

# **Whatcom County Council Special Committee of the Whole**

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



## **Meeting Agenda**

ESTIMATED TIME - MEETING MAY BEGIN EARLIER/LATER THAN 4:30 P.M.

**Wednesday, August 7, 2019**

**4:30 PM**

**Council Chambers**

### **COUNCILMEMBERS**

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

### **CLERK OF THE COUNCIL**

Dana Brown-Davis, C.M.C.

**Call To Order**

**Roll Call**

**Committee Discussion**

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

**Other Business**

**Adjournment**



# Whatcom County

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## Agenda Bill Master Report

**File Number: AB2019-387**

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**File ID:** AB2019-387      **Version:** 1      **Status:** Discussed  
**File Created:** 07/02/2019      **Entered by:** DBrown@co.whatcom.wa.us  
**Department:** Council Office      **File Type:** Discussion  
**Assigned to:** Council Special Committee of the Whole      **Final Action:** 07/30/2019  
**Agenda Date:** 08/07/2019      **Enactment #:**

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Primary Contact Email: RBrowne@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

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

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

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

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### HISTORY OF LEGISLATIVE FILE

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| Date:      | Acting Body:                           | Action:           | Sent To:                               |
|------------|--|-------------------|--|
| 07/09/2019 | Council Special Committee of the Whole | HELD IN COMMITTEE | Council Special Committee of the Whole |
| 07/23/2019 | Council Special Committee of the Whole | HELD IN COMMITTEE | Council Special Committee of the Whole |
| 07/30/2019 | Council Special Committee of the Whole | DISCUSSED         |  |

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**Attachments:** July 29 - Potential Code Amendments, June 11 Potential Countywide Planning Policies and Comp Plan Amendments – Cherry Point, July 30 Draft Minutes - Special Committee of the Whole, Cherry Point Amendments - Memo to Council from Planning Director (July 22 2019), July 23 Donovan Additional Proposed Amendments, July 23 Browne Additional Proposed Amendments, August 5 - Potential Code Amendments for Cherry Point, August 5 - Potential Countywide Planning Policies and Comp Plan Amendments for Cherry Point

# 1 Whatcom County

## 2 Fossil Fuel Industrial Uses

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

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### 4 Overview

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

7 Policy 2CC-16: The County shall undertake a study to be completed if possible by December of  
8 2017 to examine existing County laws, including those related to public health, safety,  
9 development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop  
10 recommendations for legal ways the County may choose to limit the negative impacts on public  
11 safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum  
12 gases, and natural gas exports from the Cherry Point UGA above levels in existence as of March  
13 1, 2017.

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

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

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

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

25 Code amendments also fulfill Resolution 2019-004 and changes authorized by majority motions at the  
26 July 23, 2019 Whatcom County Council Special Committee of the Whole Meeting.  
27

28 The following table identifies major code amendment topics developed by the County Council in  
 29 Resolution 2019-004 or by the July 23, 2019 Whatcom County Council Special Committee of the Whole  
 30 Meeting. The following sections provide an overview of key elements of the proposal and preliminary  
 31 draft code language.

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

| <b>Code Outline Topic</b>  | <b>Location in Code Changes</b>   |  |
|--|---|--|
| 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.  | Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities |
| 4. Conditional Use Permit Criteria and Analysis of Greenhouse Gas Impacts of Expansions of Existing Refineries | 20.68.800.  | Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities |
| 5. Prohibit Crude Oil and Coal Export Facilities   | 20.66.200   | Prohibited uses.   |
|  | 20.68.200   | Prohibited uses.   |
| 6. Renewable Fuel Production and Blending Facilities as an Outright Permitted Use                              | Treat renewable fuels like fossil fuels.  |  |
| 7. Prohibit New Docks and Piers  | 20.68.200   | Prohibited uses.   |
|  | 20.74.055   | Prohibited uses.   |
|  | 23.100.170  | Cherry Point management area.  |
| 8. Prohibit Crude Oil Transshipment Facilities   | 20.66.200   | Prohibited uses.   |
|  | 20.68.200   | Prohibited uses.   |
| 9. Prohibit Coal Transshipment Facilities  | 20.66.200   | Prohibited uses.   |
|  | 20.68.200   | Prohibited uses.   |
| 10. Pipelines  | Not addressed per Cascadia Law Group report to the County Council: Reducing Impacts from Fossil Fuel Projects Report to the Whatcom County Council February 23, 2018. |  |
| 11. Small Oil Storage and Distribution Facilities  | 20.97.160.6   | Small Oil Storage and Distribution Facilities                        |

