

Whatcom County Fossil Fuel Industrial Uses

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

Overview

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

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

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

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

- Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments for Council consideration as soon as possible.

- Until the above mentioned amendments are implemented, the Prosecuting Attorney and/or the County Administration should provide the County Council written notice of all known pre-application correspondence or permit application submittals and notices, federal, state, or local that involve activity with the potential to expand the export of fossil fuels from Cherry Point.

26 The following table identifies major code amendment topics developed by the County Council in
 27 Resolution 2019-004. The following sections provide preliminary draft code language.

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

Code Outline Topic	Location in Code Changes	
1. Prohibit New Fossil Fuel Refineries	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
2. Retain Existing Refineries as an Outright Permitted Use with Limits	20.68.050	Permitted uses.
3. Conditional Use Permit Threshold for Expansions of Existing Refineries	20.68.150	Conditional uses.
	20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment	
4. Conditional Use Permit Criteria and Analysis of Greenhouse Gas Impacts of Expansions of Existing Refineries	20.68.800. Expansion Thresholds for Existing Fossil Fuel Refineries or Fossil Fuel Transshipment	
5. Prohibit Crude Oil and Coal Export Facilities	20.66.200	Prohibited uses.
	20.68.100	Accessory uses.
	20.68.200	Prohibited uses.
6. Renewable Fuel Production and Blending Facilities as an Outright Permitted Use	20.68.050	Permitted uses.
7. Prohibit New Docks and Piers	20.74.055	Prohibited uses.
	23.100.170	Cherry Point management area.
8. Prohibit Crude Oil Transshipment Facilities	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
9. Prohibit Coal Transshipment Facilities	20.66.200	Prohibited uses.
	20.68.200	Prohibited uses.
10. Pipelines	Not addressed per White Paper.	
11. Small Oil Storage and Distribution Facilities	See definitions – not included in defined uses that are prohibited (fossil fuel refinery and fossil fuel transshipment facility). Chapter 20.97 DEFINITIONS	

Code Outline Topic	Location in Code Changes
12. Change of Use Provisions	20.74.110 Change of Use
13. SEPA Threshold Determination	16.08.160 Substantive authority.
14. Scrubbing the Existing Code	20.88.200 Procedure.
	22.05.020 Project permit processing table.
15. Consistency with Countywide Planning Policies	See separate policy evaluation document.
16. Procedural Due Process, GMA and Shoreline WAC provisions	Co-timed policy and code amendments planned.
17. Severability Clause	Will go into the ordinance draft.
18. Insurance Provisions	Addressed in permit procedures, criteria, and conditions.

29

Changes by Code Chapter

CHAPTER 2.11 HEARING EXAMINER

2.11.205 Recommended decisions

Add new subsection F:

2.11.205 Recommended decisions.

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

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

B. Planned unit developments;

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

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

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

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

Discussion/Notes: Addresses desired permit process for fossil fuel refinery expansions above threshold to be reviewed by the Hearing Examiner for Conditional Use Permit recommendations and ultimately County Council for approval.

CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

16.08.160 Substantive authority.

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

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

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and

2. Such conditions are in writing; and

3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

5. Such conditions are based on one or more policies in subsection D of this section and cited in the license or other decision document.

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

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that

- 66 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 67 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient
68 to mitigate the identified impact; and
- 69 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the
70 decision document.

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

- 73 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
74 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
- 75 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 76 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
77 surroundings;
- 78 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
79 other undesirable and unintended consequences;
- 80 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- 81 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- 82 f. Achieve a balance between population and resource use which will permit high standards of living and a wide
83 sharing of life's amenities; and
- 84 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable
85 resources.
- 86 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that
87 each person has a responsibility to contribute to the preservation and enhancement of the environment.
- 88 3. The county adopts by reference the policies in the following county documents:
- 89 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 90 Whatcom County Shoreline Management Program
- 91 Whatcom County Subdivision Ordinance
- 92 Whatcom County Solid Waste Management Plan
- 93 Whatcom County Critical Areas Ordinance
- 94 All official land use controls adopted by Whatcom County.

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

102 F. Specific Environmental Policies

103 1. Air Quality and Climate:

104 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality
105 of life. Mitigation of criteria pollutant impacts will normally be the subject of air permits required by the

106 Northwest Clean Air Agency (NWCAA) and no further mitigation by the County shall be required. However,
107 where a project being reviewed by the County generates nuisance impacts or odors or climate impacts not
108 addressed through the regulations of NWCAA, the County may require mitigation under SEPA

