, Inc. 2019.

76 Given the similarity between the historic and future growth rates, the County could set a flat cap based
77 on analysis of past and future growth trends and simplify the code, such as a number between 1.1% and
78 1.5%. However, the County would likely need to revisit the cap in future years as population projections
79 are updated such as in 2022 for Washington State.

80 Each of the options for permitting requirements above the threshold number would still require a
81 discretionary permit review by the County to determine whether compatibility criteria under Conditional
82 Use Permit and Major Project Permit code provisions are met.

83 Resolution 2019-004 directed the initial code draft be based on a rolling average of future population
84 projections and the above provides the Council with a variety of options. We believe all of the above
85 options are defensible because existing uses remain permitted and future growth above the thresholds
86 could be permitted through a Conditional Use or Major Project Permit review and decision if it is
87 determined that code compatibility criteria are met.

88 Allow for Renewable Fuels

89 The proposed code as drafted allows for renewable fuels facilities such as those producing biodiesel or
90 ethanol. The proposal as drafted allows renewable fuels facilities outright based on potential greenhouse
91 gas emissions benefit compared to fossil fuels.

92 Another option would be to require that renewable fuels be treated similar to fossil fuels and require a
93 Conditional Use Permit/Major Project Permit. This would also require tracking greenhouse gas emissions
94 and requiring liability insurance, given the fuel is potentially flammable and will generate local
95 greenhouse gas emissions depending on feedstocks and transportation of feedstocks to the facilities.

96 Address Impacts and Mitigation

97 Recognizing that fossil fuel facilities and transshipment facilities have the potential for environmental
98 impacts and require mitigation, several sections of the code proposal address the environmental review
99 process and content:

- 100 ■ State Environmental Policy Act (SEPA) Policies: When fossil fuel refinery facilities or transshipment
101 facilities are reviewed under SEPA, additional environmental policies would apply to guide
102 environmental impact evaluation and mitigation measures including policies on air quality and
103 climate and fish and wildlife habitat.
- 104 ■ Greenhouse Gas Emissions Mitigation: The SEPA policies and the zoning standards require reporting
105 of emissions and mitigation once emissions exceed 1% of the baseline. Local carbon offsets would be
106 required or a fee in lieu of mitigation would be required which the County would use to provide
107 local greenhouse gas mitigation projects.
- 108 ■ Fish and Wildlife Habitat: In SEPA rules, the County would require analysis and mitigation of impacts
109 to priority habitats and species and high biodiversity areas. It should be noted that the County's
110 critical area regulations and shoreline regulations would also apply.
- 111 ■ Other Considerations: Applicants would be required to demonstrate consistency with federal and
112 state laws and permit requirements, such as consistency with the Cherry Point Aquatic Reserve
113 Management Plan, federal review of consistency with Treaty Rights, etc. before any site
114 modifications or construction could occur.

- 115 ■ Insurance: Insurance provisions are contained in a new code section and are based on discussion with
116 an insurance expert familiar with commercially available policies similar in nature and in place for
117 petroleum terminals in Alaska. Options for policy limits and alternatives to conventional insurance are
118 also provided for Council discussion.

119 Consider Permit Review Options

120 Existing fossil fuel facilities and transshipment facilities that propose increases below the population-
121 based threshold of refinery production capacity would be outright permitted but subject to code
122 standards such as insurance requirements and would trigger greenhouse gas mitigation when cumulative
123 production increases exceed 1%. For increases greater than the population-based threshold, the code
124 proposal as drafted would require both a Conditional Use Permit and Major Project Permit review with
125 Hearing Examiner recommendations to the County Council. The County Council would make the final
126 decision. A development agreement could be required.

127 Several different permitting options could also be considered:

- 128 ■ Major Project Permit review only and a Development Agreement with Hearing Examiner
129 recommendation and County Council decision
- 130 ■ Conditional Use Permit with staff recommendation and Hearing Examiner decision.
- 131 ■ Combination: Structures/improvements that exceed the thresholds require a Conditional Use Permit
132 decided by the Hearing Examiner. A Major Project Permit, requiring County Council approval, is only
133 required if the project meets the standard criteria under WCC 20.88.120; in this case only require a
134 Major Project Permit to avoid duplication.

135 All permits are discretionary. All would require a detailed application. They differ in the ultimate
136 decisionmaker – Hearing Examiner or County Council. The County Council could focus on setting policy
137 through the Comprehensive Plan and development regulations and let the Hearing Examiner apply the
138 policies and code, prepare the record, and make the decision. The County Council could consider the
139 record created by the Hearing Examiner hearing and recommendation and determine whether proposals
140 should be granted or denied. Under Washington law, such decisions are made in a quasi-judicial role
141 that limits “ex parte” discussions, is time intensive, and has legal risks.¹ It is a major policy decision for the
142 County Council to decide whether it should be the final decision maker on fossil fuel facility expansions
143 and thus the Council may want to bifurcate that decision and make it at a later date. However, we
144 discuss it briefly here because the Council could make that determination now if it is ready.

145 Expansion Scenarios

146 There are several pieces of information needed to calculate the level of expansion allowed per the
147 proposed code:

- 148 ■ Historic population estimates sufficient to calculate the percentage limit for expansion of refinery
149 production (WCC 20.68.801(1)).

¹ See: <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/August-2016/Should-Councils-Conduct-Quasi-Judicial-Hearings.aspx>.

- 150 ■ Current actual refinery throughput averaged over the latest three-year reporting period to
151 calculate the threshold for refinery production (WCC 20.68.801(2)).
- 152 ■ Storage tank volume and relationship to refinery throughput (WCC 20.68.801(6)).

153 Population estimates are described above. A five-year average of the annual percent change in
154 population between 2014-2018 is 1.5% and is applied in the hypothetical scenarios below.

155 Current actual throughput for crude oil is based on atmospheric crude distillation capacity (barrels per
156 calendar day) available from the US Energy Information Administration (EIA). This is available in annual
157 reports for each refinery facility. See Exhibit 4.

158 **Exhibit 4. Barrels of Crude Oil per Calendar Day**

	2017	2018	2019	3- Year Average
BP Cherry Point	227,000	227,000	242,000	232,000
Phillips 66 Cherry Point	101,000	105,000	105,000	103,667

159 Source: U.S. Energy Information Administration, [Refinery Capacity Report](#), June 2019; BERK Consulting, 2019.
160

161 Storage tank volume is not available by individual facility in published reports though it is reported on
162 monthly forms to the US EIA. For the west coast [Petroleum Administration for Defense District \(PADD 5\)](#)
163 (Washington, Oregon, California, Alaska, Hawaii, Nevada, and Arizona), there is a monthly report. The
164 ratio of storage capacity to refinery capacity is about 12, but that is not refinery specific.

165 **Exhibit 5. West Coast (PADD 5) Storage to Production Capacity**

Year	Tank and Underground Net		Rate of Storage to Capacity
	Refinery Capacity	Available Shell Storage Capacity	
2017	2,932,771	33,693,000	11.49
2018	2,838,071	32,818,000	11.56
2019	2,875,071	35,059,000	12.19

166 Source: U.S. Energy Information Administration, June 2019
167

168 The County would require storage information for an individual refinery expansion proposal at the time
169 of application; depending on its proprietary nature or safety concern, the County may need to treat it as
170 business confidential.

171 For the purposes of this overview, simplified scenarios are presented below using a cap of a 1.5%
172 growth rate, and a storage tank ratio of 10.

173 In Year 1, the applicant for a fictitious production expansion proposes a 0.75% production increase and
174 a storage tank size increase of up to 7,500 barrels per calendar day. Since the increase is less than
175 1.5% the expansion would be permitted outright.

176 **Exhibit 6. Example Application: Year 1**

Application #1 Year 1	Unit of Measure	Quantity or Value
Current Operation average last 3 years	Barrels per calendar day	100,000
Storage Tank Volume (current)	Barrels	1,000,000
Ratio of Storage to Capacity		10
Increase of 0.75% refinery production	Barrels per calendar day	750
Storage Tank increase no greater than 10 x production increase	Barrels	7,500
Permitted if not exceeding 1.5%		

177

178

Source: BERK Consulting 2019.

179 In Year 3, the applicant has requested another 0.744%² increase up to the population growth cap of
 180 1.5%. Considering the prior approved increase, the refinery production increase would be 750 or
 181 cumulatively 1,500 barrels per calendar day. The storage tank size could increase by about 7,496
 182 barrels (no more than 7,500). The threshold for a Conditional Use Permit and Major Project Permit is not
 183 yet triggered, but the expansion is limited to 1.5%. Greenhouse gas emission documentation and
 184 mitigation applies to the full 1.5% including local carbon offsets because the cumulative refinery
 185 production increase exceeds the 1% mitigation threshold.

186 **Exhibit 7. Example Application: Year 3**

Application #2 Year 3	Unit of Measure	Quantity or Value
Current Operation (barrels per Calendar Day) average last 3 years plus prior approved increase	Barrels per calendar day	100,750
Storage Tank Volume (current plus prior approved increase)	Barrels	1,007,500
Ratio of Storage to Capacity		10
Increase of 0.744% refinery production	Barrels per calendar day	750
Cumulative	Barrels per calendar day	1,500
Storage Tank increase no greater than 10 x production increase	Barrels	7,496
Cumulative	Barrels	14,996
Permitted if not exceeding 1.5%		

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188

Source: BERK Consulting 2019.

189 In Year 5, the applicant has requested another 5% increase in production capacity. The refinery capacity
 190 increase would be 5,075, or cumulatively 6,576 barrels per calendar day. The storage tank size could
 191 be increased by 50,750 barrels, or cumulatively, 65,756 barrels. The threshold for a Conditional Use
 192 Permit and Major Project Permit is triggered and the expansion is allowed only if code discretionary
 193 compatibility criteria are met and the County Council approves the permits. Greenhouse gas emission
 194 documentation and mitigation applies including local carbon offsets.

² The intention is to limit expansions that exceed the threshold cumulatively. Due to increase in Year 1 permit, a flat 0.75% would otherwise result in 1.506% increase.

195 **Exhibit 8. Example Application: Year 5**

Application #3 Year 5	Unit of Measure	Quantity or Value
Current Operation (barrels per Calendar Day) average last 3 years plus prior approved increase	Barrels per calendar day	101,501
Storage Tank Volume (current plus prior approved increase)	Barrels	1,015,006
Ratio of Storage to Capacity		10
Increase of 5.00% refinery production	Barrels per calendar day	5,075
Cumulative	Barrels per calendar day	6,576
Storage Tank increase no greater than 10 x production increase	Barrels	50,750
Cumulative	Barrels	65,756
CUP/MPP Exceeding 1.5%		

196

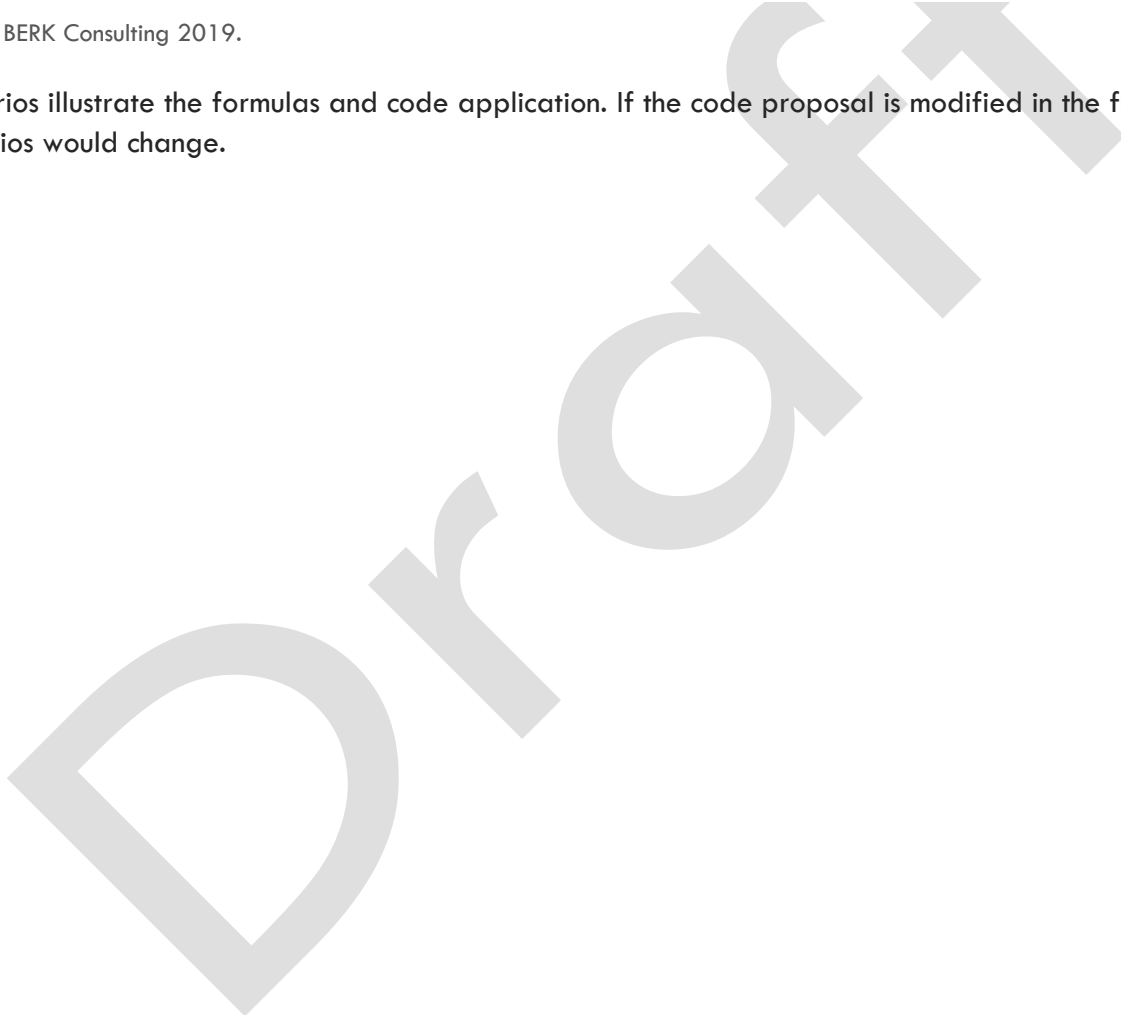
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Source: BERK Consulting 2019.