| Code Outline Topic   | Location in Code Changes   |
|--|--|
| 12. Change of Use Provisions                                 | 20.74.110 Change of Use.   |
| 13. SEPA Threshold Determination                             | 16.08.090. Environmental checklist<br>16.08.160 Substantive authority.   |
| 14. Scrubbing the Existing Code                              | 20.88.200 Procedure.<br>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.<br>See also 22.05.125 Proof of insurance for hazards created in the County |

33

## Key Elements of Code Proposal

34

### Restrict New Fossil Fuel Refineries and Transshipment Facilities

35

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

36

### Allow Current Uses and Limited Expansions

37

The code proposal outright permits existing, legally established fossil fuel refineries and fossil fuel transshipment facilities. Expansions of refinery capacity and associated storage capacity would be allowed with a conditional use permit.

38

A Conditional Use Permit with a decision by the Hearing Examiner would be needed for expansion, except where size of the proposal triggers Major Project Permit in which case the Hearing Examiner would make a recommendation to the County Council who would make the decision. The reviews are discretionary and conditional use criteria must be met, and greenhouse gas impacts analyzed, and local mitigation provided.

39

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

40

41

49 **Allow for Renewable Fuels**

50 The proposed code as drafted allows for renewable fuels facilities to be treated similarly to fossil fuels  
51 in terms of permit allowances. Renewable fuel proposals would also require tracking greenhouse gas  
52 emissions and liability insurance.

53 **Address Impacts and Mitigation**

54 Recognizing that fossil fuel facilities and transshipment facilities, as well as renewable fuel counterparts,  
55 have the potential for environmental impacts and require mitigation, several sections of the code  
56 proposal address the environmental review process and content:

- 57 ■ **State Environmental Policy Act (SEPA) Policies:** When fossil-fuel refinery facilities or transshipment  
58 facilities are reviewed under SEPA, additional environmental policies would apply to guide  
59 environmental impact evaluation and mitigation measures including policies on air quality and  
60 climate and fish and wildlife habitat. In addition, a worksheet for fossil fuel facilities would be  
61 required.
- 62 ■ **Greenhouse Gas Emissions Mitigation:** The SEPA policies and the zoning standards require reporting  
63 of emissions and mitigation above the baseline established at the time of permit. Local carbon offsets  
64 would be required or a fee in lieu of mitigation would be required which the County would use to  
65 provide local greenhouse gas mitigation projects.
- 66 ■ **Fish and Wildlife Habitat:** In SEPA rules, the County would require analysis and mitigation of impacts  
67 to priority habitats and species and high biodiversity areas. It should be noted that the County's  
68 critical area regulations and shoreline regulations would also apply.
- 69 ■ **Other Considerations:** Applicants would be required to demonstrate consistency with federal and  
70 state laws and permit requirements, such as consistency with the Cherry Point Aquatic Reserve  
71 Management Plan, federal review of consistency with Treaty Rights, etc. before any site  
72 modifications or construction could occur.
- 73 ■ **Insurance:** Insurance provisions are contained in a new code section and are based on discussion with  
74 an insurance expert familiar with commercially available policies similar in nature and in place for  
75 petroleum terminals in Alaska. Options for policy limits and alternatives to conventional insurance are  
76 also provided for Council discussion.

