

Exhibit B

NOTE: Council changes from existing, adopted code language are shown within underlines and strikethroughs. Additional Joint Stakeholder Group changes are highlighted in green. Additional Planning and Development Services changes are highlighted in gray. Additional changes from the County's Prosecuting Attorney's Office are highlighted in yellow.

CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

16.08.090. Environmental checklist

E. Evaluation/Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960, Environmental Checklist. As provided in WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment, impacts, and potential mitigation regarding air quality and climate and risks from spills and/or explosions. For any proposed expansion of facilities pursuant to and in accordance with WCC 20.68.153, WCC 20.68.154 or any new or expansions of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility, the proponent will provide an expert evaluation or fill out the County's SEPA "Worksheet for Fossil and Renewable Fuel Facilities." This expert evaluation or Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of the worksheet shall be prepared and updated as needed by the SEPA Responsible Official in consultation with the Planning Commission and the County Council. The expert evaluation or Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts arising from:

1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
2. Lifecycle greenhouse gas emissions for the project's incremental change for renewable facilities and fossil fuel facilities;
3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or interfere with commercial and treaty tribe fishing areas;
4. Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters; and
5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and transport of renewable or fossil fuels or related feedstocks within Whatcom County.

In determining whether possible impacts are "significant" and "probable," the Responsible Official shall determine whether the information in the expert evaluation or the Worksheet accurately analyze the severity of potential harm, independently from analysis of probability of occurrence, in compliance with WAC 197-11-330. Also, as provided in WAC 197-11-794, "the severity of an impact should be weighed along with the likelihood of its occurrence" and "an impact may be significant if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred."

The information provided in the expert evaluation or Worksheet required for fossil and renewable fuel facilities shall be considered procedures and criteria added to Whatcom County's SEPA policies and procedures pursuant to WAC 197-11-

37 906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA contained in RCW 43.21C.020, RCW
38 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may not be required if an environmental
39 impact statement is prepared.

41 16.08.160 Substantive authority.

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

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

- 45 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in
46 environmental documents prepared pursuant to this chapter; and
- 47 2. Such conditions are in writing; and
- 48 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 49 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are
50 sufficient to mitigate the identified impacts; and
- 51 5. Such conditions are based on one or more policies or provisions in subsection D, E, or F of this section and cited in
52 the license or other decision document.

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

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

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

- 62 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
63 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - 64 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - 65 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
66 surroundings;
 - 67 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
68 other undesirable and unintended consequences;
 - 69 d. Preserve important historic, cultural, and natural aspects of our national heritage;
 - 70 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
 - 71 f. Achieve a balance between population and resource use which will permit high standards of living and a wide
72 sharing of life's amenities; and
 - 73 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable
74 resources.

75 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that
76 each person has a responsibility to contribute to the preservation and enhancement of the environment.

77 3. The county adopts by reference the policies in the following county documents:

78 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)

79 Whatcom County Shoreline Management Program

80 Whatcom County Subdivision Ordinance

81 Whatcom County Solid Waste Management Plan

82 Whatcom County Critical Areas Ordinance

83 All official land use controls adopted by Whatcom County.

84 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
85 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific
86 adverse environmental impact has been adequately addressed by an existing rule or law of another agency with
87 jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In
88 making this deferral, the County shall base or condition its project approval on compliance with these other existing
89 rules or laws. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address
90 a particular impact of a project or would be less restrictive than County Code.

91 F. Specific Environmental Policies

92 1. Air Quality and Climate:

93 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality
94 of life. Mitigation of air pollutant impacts will normally be the subject of air permits required by the Northwest
95 Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by the County
96 shall be required. However, where a project being reviewed by the County generates public nuisance impacts,
97 odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE, the County
98 may require mitigation under SEPA.

99 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows
100 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,
101 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global
102 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that
103 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be
104 authorized by the County address greenhouse gas emissions impacts.

105 i. Greenhouse Gas Emissions: The following shall apply to projects that: (1) are expansions of Fossil Fuel
106 Refineries and Fossil Fuel Transshipment Facilities, as defined in WCC 20.68.153 and WCC 20.68.154, or new,
107 or expansion of Renewable Fuel Refineries and Renewable Fuel Transshipment Facilities; and (2) will have
108 reasonably foreseeable, probable, direct greenhouse gas emissions resulting from new or modified equipment of
109 greater than 10,000 MT/year (CO₂e) as determined by the Northwest Clean Air Agency using methodology
110 consistent with 40 CFR § 98.253, Calculating GHG Emissions (for Petroleum Refineries) and 40 CFR § 98.33,
111 Calculating GHG Emissions (for Stationary Fuel Combustion Sources), as applicable.

112 (a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle
113 greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and
114 indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d).
115 The assessment shall estimate the incremental gross direct-facility emissions change from a baseline
116 established in current Prevention of Significant Deterioration and/or Minor New Source Review Permit
117 Technical Support Documents.

118 Rationale: The proposed amendments use the terms “direct emissions” and “facility
119 emissions.” However, the Joint Stakeholder Group proposed that “Direct Emissions”
120 should have the same definition of “Facility Emissions” in an e-mail of June 18, 2021.
Instead of having two terms that mean the same thing, PDS is recommending using the
term “direct emissions” and eliminating the term “facility emissions.”

121 (b) Impact Assessment: Greenhouse gas emissions impacts shall be assessed using current scientifically
122 valid modeling techniques, accounting for project emissions and gross increases of existing facility
123 emissions resulting from the proposed expansion project. The range of greenhouse gas emissions impacts
124 assessed may be greater than the range of greenhouse gas emissions impacts for which mitigation is
125 required.

126 (c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of
127 greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC
128 16.08.160.B, and in accordance with the following considerations:

129 (1) Mitigation measures must be imposed on the permittee, ~~but only to the extent attributable to~~
130 ~~the identified direct emissions of the project proposal as permitted,~~ as provided in WAC 197-11-
131 660.1(d). ~~Required. The County decision maker must require mitigation may be limited to address~~
132 ~~the project's direct greenhouse gas emissions and may also be required for mitigation to address~~
133 ~~the project's~~ indirect emissions. Voluntary additional mitigation may occur, per WAC 197-11-
134 660.1(d). Mitigation shall not be required for projects shown in SEPA assessment to reduce
135 greenhouse gas emissions of existing facilities on a lifecycle basis.