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Scenarios illustrate the formulas and code application. If the code proposal is modified in the future the scenarios would change.



Changes by Code Chapter

CHAPTER 2.11 HEARING EXAMINER

2.11.205 Recommended decisions

Option 1: Add new subsection F where Hearing Examiner would make recommendation on Conditional Use Permits for fossil fuel refinery expansions or fossil fuel transshipment facilities that exceed thresholds. Would be combined with Major Project Permits:

2.11.205 Recommended decisions.

In accordance with the provisions of Chapter 22.05 WCC, the hearing examiner shall conduct an open record hearing and prepare a record thereof, and make recommendations to the county council for approval or disapproval of:

A. Major project permits, including major project permit applications for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC;

B. Planned unit developments;

C. Development agreements, as authorized in Chapter 36.70B RCW;

D. Such other permits as may be required from the county along with subsection A or B of this section for a given project. Where the hearing examiner would normally make a final decision to approve or deny an accompanying permit, the decision shall instead be in the form of a recommendation and accompany the hearing examiner's recommendation on the major project permit or planned unit development to the county council for final approval;

E. Proposed rates and charges or special assessments for lake management districts.

F. Fossil fuel refinery expansions or fossil fuel transshipment facilities expansions in the Cherry Point Industrial District that require a conditional use permit.

Discussion/Notes: The Major Project Permit and Conditional Use Permit would be combined into a unified permit process. Resolution 2019-004 expressed the intention that Council approval would be necessary. Proposal addresses desired permit process for fossil fuel refinery expansions above threshold to be reviewed by the Hearing Examiner for Conditional Use Permit / Major Project Permit recommendations and ultimately County Council for approval. Structures/improvements under the thresholds are permitted outright.

Option 2: Do not add "F". Retain "A". Fossil fuel refinery expansions or fossil fuel transshipment facilities above thresholds would be considered under Major Project Permits only, but with similar review criteria as for a Conditional Use Permit.

Option 3: If County Council is satisfied that Hearing Examiner review/approval is adequate process, then only require a standard Conditional Use Permit for expansions above thresholds. Rely on WCC 2.11.210 (C) as written where Hearing Examiner makes decision on a Conditional Use Permit.

Option 4: Combine Options and follow current Whatcom County Code permit structure. Structures/improvements that exceed the thresholds require a Conditional Use Permit decided by the Hearing Examiner. A Major Project Permit, requiring County Council approval, is only required if the project meets the standard criteria under WCC 20.88.120; in this case only require a Major Project Permit to avoid duplication.

237 CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

238 16.08.160 Substantive authority.

239 A. The policies and goals set forth in this chapter are supplementary to those in the existing authorization of Whatcom
240 County.

241 B. The county may attach conditions to a permit or approval for a proposal so long as:

- 242 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in
243 environmental documents prepared pursuant to this chapter; and
- 244 2. Such conditions are in writing; and
- 245 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 246 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are
247 sufficient to mitigate the identified impacts; and
- 248 5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other
249 decision document.

250 C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:

- 251 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that
252 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 253 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient
254 to mitigate the identified impact; and
- 255 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the
256 decision document.

257 D. The county designates and adopts by reference the following policies as the basis for the county’s exercise of SEPA
258 authority pursuant to this section:

- 259 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
260 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - 261 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - 262 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
263 surroundings;
 - 264 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
265 other undesirable and unintended consequences;
 - 266 d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - 267 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - 268 f. Achieve a balance between population and resource use which will permit high standards of living and a wide
269 sharing of life’s amenities; and
 - 270 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable
271 resources.
- 272 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that
273 each person has a responsibility to contribute to the preservation and enhancement of the environment.
- 274 3. The county adopts by reference the policies in the following county documents:

- 275 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 276 Whatcom County Shoreline Management Program
- 277 Whatcom County Subdivision Ordinance
- 278 Whatcom County Solid Waste Management Plan
- 279 Whatcom County Critical Areas Ordinance
- 280 All official land use controls adopted by Whatcom County.

281 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
282 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether these regulations
283 provide sufficient impact mitigation, the County shall consult orally or in writing with the responsible federal, state or
284 other agency with jurisdiction and environmental expertise and may expressly defer to that agency. The County shall
285 base or condition its project decision on compliance with these other existing regulations, rules, laws, or adopted
286 enforceable plans. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to
287 address a particular impact of a project.



288 **F. Specific Environmental Policies**

289 **1. Air Quality and Climate:**

290 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality
291 of life. Mitigation of criteria pollutant impacts will normally be the subject of air permits required by the
292 Northwest Clean Air Agency (NWCAA) and no further mitigation by the County shall be required. However,
293 where a project being reviewed by the County generates nuisance impacts or odors or greenhouse gas emissions
294 impacts not addressed through the regulations of NWCAA, the County may require mitigation under SEPA.

295 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows
296 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,
297 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global
298 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that
299 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be
300 authorized by the County address greenhouse gas emissions impacts. Mitigation may be achieved through the
301 provisions contained in County land use and development regulations or through the State Environmental Policy
302 Act where land use code provisions do not address mitigation of greenhouse gas emissions impacts.

303 i. Greenhouse Gas Emissions – Fossil Fuel Facilities and Fossil Fuel Transshipment Facilities: The following
304 policies shall apply to fossil fuel facilities and fossil fuel transshipment facilities.

305 (a) Emissions Calculated: The SEPA Responsible Official may require mitigation for greenhouse gas
306 emissions of fossil fuel facilities and fossil fuel transshipment facilities, as calculated consistent with the
307 definition of facility emissions in WCC 20.97.124.1.

308 (b) Assessment: Greenhouse gas emissions impacts shall be assessed using the most current version of the
309 GREET Model developed by Argonne National Laboratories or, where feedstocks are from Canada, using
310 the latest version of the GH Genius model developed by Canadian agencies for quantification of upstream
311 emissions from production of feedstocks produced in Canada.

312 (c) Mitigation: Greenhouse gas emissions impacts may be offset for proposals exceeding greenhouse gas
313 thresholds in WCC 20.68.802 through either code requirements or, if not addressed through code
314 requirements, through mitigation projects that provide real, additional and quantifiable greenhouse gas
315 mitigation. Such mitigation must not be required by any other regulatory mechanism and there shall be no
316 double counting of emission reductions where identified as mitigation of greenhouse gas emissions impacts
317 for permits subject to WCC 20.68.802.

318 ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuels Transshipment Facilities: The
319 SEPA Responsible Official shall require documentation of emissions consistent with b.i(a) and b.i(b) above.
320 The applicant shall demonstrate that the lifecycle greenhouse gas reductions associated with the renewable fuels
321 provide a net reduction even when considering transportation and upstream emissions. If there is a net increase
322 in emissions locally, the SEPA Responsible official may require mitigation per b.i(c) above.

323 iii. Greenhouse Gas Emissions – Other Uses:

324 (a) Method of analysis: Determined by SEPA Responsible Official following consultation with federal and
325 state agencies with jurisdiction or expertise.

326 (b) Mitigation: Determined by SEPA Responsible Official. See 1.c.

327 c. It is the County's policy to minimize or prevent adverse air quality impacts. Federal, state, regional, and county
328 regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts. If the
329 decisionmaker makes a written finding that the applicable federal, state, regional, and/or County regulations did
330 not anticipate or are inadequate to address the particular impact(s) of the project, the decisionmaker may condition
331 the proposal to mitigate its adverse impacts or, if impacts cannot be mitigated, may deny a project under the
332 provisions of the State Environmental Policy Act.

333 **2. Plants and Animals:**

334 a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban
335 environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened
336 by habitat loss and by the reduction of habitat diversity. For the purposes of this policy, animals and plants of
337 ecological, educational, and economic value include priority habitats and species as listed in the Washington
338 Department of Fish and Wildlife's Priority Habitats and Species, as amended, consistent with WCC 16.16.710,
339 and High Biodiversity Value Areas per the Whatcom County 2017 Ecosystem Report, as amended.

b. It is the County's policy to minimize or prevent the loss of fish and wildlife habitat that have substantial ecological, educational, and economic value. A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals. Special consideration shall be given to anadromous fisheries and marine mammals.

c. It is the County's policy to ensure applicants provide verifiable documentation of consistency with federal and state laws regarding treaty rights, clean water rights (both water quality and water quantity), and endangered species protection such as through attaining permits or conducting consultations. The decisionmaker may condition or deny the project to mitigate its adverse impacts if the decisionmaker finds that a proposed project would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat, designated wildlife corridors, or habitat diversity for plants or animals species of substantial educational, ecological, or economic value, or interfere with treaty rights, clean water rights, or endangered species protection.

Discussion/Notes: If amendments are made to the Comprehensive Plan policies then the County will in effect update policies under the County's SEPA substantive authority.

CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.200 Prohibited uses.

All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not limited to the following, which are listed here for purposes of clarity:

.201 Reserved.

.202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

.203 In the Bellingham Urban Growth Area the following uses are prohibited: ~~petroleum refinery and the primary manufacturing of products thereof,~~ primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof, and primary metal industries.

.204 New fossil fuel refinery, new fossil fuel transshipment or facility unless permitted as a part of an existing refinery modification otherwise permitted under this code.

Discussion/Notes: Prohibit fossil fuel related industries in the LII District; already prohibited in the Bellingham UGA. It does not appear that such uses exist in the LII zone; thus, we have only addressed the prohibition of fossil fuel refinery and fossil fuel transshipment facility unless part of an existing refinery (e.g. transshipment).

CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom County Shoreline Management Program- and implementing regulations. The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein- (Policies, except that some of those SIC number uses and "other activities similar in nature" may be precluded by or do not otherwise meet the subarea requirements of the WCC or the county Comprehensive Plan may preclude certain. Uses that are not expressly permitted uses to occur in particular subareas. Please refer to the policies of the herein are not permitted if they are precluded elsewhere in the code or in the Comprehensive Plan and any applicable subarea plan to determine the appropriateness of a land use activity listed below.)

.051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits, vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

382 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate
383 animals intended for processing within 24 hours.

384 (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered
385 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.

386 (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:

387 (a) State waste discharge permit (Chapter 173-216 WAC);

388 (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);

389 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

390 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
391 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

392 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
393 prefabricated wood products; wooden containers and cooperage.

394 .054 The following are permitted uses except as otherwise prohibited:

395 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill
396 products.

397 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;
398 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,
399 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

400 (3) Refining and storage of **petroleum and asphalt fossil fuels, limited as follows:**

401 **(a) fossil fuel refineries, existing legally as of [XXX effective date], together with allowed expansions below the thresholds in**
402 **WCC 20.68.800.**

403 **(b) fossil fuel transshipment facilities existing legally as of [XXX effective date], together with allowed expansions below the**
404 **thresholds in WCC 20.68.800.**

405 *Discussion/Notes: Allow existing legal fossil fuel uses with minor expansions.*

406 (4) The manufacture and processing of rubber and plastic products.

407 (5) Leather tanning and finishing.

408 (6) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
409 mineral products.

410 (7) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting,
411 refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture
412 of miscellaneous metal products.

413 **(8) Storage of asphalt in the Heavy Impact Industrial Zone.**

414 *Discussion/Notes: Retained from (3) above in case of construction related businesses.*

415 **Option 1: Add renewable fuels refining as a permitted use.**

416 **(9) The refining, storage, blending, and manufacture of renewable fuels subject to WCC 20.68.801.**

417 *Discussion/Notes: Renewable Fuel Production and Blending Facilities Could be an Outright*
418 *Permitted Use. Recognizes progression to these fuels benefits greenhouse gas emissions*

419 reductions. Section 20.68.801 requires insurance and if there's a conversion from fossil
420 fuels to renewable fuels a change of use would be needed.

421 **Option 2: Treat existing renewable fuels operations as permitted, but new ones or expansions as a**
422 **Conditional Use Permit or Major Project Permit as with fossil fuel facilities or transshipment facilities subject to**
423 **similar criteria.**

424 **(9) The refining, storage, blending, and manufacture of renewable fuels, existing legally as of [XXX effective date], together**
425 **with allowed expansions below the thresholds in WCC 20.68.800.**

426 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
427 fixtures, structural metal and stamping.

428 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
429 materials handling equipment; machine tools and dies; and special and general industrial equipment.

430 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

431 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
432 railroad equipment, bicycles and motorcycles.

433 .059 Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities **except for**
434 **fossil fuel facilities or fossil fuel transshipment facilities. Expansions of existing fossil fuel facilities and transshipment**
435 **facilities as of [XXX effective date] are subject to WCC 20.68.800. New fossil fuel storage and transshipment facilities are**
436 **expressly prohibited.**

437 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
438 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
439 (Chapter 20.14 WCC) or water sources.

440 .061 Heavy construction contractors.

441 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
442 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
443 noncommercial uses, excluding state education facilities and correction facilities.

444 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
445 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
446 shall contain no indoor plumbing but may be served with electrical power for lighting.

447 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
448 the Heavy Impact Industrial District in the Bellingham UGA.

449 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

450 .066 Marijuana production or processing facility.

451 .081 Freight railroad switching yards and terminals, **excluding uses addressed in .059.**

452 .082 Marine port facilities, **excluding uses addressed in .059, and excluding new piers, docks, or wharves.**

453 .085 Type I solid waste handling facilities.

454 .086 Type II solid waste handling facilities.

455 20.68.100 Accessory uses.

456 .101 Employee recreation facilities and play areas.

- 457 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
458 district.
- 459 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 460 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
461 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 462 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.
- 463 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
464 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.
- 465 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
466 purpose of serving the child care needs of employees whose place of employment lies within this zone district.
- 467 .108 Electric vehicle rapid charging stations and battery exchange facilities.

468 **Option 1: Base accessory transshipment facility on limitation of current ratio of refining capacity to storage**
469 **capacity similar to .801, Option 1.**

470 .109 Fossil Fuel transshipment facilities that are a necessary part of providing raw materials to, and serving, a permitted
471 expansion of an existing fossil fuel refinery. The volume of any storage associated with such permitted fossil fuels
472 transshipment facilities shall be limited to the current ratio of refining capacity to storage capacity at the existing fossil fuel
473 refinery.