# Changes by Code Chapter

## CHAPTER 2.11 HEARING EXAMINER

### 2.11.205 Recommended decisions

#### 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.

*Discussion/Notes: No change is needed to Hearing Examiner duties at WCC 2.11.205 or elsewhere. Based on July 23, 2019 County Council Special Committee of the Whole, discussion indicated support for "option 4" in the 7/16/19 code draft, as described in Planning and Development Services Memo dated 7/22/2019): Require a conditional use permit. The Hearing Examiner would conduct the public hearing and make the final decision. However, if the proposal meets the existing criteria for a major project permit (WCC 20.88.120) then a major project permit would be required (without a conditional use permit). In this case, the Hearing Examiner would conduct the public hearing and issue a recommendation. The County Council would make the final decision.*

## CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

### 16.08.090. Environmental checklist

E. Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960. Environmental Checklist. As provided in WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment, impacts, and mitigation regarding air quality and climate and risks from spills and/or explosions. For any proposed change of use or expansion of facilities that manufacture, process, transport any fossil fuel, renewable fuel, or hydrocarbon feedstock, the proponent will fill out the County's SEPA "Worksheet for Fossil and Renewable Fuel Facilities." This Worksheet provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of worksheet shall be prepared and updated once per year by the SEPA Responsible Official in consultation with and taking into account the comments of the Climate Impacts Advisory Group and its members. The Worksheet shall analyze the "significance" of direct, indirect, and cumulative impacts including but not limited to those arising from:

1. Windborne transport of fossil or renewable fuel emissions into/through/across Whatcom County;
2. Life cycle greenhouse gas emissions above existing levels;



116 3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or  
117 interfere with commercial and treaty tribe fishing areas; and

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

120 5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and  
121 transport of renewable or fossil fuels or related feedstocks within Whatcom County.

122 In determining whether possible impacts are “significant” and “probable,” the Responsible Official shall determine whether  
123 the answers on the Worksheet for Fossil Fuel Facilities accurately analyze the severity of potential harm, independently from  
124 analysis of probability of occurrence, in compliance with WAC 197-11-330—794. Also, as provided in WAC 197-11-794,  
125 “the severity of an impact should be weighed along with the likelihood of its occurrence” and “an impact may be significant  
126 if its chance of occurrence is not great, but the resulting environmental impact would be severe if it occurred.”

127 The worksheet and supplemental information required for fossil and renewable fuel facilities shall be considered procedures  
128 and criteria added to Whatcom County’s SEPA policies and procedures pursuant to WAC 197-11-906(1)(c) and are deemed  
129 necessary to be consistent with the provisions of SEPA contained in RCW 43.21C.020, RCW 43.21C.030 and RCW  
130 43.21C.031. The county may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is  
131 prepared, it must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 98-048 Exh. A;  
132 Ord. 84-122 Part 3 (part)).

133 Discussion/Notes: Subsection E with the exception of green text was proposed by County  
134 Council. Suggest reference to WAC 197-11-906(1)(c) as basis to require worksheet  
135 since it allows for additional procedures and criteria. WAC 197-11-315 refers to  
136 Ecology and 30-day review for planned actions, which is not proposed.

### 137 16.08.160 Substantive authority.

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

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

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

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

- 150 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that  
151 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 152 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient  
153 to mitigate the identified impact; and

154 3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the  
155 decision document.

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

158 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve  
159 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

160 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

161 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing  
162 surroundings;

163 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or  
164 other undesirable and unintended consequences;

165 d. Preserve important historic, cultural, and natural aspects of our national heritage;

166 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

167 f. Achieve a balance between population and resource use which will permit high standards of living and a wide  
168 sharing of life's amenities; and

169 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable  
170 resources.

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

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

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

175 Whatcom County Shoreline Management Program

176 Whatcom County Subdivision Ordinance

177 Whatcom County Solid Waste Management Plan

178 Whatcom County Critical Areas Ordinance

179 All official land use controls adopted by Whatcom County.

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

187 F. Specific Environmental Policies

188 1. Air Quality and Climate:

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

194 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows  
195 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads.

196 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global  
197 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that  
198 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be  
199 authorized by the County address greenhouse gas emissions impacts. Mitigation may be achieved through the  
200 provisions contained in County land use and development regulations or through the State Environmental Policy  
201 Act where land use code provisions do not address mitigation of greenhouse gas emissions impacts.

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

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

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

211 (c) Mitigation: Greenhouse gas emissions impacts may be offset for proposals subject to WCC 20.68.801  
212 through either code requirements or, if not addressed through code requirements, through mitigation projects  
213 that provide real, additional and quantifiable greenhouse gas mitigation. Such mitigation must not be required  
214 by any other regulatory mechanism and there shall be no double counting of emission reductions where  
215 identified as mitigation of greenhouse gas emissions impacts for permits subject to WCC 20.68.802.