109 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows
110 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,
111 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global
112 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that
113 major projects authorized by the County address climate impacts. Mitigation may be achieved through the
114 provisions contained in County land use and development regulations or through the State Environmental Policy
115 Act where land use code provisions do not address mitigation of climate impacts. Mitigation may be required for
116 the direct climate emissions of major projects (as defined under this code), the emissions from transportation
117 within the boundaries of Whatcom County generated by major projects as well as the upstream emissions
118 generated through production of raw materials processed in local facilities such as crude oil feedstocks or other
119 fuels used in production or energy generation at facilities. Climate impacts shall be assessed using the most current
120 version of the GREET Model developed by Argon National Laboratories or, where feedstocks are from Canada,
121 using the latest version of the GH Genius model developed by Canadian agencies for quantification of upstream
122 emissions from production of feedstocks produced in Canada. Climate impacts may be offset for major projects
123 through either code requirements or, if not addressed through code requirements, through mitigation projects that
124 provide real, additional and quantifiable greenhouse gas mitigation. Such mitigation must not be required by any
125 other regulatory mechanism and there shall be no double counting of emission reductions where identified as
126 mitigation of climate impacts for a major project.

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

133 2. Plants and Animals:

134 a. Many species of birds, mammals, fish, and other classes of animals and plants living in both rural and urban
135 environments and are of ecological, educational, and economic value. Fish and wildlife populations are threatened
136 by habitat loss and by the reduction of habitat diversity.

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

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

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

149 CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

150 20.66.200 Prohibited uses.

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

153 .201 Reserved.

154 .202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

155 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
156 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
157 products derived thereof, and primary metal industries.

158 .204 In the Cherry Point District the following uses are prohibited: new fossil fuel refinery, new fossil fuel transshipment or
159 facility unless permitted as a part of an existing refinery modification otherwise permitted under this code.

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

164 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

165 20.68.050 Permitted uses.

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

176 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
177 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

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

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

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

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

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

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

186 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
187 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

188 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
189 prefabricated wood products; wooden containers and cooperage.

190 .054 The following are permitted uses except as otherwise prohibited:

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

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

196 | (3) Refining and storage of ~~petroleum and asphalt~~ fossil fuels, limited as follows:
197 | (a) fossil fuel refineries, existing legally as of March 1, 2017, together with allowed expansions below the thresholds in WCC
198 | 20.68.800.

199 | (b) fossil fuel transshipment facilities existing legally as of March 1, 2017, together with allowed expansions below the
200 | thresholds in WCC 20.68.800.

201 | *Discussion/Notes: Allow existing legal fossil fuel uses with minor expansions. March 1,*
202 | *2017 date is in Comprehensive Plan policies.*

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

204 | (5) Leather tanning and finishing.

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

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

210 | (8) Storage of asphalt in the Heavy Impact Industrial Zone excluding the Cherry Point Industrial District.

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

212 | (9) The refining, storage, blending, and manufacture of renewable fuels.

213 | *Discussion/Notes: Renewable Fuel Production and Blending Facilities Could be an Outright*
214 | *Permitted Use.*

215 | .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
216 | fixtures, structural metal and stamping.

217 | .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
218 | materials handling equipment; machine tools and dies; and special and general industrial equipment.

219 | .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

220 | .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
221 | railroad equipment, bicycles and motorcycles.

222 | .059 Bulk commodity storage facilities, and truck, rail, vessel and pipeline transshipment terminals and facilities in existence
223 | as of March 1, 2017. New fossil fuel storage and transshipment facilities other than those existing as of March 1, 2017 are
224 | expressly prohibited unless permitted under the provisions for expansions of existing facilities provided for in WCC
225 | 20.68.800.

226 | .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
227 | with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
228 | (Chapter 20.14 WCC) or water sources.

229 | .061 Heavy construction contractors.

230 | .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
231 | park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
232 | noncommercial uses, excluding state education facilities and correction facilities.

233 | .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
234 | and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
235 | shall contain no indoor plumbing but may be served with electrical power for lighting.

- 236 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
237 the Heavy Impact Industrial District in the Bellingham UGA.
- 238 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- 239 .066 Marijuana production or processing facility.
- 240 .081 Freight railroad switching yards and terminals.
- 241 .082 Marine port facilities.
- 242 .085 Type I solid waste handling facilities.
- 243 .086 Type II solid waste handling facilities.

244 **20.68.100 Accessory uses.**

- 245 .101 Employee recreation facilities and play areas.
- 246 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
247 district.
- 248 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 249 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
250 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 251 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.
- 252 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
253 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.
- 254 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
255 purpose of serving the child care needs of employees whose place of employment lies within this zone district.
- 256 .108 Electric vehicle rapid charging stations and battery exchange facilities.
- 257 .109 Fossil Fuel transshipment facilities that are a necessary part of providing raw materials to, and serving, a permitted
258 expansion of an existing fossil fuel refinery. The volume of any storage associated with such permitted fossil fuels
259 transshipment facilities shall be limited to the current ratio of refining capacity to storage capacity at the existing fossil fuel
260 refinery.

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

264 **20.68.130 Administrative approval uses.**

- 265 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
266 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
267 (Exh. A), 2006).