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137 **Rationale: The Joint Stakeholder Group proposed the above changes in an**
138 **e-mail of May 3, 2021 to clarify the language.**

139 (2) The SEPA Responsible Official shall not require duplicative mitigation of greenhouse gas
140 emissions (MT CO₂e) that are reasonably foreseeable, probable, and caused by the project to the
141 extent these emissions or a portion of these emissions are otherwise mitigated under other local,
142 state, or federal laws, rules, or permits.

143 (3) Mitigation may be achieved through on-site mitigation measures, such as efficiency
144 improvements and reduced generation, and through local and regional projects, so long as such
145 measures or projects are reasonable, capable of being accomplished, are likely to protect or
146 enhance environmental quality, and meet current state rules and standards. Alternatively,
147 mitigation may be achieved through 1) projects located outside of the local area/region, or 2)
148 through purchase of carbon offsets from any carbon registry approved by the Planning
149 Department, NWCAA, or any Washington state agency, subject to the provisions of item (6),
150 below. Mitigations for the project being permitted may concurrently satisfy any other
151 requirements imposed by County, State or Federal governments for the same project.

152 (4) When considering the total mitigation required, a multiplier of 1.5 shall be applied to the
153 tonnage of all mitigations performed locally (including those selected from the current Whatcom
154 County Climate Action Plan) after [the effective date of this ordinance] as a means to encourage
155 local investment. This multiplier shall not apply to emission reduction units generated by and
156 purchased from local third-party projects or activities that were implemented prior to the effective
157 date of this ordinance.

158 (5) Applicants are encouraged, but not required, to select mitigation proposals from the Whatcom
159 County Climate Action Plan and to select projects that yield energy efficiency gains, local
160 economic benefits such as creation of jobs with living wage or use of prevailing wages, and/or
161 local economic development.

162 (6) Mitigations based on emissions reductions from activities or programs must be: (a) real,
163 specific, identifiable, and quantifiable; (b) permanent; (c) enforceable; (d) verifiable; and (e)
164 except as allowed by (3) above, additional to reductions required under other laws, rules, or
165 permits for unrelated projects or expansions.

166 (7) The County decision maker may not deny a permit based upon lack of availability of local or
167 regional mitigation.

168 (d) Should a Washington state greenhouse gas assessment and mitigation permitting or project requirement
169 be adopted, such as a rule adopted pursuant to the Washington Governor's Directive 19- 18, Environmental
170 Assessment of Greenhouse Gas Emissions, Title 16.08.160.F.1.b.i shall no longer apply as of the effective
171 date of the requirement or rule. Should a new Federal greenhouse gas assessment and mitigation permitting
172 or project requirement with the same force and effect of Title 16.08.160.F.1.b.i be adopted Title
173 16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule.

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(e) For the purposes of 16.08.160.F.1.b.i., the following definitions apply:

(1) Gross emissions are defined as the actual incremental emissions increases or decreases resulting from the project. Gross emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

(2) Indirect emissions are defined as emissions resulting from offsite generation of power purchased for consumption at the facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include cogeneration of steam, offsite hydrogen production).

Rationale: The definitions of “Gross emissions” and “Indirect emissions” have been moved to page 8, because that’s where the other definitions are located.

ii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:

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

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

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

2. Plants and Animals:

a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened by habitat loss and by the reduction of habitat diversity. For the purposes of this policy, animals and plants of ecological, educational, and economic value include priority habitats and species as listed in the Washington Department of Fish and Wildlife’s Priority Habitats and Species, as amended, consistent with WCC 16.16.710, 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. The decision-maker may condition or deny the project to mitigate its specific adverse environmental impacts if the decision-maker 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.

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16.08.175 Purpose of this article and adoption by reference.

This article contains uniform usage and definitions of terms under SEPA. The county adopts the following sections by reference, as supplemented by WAC 173-806-040:

- WAC
- 197-11-700 Definitions.
 - 197-11-702 Act.
 - 197-11-704 Action.
 - 197-11-706 Addendum.
 - 197-11-708 Adoption.
 - 197-11-710 Affected tribe.
 - 197-11-712 Affecting.
 - 197-11-714 Agency.
 - 197-11-716 Applicant.
 - 197-11-718 Built environment.
 - 197-11-720 Categorical exemption.
 - 197-11-721 Closed record appeal.
 - 197-11-722 Consolidated appeal.
 - 197-11-724 Consulted agency.
 - 197-11-726 Cost-benefit analysis.
 - 197-11-728 County/city.
 - 197-11-730 Decision maker.
 - 197-11-732 Department.
 - 197-11-734 Determination of nonsignificance (DNS).
 - 197-11-736 Determination of significance (DS).
 - 197-11-738 EIS.
 - 197-11-740 Environment.
 - 197-11-742 Environmental checklist.
 - 197-11-744 Environmental document.
 - 197-11-746 Environmental review.
 - 197-11-750 Expanded scoping.
 - 197-11-752 Impacts.
 - 197-11-754 Incorporation by reference.
 - 197-11-756 Lands covered by water.
 - 197-11-758 Lead agency.
 - 197-11-760 License.

- 260 197-11-762 Local agency.
- 261 197-11-764 Major action.
- 262 197-11-766 Mitigated DNS.
- 263 197-11-768 Mitigation.
- 264 197-11-770 Natural environment.
- 265 197-11-772 NEPA.
- 266 197-11-774 Nonproject.
- 267 197-11-775 Open record hearing.
- 268 197-11-776 Phased review.
- 269 197-11-778 Preparation.
- 270 197-11-780 Private project.
- 271 197-11-782 Probable.
- 272 197-11-784 Proposal.
- 273 197-11-786 Reasonable alternative.
- 274 197-11-788 Responsible official.
- 275 197-11-790 SEPA.
- 276 197-11-792 Scope.
- 277 197-11-793 Scoping.
- 278 197-11-794 Significant.
- 279 197-11-796 State agency.
- 280 197-11-797 Threshold determination.
- 281 197-11-799 Underlying governmental action.