474 *Discussion/Notes: Per code outline: Prohibit coal and crude oil transshipment, except*
475 *where necessary to supply raw materials to permitted refining operations. Using broader*
476 *category of fossil fuels.*

477 **Option 2, if basing expansions on flat percentage increase and relating to physical structure changes.**

478 .109 Fossil Fuel transshipment facilities that are a necessary part of providing raw materials to, and serving, a permitted
479 expansion of an existing fossil fuel refinery.

480 **Optional: if treating renewable fuel similar to fossil fuel transshipment facilities that are accessory.**

481 .110 Renewable fuel transshipment facilities that are a necessary part of providing raw materials to, and serving, a permitted
482 expansion of an existing renewable fuel refinery. The volume of any storage associated with such permitted renewable fuels
483 transshipment facilities shall be limited to the current ratio of refining capacity to storage capacity at the existing renewable
484 fuel refinery consistent with WCC 20.68.801(2).

485 **20.68.130 Administrative approval uses.**

486 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
487 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
488 (Exh. A), 2006).

489 **20.68.150 Conditional uses.**

490 The following uses require a conditional use permit in the HII Zoning District.

491 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

492 (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that
493 allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

494 (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to
495 protest proposed heavy industrial uses allowed in the zone in accordance with Chapter 20.68 WCC, and to refrain from legal
496 action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval
497 which might have been proposed.

498 **Option 1: Expansions of existing legal fossil fuel refinery and transshipment facilities need Conditional Use**
499 **Permit as well as Major Project Permit.**

500 .153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or
501 expansion of existing legal fossil fuels transshipment facilities when proposed in excess of expansion thresholds determined
502 consistent with WCC 20.68.800 and subject to the conditional use permit criteria below and approval of a major project
503 permit:

504 (1) The CUP approval criteria listed under WCC 20.84.220 are met;

505 (2) Within shorelines, if applicable, County approval shall be contingent upon approval of a shoreline permit;

506 (3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated sources, types, and
507 volumes of substances transferred in bulk at the facility. The permit shall be limited exclusively to those types and volumes
508 of materials or products as documented and approved.

509 (4) Insurance requirements meet the provisions of WCC Section 22.05.125.

510 (5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and
511 Chapter 16.24 WCC, Commute Trip Reduction.

512 (6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to
513 address risks created by expansions.

514 (7) Prior to issuance of any site preparation of construction permits, and prior to occupancy and/or operation of the expanded
515 facility, the applicant shall provide verifiable documentation to the county that the facility has been constructed consistent
516 with any applicable federal or state requirements, including but not limited to water rights and use.

517 (8) Plans for stormwater and wastewater releases have been approved.

518 (9) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for
519 any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the
520 project applicant has met any federal or state permit or consultation requirements, including properly addressing tribal treaty
521 rights or the provisions of the Magnuson Amendment through state and federal permitting decisions;

522 (10) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and

523 (11) Demonstration that the proposal will retain or add living-wage jobs or contribute to the Whatcom County economy.

524 *Discussion/Notes: Addresses Conditional Use Permit for Expansions of Existing Refineries*
525 *above Threshold in WCC 20.68.800.*

526 **Option 2: Indicate that the permit process for .153 is a Major Project Permit not a CUP but with the same**
527 **criteria.**

528 .153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or
529 expansion of existing legal fossil fuels transshipment facilities when proposed in excess of expansion thresholds determined
530 consistent with WCC 20.68.800 and subject to consideration of major project permit and the criteria below:

531 [criteria 1-11 are the same]

532 .154 Treatment and storage facilities for hazardous wastes subject to the following:

533 (1) The ~~eight~~ criteria for a conditional use listed under WCC 20.84.200.

- 534 (2) The most current state siting criteria under Chapter 173-303 WAC.
- 535 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
536 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
537 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- 538 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
539 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
540 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
541 percent of the total local hazardous waste stream.
- 542 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been
543 constructed consistent with state requirements.
- 544 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,
545 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to
546 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
547 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
548 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
549 documented by county staff.
- 550 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
551 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county
552 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
553 inspection reporting procedures.
- 554 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an
555 inspection by a qualified and independent inspection agency satisfactory to the county.
- 556 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health
557 and safety, the permit may be revoked by the approving body following a public hearing.

- 558 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.
- 559 .157 Trailheads with parking areas for more than 30 vehicles.
- 560 .158 Athletic fields.

561 **Option 3: Add renewable fuels as a Conditional Use Permit to match fossil fuel requirements.**

562 **.159 Expansion of existing legal renewable fuels refinery operations or renewable fuels transshipment facilities when**
563 **proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and subject to a conditional use**
564 **permit and major project permit and the criteria identified in .153 (1) to (11).**

565 .180 Major passenger intermodal terminals.

566 .187 Type III solid waste handling facilities; provided, that:

- 567 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
568 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
569 least three feet in elevation higher than the floodway elevation;
- 570 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
- 571 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 572 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 573 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 574 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

- 575 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 576 (f) This 1,500-foot buffer does not apply to:
- 577 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
578 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 579 (ii) Inert landfills;
- 580 (3) Inert landfills shall be located at least 500 feet from the following:
- 581 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 582 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 583 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 584 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 585 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 586 (f) This 500-foot buffer does not apply to:
- 587 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
588 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 589 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
590 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
591 county or state road right-of-way;
- 592 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
593 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
594 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 595 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
596 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
597 and federal regulations concerning solid waste facilities and sites;
- 598 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
599 closure plan includes:
- 600 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
601 activity, with seeding to be accomplished annually but no later than September 30th; and
- 602 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
603 covered through the financial assurance for post-closure activities;
- 604 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
605 of WCC 20.80.300 (Landscaping);
- 606 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
607 delineated wellhead protection area;
- 608 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
609 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
610 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
611 the boundary of the airport property;
- 612 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
613 protect the value and enjoyment of existing adjacent uses.

614 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
615 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
616 processed as a major development project pursuant to Chapter 20.88 WCC.

617 **20.68.200 Prohibited uses.**

618 All uses not listed as permitted, accessory, administrative approval, or conditional uses are prohibited, including but not
619 limited to the following, which are listed here for purposes of clarity:

620 .201 Reserved.

621 .202 Adult businesses.

622 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
623 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
624 products derived thereof; and primary metal industries.

625 **.204 New Fossil fuel refineries and the primary manufacturing of products thereof [XXX effective date].**

626 **.205. New Fossil fuels transshipment facilities, including bulk storage or transfer facilities for fossil fuels [XXX effective**
627 **date].**

628 **.206. New piers, docks, or wharves in Cherry Point District.**

629 *Discussion/Notes: Prohibit New Fossil Fuel Refineries. Prohibit Crude Oil and Coal Export*
630 *Facilities – made broader to Fossil Fuel transshipment.*

631 | *(Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 2016-011 § 1 (Exh. L), 2016; Ord. 99-078, 1999; Ord. 99-070 § 2, 1999; Ord. 91-*
632 *075, 1991).*

633 **20.68.250 Minimum lot size.**

634 The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and
635 development standards of the district. (Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996).

636 **20.68.255 Minimum lot frontage.**

637 For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility
638 development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the
639 frontage be less than 30 feet. (Ord. 99-045 § 1, 1999).

640 **20.68.350 Building setbacks.**

641 Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.68.550. (Ord. 99-078, 1999).

642 **20.68.400 Height limitations.**

643 No maximum height is established; however, when a building exceeds 50 feet, the setback requirements of WCC 20.80.200
644 shall be increased by one foot for each foot of building height in excess of 50 feet, as applicable to all setbacks.

645 **20.68.450 Lot coverage.**

646 The maximum building or structural coverage shall not exceed 60 percent of the lot size.

647 **20.68.500 Open space.**

648 *Repealed by Ord. 97-057. (Ord. 96-046, 1996).*

649 **20.68.550 Buffer area.**

650 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
651 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
652 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
653 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

654 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
655 structures shall be established consistent with the following options:

656 (1) If a planting screen is not provided by the industrial user and no natural vegetative screening exists, the minimum
657 setback(s) shall be 660 feet, as measured from the edge of the district boundary. The setback area may be used for security
658 roads, parking, or open space.

659 (2) If natural sight-obscuring and dense vegetation exists, the minimum setback(s) shall be 250 feet, as measured from the
660 district boundary; provided, that a minimum width of 50 feet of natural vegetation is retained. The remainder of the
661 setback(s) may be used for security roads, parking, or open space.

662 (3) If a 50-foot buffer planting screen is established, pursuant to WCC 20.80.345, the minimum setback(s) shall conform to
663 the setback requirements of WCC 20.80.200, as measured from the district boundary. In addition, security roads may be
664 situated within the minimum buffer setback; provided, that the 50-foot-wide buffer planting is established.

665 (4) When a parcel situated within this district is located within the Bellingham Urban Growth Area and adjoins an Urban
666 Residential District or residential district within the city limits, setbacks for heavy industrial buildings and/or uses shall be
667 increased to 100 feet and landscaped in accordance with the requirements of WCC 20.80.345.

668 (5) In no case shall the setback from the northern and western boundaries of the Cherry Point heavy industrial area not
669 contiguous to another industrial zone be less than 660 feet, nor the natural vegetation removed except for parking and
670 security or protective uses.

671 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
672 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

673 .554 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so
674 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
675 2019; Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999; Ord. 97-057 § 1, 1997; Ord. 96-046 § 1, 1996; Ord. 89-117,
676 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

677 **20.68.600 Sign regulations.**

678 Sign regulations shall be administered pursuant to WCC 20.80.400.

679 **20.68.650 Development criteria.**

680 (Ord. 96-056 Att. A § A1, 1996).

681 **20.68.651 Landscaping.**

682 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).

683 **20.68.652 Off-street parking and loading.**

684 Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must
685 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on
686 public rights-of-way.

687 **20.68.653 Drainage.**

688 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
689 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §
690 A2, 1996; Ord. 94-022, 1994).

691 **20.68.654 Driveways.**
692 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of
693 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).

694 **20.68.655 Access.**
695 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).

696 **20.68.656 Maintenance.**
697 The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be
698 responsible for assuring the care and maintenance of any natural growth, where appropriate.

699 **20.68.657 Enclosure.**
700 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,
701 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).

702 **20.68.700 Performance standards.**

703 **20.68.701 Pollution control and nuisance abatement.**
704 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when
705 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or
706 regulations provide for the level of technology to be employed, the appropriate standards shall apply.

707 **20.68.702 Heat, light and glare.**
708 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used
709 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

710 **20.68.703 Ground vibration.**
711 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is
712 discernible without instruments, at or beyond the property line for the use concerned.

713 **20.68.704 Odors.**
714 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in
715 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe
716 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

717 **20.68.705 Noise.**
718 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
719 075, 1991).

720 **20.68.706 Toxic gases and fumes.**
721 Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control
722 Authority standards. (Ord. 91-075, 1991).

723 **20.68.707 Liquid pollutants.**
724 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).

725 **20.68.708 Appearance.**

726 New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so
727 as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such
728 uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).

729 **20.68.709 Marijuana odor.**

730 For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a
731 concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon
732 the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to
733 capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or
734 surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.
735 A, 2015).

736 **20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel**
737 **Transshipment**

738 **.801. Limits on Refinery or Transshipment Facility Capacity Expansions:**

739 **Option 1: Base Expansions on historic population, and relationship of production throughput and storage**
740 **capacity.**

741 **(1) Expansions of existing fossil fuel refinery or fossil fuel transshipment capacity shall be an outright permitted use up to a**
742 **percentage limit defined as a rolling five-year average of the annual percent change in population for the combined region of**
743 **the states of Washington and Oregon and the Province of British Columbia as determined by their respective published**
744 **government estimates for the five years immediately preceding the date of a completed application for any necessary County**
745 **permits.**

746 **(2) Storage tank capacity increases at existing refineries or transshipment facilities shall be limited to the ratio of storage to**
747 **refining capacity currently existing at the facilities as of [XXX effective date]. See WCC 20.97.160.5 for applicable**
748 **definitions.**

749 **(3) The capacity of a refinery or process unit is a measure of its current actual throughput averaged over the latest three-year**
750 **reporting period preceding the date of a completed application for any necessary County permits.**

751 **(a) The data used to calculate the current actual throughput average shall be obtained from official government reports**
752 **from the refinery to federal or state agencies regarding production of the refinery or a particular process unit to be**
753 **expanded. This information shall be provided by the project applicant and verified by the County at the time of**
754 **application for any land use or construction permits.**

755 **(b) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day),**
756 **consistent with data collected by the US Energy Information Administration. The zoning administrator may approve**
757 **another measure of capacity or source that is consistent with (3) and (3)(a).**

758 **(4) Expansions of existing refineries or transshipment facilities above that threshold in subsections (1) and (2) above shall**
759 **require a conditional use permit consistent with the criteria of 20.68.150, conditional uses, and major project permits subject**
760 **to Chapter 20.88.**

761 *Discussion/Note: The intention is to limit expansions that exceed the threshold*
762 *cumulatively. More specifics on the period within which the threshold applies could be*
763 *added.*

764 **(5) Expansions below the threshold are permissible with approval of a master site plan consistent with WCC 20.74.060 and**
765 **consistent with applicable project permits per Chapter 22.05.**

766 **(6) Incidental increases in refinery capacity or transshipment capacity related to normal safety or process improvements that**
767 **do not exceed 1% of throughput for the prior three-year period as calculated under subsection (3) shall not require new major**

768 project permits or conditional use permit approval and shall not trigger greenhouse gas mitigation requirements until they
769 cumulatively exceed 1% of refinery throughput.

770 **Option 2: Base Expansions on future population growth.**

771 Replace (1) above:

772 (1) Expansions of existing fossil fuel refinery or fossil fuel transshipment capacity shall be permitted up to a percentage limit
773 defined as a rolling five-year average of the annual forecasted percent change in population for the combined region of the
774 states of Washington and Oregon and the Province of British Columbia based on their respective official published estimates
775 for the 5 years after the date of a completed application for any necessary County permits.