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

221 iii. Greenhouse Gas Emissions – Other Uses:

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

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

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

## 231 2. Plants and Animals:

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

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

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

corridors, or habitat diversity for plants or animals species of substantial educational, ecological, or economic value, or interfere with treaty rights, clean water rights, or endangered species protection.

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

## CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

### 20.66.200 Prohibited uses.

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

.201 Reserved.

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

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

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

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

## CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

### 20.68.050 Permitted uses.

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

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

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

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

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

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

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

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

288 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and  
289 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

290 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and  
291 prefabricated wood products; wooden containers and cooperage.

292 .054 The following are permitted uses except as otherwise prohibited:

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

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

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

299 (a) fossil fuel refineries, existing legally as of [XXX effective date].

300 (b) fossil fuel transshipment facilities existing legally as of [XXX effective date].

301 *Discussion/Notes: Allow existing legal fossil fuel uses.*

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

303 (5) Leather tanning and finishing.

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

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

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

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

311 (9) The refining, storage, blending, manufacture and transshipment of renewable fuels, existing legally as of [XXX effective  
312 date]. Expansions of such existing facilities are subject to the provisions of Section 20.68.153.

313 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing  
314 fixtures, structural metal and stamping.

315 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and  
316 materials handling equipment; machine tools and dies; and special and general industrial equipment.

317 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

318 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,  
319 railroad equipment, bicycles and motorcycles.

320 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except for  
321 fossil fuel facilities or fossil fuel transshipment facilities subject to the provisions of 20.68.153. New fossil fuel storage and  
322 transshipment facilities are expressly prohibited except as provided in Section 20.68.153.

323 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants  
324 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind  
325 (Chapter 20.14 WCC) or water sources.



- 326 .061 Heavy construction contractors.
- 327 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,  
 328 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar  
 329 noncommercial uses, excluding state education facilities and correction facilities.
- 330 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet  
 331 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building  
 332 shall contain no indoor plumbing but may be served with electrical power for lighting.
- 333 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within  
 334 the Heavy Impact Industrial District in the Bellingham UGA.
- 335 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.
- 336 .066 Marijuana production or processing facility.
- 337 .081 Freight railroad switching yards and terminals, excluding uses addressed in .059.
- 338 .082 Marine port facilities, excluding uses addressed in .059, and excluding new piers, docks, or wharves.
- 339 .085 Type I solid waste handling facilities.
- 340 .086 Type II solid waste handling facilities.

341 **20.68.100 Accessory uses.**

- 342 .101 Employee recreation facilities and play areas.
- 343 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the  
 344 district.
- 345 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 346 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50  
 347 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 348 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.
- 349 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved  
 350 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.
- 351 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the  
 352 purpose of serving the child care needs of employees whose place of employment lies within this zone district.
- 353 .108 Electric vehicle rapid charging stations and battery exchange facilities.

354 **20.68.130 Administrative approval uses.**

- 355 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the  
 356 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1  
 357 (Exh. A), 2006).

358 **20.68.150 Conditional uses.**

- 359 The following uses require a conditional use permit in the HII Zoning District.
- 360 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:
- 361 (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that  
 362 allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.

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

367 .153 Expansion of existing legal fossil or renewable fuel refinery operations and the primary manufacturing of products  
368 thereof or expansion of existing legal fossil or renewable fuel transshipment facilities, subject to the conditional use criteria  
369 below:

370 (1) The conditional use permit approval criteria listed under WCC 20.84.220 are met;

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

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

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

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

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

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

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

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

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

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

390 .154 Treatment and storage facilities for hazardous wastes subject to the following:

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

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

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

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

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

402 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,  
403 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to  
404 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit

405 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,  
406 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be  
407 documented by county staff.

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

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

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

416 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

417 .157 Trailheads with parking areas for more than 30 vehicles.

418 .158 Athletic fields.

419 .159 New or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities subject  
420 to the conditional use permit criteria identified in WCC 20.68.153 (1) to (11).

421 .180 Major passenger intermodal terminals.