In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article, the following terms shall have the following meanings, unless the context indicates otherwise:

A. “Direct Emissions” means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial Area.

Rationale: The Joint Stakeholder Group proposed that “Direct Emissions” should have the same definition of “Facility Emissions” in an e-mail of June 18, 2021.

B. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a determination of significance (DS) likely for the applicant’s proposal (mitigated determination of nonsignificance (MDNS) procedures).

B-C. “ERC” means environmental review committee established in WCC 16.08.045.

299 D. "Facility Emissions" means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel
300 Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon the
301 refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area.

302
303 Rationale: The proposed amendments use the terms "direct emissions" and "facility
304 emissions." However, the Joint Stakeholder Group proposed that "Direct Emissions" should
305 have the same definition of "Facility Emissions" in an e-mail of June 18, 2021. Instead of
306 having two terms that mean the same thing, PDS is recommending using the term "direct
307 emissions" and eliminating the term "facility emissions."

308 D. "Greenhouse Gas Emissions" means gases that trap heat in the atmosphere. "Greenhouse gas," "greenhouse
309 gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons,
310 perfluorocarbons, and sulfur hexafluoride, and any other gas or gases designated by the federal clean air act
311 (United States Code Title 42, Chapter 85), state clean air act (Chapter 70A.1570.94 RCW) or state limiting
312 greenhouse gas emissions law (Chapter 70A.4570.235 RCW) or any directly superseding provisions of state or
313 federal law.

314
315 E. Gross emissions mean the actual incremental emissions increases or decreases resulting from the project. Gross
316 emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

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318 F. Indirect emissions mean emissions resulting from offsite generation of power purchased for consumption at the
319 facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include
320 cogeneration of steam, offsite hydrogen production).

321
322 Rationale: The definitions of "Gross emissions" and "Indirect emissions" have
323 been moved from page 5 to page 8, because that's where the other definitions
324 are located. The only change is from "are defined as" to "mean" for
325 consistency with the other definitions.

326 G. "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including
327 direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel
328 and feedstock production and distribution, from feedstock generation or extraction through the distribution and
329 delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are
330 adjusted to account for their relative global warming potential.

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332 H. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

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334 I. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA
335 process or his/her designee.

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337 J. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A; Ord.
338 84-122 Part 8).

Exhibit C

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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 or new Fossil Fuel Transshipment Facilities.

372 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

373 20.68.050 Permitted uses.

374 Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of
375 Chapter 20.80 WCC, Supplementary Requirements, and Chapter ~~22.0520.84~~ WCC, Variances, Conditional Uses,
376 Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and
377 the Whatcom County Shoreline Management Program- and implementing regulations. ~~The purpose of the SIC numbers~~
378 ~~listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the~~
379 ~~subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies~~
380 ~~of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)~~

381 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
382 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

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

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

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

- 388 (a) State waste discharge permit (Chapter 173-216 WAC);
- 389 (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
- 390 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

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

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

395 .054 The following are permitted uses except as otherwise prohibited:

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

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

401 ~~(3) Refining and storage of petroleum and asphalt.~~

402 ~~(34)~~ The manufacture and processing of rubber and plastic products.

403 ~~(45)~~ Leather tanning and finishing.

404 ~~(56)~~ The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
405 mineral products.

406 ~~(67)~~ Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting,
407 refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture
408 of miscellaneous metal products.

409 (7) Storage of asphalt in the Heavy Impact Industrial Zone.

410 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
411 fixtures, structural metal and stamping.

- 412 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
413 materials handling equipment; machine tools and dies; and special and general industrial equipment.
- 414
- 415 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.
- 416 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
417 railroad equipment, bicycles and motorcycles.
- 418 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~-transshipment terminals and facilities except as
419 conditionally permitted under WCC 20.68.153 and .154 and prohibited under WCC 20.68.200.
- 420 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
421 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
422 (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.
- 423 .061 Heavy construction contractors.
- 424 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
425 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
426 noncommercial uses, excluding state education facilities and correction facilities.
- 427 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
428 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
429 shall contain no indoor plumbing but may be served with electrical power for lighting.
- 430 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
431 the Heavy Impact Industrial District in the Bellingham UGA.
- 432 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- 433 .066 Marijuana production or processing facility.
- 434 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable
435 Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that
436 when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must
437 disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting authorities.
438 Provided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses include repairs,
439 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following.:
- 440 (1) Accessory and appurtenant buildings, structures, and processing equipment.
- 441 (2) Office space.
- 442 (3) Parking lots.
- 443 (4) Radio communications facilities.
- 444 (5) Security buildings, fire stations, and operation centers.
- 445 (6) Storage buildings.
- 446 (7) Routine maintenance and repair.
- 447 (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with
448 on the subject site by federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes
449 of co-processing biomass with petroleum.
- 450 (9) Road projects and bridges.
- 451 (10) Temporary trailers.

- 452 (11) Heating and cooling systems.
- 453 (12) Cable installation.
- 454 (13) Information technology improvements.
- 455 (14) Continuous emissions monitoring systems or analyzer shelters.
- 456 (15) Wastewater and stormwater treatment facilities.
- 457 (16) Replacement and upgrading of existing equipment.
- 458 (17) Safety upgrades.
- 459 (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.
- 460 (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.
- 461 (20) Renewable fuel production and shipment.
- 462 (21) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;
- 463 (22) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.
- 464 (23) Storage tanks, provided that the County decision maker shall include in any approval of an application for storage tanks
465 at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel
466 Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and
467 approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of
468 fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or
469 will not be used for transshipment.
- 470 (24) Other similar structures or activities.
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- 472 .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves
473 in the Cherry Point Industrial District are prohibited.
- 474 .071 Expansion of existing legal Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, provided that the
475 expansion is for Renewable Fuels only.
- 476 .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.
- 477 .082 Marine port facilities, except as prohibited under WCC 20.68.200.
- 478 .085 Type I solid waste handling facilities.
- 479 .086 Type II solid waste handling facilities.
- 480 **20.68.100 Accessory uses.**
- 481 .101 Employee recreation facilities and play areas.
- 482 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
483 district.
- 484 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 485 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
486 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 487 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

488 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
489 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

490 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
491 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

492 .108 Electric vehicle rapid charging stations and battery exchange facilities.