268 **20.68.150 Conditional uses.**

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

- 270 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

277 .153 Expansion of existing legal fossil fuel refinery operations and the primary manufacturing of products thereof or
278 expansion of existing legal fossil fuels transshipment facilities when proposed in excess of expansion thresholds determined
279 consistent with WCC 20.68.800 and subject to the conditional use permit criteria below in addition to WCC 20.84.220:

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

281 (2) Within shorelines, County approval shall be contingent upon Department of Ecology approval of a shoreline CUP;

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

285 (4) Proof of insurance for hazards created in the County. At the time of application for an expansion of refinery capacity, the
286 applicant shall provide proof of insurance to cover loss or damages to the County and to County residents from any fire,
287 explosion, spill or other incident from operations of the refinery or from transport of raw materials or finished products
288 within the boundaries of Whatcom County. The County shall be named as an additional insured under insurance policies
289 provided. The County may require proof that adequate and sufficient insurance policies remain in existence throughout the
290 lifetime of operations or cleanup of the facility by current owners and operators or any successors to current owners or
291 operators of the properties involved in the application.

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

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

296 (7) Prior to occupancy and/or operation of the expanded facility, the State Department of Ecology shall certify to the county
297 that the facility has been constructed consistent with any applicable state requirements, including but not limited to water
298 rights and use, and that plans for stormwater and wastewater releases have been approved.

299 (8) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for
300 any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the County building official that
301 the project applicant has met any federal permitting needs, including properly addressing tribal treaty rights or the provisions
302 of the Magnuson Amendment through state and federal permitting decisions;

303 (9) Minimization of greenhouse gas emissions and inclusion of local carbon offset mitigation projects; and

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

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

307 .154 Treatment and storage facilities for hazardous wastes subject to the following:

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

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

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

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

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

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

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

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

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

333 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

334 .157 Trailheads with parking areas for more than 30 vehicles.

335 .158 Athletic fields.

336 .180 Major passenger intermodal terminals.

337 .187 Type III solid waste handling facilities; provided, that:

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

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

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

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

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

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

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

347 (f) This 1,500-foot buffer does not apply to:

348 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
349 the property line 100 feet or the standard zoning district setback, whichever is greater;

350 (ii) Inert landfills;

351 (3) Inert landfills shall be located at least 500 feet from the following:

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

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

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

- 355 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 356 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 357 (f) This 500-foot buffer does not apply to:
- 358 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
359 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 360 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
361 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
362 county or state road right-of-way;
- 363 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
364 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
365 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 366 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
367 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
368 and federal regulations concerning solid waste facilities and sites;
- 369 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
370 closure plan includes:
- 371 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
372 activity, with seeding to be accomplished annually but no later than September 30th; and
- 373 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
374 covered through the financial assurance for post-closure activities;
- 375 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
376 of WCC 20.80.300 (Landscaping);
- 377 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
378 delineated wellhead protection area;
- 379 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
380 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
381 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
382 the boundary of the airport property;
- 383 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
384 protect the value and enjoyment of existing adjacent uses.
- 385 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
386 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
387 processed as a major development project pursuant to Chapter 20.88 WCC.

388 20.68.200 Prohibited uses.

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

391 .201 Reserved.

392 .202 Adult businesses.

393 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
394 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
395 products derived thereof; and primary metal industries.

396 | .204 Fossil fuel refineries and the primary manufacturing of products thereof, new, after March 1, 2017.

397 | .205. Fossil fuels transshipment facilities, including bulk storage or transfer facilities for fossil fuels, new, after March 1,
398 | 2017.

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

401 | *(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-*
402 | *075, 1991).*

403 | **20.68.250 Minimum lot size.**

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

406 | **20.68.255 Minimum lot frontage.**

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

410 | **20.68.350 Building setbacks.**

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

412 | **20.68.400 Height limitations.**

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

415 | **20.68.450 Lot coverage.**

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

417 | **20.68.500 Open space.**

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

419 | **20.68.550 Buffer area.**

420 | .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
421 | District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
422 | appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
423 | impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

424 | .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
425 | structures shall be established consistent with the following options:

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

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

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

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

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

441 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
442 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

443 .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
444 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
445 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,
446 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

447 **20.68.600 Sign regulations.**

448 Sign regulations shall be administered pursuant to WCC 20.80.400.

449 **20.68.650 Development criteria.**

450 (Ord. 96-056 Att. A § A1, 1996).

451 **20.68.651 Landscaping.**

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

453 **20.68.652 Off-street parking and loading.**

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

457 **20.68.653 Drainage.**

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

461 **20.68.654 Driveways.**

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

464 **20.68.655 Access.**

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

466 **20.68.656 Maintenance.**

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

469 **20.68.657 Enclosure.**

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

472 **20.68.700 Performance standards.**

473 **20.68.701 Pollution control and nuisance abatement.**

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

477 **20.68.702 Heat, light and glare.**

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

480 **20.68.703 Ground vibration.**

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

483 **20.68.704 Odors.**

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

487 **20.68.705 Noise.**

488 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
489 075, 1991).