422 .187 Type III solid waste handling facilities; provided, that:

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

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

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

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

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

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

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

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

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

435 (ii) Inert landfills;

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

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

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

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

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

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



- 442 (f) This 500-foot buffer does not apply to:
- 443 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from  
444 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 445 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use  
446 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any  
447 county or state road right-of-way;
- 448 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,  
449 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use  
450 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 451 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid  
452 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state  
453 and federal regulations concerning solid waste facilities and sites;
- 454 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the  
455 closure plan includes:
- 456 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular  
457 activity, with seeding to be accomplished annually but no later than September 30th; and
- 458 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is  
459 covered through the financial assurance for post-closure activities;
- 460 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements  
461 of WCC 20.80.300 (Landscaping);
- 462 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's  
463 delineated wellhead protection area;
- 464 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving  
465 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be  
466 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from  
467 the boundary of the airport property;
- 468 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to  
469 protect the value and enjoyment of existing adjacent uses.
- 470 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when  
471 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be  
472 processed as a major development project pursuant to Chapter 20.88 WCC.

## 473 20.68.200 Prohibited uses.

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

476 .201 Reserved.

477 .202 Adult businesses.

478 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary  
479 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and  
480 products derived thereof; and primary metal industries.

481 .204 New Fossil fuel refineries and the primary manufacturing of products thereof [XXX effective date].

482 .205. New Fossil fuel transshipment facilities, including bulk storage or transfer facilities for fossil fuels [XXX effective  
483 date].

484 | 206. New piers, docks, or wharves in Cherry Point District.

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

487 | *(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-*  
488 | *075, 1991).*

489 | **20.68.250 Minimum lot size.**

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

492 | **20.68.255 Minimum lot frontage.**

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

496 | **20.68.350 Building setbacks.**

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

498 | **20.68.400 Height limitations.**

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

501 | **20.68.450 Lot coverage.**

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

503 | **20.68.500 Open space.**

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

505 | **20.68.550 Buffer area.**

506 | .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial  
507 | District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual  
508 | appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site  
509 | impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

510 | .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory  
511 | structures shall be established consistent with the following options:

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

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

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

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

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

527 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and  
528 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

529 .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  
530 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),  
531 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,  
532 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

### 533 **20.68.600 Sign regulations.**

534 Sign regulations shall be administered pursuant to WCC 20.80.400.

### 535 **20.68.650 Development criteria.**

536 (Ord. 96-056 Att. A § A1, 1996).

### 537 **20.68.651 Landscaping.**

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

### 539 **20.68.652 Off-street parking and loading.**

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

### 543 **20.68.653 Drainage.**

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

### 547 **20.68.654 Driveways.**

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

### 550 **20.68.655 Access.**

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

### 552 **20.68.656 Maintenance.**

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

### 555 **20.68.657 Enclosure.**

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

558 **20.68.700 Performance standards.**

559 **20.68.701 Pollution control and nuisance abatement.**

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

563 **20.68.702 Heat, light and glare.**

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

566 **20.68.703 Ground vibration.**

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

569 **20.68.704 Odors.**

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

573 **20.68.705 Noise.**

574 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-  
575 075, 1991).

576 **20.68.706 Toxic gases and fumes.**

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

579 **20.68.707 Liquid pollutants.**

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

581 **20.68.708 Appearance.**

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

585 **20.68.709 Marijuana odor.**

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

592 20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities

593 This section applies to fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, or renewable fuel  
594 transshipment facilities.

595 .801. Environmental Review and Greenhouse Gas Mitigation

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

598 (2) Greenhouse gas emission analysis required:

599 (a) For the first expansion requiring County land use permits after the date of this ordinance, a baseline calculation  
600 of existing facility emissions of greenhouse gases shall be provided by the applicant addressing the average of the  
601 prior three-year throughput. See facility emissions definition in WCC 20.97.124.1 for the scope and geography of  
602 the analysis. Calculation of baseline greenhouse gas emissions shall follow the methodology used for facility  
603 greenhouse gas reports to the State of Washington Department of Ecology, and to the US Environmental Protection  
604 Agency Electronic Greenhouse Gas Reporting Tool (e-GGRT), or successor state or federal emissions reporting tool  
605 or requirements.