776 Other subsections (2) through (6) continue to apply.

777 **Option 3: Base Expansions on flat percentage increase and relate to physical structure changes.**

778 (1) Threshold of Review: Expansion of the following elements of fossil fuel refineries or fossil fuel transshipment facilities
779 shall be allowed shall be allowed as a permitted outright use up to X% cumulatively over a X-year period:

780 (a) Expansion of refining capacity resulting from refinery infrastructure improvements.

781 (b) Storage tank capacity increases.

782 (2) Expansions of existing fossil fuel refineries or transshipment facilities that do not qualify as a permitted outright use
783 under subsection (1) above shall require a conditional use permit consistent with the criteria of 20.68.150 and Chapter 20.84.

784 (3) Incidental increases related to normal safety or process improvements that do not exceed thresholds in (1) shall not
785 require a new conditional use permit and shall not trigger greenhouse gas mitigation requirements until they cumulatively
786 exceed X%.

787 **.802. Environmental Review and Greenhouse Gas Mitigation**

788 (1) State Environmental Policy Act (SEPA) review shall be conducted consistent with WCC Chapter 16.08. Fossil fuel
789 facility capacity expansions or fossil fuel transshipment facility expansions are subject to applicable SEPA requirements.

790 (2) Greenhouse gas emission analysis required:

791 (a) For the first expansion requiring County land use permits after the date of this ordinance, a baseline calculation
792 of existing facility emissions of greenhouse gases shall be provided by the applicant for the three-year period
793 identified in WCC 20.68.801(3). See facility emissions definition in WCC 20.97.124.1 for the scope and geography
794 of the analysis. Calculation of baseline greenhouse gas emissions shall follow the methodology used for facility
795 greenhouse gas reports to the State of Washington Department of Ecology, and to the US Environmental Protection
796 Agency Electronic Greenhouse Gas Reporting Tool (e-GGRT), or successor state or federal emissions reporting tool
797 or requirements.

798 (b) Facility emissions, defined in WCC 20.97.124.1, shall be quantified for each expansion of refining and storage
799 capacity in the application for land use or construction permits and in SEPA documents analyzing the impacts of an
800 expanded facility.

801 (c) The emissions analysis shall identify how mitigation will offset greenhouse gas emissions generated.

802 (d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and
803 methods adopted by the State of Washington Department of Ecology and shall include upstream greenhouse gas
804 emission calculations for feedstocks used in the refining process as provided in (e) below.

805 (e) Emissions generated upstream of the refinery facility for production and transport of raw materials used for
806 refinery expansions shall be quantified using the latest version of the GREET Model developed by Argonne
807 National Laboratories or, for raw materials produced in Canada, the latest version of the GH Genius model
808 developed by Canadian national agencies may be used.

809 (f) The County may condition the permit to ensure appropriate mitigation consistent with subsection (3) and may
810 require periodic monitoring of greenhouse gas reduction measure effectiveness. Greenhouse gas mitigation proposed
811 by the permit applicant shall be additional, real and quantifiable and shall not be required under any other regulatory
812 mechanism.

813 (g) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause
814 duplication through local greenhouse gas mitigation, the County may defer to the national or state program.

815 (3) Local mitigation of greenhouse gas emissions shall be required, whenever increases of greenhouse gas equal or exceed
816 1% cumulatively above the baseline for a 3-year average (per section .802(2)(a)), after the effective date of this section
817 [XXX].

818 (a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected
819 greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas
820 mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any
821 other regulatory mechanism.

822 (b) The County may, upon request by the Applicant, approve a fee in-lieu of providing a local mitigation project.
823 The County shall use collected fees in-lieu of mitigation for local greenhouse gas mitigation projects that are
824 additional, real and quantifiable and not required under any other regulatory mechanism. The in-lieu fee shall be set
825 at \$60 per ton of carbon, based on the following document: US Environmental Protection Agency, Technical Update
826 of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (May 2013, Revised
827 August 2016). The fee shall be collected annually for the life of the fossil fuel facility or fossil fuel transshipment
828 facility.

829 (c) Should a national or state greenhouse gas mitigation requirement be adopted that pre-empts or would cause
830 duplication through local greenhouse gas mitigation, the County shall defer to the national or state program.

831 *Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-*
832 *CO₂) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide*
833 *(CO₂) emissions in a given year. This dollar figure also represents the value of damages*
834 *avoided for a small emission reduction (i.e., the benefit of a CO₂ reduction)." See:*
835 *<https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. If the*
836 *County wishes to increase the mitigation fee it may do so by ordinance with an*
837 *accompanying rationale such as inflation, updated US EPA guidance or other factors.*

838 **.803 Non-Capacity Improvements**

839 (1) Expansions of existing fossil fuel refineries for non-capacity purposes are outright permitted uses. Examples of non-
840 capacity improvements include, but are not limited to:

841 (a) accessory buildings,

842 (b) office space,

843 (c) parking lots,

844 (d) radio communications facilities,

845 (e) regular equipment maintenance and replacement,

846 (f) safety upgrades,

847 (g) security buildings,

848 (h) storage buildings, and

849 (i) other similar structures or activities.

850 (2) This allowance does not include improvements that would expand the capacity of the refinery or the transshipment
851 facility above the conditional use permit thresholds in subsection .081 or non-capacity improvements that would cause a net
852 increase in or greenhouse gas emissions above subsection .802.

853 **Option 1: If renewable fuels facilities/transshipment is treated as an outright permitted use, consider the**
854 **following subsection:**

855 .804 Renewable Fuels Facilities and Transshipment Facilities

856 (1) Renewable fuels facilities or renewable fuels transshipment facilities are subject to:

857 (a) Documentation of greenhouse gas emissions per WCC 16.08.160.F.1 and 20.68.802.

858 (b) Proof of insurance for hazards created in the County per WCC 22.05.125.

859 (c) Compliance with standards and conditions of required land use, building, and construction permits.

860 (2) Within the CP District, conversion of existing fossil fuel facilities or fossil fuel transshipment facilities to renewable fuels
861 facilities or renewable fuel transshipment facilities shall require a change of use permit per WCC 20.74.110.

862 **Option 2: Treat renewable fuels like fossil fuel facilities in Section 800 above.**

863 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

864 20.74.010 Purpose.

865 The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban
866 Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of
867 development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to
868 preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Exh. A § 57, 1998).

869 20.74.020 Applicability.

870 This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

871 20.74.030 Permitted uses.

872 (1) Primary permitted uses:

873 (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy
874 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.

875 (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light
876 Impact Industrial District, Chapter 20.66 WCC.

877 (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related
878 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point
879 Industrial Urban Growth Area. (Ord. 98-083 Exh. A § 57, 1998).

880 20.74.040 Accessory uses.

881 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
882 083 Exh. A § 57, 1998).

883 20.74.050 Conditional uses.

884 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
885 083 Exh. A § 57, 1998).

886 **20.74.055 Prohibited uses.**

887 Prohibited uses shall be the same as those prohibited in the Heavy Impact Industrial District, Chapter 20.68 WCC and the
888 following:

889 **(1) New piers, docks, or wharves.**

890 **20.74.060 Master site plan requirements.**

891 (1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including
892 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for
893 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a
894 planned unit development.

895 (2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common
896 ownership if the common ownership is less than 160 acres.

897 (3) Each planning block shall include one lot of not less than 40 acres in size to be designated as the site for a port or major
898 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
899 shall be waived.

900 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

901 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,
902 short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject
903 to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site
904 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private
905 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation
906 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

907 **20.74.070 Minimum lot size and parcelization.**

908 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be
909 permitted as follows:

910 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent
911 with the master site plan requirements in this chapter.

912 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC
913 consistent with the master site plan requirements of this chapter.

914 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master
915 site plan requirements of this chapter.

916 (4) When the administrator finds that the lot(s) will be developed with a use(s) that is consistent with the intent of the district
917 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

918 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
919 Exh. A § 57, 1998).

920 **20.74.080 Design standards.**

921 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site
922 design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,
923 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,
924 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

925 **20.74.090 Traffic demand management.**

926 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
927 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time

928 employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least 12
929 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

930 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by
931 December 1, 2011.

932 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the
933 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

934 20.74.100 Drainage.

935 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
936 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

937 20.74.110 Change of Use

938 A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A
939 change of use permit is required to document a change of use, even where no alterations are planned or required by the code.
940 This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:

941 (1) Applicable building and construction codes are met per Title 15;

942 (2) Consistency with the requirements of the CP Industrial District, Chapter 20.74, and base zone; and

943 (3) Transportation concurrency requirements are met per Chapter 20.78.

944 *Discussion/Notes: Change of Use Provisions. Focus is on consistency with the CP district*
945 *where this permit applies.*

946 CHAPTER 20.88 MAJOR PROJECT PERMITS

947 20.88.100 Major project permits.

948 .110 All major developments shall, prior to any construction, obtain a major project permit.

949 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
950 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost

(estimated construction cost exclusive \$5,000,000
of land value)

Size

retail 75,000 square feet

office or industrial (gross leasable 200,000 square feet
floor space)

residential 300 dwelling units

motel/hotel 200 units

951

952 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the
953 technical review committee that any project be considered a major development, if in the opinion of the administration it is of
954 a nature that council review would be appropriate.

955 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
956 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
957 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application
958 based on the following criteria:

959 (1) Will comply with the development standards and performance standards of the zone in which the proposed major
960 development will be located; provided where a proposed major development has obtained a variance from the development
961 and performance standards, standards as varied shall be applied to that project for the purposes of this act.

962 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for
963 the issuance of a conditional use permit for the zone in which the project is located.

964 ~~(3) Will be consistent with applicable laws and regulations.~~

965 (3) Will obtain, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal
966 determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the
967 "Magnuson Amendment" under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or
968 over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline
969 conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act, including but not limited to a
970 federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, prior to
971 issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project
972 permit.

973 (4) Will not substantially interfere with the operation of existing uses.

974 (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as
975 roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for
976 such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the
977 appropriate agency or division thereof.

978 (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and
979 will not impose uncompensated costs on other property owned.

980 (7) Will be appropriately responsive to any EIS prepared for the project.

981 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
982 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
983 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
984 the policies for environmental protection set forth in the Comprehensive Plan.

985 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
986 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
987 and provide relief from the specific standards and requirements thereof.

988 **20.88.200 Procedure.**

989 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the
990 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
991 part of the application for a major project permit. The master plan document shall include all elements required per the
992 department’s administrative manual.

993 .210 Development Standards. The master plan may propose standards that will control development of the possible future
994 uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks,
995 frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards
996 that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed
997 standards. If the proposed design standards will apply to property located partially or totally within an urban growth area,
998 concurrence of the affected city will be required.

999 .215 Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be
1000 conducted concurrently with the master plan review.

1001 (a) Any modifications, additions or changes to an approved master plan are subject to the following:

1002 (i) Minor changes shall be reviewed for compliance and compatibility with the approved **master plan major project**
1003 **permit.**

1004 (1) A determination is made by the director. **The director is authorized to consult a technical committee at**
1005 **his/her discretion.**

1006 (2) **Minor changes are those amendments which may affect the dimensions, location and type of**
1007 **improvements of facilities; provided, the amendment maintains the basic character of the major project**
1008 **permit application approved by the county council including general type and location of dwellings and**
1009 **other land use activities, arrangement of buildings, density of the development, and provisions of the**
1010 **project to meet density bonus and open space requirements, or capacity limits, and maintains required**
1011 **conditions or mitigation.**

1012 (ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in
1013 the unified fee schedule.

1014 (iii) **Master plans Major project permits** may include, as a condition of their approval, a requirement for periodic
1015 progress reports and mandatory updates on a predetermined interval.

1016 .220 through .265 *Reserved.*

1017 **Option 1: Require a combined CUP/MPP for fossil fuel facilities and fossil fuel transshipment facilities.**

1018 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a
1019 conditional use permit, **except in the CP zone.**

1020 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that
1021 project shall be exempt from the requirement to obtain a major project permit, **except in the CP zone.**

1022 **.280 Major project permits in the CP zone: where a project in the CP zone requires a major project permit, the major project**
1023 **permit shall be concurrently processed with other required land use permits including but not limited to: Cherry Point master**
1024 **site plan, conditional use permit, planned unit development, or development agreement.**

1025 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*
1026 *desired review process.*

1027 **Option 2: Do not make above edits in .270 or .280 and just require a Major Project Permit for fossil fuel**
1028 **facilities and fossil fuel transshipment facilities. Add a requirement for a development agreement. Would**
1029 **likely mean adding a code section on development agreements consistent with RCW 36.70B.170 et seq.**

1030 **Option 3: Do not make above edits in .270, .275, or .280. Require a standard Conditional Use Permit that**
1031 **requires only a Hearing Examiner decision and no Major Project Permit.**

1032 CHAPTER 20.97 DEFINITIONS

1033 *Discussion/Notes: Definitions added are based on a review of federal (US Energy*
1034 *Information Administration, US Census, Code of the Federal Register, Revised Code of*
1035 *Washington), County Ordinance NO. 2018-007, Resolution 2019-004 and examples*
1036 *addressed in the White Paper.*

1037 20.97.052.1 Change of Use

1038 "Change of use" means when a building or occupancy is altered or replaced, for example from manufacturing to office.

1039 Renumber Section 20.97.052.1 Child care facilities to 20.97.052.2 Child care facilities.

1040 20.97.124.1 Facility Emissions.

1041 "Facility Emissions" are greenhouse gas emissions associated with fossil fuel refineries or fossil fuels transshipment facilities
1042 based upon:

1043 (1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility
1044 located within the Cherry Point Heavy Industrial area, and

1045 (2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and

1046 (3) the upstream emissions generated by the production and transport of raw products to the facility such as crude oil
1047 feedstocks or other fuels used in production or energy generation at facilities.

1048 20.97.160.2 Fossil Fuels.

1049 "Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All
1050 contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels
1051 are not fossil fuels.

1052 20.97.160.3 Fossil Fuels Transshipment Facilities.

1053 "Fossil Fuel Transshipment Facility" is a facility engaging in the process of off-loading of fossil fuel materials, refined or
1054 unrefined, refinery feedstocks, products or by products, from one transportation facility and loading it onto another
1055 transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of
1056 transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and
1057 compressor stations and associated facilities.

1058 20.97.160.4 Fossil Fuel Refinery.