490 **20.68.706 Toxic gases and fumes.**

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

493 **20.68.707 Liquid pollutants.**

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

495 **20.68.708 Appearance.**

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

499 **20.68.709 Marijuana odor.**

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

506 20.68.800. EXPANSION THRESHOLDS FOR EXISTING FOSSIL FUEL REFINERIES OR
507 FOSSIL FUEL TRANSSHIPMENT

508 .801. Limits on Refinery Capacity Expansions:

509 (1) Expansions of existing refinery production shall be permitted up to a percentage limit defined as a rolling five-year
510 average of the combined regional population growth of the states of Washington and Oregon and the Province of British
511 Columbia as determined by their respective published government forecasts for the five years immediately preceding the date
512 of a completed application for any necessary County permits.

513 (2) Storage tank capacity increases at existing refineries or transshipment facilities shall be limited to the ratio of storage to
514 refining capacity currently existing at the facilities as of March 1, 2017. See WCC 20.97.160.5 for applicable definitions.

515 (3) The capacity of a refinery or process unit is a measure of its current actual throughput averaged over the latest 3-year
516 reporting period prior to the date of a completed application for any necessary County permits. The data used to calculate the
517 current actual throughput average shall be obtained from official government reports from the refinery to federal or state
518 agencies regarding production of the refinery or a particular process unit to be expanded.

519 (4) Expansions of existing refineries above that threshold in subsections (1) through (3) above shall require a conditional use
520 permit consistent with the criteria of 20.68.150, Conditional Uses, and major project permits subject to Chapter 20.88.

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

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

527 .082. Environmental Review and Greenhouse Gas Mitigation

528 (1) State Environmental Policy Act (SEPA) review of all refinery capacity expansions shall be required.

529 (2) Greenhouse gas emission analysis required:

530 (a) For the first expansion requiring County land use permits after the date of this ordinance, a baseline calculation
531 of existing facility emissions of greenhouse gases shall be provided for the 3-year period identified in WCC
532 20.68.801(3). See facility emissions definition in WCC 20.97.124.1 for the scope and geography of the analysis.
533 Calculation of baseline greenhouse gas emissions shall follow the methodology used for greenhouse gas reporting to
534 the State of Washington.

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

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

539 (d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and
540 methods adopted by the State of Washington Department of Ecology.

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

545 (f) The County may condition the permit to ensure appropriate mitigation and may require periodic monitoring of
546 greenhouse gas reduction measure effectiveness. Greenhouse gas mitigation proposed by the permit applicant shall
547 be additional, real and quantifiable and shall not be required under any other regulatory mechanism.

548 (3) Local mitigation of facility emissions above 1% over existing emissions shall be required for greenhouse gases.

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

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

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

561 .083 Non-Capacity Improvements

562 (1) Expansions of existing fossil fuel refineries for non-capacity purposes is permitted. Examples of non-capacity
563 improvements include, but are not limited to:

564 (a) accessory buildings,

565 (b) office space,

566 (c) parking lots,

567 (d) radio communications facilities,

568 (e) regular equipment maintenance and replacement,

569 (f) safety upgrades,

570 (g) security buildings,

571 (h) storage buildings, and

572 (i) other similar structures or activities.

573 (2) This allowance does not include improvements that would expand the capacity of the refinery or the transshipment
574 facility above the conditional use permit thresholds in subsection .081 or non-capacity improvements that would cause a net
575 increase in or greenhouse gas emissions above subsection .082.

576 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

577 20.74.010 Purpose.

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

582 20.74.020 Applicability.

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

584 20.74.030 Permitted uses.

585 (1) Primary permitted uses:

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

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

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

593 **20.74.040 Accessory uses.**

594 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
595 083 Exh. A § 57, 1998).

596 **20.74.050 Conditional uses.**

597 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
598 083 Exh. A § 57, 1998).

599 **20.74.055 Prohibited uses.**

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

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

603 **20.74.060 Master site plan requirements.**

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

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

610 (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
611 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
612 shall be waived.

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

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

620 **20.74.070 Minimum lot size and parcelization.**

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

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

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

- 627 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master
628 site plan requirements of this chapter.
- 629 (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
630 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.
- 631 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
632 Exh. A § 57, 1998).

633 20.74.080 Design standards.

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

638 20.74.090 Traffic demand management.

639 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
640 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
641 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
642 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

647 20.74.100 Drainage.

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

650 20.74.110 Change of Use

651 A permit is required to document a change of use, even where no alterations are planned or required by the code. This shall
652 be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:

- 653 (1) Applicable building and construction codes are met per Title 15;
654 (2) Consistency with the requirements of the CP Industrial District, Chapter 20.74; and
655 (3) Transportation concurrency requirements are met per Chapter 20.78.