493 .109 Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks.

494 20.68.130 Administrative approval uses.

495 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
496 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
497 (Exh. A), 2006).

498 20.68.150 Conditional uses.

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

500 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

507 .153 Expansion of existing Fossil Fuel Refineries. For purposes of this section, an expansion is any development (including
508 otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following
509 applicable thresholds:

510 A. Cumulatively increases the facility's total Maximum Atmospheric Crude Distillation Capacity for Fossil Fuels by
511 more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations
512 conducted by a licensed professional engineer; or

513 B. Cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000
514 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a
515 licensed professional engineer in accordance with 20.97.230.1; or

516 C. Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess
517 of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of
518 ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

519 If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

520
521 Rationale: In the Planning Commission version, expansion of Fossil Fuel Refineries and expansion of
522 Fossil Fuel Transshipment Facilities were addressed under one code section. They were
523 subsequently split into two code sections but the reset clause was only carried over to one of them
524 (WCC 20.68.154 below). The above change would restore the original intent to apply this clause
to both Fossil Fuel Refinery expansions and Fossil Fuel Transshipment Facility expansions.

525 .154 Expansion of existing Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any
526 development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that
527 cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or

528 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with
529 20.97.230.1.

530 If a conditional use permit is obtained, the baseline for determining the cumulative increases is reset.

531 Expansions as per 20.68.153 or 20.68.154 shall be subject to the conditional use criteria below as applicable:

532 (1) The conditional use permit approval criteria listed under WCC 22.05.026 are met;

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

534 (3) The applicant has documented to the County decision maker (as applicable):

535 (a) All of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk with the
536 proposed expansion;

537 (b) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric Crude Distillation Capacity
538 occurring as a result of the proposed expansion, as applicable; and

539 (c) The mode of shipment vessels to be loaded or unloaded with the proposed equipment and/or as a result of the
540 proposed expansion;

541 The permit shall be limited exclusively to those types and volumes of materials or products as documented and approved.

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

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

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

547 (7) Plans for stormwater and wastewater releases have been approved.

548 (8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for
549 any piers or aquatic lands improvements, and it shall be demonstrated to the zoning administrator that the project applicant
550 has met any federal or state permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson
551 Amendment through state and federal permitting decisions.

552 (9) The County decision maker may approve a conditional use permit with a condition to obtain relevant leases and complete
553 any necessary federal and state permitting requirements, and may restrict the conditional use permittee from undertaking site
554 preparation or construction activities until it has fulfilled that condition.

555 (10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the
556 department can document current capacity levels to ensure that the cumulative thresholds under WCC 20.68.153 or WCC
557 20.68.154 (as applicable) have not been exceeded.

558 (11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or
559 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in
560 the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be
561 stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used
562 for transshipment.

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Rationale: The proposed conditional use approval criteria for expansion of fossil fuel facilities have been moved, with no changes, from proposed WCC 20.68.154 to WCC 22.05.026 where the standard conditional use criteria are located.

568 .15~~4~~ Treatment and storage facilities for hazardous wastes subject to the following:

569 (1) The ~~eight~~ criteria for a conditional use listed under WCC ~~22.05.02620.84.200~~.

570 (2) The most current state siting criteria under Chapter 173-303 WAC.

571 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
572 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
573 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.

574 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
575 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
576 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
577 percent of the total local hazardous waste stream.

578 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been
579 constructed consistent with state requirements.

580 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,
581 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to
582 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
583 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
584 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
585 documented by county staff.

586 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
587 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county
588 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
589 inspection reporting procedures.

590 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an
591 inspection by a qualified and independent inspection agency satisfactory to the county.

592 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health
593 and safety, the permit may be revoked by the approving body following a public hearing.

594 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

595 .157 Trailheads with parking areas for more than 30 vehicles.

596 .158 Athletic fields.

597 .180 Major passenger intermodal terminals.

598 .187 Type III solid waste handling facilities; provided, that:

599 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
600 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
601 least three feet in elevation higher than the floodway elevation;

602 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:

603 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

604 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

605 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

606 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

607 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

- 608 (f) This 1,500-foot buffer does not apply to:
- 609 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
610 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 611 (ii) Inert landfills;
- 612 (3) Inert landfills shall be located at least 500 feet from the following:
- 613 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 614 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 615 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 616 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 617 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 618 (f) This 500-foot buffer does not apply to:
- 619 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
620 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 621 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
622 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
623 county or state road right-of-way;
- 624 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
625 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
626 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 627 (6) The facility or site has complied with the provisions of WCC ~~22.05.02620.84.200~~ and all other ordinances and laws
628 regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as
629 well as state and federal regulations concerning solid waste facilities and sites;
- 630 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
631 closure plan includes:
- 632 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
633 activity, with seeding to be accomplished annually but no later than September 30th; and
- 634 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
635 covered through the financial assurance for post-closure activities;
- 636 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
637 of WCC 20.80.300 (Landscaping);
- 638 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
639 delineated wellhead protection area;
- 640 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
641 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
642 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
643 the boundary of the airport property;
- 644 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
645 protect the value and enjoyment of existing adjacent uses.
- 646 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
647 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
648 processed as a major development project pursuant to Chapter 20.88 WCC.

649 **20.68.200 Prohibited uses.**

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

652 .201 Reserved.

653 .202 Adult businesses.

654 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
655 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
656 products derived thereof; and primary metal industries.

657 .204 New Fossil Fuel Refineries.

658 .205. New Fossil Fuel Transshipment Facilities.

659 .206. New piers, docks, or wharves in Cherry Point Industrial District.

660 .207 Coal-fired power plants.

661 (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-
662 075, 1991).