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

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

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

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

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

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

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

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

630 (3) Local mitigation of greenhouse gas emissions shall be required, whenever calculated greenhouse gas emissions increase  
631 above the baseline for a 3-year average (per section .801(2)(a)), after the effective date of this section [XXX].

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

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

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

645 *Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-*  
646 *CO<sub>2</sub>) “is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide*  
647 *(CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages*  
648 *avoided for a small emission reduction (i.e., the benefit of a CO<sub>2</sub> reduction).” See:*  
649 *<https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. If the*  
650 *County wishes to increase the mitigation fee it may do so by ordinance with an*  
651 *accompanying rationale such as inflation, updated US EPA guidance or other factors.*

## 652 .802 Non-Capacity Improvements

653 (1) Expansions of existing legal fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, or  
654 renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses. Examples of non-capacity  
655 improvements include, but are not limited to:

656 (a) accessory buildings,

657 (b) office space,

658 (c) parking lots,

659 (d) radio communications facilities,

660 (e) regular equipment maintenance and replacement,

661 (f) safety upgrades,

662 (g) security buildings,

663 (h) storage buildings, and

664 (i) other similar structures or activities.

665 (2) This allowance does not include improvements that would expand the capacity of the refinery or the transshipment  
666 facility which requires a conditional use permit per 20.68.153 or non-capacity improvements that would cause a net increase  
667 in or greenhouse gas emissions above subsection .801.

## 668 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

### 669 20.74.010 Purpose.

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



674 **20.74.020 Applicability.**

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

676 **20.74.030 Permitted uses.**

677 (1) Primary permitted uses:

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

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

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

685 **20.74.040 Accessory uses.**

686 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
687 083 Exh. A § 57, 1998).

688 **20.74.050 Conditional uses.**

689 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
690 083 Exh. A § 57, 1998).

691 **20.74.055 Prohibited uses.**

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

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

695 **20.74.060 Master site plan requirements.**

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

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

702 (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  
703 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site  
704 shall be waived.

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

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

712 **20.74.070 Minimum lot size and parcelization.**

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

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

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

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

721 (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  
722 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

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

725 **20.74.080 Design standards.**

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

730 **20.74.090 Traffic demand management.**

731 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major  
732 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time  
733 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  
734 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

739 **20.74.100 Drainage.**

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

742 **20.74.110 Change of Use**

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

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

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

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

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



751 CHAPTER 20.88 MAJOR PROJECT PERMITS

752 20.88.100 Major project permits.

753 .110 All major developments shall, prior to any construction, obtain a major project permit.

754 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter  
755 16.16 WCC and for any proposed development that meets any two of the following conditions:

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

756  
757 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the  
758 technical review committee that any project be considered a major development, if in the opinion of the administration it is of  
759 a nature that council review would be appropriate.

760 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval  
761 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing  
762 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application  
763 based on the following criteria:

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

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

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

770 (3) Will obtain, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal  
771 determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the

772 “Magnuson Amendment” under 33 U.S.C. § 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or  
773 over navigable waters of the U.S.), the Coastal Zone Management Act (including any state Department of Ecology shoreline  
774 conditional use or variance approval), the Clean Air Act, and/or under the Clean Water Act, including but not limited to a  
775 federal Section 404 authorization (for fill into waters of the U.S.) and a state Section 401 water quality certification, prior to  
776 issuance of any site preparation or construction permits necessary to construct a facility authorized under a major project  
777 permit.

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

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

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

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

786 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent  
787 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural  
788 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with  
789 the policies for environmental protection set forth in the Comprehensive Plan.

790 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major  
791 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC  
792 and provide relief from the specific standards and requirements thereof.

## 793 20.88.200 Procedure.

794 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the  
795 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as  
796 part of the application for a major project permit. The master plan document shall include all elements required per the  
797 department’s administrative manual.

798 .210 Development Standards. The master plan may propose standards that will control development of the possible future  
799 uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as height limits, setbacks,  
800 frontage, landscaping requirements, parking requirements, signage, view corridors or facade treatments. Proposed standards  
801 that do not meet the minimum county standards must obtain the appropriate variance prior to county approval of the proposed  
802 standards. If the proposed design standards will apply to property located partially or totally within an urban growth area,  
803 concurrence of the affected city will be required.