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

658 CHAPTER 20.88 MAJOR PROJECT PERMITS

659 20.88.100 Major project permits.

660 .110 All major developments shall, prior to any construction, obtain a major project permit.

661 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
662 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

663

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

667 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
668 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
669 examiner’s recommendation and county council’s decision shall determine the adequacy of a major project permit application
670 based on the following criteria:

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

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

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

677 (3) Will be consistent with applicable federal, state and local laws and regulations , including but not limited to state aquatics
678 land lease management programs, federal treaty rights review, endangered species protections, and the protection of
679 archeological and sensitive cultural resources. This shall be ensured by making County approvals contingent upon receipt of
680 all other necessary federal, state and local laws and regulations. Site preparation and construction permits shall not be issued
681 until certification by the County that all such federal, state and local approvals have been received.

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

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

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

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

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

698 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
699 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
700 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
701 the policies for environmental protection set forth in the Comprehensive Plan.

702 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
703 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
704 and provide relief from the specific standards and requirements thereof.

705 20.88.200 Procedure.

706 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the
707 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
708 part of the application for a major project permit. The master plan document shall include all elements required per the
709 department’s administrative manual.

710 .210 Development Standards. The master plan may propose standards that will control development of the possible future
711 uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks,
712 frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards
713 that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed
714 standards. If the proposed design standards will apply to property located partially or totally within an urban growth area,
715 concurrence of the affected city will be required.

716 .215 Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be
717 conducted concurrently with the master plan review.

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

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

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

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

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

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

733 .220 through .265 *Reserved*.

734 | ~~Where~~ Except in the CP zone, where a project requires a major project permit, that project shall be exempt from the
735 requirement of obtaining a conditional use permit.

736 | .275 Major project permits: ~~Where~~ Except in the CP zone, where an applicant has applied for a planned unit development or a
737 development agreement, that project shall be exempt from the requirement to obtain a major project permit.

738 | .280 Major Project Permits in the CP zone: where a project in the CP zone requires a major project permit, the major project
739 permit shall be concurrently processed with other required land use permits including but not limited to: Cherry Point master
740 site plan, conditional use permit, planned unit development, or development agreement.

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

743 CHAPTER 20.97 DEFINITIONS

744 *Discussion/Notes: Definitions added are based on a review of federal (US Energy, US*
745 *Census, Code of the Federal Register), County Ordinance NO. 2018-007, Resolution*
746 *2019-004 and examples addressed in the White Paper.*

747 20.97.124.1 Facility Emissions.

748 "Facility Emissions" are greenhouse gas emissions associated with fossil fuel refineries or fossil fuels transshipment facilities
749 including but not limited to:

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

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

753 (3) the upstream emissions generated by the production and transport of raw products to the facility.

754 20.97.160.2 Fossil Fuels.

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

757 20.97.160.3 Fossil Fuels Transshipment Facilities.

758 "Fossil Fuel Transshipment Facility" is the process of off-loading a container of fossil fuel materials, refined or unrefined,
759 refinery feedstocks, products or by products, from one transportation facility and loading it onto another transportation
760 facility for the purposes of transporting such products into or out of Whatcom County.

761 20.97.160.4 Fossil Fuel Refinery.

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

766 20.97.160.5 Fossil Fuel Refinery Capacity.

767 "Fossil Fuel Refinery Capacity" means the extent of refinery production capacity in relation to storage capacity. "Storage
768 Capacity" is defined as total volume of all tanks at a facility and "Refining Capacity" is defined as the current actual
769 throughput averaged over the latest 3-year reporting period prior to the date of a completed application for any necessary
770 County permits obtained from official government reports from the refinery to federal or state agencies regarding production
771 of the refinery or a particular process unit to be expanded.

772 **20.97.160.6 Fossil Fuel, Unrefined.**

773 "Unrefined fossil fuel" includes but is not limited to all forms of crude oil whether stabilized or not; raw bitumen, diluted
774 bitumen, or syncrude; coal; methane, propane, butane, and other "natural gas" in liquid or gaseous formats excluding those
775 that are the byproduct of refinery processes in the Cherry Point UGA; and condensate.

776 **20.97.350.1 Renewable Biomass**

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

778 (1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated.

779 (2) Planted trees and tree residue from a tree plantation located on non-federal land.

780 (3) Animal waste material and animal byproducts.

781 (4) Slash and pre-commercial thinnings from non-federal forestland.

782 (5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings
783 and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.

784 (6) Algae.

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

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

788 **20.97.350.2 Renewable Fuel**

789 "Renewable Fuel" means liquid fuels produced from renewable biomass. Denatured ethanol and similar fuel additives with
790 less than 5 percent fossil fuel content, or biodiesel/renewable diesel with less than 5 percent fossil fuel content are considered
791 renewable fuels. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be
792 proven to reduce greenhouse gases utilizing accepted methods of the Washington State Department of Ecology or US EPA.