663 **20.68.250 Minimum lot size.**

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

666 **20.68.255 Minimum lot frontage.**

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

670 **20.68.350 Building setbacks.**

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

672 **20.68.400 Height limitations.**

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

675 **20.68.450 Lot coverage.**

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

677 **20.68.500 Open space.**

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

679 **20.68.550 Buffer area.**

680 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
681 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
682 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
683 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

684 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
685 structures shall be established consistent with the following options:

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

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

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

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

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

701 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
702 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

703 .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
704 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
705 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,
706 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

707 **20.68.600 Sign regulations.**

708 Sign regulations shall be administered pursuant to WCC 20.80.400.

709 **20.68.650 Development criteria.**

710 (Ord. 96-056 Att. A § A1, 1996).

711 **20.68.651 Landscaping.**

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

713 **20.68.652 Off-street parking and loading.**

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

717 **20.68.653 Drainage.**

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

721 **20.68.654 Driveways.**

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

724 **20.68.655 Access.**

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

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20.68.656 Maintenance.

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

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20.68.657 Enclosure.

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

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20.68.700 Performance standards.

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20.68.701 Pollution control and nuisance abatement.

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

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20.68.702 Heat, light and glare.

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

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20.68.703 Ground vibration.

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

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20.68.704 Odors.

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

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20.68.705 Noise.

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

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20.68.706 Toxic gases and fumes.

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

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20.68.707 Liquid pollutants.

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

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20.68.708 Appearance.

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

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20.68.709 *Marijuana odor.*

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

791 **CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT**

792 **20.74.010 Purpose.**

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

797 **20.74.020 Applicability.**

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

799 **20.74.030 Permitted uses.**

800 (1) Primary permitted uses:

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

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

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

808 **20.74.040 Accessory uses.**

809 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
810 083 Exh. A § 57, 1998).

811 **20.74.050 Conditional uses.**

812 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
813 083 Exh. A § 57, 1998).

814 **20.74.055 Prohibited uses.**

815 Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District (Chapter 20.66) and the Heavy
816 Impact Industrial District (Chapter 20.68 WCC), as applicable, and the following:

817 (1) New piers, docks, or wharves.

818 (2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or Fossil
819 Fuel Transshipment Facility.

820 **20.74.060 Master site plan requirements.**

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

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

827 (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
828 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
829 shall be waived.

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

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

837 **20.74.070 Minimum lot size and parcelization.**

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

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

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

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

846 (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
847 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

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

850 **20.74.080 Design standards.**

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

855 **20.74.090 Traffic demand management.**

856 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
857 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
858 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
859 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

864 **20.74.100 Drainage.**

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

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869 CHAPTER 20.88 MAJOR PROJECT PERMITS

870 20.88.100 Major project permits.

871 .110 All major developments shall, prior to any construction, obtain a major project permit.

872 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
873 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 floor space) 200,000 square feet

Residential 300 dwelling units

motel/hotel 200 units

Number of Employees 250

SEPA Review An EIS is required

874

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

878 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
879 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
880 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application
881 based on the following criteria:

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

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

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

888

889 (3) Prior to commencement of any site preparation or construction activities, will obtain, if required, a state aquatic lands
890 lease, and all other necessary permit consultations and authorizations, including federal determinations that the project will
891 not interfere with treaty fishing rights of tribal nations, the limits set forth in the “Magnuson Amendment” under 33 U.S.C. §
892 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal
893 Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean
894 Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into
895 waters of the U.S.) and a state Section 401 water quality certification.

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

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

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

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

904 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
905 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
906 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
907 the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a
908 major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting
909 requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it
910 has fulfilled that condition.

911 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
912 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
913 and provide relief from the specific standards and requirements thereof.

914 20.88.200 Procedure.

915 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the
916 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
917 part of the application for a major project permit. The master plan document shall include all elements required per the
918 department’s administrative manual.

919 .210 Development Standards. The ~~master plan~~major project permit may propose standards that will control development of
920 the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as
921 height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade
922 treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to
923 county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally
924 within an urban growth area, concurrence of the affected city will be required.

925 .215 Procedures. ~~Master Plan~~Major project permit review shall be conducted under current review procedures. Other land use
926 reviews may be conducted concurrently with the ~~master plan~~major project permit review.

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

928 (i) Minor changes shall be reviewed for compliance and compatibility with the approved ~~master plan~~major project
929 permit.

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

932 (2) Minor changes are those amendments which may affect the dimensions, location and type of
933 improvements of facilities; provided, the amendment maintains the basic character of the major project
934 permit application approved by the county council including general type and location of dwellings and

935 other land use activities, arrangement of buildings, density of the development, and provisions of the
936 project to meet density bonus and open space requirements, or capacity limits, and maintains required
937 conditions or mitigation.

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

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

942 .220 through .265 *Reserved.*

943 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a
944 conditional use permit.

945 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that
946 project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

947 .280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District
948 requires a major project permit, the major project permit shall be concurrently processed with other required land use permits
949 including but not limited to: planned unit development or development agreement.

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971 CHAPTER 20.97 DEFINITIONS

972 **20.97.160.2 Fossil Fuels.**

973 “Fossil fuels” refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the
974 remains of organic matter, including but not limited to coal, petroleum products and byproducts, crude oil, Intermediate
975 Materials (such as unfinished oils and blendstocks), natural gas, oil shales, bitumens, tar sands, liquefied petroleum gases,
976 propane, butane, and heavy oils. Renewable fuels are not Fossil Fuels.

977 **20.97.160.3 Fossil Fuel Refinery.**

978 A “Fossil Fuel Refinery” is an entire complex, consisting of its individual units, equipment, or components, which in
979 aggregate engages primarily in receiving and converting Fossil Fuels into products including but not limited to gasoline,
980 distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, Intermediate
981 Materials, and asphalt. Fossil Fuel Refinery uses include, but are not limited to: receiving feedstocks, bulk storage,
982 manufacturing, or processing of Fossil Fuels, Intermediate Materials or byproducts, and shipment of those processed
983 materials to downstream customers. The following activities do not render a Fossil Fuel Refinery a Fossil Fuel
984 Transshipment Facility: (i) inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils
985 and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be
986 moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods. This definition shall exclude
987 Small Fossil or Renewable Fuel Storage and Distribution Facilities.