1059 A "Fossil Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not
1060 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,
1061 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of
1062 fossil fuels or by products.

1063 **20.97.160.5 Fossil Fuel Refinery Capacity.**

1064 "Fossil Fuel Refinery Capacity" means the extent of refinery production capacity in relation to storage capacity. "Storage
1065 Capacity" is defined as total volume of all tanks at a facility and "Refining Production Capacity" is defined as the current
1066 actual throughput averaged over the latest three-year reporting period prior to the date of a completed application for any
1067 necessary County permits obtained from official government reports from the refinery to federal or state agencies regarding
1068 production of the refinery or a particular process unit to be expanded.

1069 **20.97.163 Greenhouse Gas Emissions**

1070 "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse gases," "GHG,"
1071 and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride,
1072 and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), or state clean air
1073 act (Chapter 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

1074 Discussion/Notes: See RCW 70.235.010 and RCW 70.94.030 regarding State laws.
1075 See also <https://www.epa.gov/ghgemissions/overview-greenhouse-gases>.

1076 **20.97.201 Living Wage**

1077 "Living wage" means the hourly rate that an individual must earn to support their family, if they are the sole provider and are
1078 working full-time (2080 hours per year). For the purposes of this definition family includes four individuals.

1079 Discussion/Notes: Based on a definition published by Massachusetts Institute of
1080 Technology. See <http://livingwage.mit.edu/counties/53073>. There is a living-wage
1081 calculator for each state and each county within. Living wage ordinances vary in their
1082 wage rates, and they often set the hourly wage a full-time, year-round worker must earn
1083 to bring a family of four out of poverty. See:
1084 <http://www.forworkingfamilies.org/resources/policy-tools-living-wage>.

1085 **20.97.350.1 Renewable Biomass**

1086 "Renewable biomass" includes but is not limited to the following:

1087 (1) Planted crops and crop residue harvested from agricultural land.

1088 (2) Planted trees and tree residue from a tree plantation.

1089 (3) Animal waste material and animal byproducts.

1090 (4) Slash and pre-commercial thinnings.

1091 (5) Organic matter that is available on a renewable or recurring basis.

1092 (6) Algae.

1093 (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1094 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
1095 customary feedstock production and transport.

1096 Discussion/Notes: Adapted from based on federal renewable fuel definition,
1097 <https://www.law.cornell.edu/cfr/text/40/80.1401>.

1098 **20.97.350.2 Renewable Fuel**

1099 "Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.
1100 Common renewable fuels include ethanol and biodiesel:

1101 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
1102 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
1103 American society of testing and materials specification D 5798.

1104 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
1105 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal
1106 environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and
1107 materials specification D 975.

1108 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
1109 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
1110 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State
1111 Department of Ecology or US EPA.

1112 *Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,*
1113 *common liquid fuel forms include ethanol and biodiesel. See:*
1114 https://www.eia.gov/energyexplained/?page=renewable_home.

1115 Washington State defines renewable diesel and E85 motor fuel in the motor fuel
1116 quality act (Chapter 19.112 RCW), which are integrated in the definition.

1117 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See
1118 <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-
1119 25% fossil fuels and is used by flexibly fueled vehicles. See
1120 <https://www.fueleconomy.gov/feg/flextech.shtml>.

1121 Under the EPA renewable fuel standard, three of four renewable fuel categories must
1122 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional
1123 renewable ethanol must meet a 20% lifecycle GHG reduction. See:
1124 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)
1125 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

1126 20.97.434.1 Technical committee.

1127 "Technical committee" or "technical review committee" means the designated representatives of the Whatcom County
1128 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and
1129 the Whatcom County Health Department Director.

1130 CHAPTER 22.05 PROJECT PERMIT PROCEDURES

1131 **Option 1: Require a combined CUP/MPP as a Type IV permit.**

1132 **Option 2: Require a Major Project Permit with a Development Agreement as a Type IV permit.**

1133 **Option 3: Require a CUP only as a Type III permit.**

1134 22.05.020 Project permit processing table.

1135 (1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or
1136 administrative actions. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040
1137 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in
1138 the table.

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line Adjustment	21.03							Administrator	Hearing Examiner
Building Permit	15.04	(f)						Administrator	Hearing Examiner (i)
Natural Resource Assessment	Title 16							Administrator	Hearing Examiner
Change of Use, Cherry Point Industrial District	Chapter 20.74							Administrator	Hearing Examiner
Commercial Site Plan Review								Administrator	Hearing Examiner
Exempt Land Division	21.03							Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80							Administrator	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220							Administrator	Hearing Examiner
Nonconforming Use	20.83							Administrator	Hearing Examiner
Removal of Development Moratorium	20.80.738(3)								
Shoreline Exemption	23.60	(a)						Administrator	Hearing Examiner
Zoning Interpretation	22.20							Administrator	Hearing Examiner
Type II Applications (Administrative Decision with Public Notice; No Public Hearing)									
Administrative Use	20.84.235							Administrator	Hearing Examiner
Lot Consolidation Relief	20.83.070							Administrator	Hearing Examiner
Reasonable Use (b)	16.16							Administrator	Hearing Examiner
Shoreline Substantial (c)	23.60	(a)						Administrator (d)	Shorelines Hearings Board (h)

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Shoreline Conditional Use (c)	23.60	(a)						Administrator (d)	Hearing Examiner
Short Subdivision	21.04							Administrator	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200						Hearing Examiner	Hearing Examiner	Superior Court
Floodplain Development Variance	Title 17						Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05						Hearing Examiner	Hearing Examiner (g)	Superior Court
Binding Site Plan	21.07						Hearing Examiner	Hearing Examiner (g)	Superior Court
Reasonable Use (e)	16.16						Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)						Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Substantial	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Variance	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Zoning or Critical Areas Ordinance Variance	20.84.100 or 16.16.270						Hearing Examiner	Hearing Examiner	Superior Court
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
CP Industrial District Conditional Use Permit for Fossil Fuel Refinery Expansion	20.68.150, 20.84.200						Hearing Examiner	County Council	Superior Court
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Planned Unit Development	20.85						Hearing Examiner	County Council	Superior Court

1139

1140 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

1141 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*
 1142 *desired review process.*

1143 **22.05.110 Final decisions – Type I, II, and III applications.**

1144 (1) The director or designee’s final decision on all Type I or II applications shall be in the form of a written determination or
 1145 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
 1146 comply with all applicable codes.

1147 (2) The hearing examiner’s final decision on all Type III applications per WCC 22.05.020 or appeals per WCC 22.05.160(1)
 1148 shall either grant or deny the application or appeal.

1149 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
 1150 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
 1151 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
 1152 of Whatcom County.

1153 (b) **Requirements:**

1154 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
 1155 compliance with the conditions, modifications and restrictions.

1156 (ii) **Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide insurance or other**
 1157 **financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.**

1158 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
 1159 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
 1160 based on the record to support the decision.

1161 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
 1162 provided herein.

1163 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
 1164 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
 1165 032 § 1 (Exh. A)).

1166 **22.05.120 Recommended Recommendations and final decisions to county council. – Type**
 1167 **IV applications**

1168 (1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to
 1169 grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions,
 1170 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
 1171 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
 1172 objectives of Whatcom County.

1173 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
1174 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
1175 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
1176 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1177 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
1178 Chapter 42.36 RCW.

1179 (4) For planned unit developments and major project permits the following shall apply:

1180 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
1181 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1182 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
1183 following the conclusion of the open record hearing.

1184 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
1185 (4)(c)(iii) of this section:

1186 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
1187 calendar days after receiving the hearing examiner's recommendation.

1188 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1189 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
1190 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
1191 written findings that a specified amount of additional time is needed to process a specific application or project
1192 type, per RCW 36.70B.080(1).

1193 (5) The county council's final written decision may include conditions when the project is approved and shall state the
1194 findings of fact upon which the decision is based.

1195 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
1196 with the conditions, modifications and restrictions.

1197 (b) Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide insurance or other
1198 financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1199 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
1200 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in ~~county code, applicable state~~
1201 ~~laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management~~
1202 ~~program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the~~
1203 ~~county code, and the county's adopted SEPA policies.~~ (Ord. 2018-032 § 1 (Exh. A)).

1204 22.05.125 Proof of insurance for hazards created in the County

1205 At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel
1206 refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities, the
1207 applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney to cover loss or
1208 damages to the County and to County residents from any fire, explosion, spill or other incident from operations of the
1209 refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. This requirement
1210 shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries
1211 or transshipment facilities. The required policies shall contain the following Coverage Terms:

1212 (1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional
1213 Insured and shall be provided complete copies of applicable insurance policies and endorsements.

1214 (2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property
1215 damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or
1216 after the Permit effective date, either:

1217 (a) emanating from and beyond the boundaries of a Permitted Facility, or

1218 (b) arising from materials or waste during transportation to or from a Permitted Facility.

1219 (3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses. The required limits may
1220 be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.

1221 *Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50*
1222 *million to \$100 million may not be available in the insurance market. Other forms of*
1223 *financial insurance instruments could be allowed such as a letter of credit or other financial*
1224 *assurance acceptable to the County Prosecutor as a substitute for commercial insurance.*
1225 *We have included code language to that effect in this draft. The County could also*
1226 *indicate that the amount of financial assurance is to be determined at the point of an*
1227 *approval decision for a facility expansion rather than specifying an amount here.*

1228 (4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any
1229 deductible or self-insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any
1230 such payment made by the Insurer. If the Policy has a self-insured retention (SIR) amount, the Primary Named Insured shall
1231 declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of
1232 financial assurance are letters of credit and certificates of deposit.

1233 (5) Term and Cancellation Notice:

1234 (a) Insurance shall be carried for the lifetime of the fossil fuel refineries, fossil fuel transshipment facilities,
1235 renewable fuel refineries, or renewable fuel transshipment facilities.

1236 (b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in
1237 and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon
1238 written notice and only after the expiration of 60 days after a copy of such written notice is received by the County
1239 as evidenced by the return receipt.

1240 (6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

1241 (7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply
1242 in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any
1243 term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.

1244 (8) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating
1245 from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or
1246 the equivalent from another major financial rating agency.

1247 (9) Definitions: For the purposes of this section, terms are defined as follows:

1248 (a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any
1249 fixed conveyances such as pipelines and terminal distribution systems.

1250 (b) Loss shall include:

1251 (i) monetary awards or settlements of compensatory damages; and

1252 (ii) where allowable by law, punitive, exemplary, or multiple damages; and

1253 (iii) civil fines, penalties, or assessments.

(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors, soot, fumes, acids, alkalis, or other chemicals.

(d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to the insurer.

(e) Transportation shall include movement by any vehicle or mode of transit including automobile, rail way or watercraft, including loading, temporary placement during transit prior to final delivery, or unloading, of materials or waste, either:

(i) intended for delivery to a Permitted Facility, or

(ii) being sent from a Permitted Facility.

CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS

23.100.010 Shoreline use and development.

Shoreline use and development shall be classified by the administrator and regulated under one or more of the following applicable sections of Chapter 23.100 WCC. Unless otherwise stated, all use and development shall also comply with all of the general policies and regulations of Chapter 23.90 WCC and, if applicable, the policies of Chapter 23.40 WCC.

WCC Table 23.100.010
Shoreline Use by Area Designation^(a)

Shoreline Uses	Shoreline Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point
Agriculture										
	P ⁽⁻⁾	X	P ⁽⁻⁾	P ⁽⁻⁾	P	P	P	P ⁽⁺⁾	X	
Aquaculture										
	P	P ⁽⁺⁾	P	P ⁽⁺⁾	P ⁽⁺⁾	P	P	P ⁽⁺⁾	P	
Commercial salmon net pen facilities	X ^(*)	X ^(*)	X ^(*)	X ^(*)	X ^(*)	X ^(*)	X ^(*)	X ^(*)	X ^(*)	
Boating Facilities										
Launch ramps	P	P	P	P	P	P	P	X ^(*)	P	
Marinas	P	P	C	P	P	P	C	X	P	
Covered over-water structures	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	P ⁽⁺⁾	P ⁽⁺⁾
Commercial										
Water-oriented commercial	P	P ⁽⁻⁾	C ⁽⁻⁾	P	P	P ⁽⁻⁾	C ⁽⁻⁾	X	X ^(*)	
Non-water-oriented commercial	C	C ⁽⁻⁾	C ⁽⁻⁾	C	C	C ⁽⁻⁾	C ⁽⁻⁾	X	X	
Dredging										
	C	C	C	C	C	C	C	X ^(*)	C ^(*)	X ^(*)
Essential Public Facilities										
	C	C	C	C	C	C	C	X	C	

**WCC Table 23.100.010
Shoreline Use by Area Designation^(a)**

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point
Flood Control and Instream Structures										
	P	P	P	P	P	P	P	X	P	
Channelization or dams for flood control	P	P	X	P	C	C	X	X	P	
Forest Practices										
	X	X	X	X	P	P	P	C	X	
Industrial and Port										
<u>Fossil Fuel Refineries, existing legal, below thresholds of the zoning code at WCC 20.68.800</u>										p⁽⁻⁾⁽⁺⁾
<u>Fossil Fuel Refineries, existing legal, above thresholds of the zoning code at WCC 20.68.800</u>										C
<u>Renewable fuels</u>										p⁽⁻⁾⁽⁺⁾
Water-oriented industrial and port development	P	X ^(*)	X	X	P ⁽⁻⁾	P ⁽⁻⁾ / C	X	X	P / C ⁽⁻⁾	P ⁽⁻⁾⁽⁺⁾
Non-water-oriented industrial and port development	C	X	X	X	C	C ⁽⁻⁾	X	X	X	X
Dams, diversion and tailrace structures for hydroelectric power generation	C	X	C	C	C	C	C	X	P	
Institutional										
	C	C	C	C	C	C	C	X	X	X
Landfill and Excavation										
	P	P	P	P	P	P	P ⁽⁻⁾ / C	X ^(*)	C ⁽⁻⁾ / X	X ^(*)
Mining										
	X	X	X	X	C	C	C	X	C ⁽⁻⁾ / X	
Surface oil or gas drilling	X	X	X	X	X	X	X	X	X	X
Moorage: Docks, Piers and Mooring Buoys										