793 **20.97.434.1 Technical committee.**

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

797 **CHAPTER 22.05 PROJECT PERMIT PROCEDURES**

798 **22.05.020 Project permit processing table.**

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

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Type I Applications (Administrative Decision with No Public Notice or Hearing)									
Boundary Line	21.03							Administrator	Hearing

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

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Short Subdivision	21.04							Administrator	Hearing Examiner
Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)									
Conditional Use	20.84.200						Hearing Examiner	Hearing Examiner	Superior Court
Floodplain Development Variance	Title 17						Hearing Examiner	Hearing Examiner	Superior Court
Long Subdivision	21.05						Hearing Examiner	Hearing Examiner (g)	Superior Court
Binding Site Plan	21.07						Hearing Examiner	Hearing Examiner (g)	Superior Court
Reasonable Use (e)	16.16						Hearing Examiner	Hearing Examiner	Superior Court
Removal of Development Moratorium	20.80.738(2)						Hearing Examiner	Hearing Examiner	Superior Court
Shoreline Conditional Use	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Substantial	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Shoreline Variance	23.60	(a)					Hearing Examiner	Hearing Examiner (d)	Shorelines Hearings Board (h)
Zoning or Critical Areas Ordinance Variance	20.84.100 or 16.16.270						Hearing Examiner	Hearing Examiner	Superior Court
Type IV Applications (County Council Decision with Public Notice and Public Hearing)									
<u>CP Industrial District Conditional Use Permit for Fossil Fuel Refinery Expansion</u>	<u>20.68.150, 20.84.200</u>						<u>Hearing Examiner</u>	<u>County Council</u>	<u>Superior Court</u>
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court
Planned Unit Development	20.85						Hearing Examiner	County Council	Superior Court

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

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

807 **22.05.110 Final decisions – Type I, II, and III applications.**

808 (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
809 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
810 comply with all applicable codes.

811 (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)
812 shall either grant or deny the application or appeal.

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

817 (b) Requirements:

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

820 (ii) Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide proof of insurance to
821 cover loss or damages to the County and to County residents from any fire, explosion, spill or other incident from
822 operations of the refinery or from transport of raw materials or finished products within the boundaries of Whatcom
823 County. The County shall be named as an additional insured under insurance policies provided. The County may
824 require proof that adequate and sufficient insurance policies remain in existence throughout the lifetime of
825 operations or cleanup of the facility by current owners and operators or any successors to current owners or
826 operators of the properties involved in the application.

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

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

832 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
833 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
834 032 § 1 (Exh. A)).

835 **22.05.120 ~~Recommended~~ Recommendations and final decisions to county council. – Type**
836 **IV applications**

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

842 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
843 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
844 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
845 and conforms to the county’s comprehensive plan and complies with the applicable statutes, ordinances or regulations.

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

- 848 (4) For planned unit developments and major project permits the following shall apply:
- 849 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
850 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.
- 851 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
852 following the conclusion of the open record hearing.
- 853 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
854 (4)(c)(iii) of this section:
- 855 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
856 calendar days after receiving the hearing examiner's recommendation.
- 857 (ii) Issue a final written decision within 21 calendar days of the public meeting.
- 858 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
859 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
860 written findings that a specified amount of additional time is needed to process a specific application or project
861 type, per RCW 36.70B.080(1).
- 862 (5) The county council's final written decision may include conditions when the project is approved and shall state the
863 findings of fact upon which the decision is based.

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

866 (b) Fossil Fuel Refinery or Fossil Fuels Transshipment Facilities: The applicant shall provide proof of insurance to cover
867 loss or damages to the County and to County residents from any fire, explosion, spill or other incident from operations
868 of the refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. The
869 County shall be named as an additional insured under insurance policies provided. The County may require proof that
870 adequate and sufficient insurance policies remain in existence throughout the lifetime of operations or cleanup of the
871 facility by current owners and operators or any successors to current owners or operators of the properties involved in
872 the application.

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

878 CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS

879 23.100.170 Cherry Point management area.

880 A. Policies.

881 1. Purpose and Intent.

882 a. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and
883 balances the special port, industrial and natural resource needs associated with the development of this marine
884 resource. This section identifies policies and regulations for water-dependent industrial activities that apply in
885 addition to specific other elements of this program as referenced herein.

886 b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry
887 Point management area as providing herring spawning habitat and other key habitat characteristics that warrant
888 special consideration due to their importance to regional fisheries and other elements of the aquatic environment.

889 c. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require
890 marine access for marine cargo transfer, ~~including oil and other materials. For this reason, water~~.

891 i. Water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management
892 area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the
893 number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

894 d. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and
895 other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic
896 lands within the Cherry Point management area. The development of such a plan could provide a forum and
897 process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future
898 amendments to this program as appropriate.