988 **20.97.160.4 Fossil Fuel Transshipment Facility.**

989 “Fossil Fuel Transshipment Facility” is an entire complex, consisting of its individual units, equipment, or components,
990 which in aggregate, engages primarily in the process of off-loading Fossil Fuels from one or more modes of shipment (i.e.,
991 rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels without processing through a Fossil Fuel Refinery,
992 onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry
993 Point Industrial District. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

994 **20.97.163 Greenhouse Gas Emissions.**

995 “Greenhouse Gas Emissions” means gases that trap heat in the atmosphere. “Greenhouse gas,” “greenhouse gases,” “GHG,”
996 and “GHGs” includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride,
997 and any other gas or gases designated by the federal clean air act (United States Code Title 42, Chapter 85), state clean air act
998 (Chapter 70A.1570.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.4570.235 RCW).

999 **20.97.190.2 Intermediate Materials**

1000 “Intermediate Materials” refers to refined or partially refined Fossil Fuel products that are produced at a refinery by
1001 processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other
1002 blending components. Under this definition, feedstocks such as “topped crude” are not Intermediate Materials.

1003 **20.97.201 Lifecycle Greenhouse Gas Emissions**

1004 “Lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions
1005 and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and
1006 distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the
1007 ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming
1008 potential.

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20.97.230 Maximum Atmospheric Crude Distillation Capacity.

“Maximum Atmospheric Crude Distillation Capacity” or “MACDC” is the maximum number of barrels of input that the atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer licensed in the State of Washington and shall be measured in barrels per day.

20.97.230.1 Maximum Transshipment Capacity

The calculation of Maximum Transshipment Capacity shall be conducted by a professional engineer licensed in the State of Washington and shall consist of one or a combination of the following limitations:

(a) The maximum physical limit of a facility's capacity for off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels, without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries such as the Cherry Point Industrial District, based on the facility’s maximum physical limits to move Fossil Fuels from the receipt points of all its inbound shipment methods to the delivery points of all its outbound shipment methods, including the capacities or other physical attributes of the facility's equipment, including but not limited to capacities of:

- (i) loading equipment;
- (ii) offloading equipment;
- (iii) pumps and/or compressors;
- (iv) bulk storage;
- (v) piping hydraulics; or
- (vi) any combination of the above.

The capacity calculation shall exclude any equipment installed with a permit condition that prohibits that equipment from being used for transshipment purposes.

(b) Shipment limitations imposed by County, State or Federal authorities that can be demonstrated by the applicant to restrict the frequency and/or annual amount of Fossil Fuel shipments at its facility. If any such limitations form the basis of a Maximum Transshipment Capacity calculation, then any future increases in Fossil Fuel shipments above those previously imposed limits would constitute an increase in Maximum Transshipment Capacity.

20.97.340.3 Renewable Biomass.

“Renewable biomass” includes but is not limited to the following:

- (1) Planted crops and crop residue harvested from agricultural land.
- (2) Planted trees and tree residue from a tree plantation.
- (3) Animal waste material and animal byproducts.
- (4) Slash and pre-commercial thinnings.
- (5) Organic matter that is available on a renewable or recurring basis.
- (6) Algae.
- (7) Separated yard waste or food waste, including recycled cooking and trap grease.
- (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport.

1047 **20.97.340.4 Renewable Fuel.**

1048 “Renewable Fuel” means liquid or gaseous fuels produced from renewable biomass, woody biomass or landfill wastes and
1049 limited in terms of blending with fossil fuels. Renewable fuels shall also include fuels produced from renewable electricity
1050 including hydrogen and synthetic fuels. Common renewable fuels include ethanol, renewable diesel and biodiesel:

1051 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
1052 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
1053 American society of testing and materials specification D 5798.

1054 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
1055 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal
1056 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 and meets the requirements of American
1057 society of testing and materials specification D 975.

1058 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
1059 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
1060 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State
1061 Department of Ecology or US EPA.

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Rationale: This revised definition of “Renewable Fuel” is more consistent with the types of fuels and feedstocks that are likely to be produced in the future. Both liquid and gaseous fuels are creditable fuels under the clean fuel standard created by HB 1091 and this definition provides for gaseous fuels like renewable natural gas and hydrogen.

1066 **20.97.340.5 Renewable Fuel Refinery.**

1067 A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small
1068 Fossil or Renewable Storage and Distribution Facilities.

1069 **20.97.340.6 Renewable Fuel Transshipment Facility.**

1070 “Renewable Fuel Transshipment Facility” is an entire complex, consisting of its individual units, equipment, or components
1071 which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable Biomass from one
1072 mode of shipment (i.e., rail, truck, pipeline, etc.) then storing and/or loading such fuels without processing through a
1073 Renewable Fuel Refinery or Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated
1074 zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or
1075 Renewable Fuel Storage and Distribution Facilities.

1076 **20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities.**

1077 “Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

1078 (1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

1079 (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation,
1080 and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel
1081 transshipment facilities.

1082 **20.97.434.1 Technical committee.**

1083 “Technical committee” or “technical review committee” means the designated representatives of the Whatcom County
1084 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and
1085 the Whatcom County Health Department Director.

1086 *NOTE: Renumber definitions in existing code as necessary.*

Exhibit D

1087

1088 22.05.026 Conditional use permits.

1089 (1) Application. Conditional use permit applications shall be processed per the provisions of this chapter.

1090 (2) Conditional use permits shall be nontransferable unless said transfer is approved by the hearing
1091 examiner.

1092 (3) Approval Criteria. Before approving an application, the director or hearing examiner shall ensure
1093 that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate
1094 evidence showing that the proposed use at the proposed location:

1095

1096 (a) Will be harmonious and in accordance with the general and specific objectives of Whatcom
1097 County's Comprehensive Plan, zoning regulations, and any other applicable regulations.

1098 (b) Will be designed, constructed, operated, and maintained so as to be harmonious and
1099 appropriate in appearance with the existing or intended character of the general vicinity, and
1100 that such use will not change the essential character of the same area.

1101 (c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with
1102 rural land use policies as designated in the rural lands element of the Comprehensive Plan.

1103 (d) Will not be hazardous or disturbing to existing or future neighboring uses.