**WCC Table 23.100.010
Shoreline Use by Area Designation^(a)**

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point
Private and shared moorage	P	C	P ⁽⁻⁾ / C ⁽⁻⁾	P	P	P	P ⁽⁻⁾ / C ⁽⁻⁾	X ^(*)	P	
Public moorage	C	C	C	C	C	C	C	X ^(*)	P	
Commercial moorage	C	X ^(*)	C	C	C	C	C	X ^(*)	P	
Industrial moorage	C	X	X	X	C	C	X	X ^(*)	P	Existing: P ⁽⁺⁾ New: X
Covered moorage accessory to permitted moorage	C	C	X	C	X	X	X	X	P	C
Float plane moorage accessory to permitted moorage	C	C	C	C	C	C	C	X	P	
Recreational										
Water-oriented recreation	P	P	P ⁽⁺⁾⁽⁻⁾	P	P	P ⁽⁺⁾	P ⁽⁺⁾⁽⁻⁾	P ⁽⁺⁾⁽⁻⁾	P / C ⁽⁻⁾	P ⁽⁺⁾⁽⁻⁾
Residential										
	P	P	P ⁽⁻⁾ / C	P	P	P ⁽⁺⁾⁽⁻⁾	P ⁽⁻⁾ / C	C ⁽⁺⁾⁽⁻⁾ / X	X	
Restoration and Enhancement										
	P	P	P	P	P	P	P	P	P	P
Shoreline Stabilization										
Groins	C	C	X	C	C	C	X	X	C	X
Breakwaters and jetties	C	C	C ⁽⁺⁾⁽⁻⁾	C	C	C	C ⁽⁺⁾⁽⁻⁾	X	C	C ⁽⁺⁾⁽⁻⁾
Bulkheads and revetments	C	C	C	C	C	C	C	X	X ^(*)	C
Bioengineering approaches	P	P	P	P	P	P	P	P ⁽⁺⁾	P ⁽⁺⁾	P
Signs										
	P	P	P	P	P	P	P	X ^(*)	P ⁽⁺⁾⁽⁻⁾	P
Transportation										
	P	P	P ⁽⁻⁾	P	P	P	P ⁽⁻⁾	X ^(*)	P ⁽⁻⁾ / C ⁽⁻⁾	P ⁽⁻⁾
Transportation facilities not serving a specific approved use	C	C	X	C	C	C	X	X	C	X
Utilities										

**WCC Table 23.100.010
Shoreline Use by Area Designation^(a)**

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic ^(b)	Cherry Point
Local distribution facilities	P	P	P ⁽⁻⁾ / C	P	P	P	P ⁽⁻⁾ / C	X ^(*)	P ⁽⁻⁾⁽⁺⁾ / C ⁽⁻⁾ / X	P ⁽⁻⁾⁽⁺⁾
Regional transmission facilities	C	C	C	C	C	C	C	X	C ⁽⁻⁾ / X	C
Desalination facilities	C	C	C	C	C	C	C	X	P ⁽⁻⁾	P ⁽⁻⁾

- 1268 P = Permitted, may be subject to policies and regulations of this program and subject to shoreline substantial development
- 1269 permit requirements.
- 1270 C = Shoreline conditional use, subject to policies and regulations of this program and may be subject to shoreline substantial
- 1271 development permit requirements.
- 1272 X = Prohibited.
- 1273 N/A = Not applicable.
- 1274 (-) Subject to limitations.
- 1275 (+) Subject to conditions.
- 1276 (*) Subject to exceptions.

- 1277 (a) In the event that there is a conflict between the use(s) identified in Table 23.100.010 and the policies or regulations in
- 1278 Chapters [23.30](#), [23.90](#), or [23.100](#) WCC, the policies and regulations shall apply.
- 1279 (b) Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area
- 1280 designation.
- 1281 (Ord. 2014-051 § 3; Ord. 2009-13 § 1 (Exh. 1)).

23.100.170 Cherry Point management area.

A. Policies.

1. Purpose and Intent.

- 1286 a. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and
- 1287 balances the special port, industrial and natural resource needs associated with the development of this marine
- 1288 resource. This section identifies policies and regulations for water-dependent industrial activities that apply in
- 1289 addition to specific other elements of this program as referenced herein.
- 1290 b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry
- 1291 Point management area as providing herring spawning habitat and other key habitat characteristics that warrant
- 1292 special consideration due to their importance to regional fisheries and other elements of the aquatic environment.
- 1293 c. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require
- 1294 marine access for marine cargo transfer, ~~including oil and other materials. For this reason, water~~
- 1295 ~~i. Water~~-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management
- 1296 area. ~~Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the~~
- 1297 ~~number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.~~
- 1298 ~~d. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and~~
- 1299 ~~other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic~~
- 1300 ~~lands within the Cherry Point management area. The development of such a plan could provide a forum and~~

1301 process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future
1302 amendments to this program as appropriate.

1303 ii. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with
1304 limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance
1305 with the Shoreline Master Program and other applicable land use designation.

1306 iii. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing
1307 three piers in operation or approved as of January 1, 1998, taking into account the need to:

1308 • Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the
1309 Cherry Point Herring stock and Southern Resident Killer Whales;

1310 • Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance
1311 per WCC 23.40;

1312 • Encourage the continued County use of best available science;

1313 • Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry
1314 Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry
1315 Point Aquatic Reserve designation and Management Plan;

1316 • Recognize federal actions upholding treaty rights;

1317 • Protect traditional commercial and tribal fishing; and

1318 • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil
1319 or fuel spills.

1320 d. Whatcom County should ensure that shoreline development applicants demonstrate conformance with the State
1321 of Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.

1322 e. All development that is to be located within the Cherry Point management area, as defined in Chapter 23.110
1323 WCC, shall be subject to the policies and regulations found in this section, and shall not be subject to the policies
1324 and regulations found in WCC 23.100.010 through 23.100.160, nor Chapter 23.90 WCC, unless otherwise
1325 referenced in this section. The policies and regulations found in this section are applicable only within the
1326 geographic boundaries of the Cherry Point management area and do not apply elsewhere in the county. In the event
1327 that the provisions of this section conflict with other applicable referenced provisions of this program, the policies
1328 and regulations that are most protective of shoreline resources shall prevail.

1329 *Discussion/Notes: Above amendments are similar to those in the Comprehensive Plan*
1330 *policy changes.*

1331 2. Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be
1332 allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated
1333 in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.

1334 3. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other
1335 accessory facilities are encouraged.

1336 4. Public Access.

1337 a. Where appropriate, industrial and port development within the Cherry Point management area should provide
1338 public beach and shoreline access in a manner that does not cause interference with facility operations or present
1339 hazards to life and property. This may be accomplished through individual action or by joint, coordinated action
1340 with other developers and landowners, for example, by setting aside a common public access area.

1341 b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities
1342 including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.

1343 c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks
1344 and Recreation Open Space Plan.

1345 5. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the
1346 Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological
1347 functions and processes should be assessed with the other long-term statewide interests. New port development that
1348 requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on
1349 ecological functions, including fish and shellfish habitat and geohydraulic processes.

1350 6. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic character
1351 of the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.

1352 7. Site Development. All development should be constructed and operated in a manner that, while permitting water-
1353 dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the
1354 following:

1355 a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water
1356 quality, fish and wildlife habitat, and other natural site conditions;

1357 b. Adequate temporary and permanent management measures to control erosion and sediment impacts during
1358 construction and operation; and

1359 c. Adequate stormwater management facilities.

1360 *Discussion/Notes: Be consistent with Comprehensive Plan Policies. Prohibit New Docks and*
1361 *Piers.*

1362 B. Regulations.

1363 1. Allowed Use.

1364 a. Water-dependent industrial and port uses are allowed within the Cherry Point management area; provided, that
1365 specific findings are made in a shoreline substantial development permit or conditional use permit that:

1366 i. Policies for optimum implementation of the statewide interest have been achieved through protection of
1367 shoreline ecological functions and processes;

1368 ii. The long-term statewide benefits of the development have been considered with the potential adverse impacts
1369 on ecological functions; and

1370 iii. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated
1371 in the proposal.

1372 b. **Fuel Uses:**

1373 **i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of**
1374 **[XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries below**
1375 **thresholds of the zoning code at WCC 20.68.800 are subject to review as shoreline substantial development**
1376 **permits. Expansions of existing legal fossil fuel refineries above thresholds at WCC 20.68.800 require a**
1377 **shoreline conditional use permit.**

1378 **ii. Fossil fuels transshipment facilities as a primary use are prohibited. Those that are a necessary part of**
1379 **providing raw materials to, and serving, a permitted expansion of an existing fossil fuel refinery shall**
1380 **require either shoreline substantial development permit or a shoreline conditional use permit dependent on**
1381 **the level of expansion as identified in subsection b.i.**

1382 **Option 1: Treat renewable fuels as shoreline substantial development permit.**

1383 **iii. Refining, storage, blending, and manufacture of renewable fuels is allowed as a shoreline substantial**
1384 **development permit subject to requirements in WCC 20.68.801.**

1385 **Option 2: Treat renewable fuels similar to (integrated) with b.i and b.ii with same thresholds.**

1386 | **c.** Water-related and water-enjoyment uses are allowed only as part of public access and public recreation
1387 development, subject to the findings in subsection (B)(1)(a) of this section.

1388 | **ed.** Accessory development, which does not require a shoreline location in order to carry out its support functions,
1389 shall be sited away from the land/water interface and landward of the principal use. Accessory development shall
1390 observe critical area buffers in Chapter 16.16 WCC. Accessory development includes, but is not limited to,
1391 parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land
1392 transport development.

1393 | **de.** Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that
1394 are located and designed to minimize shoreline alteration are permitted.

1395 | **ef.** Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are
1396 prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have
1397 been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

1398 *Discussion/Notes: Consistency with Zoning Code changes.*

1399 2. Public Access.

1400 a. Public access shall be provided in accordance with WCC 23.90.080 unless it is demonstrated that public access
1401 poses significant interference with facility operations or hazards to life or property.

1402 b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access
1403 may be provided in accordance with WCC 23.90.080 at a location not directly adjacent to the water such as a
1404 viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include
1405 interpretive centers and displays that explain maritime history and industry; provided, that visual access to the
1406 water is also provided.

1407 c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public
1408 access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

1409 3. Critical Areas. In addition to meeting the provisions of WCC 23.90.030, Ecological protection and critical areas,
1410 development and alteration shall not be located or expanded within critical areas designated pursuant to Chapter 16.16
1411 WCC except where the site is approved for water-dependent use, and the following are met:

1412 a. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with
1413 WCC 23.90.030.

1414 b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall
1415 demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade
1416 the existing water quality within the wetland.

1417 c. The minimum required setback from the OHWM for all industrial and port facilities, including development
1418 components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs
1419 and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such
1420 setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.

1421 d. Development and alteration other than recreation development for public and quasi-public shoreline access is
1422 prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations
1423 in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations
1424 of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained
1425 subject to the provisions of WCC 23.50.070.

1426 4. Location and Design.

1427 a. Piers.

- 1428 i. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the
1429 movement of material and cargo from land to water and water to land. The length of piers shall not extend
1430 beyond that which is necessary to accommodate the draft of the vessels intending to use the facility. Due to the
1431 environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~
1432 those in operation as of January 1, 1998.
- 1433 ii. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife
1434 habitats.
- 1435 iii. Piers shall be designed to minimize impacts on steep shoreline bluffs.
- 1436 iv. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials
1437 that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other
1438 structural components shall be approved by applicable state agencies for contact with water to avoid discharge
1439 of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or
1440 pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated
1441 wood is allowed for maintenance purposes where use of a different material such as steel or concrete would
1442 result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds
1443 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction
1444 provisions of this section.
- 1445 v. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.
- 1446 vi. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers,
1447 except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means
1448 nonportable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- 1449 vii. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other
1450 properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and
1451 approved for compliance with U.S. Coast Guard regulations.
- 1452 b. Dredging.
- 1453 i. Dredging to accommodate water access to, or construction of, new development is prohibited. New
1454 development shall be located and designed to avoid the need for dredging. Dredging for existing development
1455 shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and
1456 wildlife habitats.
- 1457 ii. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations
1458 in WCC 23.90.120(B)(4) and (5), Dredging.
- 1459 iii. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of
1460 this title.
- 1461 c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to
1462 the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-
1463 supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier
1464 access that does not extend further toward the OHWM than existing topography.
- 1465 d. Excavation/Stabilization.
- 1466 i. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other
1467 structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration
1468 will adversely affect the existing littoral drift process. New development shall avoid, rather than modify, feeder
1469 bluffs.
- 1470 ii. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
- 1471 e. Shore defense works shall be regulated in accordance with WCC 23.100.130, Shoreline stabilization, and be
1472 consistent with the conservancy and aquatic shoreline area regulations of that section.

- 1473 5. Adjacent Use.
- 1474 a. New or expanded port or industrial development adjacent to properties which are zoned for nonindustrial
1475 purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare;
1476 and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual
1477 screen.
- 1478 b. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for nonport or
1479 nonindustrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent
1480 hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to,
1481 limits on height of structure, limits on light levels of fixtures, light shields and screening.
- 1482 c. The minimum setback from side property lines which intersect the OHWM for industrial and port development
1483 shall be 60 feet; provided, that:
- 1484 i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard
1485 houses, power vaults or transformers; and
- 1486 ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management
1487 area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
- 1488 d. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but
1489 may be used for public access or outdoor recreation.
- 1490 6. Oil and Hazardous Materials.
- 1491 a. Release of oil or hazardous materials on shorelines is prohibited.
- 1492 b. A management plan shall be developed for new permitted or conditionally permitted development for the safe
1493 handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic
1494 waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may
1495 occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill
1496 management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this
1497 section.
- 1498 c. Necessary spill containment facilities associated with existing development may be permitted within shoreline
1499 jurisdiction where there are no feasible alternatives.
- 1500 7. Recreational Development. All recreational development shall comply with the policies and regulations of WCC
1501 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.
- 1502 8. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological,
1503 historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070. (Ord. 2014-051 §§ 5,
1504 6; Ord. 2009-13 § 1 (Exh. 1)).