804 .215 Procedures. Master plan review shall be conducted under current review procedures. Other land use reviews may be  
805 conducted concurrently with the master plan review.

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

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

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

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

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

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

821 .220 through .265 *Reserved*.

822 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a  
823 conditional use permit.

824 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that  
825 project shall be exempt from the requirement to obtain a major project permit except in the CP zone.

826 .280 Major project permits in the CP zone: where a project in the CP zone requires a major project permit, the major project  
827 permit shall be concurrently processed with other required land use permits including but not limited to: Cherry Point master  
828 site plan, conditional use permit, planned unit development, or development agreement.

## 829 CHAPTER 20.97 DEFINITIONS

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

### 834 20.97.052.1 Change of Use

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

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

### 837 20.97.124.1 Facility Emissions.

838 "Facility Emissions" are greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or  
839 renewable fuel transshipment facilities based upon:

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

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

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

### 845 20.97.160.2 Fossil Fuels.

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

### 849 20.97.160.3 Fossil or Renewable Fuel Transshipment Facilities.

850 "Fossil Fuel Transshipment Facility" is a facility engaging in the process of off-loading of fossil or renewable fuel materials,  
851 refined or unrefined, refinery feedstocks, products or by products, from one transportation facility and loading it onto another  
852 transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of  
853 transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and  
854 compressor stations and associated facilities. This definition excludes Small Oil Storage and Distribution Facilities.

855 **20.97.160.4 Fossil-Fuel Refinery.**

856 A "Fossil-Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not  
857 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,  
858 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of  
859 fossil fuels or by products. This definition excludes Small Oil Storage and Distribution Facilities.

860 **20.97.160.5 Fossil-Fuel Refinery Capacity.**

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

866 **20.97.163 Greenhouse Gas Emissions**

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

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

873 **20.97.201 Living Wage**

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

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

882 **20.97.350.1 Renewable Biomass**

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

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

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

886 (3) Animal waste material and animal byproducts.

887 (4) Slash and pre-commercial thinnings.

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

889 (6) Algae.

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

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

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

### 895 20.97.350.2 Renewable Fuel

896 “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.  
897 Common renewable fuels include ethanol and biodiesel:

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

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

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

909 Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,  
910 common liquid fuel forms include ethanol and biodiesel. See:

911 [https://www.eia.gov/energyexplained/?page=renewable\\_home](https://www.eia.gov/energyexplained/?page=renewable_home).

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

914 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See  
915 <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-  
916 25% fossil fuels and is used by flexibly fueled vehicles. See  
917 <https://www.fueleconomy.gov/feg/flextech.shtml>.

918 Under the EPA renewable fuel standard, three of four renewable fuel categories must  
919 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional  
920 renewable ethanol must meet a 20% lifecycle GHG reduction. See:

921 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)  
922 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

### 923 20.97.350.3 Renewable Fuel Refinery

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

### 926 20.97.425.1 Small Oil Storage and Distribution Facilities

927 “Small Oil Storage and Distribution Facilities” means:

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

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

932 **20.97.434.1 Technical committee.**

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

936 **CHAPTER 22.05 PROJECT PERMIT PROCEDURES**

937 **22.05.020 Project permit processing table.**

938 (1) Marked boxes in the table below indicate the required general steps for processing all project permit applications or  
 939 administrative actions. The requirements for each step listed in the top row of the table are provided in WCC 22.05.040  
 940 through 22.05.160, as indicated. Specific requirements for each project permit can be found through the references given in  
 941 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)) |
|---|---|--|--|--|---------------------------------------|--|--|---|---|
| <b>Type I Applications (Administrative Decision with No Public Notice or Hearing)</b> |   |  |  |  |                                       |  |  |   |   |
| Boundary Line Adjustment  | 21.03                                   |  |  |  |                                       |  |  | Administrator                                   | Hearing Examiner                                    |
| Building Permit   | 15.04                                   | (f)                                      |  |  |                                       |  |  | Administrator                                   | Hearing Examiner (i)                                |
| Natural Resource Assessment   | Title 16                                |  |  |  |                                       |  |  | Administrator                                   | Hearing Examiner                                    |
| <b><u>Change of Use, Cherry Point Industrial District</u></b>                         | <b><u>Chapter 20.74</u></b>             |  |  |  |                                       |  |  | <b><u>Administrator</u></b>                     | <b><u>Hearing Examiner</u></b>                      |
| 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  | 22.20                                   |  |  |  |                                       |  |  | 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)) |
|--|---|--|--|--|---------------------------------------|--|--|---|---|
| Interpretation   |   |  |  |  |                                       |  |  |   | Examiner  |
| <b>Type II Applications (Administrative Decision with Public Notice; No Public Hearing)</b>    |   |  |  |  |                                       |  |  |   |   |
| 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                                    |
| Short Subdivision  | 21.04                                   |  |  |  |                                       |  |  | Administrator                                   | Hearing Examiner                                    |
| <b>Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing)</b> |   |  |  |  |                                       |  |  |   |   |
| 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   | 20.84.100 or                            |  |  |  |                                       |  | Hearing                                      | Hearing   | Superior Court                                      |