1104 (e) Will be serviced adequately by necessary public facilities such as highways, streets, police
1105 and fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the
1106 persons or agencies responsible for the establishment of the proposed use shall be able to
1107 provide adequately any such services.

1108 (f) Will not create excessive additional requirements at public cost for public facilities and
1109 services, and will not be detrimental to the economic welfare of the community.

1110 (g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation
1111 that will be detrimental to any persons, property, or the general welfare by reasons of excessive
1112 production of traffic, noise, smoke, fumes, glare or odors.

1113 (h) Will have vehicular approaches to the property which shall be so designed as not to create an
1114 interference with traffic on surrounding public streets.

1115 (i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of
1116 major importance.

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1123 (4) Approval Criteria for expansion of Fossil Fuel Refineries pursuant to WCC 20.68.153 and expansion
1124 of Fossil Fuel Transshipment Facilities pursuant to WCC 20.68.154. Before approving an application, the
1125 hearing examiner shall ensure that any specific standards of the zoning district defining the use are
1126 fulfilled, and shall find adequate evidence showing that:

1127 (a) The conditional use permit approval criteria listed under WCC 22.05.026(3) are met;

1128 (b) Within shorelines, if applicable, County approval shall be contingent upon approval of a
1129 shoreline permit;

1130 (c) The applicant has documented to the County decision maker (as applicable):

1131 (i) All of the anticipated types and volumes of substances to be processed, stored, or
1132 transferred in bulk with the proposed expansion,

1133 (ii) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric
1134 Crude Distillation Capacity occurring as a result of the proposed expansion, as
1135 applicable; and

1136 (iv) The mode of shipment vessels to be loaded or unloaded with the proposed
1137 equipment and/or as a result of the proposed expansion.

1138 The permit shall be limited exclusively to those types and volumes of materials or products
1139 as documented and approved.

1140 (d) Insurance requirements meet the provisions of WCC 22.05.125.

1141 (e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation
1142 Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.

1143 (f) Mitigation of impacts to other services including fire and emergency response capabilities,
1144 water supply and fire flow, to address risks created by expansions.

1145 (g) Plans for stormwater and wastewater releases have been approved.

1146 (h) Prior to commencement of any site preparation or construction activities, all necessary state
1147 leases shall be acquired for any piers or aquatic lands improvements, and it shall be
1148 demonstrated to the zoning administrator that the project applicant has met any federal or state
1149 permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson
1150 Amendment through state and federal permitting decisions.

1151 (i) The County decision maker may approve a conditional use permit with a condition to obtain
1152 relevant leases and complete any necessary federal and state permitting requirements, and may
1153 restrict the conditional use permittee from undertaking site preparation or construction activities
1154 until it has fulfilled that condition.

1155 (j) The permittee must inform the county permitting authorities of a change in the aforementioned
1156 disclosures so that the department can document current capacity levels to ensure that the
1157 cumulative thresholds under WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been
1158 exceeded.

1159 (k) The County decision maker shall include, in any approval of an application for an expansion,
1160 as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in
1161 the manner described by the project proponent in the application and approved in the permit.

1162 The application shall describe the intended use, including the type of fuel to be stored and, if
1163 located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will
1164 not be used for transshipment.

1165
1166 Rationale: The proposed conditional use approval criteria for expansion
1167 of fossil fuel facilities have been moved, with no changes, from proposed
1168 WCC 20.84.154 to WCC 22.05.026 where the standard conditional use
1169 criteria are located.

1170 (54) Revisions. The hearing examiner may administratively approve revisions to conditional use permits;
1171 provided, that the proposed changes are within the scope and intent of the original permit. “Within the
1172 scope and intent of the original permit” shall mean the following:

1173 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of
1174 the original permit; provided, that:

1175 (i) Revisions involving new structures not shown on the original site plan shall require a new
1176 permit;

1177 (ii) Any revisions shall not exceed height, lot coverage, setback, or any other requirements
1178 of the regulations for the area in which the project is located; and

1179 (iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan;

1180 (b) Landscaping may be added to a project without necessitating an application for a new
1181 permit; provided, that the landscaping is consistent with conditions (if any) attached to the original
1182 permit and is consistent with the regulations for the area in which the project is located;

1183 (c) The use authorized pursuant to the original permit is not changed;

1184 (d) No additional over-water construction will be involved for shoreline conditional use permits;

1185 (e) No substantial increase in adverse environmental impact will be caused by the project revision.
1186 (Ord. 2020-045 § 1 Exh. A).

1187 22.05.110 Final decisions – Type I, II, and III applications.

1188 (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
1189 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
1190 comply with all applicable codes.

1191 (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)
1192 shall either grant or deny the application or appeal.

1193 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
1194 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
1195 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
1196 of Whatcom County.

1197 (b) Requirements:

1198 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
1199 compliance with the conditions, modifications and restrictions.

1200 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1201 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section
1202 22.05.125.

1203 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
1204 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
1205 based on the record to support the decision.

1206 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
1207 provided herein.

1208 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
1209 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
1210 032 § 1 (Exh. A)).

1211 22.05.120 ~~Recommended~~ Recommendations and final decisions to county council. Type
1212 IV applications

1213 (1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to
1214 grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions,
1215 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
1216 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
1217 objectives of Whatcom County.

1218 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
1219 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
1220 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
1221 and conforms to the county’s comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1222 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
1223 Chapter 42.36 RCW.

1224 (4) For planned unit developments and major project permits the following shall apply:

1225 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
1226 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1227 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
1228 following the conclusion of the open record hearing.

1229 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
1230 (4)(c)(iii) of this section:

1231 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
1232 calendar days after receiving the hearing examiner’s recommendation.

1233 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1234 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
1235 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
1236 written findings that a specified amount of additional time is needed to process a specific application or project
1237 type, per RCW 36.70B.080(1).

1238 (5) The county council’s final written decision may include conditions when the project is approved and shall state the
1239 findings of fact upon which the decision is based.

1240 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
1241 with the conditions, modifications and restrictions.