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

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

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

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

908 • Encourage the continued agency use of best available science;

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

912 • Recognize federal actions upholding treaty rights;

913 • Protect traditional commercial and tribal fishing; and

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

916 d. Whatcom County should ensure that shoreline developments demonstrate conformance with the State of
917 Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.

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

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

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

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

932 4. Public Access.

933 a. Where appropriate, industrial and port development within the Cherry Point management area should provide
934 public beach and shoreline access in a manner that does not cause interference with facility operations or present

- 935 hazards to life and property. This may be accomplished through individual action or by joint, coordinated action
936 with other developers and landowners, for example, by setting aside a common public access area.
- 937 b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities
938 including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.
- 939 c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks
940 and Recreation Open Space Plan.

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

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

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

- 951 a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water
952 quality, fish and wildlife habitat, and other natural site conditions;
- 953 b. Adequate temporary and permanent management measures to control erosion and sediment impacts during
954 construction and operation; and
- 955 c. Adequate stormwater management facilities.

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

958 B. Regulations.

959 1. Allowed Use.

- 960 a. Water-dependent industrial and port uses are allowed within the Cherry Point management area; provided, that
961 specific findings are made in a shoreline substantial development permit or conditional use permit that:
- 962 i. Policies for optimum implementation of the statewide interest have been achieved through protection of
963 shoreline ecological functions and processes;
- 964 ii. The long-term statewide benefits of the development have been considered with the potential adverse impacts
965 on ecological functions; and
- 966 iii. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated
967 in the proposal.

968 b. Fuel Uses:

969 i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of
970 March 1, 2017 are permitted shoreline uses. Expansions of existing legal fossil fuel refineries below
971 thresholds of the zoning code at WCC 20.68.800 are subject to review as shoreline substantial development
972 permits. Expansions of existing legal fossil fuel refineries above thresholds at WCC 20.68.800 require a
973 shoreline conditional use permit.

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

978 | iii. Refining, storage, blending, and manufacture of renewable fuels is allowed as a shoreline substantial
979 | development permit.

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

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

987 | ee. Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that
988 | are located and designed to minimize shoreline alteration are permitted.

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

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

993 | 2. Public Access.

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

996 | b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access
997 | may be provided in accordance with WCC 23.90.080 at a location not directly adjacent to the water such as a
998 | viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include
999 | interpretive centers and displays that explain maritime history and industry; provided, that visual access to the
1000 | water is also provided.

1001 | c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public
1002 | access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

1003 | 3. Critical Areas. In addition to meeting the provisions of WCC 23.90.030, Ecological protection and critical areas,
1004 | development and alteration shall not be located or expanded within critical areas designated pursuant to Chapter 16.16
1005 | WCC except where the site is approved for water-dependent use, and the following are met:

1006 | a. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with
1007 | WCC 23.90.030.

1008 | b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall
1009 | demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade
1010 | the existing water quality within the wetland.

1011 | c. The minimum required setback from the OHWM for all industrial and port facilities, including development
1012 | components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs
1013 | and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such
1014 | setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.

1015 | d. Development and alteration other than recreation development for public and quasi-public shoreline access is
1016 | prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations
1017 | in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations
1018 | of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained
1019 | subject to the provisions of WCC 23.50.070.

1020 | 4. Location and Design.

1021 | a. Piers.

- 1022 i. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the
1023 movement of material and cargo from land to water and water to land. The length of piers shall not extend
1024 beyond that which is necessary to accommodate the draft of the vessels intending to use the facility. Due to the
1025 environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~
1026 those in operation as of January 1, 1998.
- 1027 ii. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife
1028 habitats.
- 1029 iii. Piers shall be designed to minimize impacts on steep shoreline bluffs.
- 1030 iv. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials
1031 that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other
1032 structural components shall be approved by applicable state agencies for contact with water to avoid discharge
1033 of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or
1034 pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated
1035 wood is allowed for maintenance purposes where use of a different material such as steel or concrete would
1036 result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds
1037 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction
1038 provisions of this section.
- 1039 v. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.
- 1040 vi. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers,
1041 except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means
1042 nonportable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- 1043 vii. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other
1044 properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and
1045 approved for compliance with U.S. Coast Guard regulations.
- 1046 b. Dredging.
- 1047 i. Dredging to accommodate water access to, or construction of, new development is prohibited. New
1048 development shall be located and designed to avoid the need for dredging. Dredging for existing development
1049 shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and
1050 wildlife habitats.
- 1051 ii. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations
1052 in WCC 23.90.120(B)(4) and (5), Dredging.
- 1053 iii. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of
1054 this title.
- 1055 c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to
1056 the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-
1057 supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier
1058 access that does not extend further toward the OHWM than existing topography.
- 1059 d. Excavation/Stabilization.
- 1060 i. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other
1061 structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration
1062 will adversely affect the existing littoral drift process. New development shall avoid, rather than modify, feeder
1063 bluffs.
- 1064 ii. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
- 1065 e. Shore defense works shall be regulated in accordance with WCC 23.100.130, Shoreline stabilization, and be
1066 consistent with the conservancy and aquatic shoreline area regulations of that section.