1505 CHAPTER 23.110 DEFINITIONS

1506 *Discussion/Notes: Definitions added are based on a review of federal (US Energy*
1507 *Information Administration, US Census, Code of the Federal Register, Revised Code of*
1508 *Washington), County Ordinance NO. 2018-007, and examples addressed in the White*
1509 *Paper. See also notes under Zoning Code definitions.*

1510 23.110.060 F definitions.

1511 27. "Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All
1512 contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels
1513 are not fossil fuels.

1514 | 28. “Fossil Fuel Transshipment Facility” is a facility engaging in the process of off-loading of fossil fuel materials, refined or
1515 | unrefined, refinery feedstocks, products or by products from one transportation facility and loading it onto another
1516 | transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of
1517 | transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and
1518 | compressor stations and associated facilities.

1519 | 29. “Fossil Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not
1520 | limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,
1521 | and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of
1522 | fossil fuels or by products.

1523 | *Discussion/Notes: Consistency with Zoning Code changes.*

1524 | 23.110.090 I definitions.

1525 | 4. “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods,
1526 | including but not limited to ~~oil~~, metal or mineral product refining, power generating facilities, including hydropower, ship
1527 | building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of
1528 | fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and material/equipment
1529 | storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as
1530 | parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of
1531 | raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an
1532 | agricultural use. This definition excludes fossil fuel refineries.

1533 | *Discussion/Notes: Consistency with Zoning Code changes.*

1534 | 23.110.150 O definitions.

1535 | 2. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to,
1536 | crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

1537 | *Discussion/Notes: Consistency with Zoning Code changes.*

1538 | 23.110.160 P definitions.

1539 | 10. “Port development” means public or private facilities for transfer of cargo or passengers from water-borne craft to land
1540 | and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading
1541 | or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo
1542 | or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas,
1543 | boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat
1544 | building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil fuels
1545 | transshipment facilities.

1546 | *Discussion/Notes: Consistency with Zoning Code changes.*

1547 | 23.110.180 R definitions.

1548 | 6. “Renewable biomass” includes but is not limited to the following:

1549 | (1) Planted crops and crop residue harvested from agricultural land.

1550 | (2) Planted trees and tree residue from a tree plantation.

1551 | (3) Animal waste material and animal byproducts.

1552 | (4) Slash and pre-commercial thinnings.

1553 | (5) Organic matter that is available on a renewable or recurring basis.

1554 | (6) Algae.

1555 | (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1556 | (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
1557 | customary feedstock production and transport.

1558 | *Discussion/Notes: Consistency with Zoning Code changes.*

1559 | 7. "Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.
1560 | Common renewable fuels include ethanol and biodiesel:

1561 | (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
1562 | nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
1563 | American society of testing and materials specification D 5798.

1564 | (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
1565 | oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal
1566 | environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and
1567 | materials specification D 975.

1568 | (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
1569 | more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
1570 | feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State
1571 | Department of Ecology or US EPA.

1572 | *Discussion/Notes: Consistency with Zoning Code changes.*

COUNCILMEMBER DONOVAN'S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

Amendment 1: Treat expansions of existing refineries and storage capacity as subject to conditional use permits, rather than being outright permitted.

20.68.054. The following are permitted uses except as otherwise prohibited:

(3) Refining and storage of fossil fuels, limited as follows:

(a) fossil fuel refineries, existing legally as of [XXX effective date], ~~together with allowed expansions below the thresholds in WCC 20.68.800.~~

(b) fossil fuel transshipment facilities existing legally as of [XXX effective date], ~~together with allowed expansions below the thresholds in WCC 20.68.800.~~

(9) The refining, storage, blending, and manufacture of renewable fuels, existing legally as of [XXX effective date], ~~together with allowed expansions below the thresholds in WCC 20.68.800.~~

20.68.150. Conditional uses.

.153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or expansion of existing legal fossil fuels transshipment facilities ~~when proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and are~~ subject to the conditional use permit criteria below and approval of a major project permit:

20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment

.801. Limits on Refinery or Transshipment Facility Capacity Expansions:

Delete entire section 20.68.801; delete options 1, 2 & 3.

.802 [renumber]. Environmental Review and Greenhouse Gas Mitigation.

(3) Local mitigation of greenhouse gas emissions shall be required, whenever ~~increases of greenhouse gas increase equal or exceed 1% cumulatively above~~ the baseline for a 3-year average (per section .802(2)(a)), after the effective date of this section [XXX].

23.100.170 Cherry Point management area

B. 1. b. Fuel uses

i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries ~~below thresholds of the zoning code at WCC 20.68.800~~ are subject to review as shoreline substantial development permits. Expansions of existing legal fossil fuel refineries ~~above thresholds at WCC 20.68.800~~ require a shoreline conditional use permit.

Amendment 2: Treat renewable fuel facilities as a conditional use permit to match fossil fuel requirements.

20.68.150. Conditional uses.

.159 Expansion of existing legal renewable fuels refinery operations or renewable fuels transshipment facilities ~~when proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and~~ are subject to a conditional use permit and major project permit and the criteria identified in .153 (1) to (11).

23.100.170 Cherry Point management area.

B. 1. b. Fuel uses

i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries ~~below thresholds of the zoning code at WCC 20.68.800~~ are subject to review as shoreline substantial development permits. Expansions of existing legal fossil fuel refineries ~~above thresholds at WCC 20.68.800~~ require a shoreline conditional use permit.

ii. Fossil fuels transshipment facilities as a primary use are prohibited. Those that are a necessary part of providing raw materials to, and serving, a permitted expansion of an existing fossil fuel refinery shall require either shoreline substantial development permit or a shoreline conditional use permit. ~~dependent on the level of expansion as identified in subsection b.i.~~

iii. Refining, storage, blending, and manufacture of renewable fuels (biofuels, biomass) existing legal as of [XXX effective date] are permitted shoreline uses. Expansions of existing legal renewable fuels facilities are subject to review as shoreline substantial development permits. Expansions of existing legal renewable fuels facilities require a shoreline conditional use permit.

Amendment 3: Clarify the criteria for major project permits in Cherry Point.

20.88 Major project permits

110 All major developments shall, prior to any construction, obtain a major project permit.

.120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter 16.16 WCC and for any proposed development that meets any two of the following conditions, **or if in the Cherry Point UGA, any one of these conditions:**

Cost (estimated construction cost exclusive of land value)	\$5,000,000
Size Retail	75,000 square feet
office or industrial (gross leasable floor space)	200,000 square feet
residential	300 dwelling units
motel/hotel	200 units
Number of Employees	250
SEPA Review	An EIS is required

In addition the zoning administrator may make an administrative determination after receiving a recommendation from the technical review committee that any project be considered a major development, if in the opinion of the administration it is of a nature that council review would be appropriate.

.130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The recommendation shall determine the adequacy of a major project permit application based on the following criteria:

- (1) Will comply with the development standards and performance standards of the zone in which the proposed major development will be located; provided where a proposed major development has obtained a variance from the development and performance standards, standards as varied shall be applied to that project for the purposes of this act.
- (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for the issuance of a conditional use permit for the zone in which the project is located.

20.88.200 Procedure.

.270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a conditional use permit. [question here]

Amendment 4: Supplemental SEPA worksheet

16.08.090. Environmental checklist

E. For any proposed change of use or expansion of facilities that manufacture, process, ship by sea any fossil fuel or fossil fuel product, the proponent will fill out the County's SEPA "Worksheet for Fossil Fuel Facilities." This Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of worksheet shall be prepared and updated once per year by the SEPA Responsible Official in consultation with and taking into account the comments of the Climate Impacts Advisory Group and its members. The Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts including but not limited to those arising from:

Windborne transport of burned fossil fuel emissions into Whatcom County;

Life cycle greenhouse gas emissions above existing levels;

Transits of tankers or barges and their support vessels that have the potential to interfere with commercial and treaty tribe fishing areas; and

Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters;

In determining whether possible impacts are "significant" and "probable," the Responsible Official shall determine whether the answers on the Worksheet for Fossil Fuel Facilities accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330, -794

The county may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is prepared, it must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 98-048 Exh. A; Ord. 84-122 Part 3 (part)).

COUNCILMEMBER BROWNE'S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

.801. Limits on Refinery or Transshipment Facility Capacity Expansions:

Option 4: Base Expansions on historic ~~population~~ increased consumption of refined fossil fuels, and relationship of production throughput and storage capacity.

(1) Expansions of existing fossil fuel refinery or fossil fuel transshipment capacity shall be an outright permitted use up to a percentage limit defined as a rolling five-year average of the annual percent change in ~~population~~ increase in consumption of refined fossil fuels for the combined region of the states of Washington and Oregon and the Province of British Columbia as determined by their respective published government estimates for the five years immediately preceding the date of a completed application for any necessary County permits.

(2) Storage tank capacity increases at existing refineries or transshipment facilities shall be limited to the ratio of storage to refining capacity currently existing at the facilities as of [XXX effective date]. See WCC 20.97.160.5 for applicable definitions.

(3) The capacity of a refinery or process unit is a measure of its current actual throughput averaged over the latest three-year reporting period preceding the date of a completed application for any necessary County permits.

(a) The data used to calculate the current actual throughput average shall be obtained from official government reports from the refinery to federal or state agencies regarding production of the refinery or a particular process unit to be expanded. This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction permits.

(b) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day), consistent with data collected by the US Energy Information Administration. The zoning administrator may approve another measure of capacity or source that is consistent with (3) and (3)(a).

(c) The data used to calculate any actual increase in consumption of refined fossil fuels for the combined region of the states of Washington and Oregon and the Province of British Columbia shall be obtained from the US Energy Information Administration (EIA) (for Washington and Oregon), and from the Canadian National Energy Board (for British Columbia). This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction permits.

(4) Expansions of existing refineries or transshipment facilities above that threshold in subsections (1) and (2) above shall require a conditional use permit consistent with the criteria of 20.68.150, conditional uses, and major project permits subject to Chapter 20.88.

(5) Expansions below the threshold are permissible with approval of a master site plan consistent with WCC 20.74.060 and consistent with applicable project permits per Chapter 22.05.

(6) Incidental increases in refinery capacity or transshipment capacity related to normal safety or process improvements that do not exceed 1% of throughput for the prior three-year period as calculated under subsection (3) shall not require new major project permits or conditional use permit approval and shall not trigger greenhouse gas mitigation requirements until they cumulatively exceed 1% of refinery throughput.

COUNCILMEMBER BROWNE'S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

20.74.055 Prohibited uses.

Prohibited uses shall be the same as those prohibited in the Heavy Impact Industrial District, Chapter 20.68 WCC and the following:

(1) New piers, docks, or wharves.

(2) Conversion of Renewable Fuels Facilities and Transshipment Facilities to fossil fuel facilities unless a new permit is issued under the conditions applicable for increases in capacity for fossil fuel facilities in Chapter 20.68

20.74.115 Change of Use of Renewable Fuels Facilities

A change of use of a Renewable Fuels Facilities and Transshipment Facilities to fossil fuel facilities unless a new permit is issued under the conditions applicable for increases in capacity for fossil fuel facilities in Chapter 20.68

COUNCILMEMBER BROWNE'S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

22.05.125 Proof of insurance for hazards created in the County

At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities, the applicant shall (1) provide proof of insurance or other financial security acceptable to the prosecuting attorney, and (2) a Parent Company Corporate Guarantee –to cover loss or damages to the County and to County residents from any fire, explosion, spill or other incident from operations of the refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and Parent Company Corporate Guarantee shall contain the following Coverage Terms:

(1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional Insured and shall be provided complete copies of applicable insurance policies and endorsements.

(2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or after the Permit effective date, either:

(a) emanating from and beyond the boundaries of a Permitted Facility, or

(b) arising from materials or waste during transportation to or from a Permitted Facility.

(3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses. The required limits may be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.

(4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any deductible or self-insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. If the Policy has a self-insured retention (SIR) amount, the Primary Named Insured shall declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of financial assurance are letters of credit and certificates of deposit.

(5) Term and Cancellation Notice:

(a) Insurance shall be carried for the lifetime of the fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities.

(b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the County as evidenced by the return receipt.

(6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.

COUNCILMEMBER BROWNE’S PROPOSED AMENDMENTS (DISTRIBUTED @ NOON ON JULY 23, 2019) TO THE JULY 16 POTENTIAL CHERRY POINT CODE AMENDMENTS PREPARED BY CASCADIA LAW GROUP

(8) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or the equivalent from another major financial rating agency.

(9) Definitions: For the purposes of this section, terms are defined as follows:

(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any fixed conveyances such as pipelines and terminal distribution systems.

(b) Loss shall include:

(i) monetary awards or settlements of compensatory damages; and

(ii) where allowable by law, punitive, exemplary, or multiple damages; and

(iii) civil fines, penalties, or assessments.

(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors, soot, fumes, acids, alkalis, or other chemicals.

(d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to the insurer.

(e) Transportation shall include movement by any vehicle or mode of transit including automobile, railway or watercraft, including loading, temporary placement during transit prior to final delivery, or unloading, of materials or waste, either:

(i) intended for delivery to a Permitted Facility, or

(ii) being sent from a Permitted Facility.

10 The Parent Company Corporate Guarantee shall provide coverage for loss or damages to the County and to County residents for any amount payable in excess of the available insurance coverage.



Memorandum

July 22, 2019

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

FROM: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

The County Council has been working with the Cascadia Law Group to develop proposed amendments to the Whatcom County Code (WCC) primarily relating to fossil fuel facilities at Cherry Point. Cascadia's latest draft (July 16, 2019) includes proposed regulatory language, including a number of outstanding issues and options, for Council to consider. PDS is committed to facilitate the Council's final preferred proposal through the public review process. However, in order to clarify the Council's proposal and help facilitate a more timely review process by the Planning Commission, PDS requests that Council provide specific direction or identify their preferences on the issues/options set forth below:

Council Direction Requested on Options in the Draft

1. Thresholds for Permitted Uses – Proposed WCC 20.68.801 provides three options for determining whether an expansion of an existing fossil fuel refinery or fossil fuel transshipment facility is an outright permitted use (typically a building permit processed by the Planning Department).¹ If the use is not outright permitted, it would require either a conditional use permit (currently decided by the Hearing Examiner) or major project permit (decided by the County Council). Cascadia's current draft provides three options for consideration by Council, which are summarized as follows:

Option # 1 – Base the threshold for an outright permitted expansion of an existing fossil fuel refinery or fossil fuel transshipment facility on historical population growth over the last five years in Washington, Oregon, and B.C. Base the threshold for outright permitted storage tank capacity increases on the ratio of storage to refining capacity currently existing at the facility. Expansions that exceed the thresholds would require a conditional use permit and major project permit. We would note that the storage threshold does not address a transshipment facility without refining.