1242 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1243 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1244 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
1245 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in ~~county code applicable~~
1246 ~~county code, the county comprehensive plan if applicable, and the county shoreline management program, including~~
1247 ~~compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the county code, and the county's adopted~~
1248 ~~SEPA policies.~~ (Ord. 2018-032 § 1 (Exh. A)).

1249 22.05.125 Proof of insurance for hazards created in the County

1250 ~~For expansion projects requiring approval under a Conditional Use Permit or Major Project Permit at new or existing~~
1251 ~~facilities per WCC 20.68.153 or WCC 20.68.154, financial assurance for the benefit of Whatcom County shall be required.~~
1252 ~~For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit,~~
1253 ~~insurance, self-insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply~~
1254 ~~with the financial responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by a~~
1255 ~~Whatcom County Decision Maker. If the financial assurance is in the form of insurance policies, the policies must name~~
1256 ~~Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.~~

1257 ~~The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating~~
1258 ~~the permitted facility. At the request of the permittee, the Whatcom County Decision Maker may approve new or altered~~
1259 ~~forms of financial assurance to meet the requirements of this section, provided that the new or altered form is consistent with~~
1260 ~~the scope and intent of the original permit condition.~~

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1262 22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment 1263 Facility Permitting

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1265 ~~(1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out a supplemental~~
1266 ~~checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use~~
1267 ~~permit as specified in WCC 20.68.153 or WCC 20.68.154. The checklist shall contain supplemental information to~~
1268 ~~include:~~

1269 ~~(a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum Transshipment Capacity, and~~
1270 ~~fossil fuel unit train shipment frequency from the proposed activity;~~

1271 ~~(b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (23);~~

1272 ~~(c) Applicant name, property owner information, and parcel information as appropriate;~~

1273 ~~(d) Clear indication of information considered confidential and non-disclosable under the Public Records Act, including~~
1274 ~~the provisions of WCC 1.32.090 and RCW 42.56; and~~

1275 ~~(e) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant~~
1276 ~~and certified by a Notary Public.~~

1277

1278 ~~(2) The checklist shall establish the procedure to be followed by the County upon receipt of a request for disclosure of any~~
1279 ~~information identified by the applicant as confidential. This procedure shall establish, at a minimum, that information~~
1280 ~~identified as confidential may be disclosed only after the County has:~~

1281 ~~(a) Notified the applicant in writing of the request;~~

~~(b) Determined that the requested information is not exempt from disclosure under WCC 1.32.090 and Chapter 42.56 RCW;~~

~~(c) Notified the applicant in writing of the County's intention to disclose the information and provided the applicant with 10 days from the date of written notice to file an objection with the Public Records Officer; and~~

~~(d) Notified the applicant in writing of the County's decision to disclose the information despite the applicant's objections and provided the applicant with a reasonable opportunity (at least 30 days from the date of written notice) to file an injunction under RCW 42.56.540.~~

(3) Confidential Business Information

~~(a) For the purpose of checklists, permit applications and all other materials submitted by Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities for activities in the Cherry Point Heavy Impact Industrial District, the following shall apply:~~

~~(i) Applicants The applicant shall clearly identify information the applicant considered to be confidential and non-disclosable under the Public Records Act, including the provisions of WCC 1.32.090 and RCW 42.56, and if confidential information Confidential Business Information, not subject to disclosure under chapter 42.56 RCW (Public Records Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the applicant shall submit two copies of materials for County use as follows:~~

~~1. A copy with confidential information Confidential Business Information clearly identified, with a watermark indicating the document contains such confidential information; and~~

~~2. A copy with confidential information Confidential Business Information redacted, and a watermark added indicating that the document does not contain such confidential information and is suitable for public disclosure.~~

~~(ii) The following may be considered confidential and non-disclosable under the Public Records Act, WCC 1.32.090, and RCW 42.56, and may be exempt from disclosure by the County in accordance with WCC 1.32.090 Confidential Business Information may include:~~

~~1. Processing equipment technical specifications on internals, sidestream/pumparounds, design specifications, and process controls;~~

~~2. Process unit design, instrumentation and controls;~~

~~3. Feedstock, product, or process unit pump capacity and configuration; and~~

~~4. Contractual agreements and all terms contained therein.~~

~~(iii) The information listed above is not meant to be all-inclusive. Other information related to the applicant's processing activities, feedstock and product purchase, and/or sale and transportation methods and costs may be non-disclosable under the County's Public Record provisions and/or provisions of RCW 42.56 and other state provisions. Confidential Business Information and, if so, shall be In all cases, such information will be marked as Confidential Business Information such when submitted as part of an application.~~

1320 (iv) Calculation and permit material submittals may contain, but are not required to contain any of
1321 the above information.

1322 (v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is
1323 proposed, submittal of Confidential Business Information specifically related to the criteria of
1324 WCC 20.68.153 and WCC 20.68.154 shall not be required to be submitted with the permit
1325 application materials.

1326
1327 (4) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum Atmospheric Crude
1328 Distillation Capacity, the applicant shall provide calculations performed and certified by a professional engineer
1329 licensed in the state of Washington, clearly indicating the impact on MACDC and Transshipment Capacity. Sections
1330 of the report containing eConfidential bBusiness Information shall be separated as noted in WCC 20.05.130
1331 subsection (2) clearly identified as required by WCC 22.05.126(2)(a)(i) above.

1332 (5) If the County receives a public records request for records containing information the applicant has clearly indicated
1333 to be Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i), the County will notify the applicant of
1334 the request and provide the applicant with at least 30 days to file for an injunction under RCW 42.56.540 to prevent
1335 the disclosure of such information. If the applicant does not file for an injunction within the period of time set by
1336 the County, the County will disclose the records containing the information that the applicant has designated as
1337 Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i).

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Rationale for Above Changes Proposed by the Prosecuting Attorney's Office: The County is not in the position to independently determine whether information provided by the applicant is Confidential Business Information that is exempt from disclosure nor is it in the position to defend the withholding of such information if challenged in court. In such circumstances, the Public Records Act allows the County to provide third-party notice to an applicant and allow the applicant an opportunity to file for an injunction to prevent the release of this information. Applicants are in the unique position of having all of the evidence necessary to establish the existence of an exemption, if one exists.