- 1067 5. Adjacent Use.
- 1068 a. New or expanded port or industrial development adjacent to properties which are zoned for nonindustrial
1069 purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare;
1070 and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual
1071 screen.
- 1072 b. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for nonport or
1073 nonindustrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent
1074 hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to,
1075 limits on height of structure, limits on light levels of fixtures, light shields and screening.
- 1076 c. The minimum setback from side property lines which intersect the OHWM for industrial and port development
1077 shall be 60 feet; provided, that:
- 1078 i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard
1079 houses, power vaults or transformers; and
- 1080 ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management
1081 area shall be administered in accordance with WCC 20.68.550 (Buffer Area).
- 1082 d. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but
1083 may be used for public access or outdoor recreation.
- 1084 6. Oil and Hazardous Materials.
- 1085 a. Release of oil or hazardous materials on shorelines is prohibited.
- 1086 b. A management plan shall be developed for new permitted or conditionally permitted development for the safe
1087 handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic
1088 waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may
1089 occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill
1090 management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this
1091 section.
- 1092 c. Necessary spill containment facilities associated with existing development may be permitted within shoreline
1093 jurisdiction where there are no feasible alternatives.
- 1094 7. Recreational Development. All recreational development shall comply with the policies and regulations of WCC
1095 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.
- 1096 8. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological,
1097 historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070. (Ord. 2014-051 §§ 5,
1098 6; Ord. 2009-13 § 1 (Exh. 1)).

1099 CHAPTER 23.110 DEFINITIONS

1100 *Discussion/Notes: Definitions added are based on a review of federal (US Energy, US*
1101 *Census, Code of the Federal Register), County Ordinance NO. 2018-007, and examples*
1102 *addressed in the White Paper.*

1103 23.110.060 F definitions.

1104 27. "Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, and heavy oils. All contain carbon and
1105 were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels are not fossil fuels.

1106 28. "Fossil Fuel Transshipment Facility" is the process of off-loading a container of fossil fuel materials, refined or
1107 unrefined, refinery feedstocks, products or by products from one transportation facility and loading it onto another
1108 transportation facility for the purposes of transporting such products into or out of Whatcom County.

1109 29. “Fossil Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not
1110 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,
1111 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of
1112 fossil fuels or by products.

1113 *Discussion/Notes: Consistency with Zoning Code changes.*

1114 23.110.090 I definitions.

1115 4. “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods,
1116 including but not limited to oil, metal or mineral product refining, power generating facilities, including hydropower, ship
1117 building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of
1118 fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and material/equipment
1119 storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as
1120 parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of
1121 raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an
1122 agricultural use. This definition excludes fossil fuel refineries.

1123 *Discussion/Notes: Consistency with Zoning Code changes.*

1124 23.110.150 O definitions.

1125 2. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to,
1126 crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

1127 *Discussion/Notes: Consistency with Zoning Code changes.*

1128 23.110.160 P definitions.

1129 10. “Port development” means public or private facilities for transfer of cargo or passengers from water-borne craft to land
1130 and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading
1131 or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo
1132 or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas,
1133 boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat
1134 building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil fuels
1135 transshipment facilities.

1136 *Discussion/Notes: Consistency with Zoning Code changes.*

1137 23.110.180 R definitions.

1138 6. “Renewable biomass” includes but is not limited to the following:

1139 (1) Planted crops and crop residue harvested from existing agricultural land cleared or cultivated.

1140 (2) Planted trees and tree residue from a tree plantation located on non-federal land.

1141 (3) Animal waste material and animal byproducts.

1142 (4) Slash and pre-commercial thinnings from non-federal forestland.

1143 (5) Biomass (organic matter that is available on a renewable or recurring basis) obtained from within 200 feet of buildings
1144 and other areas regularly occupied by people, or of public infrastructure, in an area at risk of wildfire.

1145 (6) Algae.

1146 (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1147 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
1148 customary feedstock production and transport.

1149 7. “Renewable Fuel” means liquid fuels produced from renewable biomass. Denatured ethanol and similar fuel additives
1150 with less than 5 percent fossil fuel content, or biodiesel/renewable diesel with less than 5 percent fossil fuel content are
1151 considered renewable fuels. Renewable fuels shall not include products produced from palm oil or other feedstocks that
1152 cannot be proven to reduce greenhouse gases utilizing accepted methods of the Washington State Department of Ecology or
1153 US EPA.

1154 *Discussion/Notes: Consistency with Zoning Code changes.*

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