Option # 2 – Base the threshold for an outright permitted expansion of an existing fossil fuel refinery or fossil fuel transshipment facility on projected population growth over the next five years in Washington,

¹ Under the existing code, a major project permit is required if the criteria of WCC 20.88.120 are met.

Oregon, and B.C. The threshold for storage tank capacity increases would be the same as option # 1 above. Expansions that exceed the thresholds would require a conditional use permit and major project permit. Again, we would note that the storage threshold does not address a transshipment facility without refining.

Option # 3 – Base the thresholds for an outright permitted expansion of an existing fossil fuel refinery, fossil fuel transshipment facility, and storage tank capacity on a flat percentage increase over a certain number of years. Expansions that exceed the thresholds would require a conditional use permit. While the language of this option may need some work, out of the three options presented, it would be the most straightforward to implement from an administrative perspective.

For Option # 3, the Council should identify the percentage increase, over a certain number of years, for outright permitted uses.

PDS requests Council provide direction on which option to recommend moving forward for Planning Commission review.

2. Types of Permits – Cascadia Law Group’s July 16 draft includes four options for the types of permits required for fossil fuel refinery expansions and fossil fuel transshipment facility expansions that do not qualify as permitted outright uses (see proposed WCC 2.11.205, 20.68.153, 20.88.270, 20.88.280, and 22.05.020):

Option 1 – Require both a conditional use permit and major project permit. The Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

Option 2 – Require a major project permit (without a conditional use permit). The Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

Option 3 – Require a conditional use permit (without a major project permit). The Hearing Examiner would conduct the public hearing and make the final decision.

Option 4 – Require a conditional use permit. The Hearing Examiner would conduct the public hearing and make the final decision. However, if the proposal meets the existing criteria for a major project permit (WCC 20.88.120) then a major project permit would be required (without a conditional use permit). In this case, the Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.

The type of permit required, and associated decision-making body, is a basic and important policy choice. Therefore, PDS requests Council direction or preference on which option should go forward for public review.

3. Renewable Fuel Operations - Cascadia Law Group's July 16 draft includes two options for the types of permits required for renewable fuel projects (see proposed WCC 20.68.054(9) and 20.68.159):

Option 1 – Allow renewable fuel projects as an outright permitted use.²

Option 2 – Require a conditional use permit or major project permit for expansions over the thresholds in WCC 20.68.800.

Again, PDS requests Council direction or preference relating to these options to help facilitate the public review process.

Council Direction Requested on Other Issues

4. Insurance - Cascadia Law Group's July 16 draft includes proposed proof of insurance requirements (WCC 22.05.125). This section states: "At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities, the applicant shall provide proof of insurance. . . ." Does Council intend the insurance requirement only apply to potential damages from the proposed facility expansion or does it apply to the entire existing facility/operation?
5. Pipelines - Cascadia Law Group's July 16 draft includes Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location, which states that pipelines are not addressed in the proposal per Reducing Impacts from Fossil Fuel Projects Report to the Whatcom County Council (Cascadia Law Group, February 23, 2018). We would note two issues:
 - a. The proposed definition of "Fossil Fuels Transshipment Facilities" (WCC 20.97.160.3) is silent on pipelines. If pipeline facilities are not included in the definition, this should be explicitly stated.
 - b. The proposed insurance provisions of WCC 22.05.125(9)(e) state that "Transportation shall include movement by any vehicle or mode of transit including automobile, railway or watercraft . . ." Are pipelines included in this definition?
6. Small Oil Storage and Distribution Facilities – Cascadia Law Group's July 16 draft includes Exhibit 1. Potential Fossil-Fuel Code Changes – Outline and Change Location, which states that small oil storage and distribution facilities are not included in the uses that are prohibited, per the definitions of fossil fuel refinery and fossil fuel transshipment facility (see WCC 20.97.160.3 and 20.97.160.4). However, it is unclear from these definitions when a proposal would be considered a small oil storage and distribution facility. We are also unclear whether this is intended to apply to oil facilities only, or could include propane storage and distribution.

PDS requests Council direction on the above issues, to the maximum extent possible, and that Cascadia Law Group incorporate this direction into a revised draft for consideration by the Planning Commission.

² Under the existing code, a major project permit is required if the criteria of WCC 20.88.120 are met.

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

July 23, 2019

CALL TO ORDER

Council Chair Rud Browne called the meeting to order at 2:50 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Rud Browne, Barry Buchanan, Tyler Byrd, Todd Donovan, and Carol Frazey
Absent: Satpal Sidhu.

COMMITTEE DISCUSSION

1. AB2019-387 DISCUSSION OF CASCADIA LAW GROUP'S RECOMMENDATIONS FOR PROPOSED CHERRY POINT URBAN GROWTH AREA (UGA) COMPREHENSIVE PLAN AND ZONING CODE AMENDMENTS

The following staff answered questions:

- Mark Personius, Planning and Development Services Department Director
- Nick Smith, Planning and Development Services
- Karen Frakes, Prosecutor's Office

Councilmembers and staff discussed the process for moving forward and working from the July 16, 2019 version of the proposal and the following motions:

Donovan moved to amend to remove thresholds for permitted uses, per his submitted amendment 1 (*on file*) to Whatcom County Code section 20.68.054:

20.68.054. The following are permitted uses except as otherwise prohibited:

(3) Refining and storage of fossil fuels, limited as follows:

(a) fossil fuel refineries, existing legally as of [XXX effective date], together with ~~allowed expansions below the thresholds in WCC 20.68.800.~~

(b) fossil fuel transshipment facilities existing legally as of [XXX effective date], together with ~~allowed expansions below the thresholds in WCC 20.68.800.~~

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1 (9) The refining, storage, blending, and manufacture of renewable fuels,
2 existing legally as of [XXX effective date], together with allowed expansions
3 below the thresholds in WCC 20.68.800.
4

5 The motion to amend was seconded.
6

7 The motion to amend carried by the following vote:

8 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

9 **Nays:** Brenner and Byrd (2)

10 **Absent:** Sidhu (1)
11

12 **Donovan moved** to amend to remove thresholds for permitted uses, per his
13 submitted amendment 1 (*on file*) to Whatcom County Code section 20.68.153:
14

15 **20.68.150. Conditional uses.**
16

17 .153 Expansion of existing legal fossil fuel refinery operations and the primary
18 manufacturing of products thereof or expansion of existing legal fossil fuels
19 transshipment facilities ~~when proposed in excess of expansion thresholds~~
20 ~~determined consistent with WCC 20.68.800 and are~~ subject to the conditional
21 use permit criteria below and approval of a major project permit:
22

23 The motion to amend was seconded.
24

25 The motion to amend carried by the following vote:

26 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

27 **Nays:** Brenner and Byrd (2)

28 **Absent:** Sidhu (1)
29

30 **Donovan moved** to amend to remove thresholds for permitted uses, per his
31 submitted amendment 1 (*on file*) to Whatcom County Code section Whatcom County Code
32 section 20.68.801:
33

34 **20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil**
35 **Fuel Transshipment**
36

37 .801. Limits on Refinery or Transshipment Facility Capacity Expansions:
38

39 Delete entire section 20.68.801; delete options 1, 2 & 3.
40

41 The motion to amend was seconded.
42

43 The motion to amend carried by the following vote:

44 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

45 **Nays:** Brenner and Byrd (2)

46 **Absent:** Sidhu (1)
47

48 **Donovan moved** to amend to remove thresholds for permitted uses, per his
49 submitted amendment 1 (*on file*) to Whatcom County Code section 20.68.802(3):
50

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1 .802 [renumber]. Environmental Review and Greenhouse Gas Mitigation.
2

3 (3) Local mitigation of greenhouse gas emissions shall be required, whenever
4 ~~increases of greenhouse gas increase equal or exceed 1% cumulatively~~ above
5 the baseline for a 3-year average (per section .802(2)(a)), after the effective
6 date of this section [XXX].
7

8 The motion to amend was seconded.
9

10 The motion to amend carried by the following vote:

11 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

12 **Nays:** None (0)

13 **Absent:** Sidhu (1)

14 **Abstains:** Brenner and Byrd (2)
15

16 **Donovan moved** to amend to remove thresholds for permitted uses, per his
17 submitted amendment 1 (*on file*) to Whatcom County Code section 23.100.170(B)(1)(b)(i):
18

19 **23.100.170 Cherry Point management area**

20
21 B. 1. b. Fuel uses

22
23 i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil
24 fuel refineries existing legal as of [XXX effective date] are permitted
25 shoreline uses. Expansions of existing legal fossil fuel refineries ~~below~~
26 ~~thresholds of the zoning code at WCC 20.68.800~~ are subject to review as
27 shoreline substantial development permits. Expansions of existing legal fossil
28 fuel refineries ~~above thresholds at WCC 20.68.800~~ require a shoreline
29 conditional use permit.
30

31 The motion was seconded.
32

33 The motion to amend carried by the following vote:

34 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

35 **Nays:** Brenner and Byrd (2)

36 **Absent:** Sidhu (1)
37

38 Councilmembers and staff discussed conditional use permits versus major project
39 permits, the State Environmental Policy Act (SEPA), and the following motions:
40

41 **Donovan moved** to amend the SEPA environmental checklist, per his submitted
42 amendment 4 (*on file*) with amendments, Whatcom County Code section 16.08.090:
43

44 **16.08.090. Environmental checklist**

45
46 E. For any proposed change of use or expansion of facilities that manufacture,
47 process, ship by sea transport any fossil fuel, renewable fuel, or hydrocarbon
48 feedstock or fossil fuel product, the proponent will fill out the County's SEPA
49 "Worksheet for Fossil Fuel Facilities." This Worksheet provides detailed
50 information required to evaluate impacts to air, land and water during review

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1 of a SEPA environmental checklist. The form of worksheet shall be prepared
2 and updated once per year by the SEPA Responsible Official in consultation
3 with and taking into account the comments of the Climate Impacts Advisory
4 Group and its members. The Worksheet shall analyze the "significance" of
5 direct, indirect, and cumulative impacts including but not limited to those
6 arising from:

7
8 Windborne transport of ~~burned~~ fossil fuel emissions into Whatcom County;

9
10 Life cycle greenhouse gas emissions above existing levels;

11
12 Transits of tankers or barges and their support vessels that have the potential
13 to interfere with commercial and treaty tribe fishing areas; and

14
15 Releases of stormwater and wastewater to groundwater, marine waters,
16 intertidal wetlands, streams within the shorelines, and to their headwaters;

17
18 In determining whether possible impacts are "significant" and "probable," the
19 Responsible Official shall determine whether the answers on the Worksheet
20 for Fossil Fuel Facilities accurately analyze the severity of potential harm,
21 independently from analysis of probability of occurrence, in compliance with
22 WAC 197-11-330, -794

23
24 The county may modify the environmental checklist form as provided in
25 WAC 197-11-315. If a modified form is prepared, it must be sent to the
26 Department of Ecology to allow at least a 30-day review prior to use. (Ord.
27 98-048 Exh. A; Ord. 84-122 Part 3 (part)).

28
29 The motion was seconded.

30
31 The motion to amend carried by the following vote:

32 **Ayes:** Browne, Buchanan, Byrd, Donovan, and Frazey (5)

33 **Nays:** Brenner (1)

34 **Absent:** Sidhu (1)

35
36 Councilmembers and staff referenced and discussed the staff memo from Mark
37 Personius on July 22, 2019 regarding Cherry Point Amendments (*on file*) regarding types of
38 permits and the following motion:

39
40 **Donovan moved** to amend WCC 20.68.153, "Expansion of existing legal fossil fuel
41 refinery operations and the primary manufacturing of products thereof or expansion of
42 existing legal fossil fuels transshipment facilities ~~when proposed in excess of expansion~~
43 ~~thresholds determined consistent with WCC 20.68.800 and subject to the conditional use~~
44 ~~permit criteria below and approval of a major project permit."~~

45
46 The motion was seconded.

47
48 The motion to amend carried by the following vote:

49 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

50 **Nays:** Brenner (1)

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1 **Absent:** Byrd (out of the room) and Sidhu (2)
2

3 Councilmembers and staff referenced and discussed the staff memo from Mark
4 Personius on July 22, 2019 regarding Cherry Point Amendments (*on file*) regarding
5 renewable fuel operations, permitting of renewable fuel operations, and the following
6 motion:
7

8 **Donovan moved** to approve option two for item three regarding renewable fuel
9 operations as shown in the staff memo from Mark Personius on July 22, 2019 regarding
10 Cherry Point Amendments (*on file*) and the following motion:
11

- 12 1. Renewable Fuel Operations - Cascadia Law Group's July 16 draft includes two options
13 for the types of permits required for renewable fuel projects (see proposed WCC
14 20.68.054(9) and 20.68.159):
15

16 *Option 2* – Require a conditional use permit or major project permit for
17 expansions over the thresholds in WCC 20.68.800.
18

19 The motion was seconded.
20

21 The motion to amend carried by the following vote:

22 **Ayes:** Browne, Buchanan, Donovan, and Frazey (4)

23 **Nays:** Brenner (1)

24 **Absent:** Byrd (out of the room) and Sidhu (2)
25

26 Councilmembers discussed next steps. The Council will schedule a work session at a
27 special meeting on July 31 to continue discussing proposed amendments.
28

29
30 **OTHER BUSINESS**

31 There was no other business.
32
33

34
35 **ADJOURN**

36 The meeting adjourned at 5:06 p.m.
37
38

39 The County Council approved these minutes on _____, 2019.
40
41

42 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

43
44
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48 _____
Dana Brown-Davis, Council Clerk

Rud Browne, Council Chair

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Jill Nixon, Minutes Transcription