| Permit Application Processing Table   | WCC Reference for Specific Requirements | Pre-Application Required (see 22.05.040) | Determination of Completeness Required (see 22.05.050) | Notice of Application Required (see 22.05.070) | Site Posting Required (see 22.05.080) | Notice of Open Record Hearing Required (see 22.05.090) | Open Record Hearing Held By: (see 22.05.090) | County Decision Maker (see 2.11.210, 22.05.120) | Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H)) |
|---|---|--|--|--|---------------------------------------|--|--|---|---|
| Areas Ordinance Variance  | 16.16.270                               |  |  |  |                                       |  | Examiner                                     | Examiner  |   |
| <b>Type IV Applications (County Council Decision with Public Notice and Public Hearing)</b> |   |  |  |  |                                       |  |  |   |   |
| 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                                      |

942

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

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

946 **22.05.110 Final decisions – Type I, II, and III applications.**

947 (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  
 948 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to  
 949 comply with all applicable codes.

950 (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)  
 951 shall either grant or deny the application or appeal.

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

956 (b) **Requirements:**

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

959 (ii) **Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall**  
 960 **provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section**  
 961 **22.05.125.**

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

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

967 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing  
 968 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-  
 969 032 § 1 (Exh. A)).



970 22.05.120 Recommended Recommendations and final decisions to county council. Type  
971 IV applications

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

977 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC  
978 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the  
979 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out  
980 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

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

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

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

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

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

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

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

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

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

999 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance  
1000 with the conditions, modifications and restrictions.

1001 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall  
1002 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1003 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by  
1004 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code, applicable state  
1005 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management  
1006 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the  
1007 county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1008 22.05.125 Proof of insurance for hazards created in the County

1009 At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel  
1010 refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities, the  
1011 applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney to cover loss or  
1012 damages to the County and to County residents from any fire, explosion, spill or other incident from operations of the

refinery or from transport of raw materials or finished products within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies shall contain the following Coverage Terms:

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

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

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

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

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

*Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50 million to \$100 million may not be available in the insurance market. We suggest taking out the \$100 million liability limit and substituting language that determines the liability limit as each permit is reviewed and made part of a development agreement. Other forms of financial insurance instruments could be allowed such as a letter of credit or other financial assurance acceptable to the County Prosecutor as a substitute for commercial insurance. We have included code language to that effect in this draft. The County could also indicate that the amount of financial assurance is to be determined at the point of an approval decision for a facility expansion rather than specifying an amount here.*

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

(5) Term and Cancellation Notice:

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

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

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

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

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

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

- 1054 (a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any
- 1055 fixed conveyances such as pipelines and terminal distribution systems.
- 1056 (b) Loss shall include:
  - 1057 (i) monetary awards or settlements of compensatory damages; and
  - 1058 (ii) where allowable by law, punitive, exemplary, or multiple damages; and
  - 1059 (iii) civil fines, penalties, or assessments.
- 1060 (c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,
- 1061 liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors,
- 1062 soot, fumes, acids, alkalis, or other chemicals.
- 1063 (d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to the insurer.
- 1064 (e) Transportation shall include movement by any vehicle or mode of transit including automobile, railway or
- 1065 watercraft, including loading, temporary placement during transit prior to final delivery, or unloading, of materials or
- 1066 waste, either:
  - 1067 (i) intended for delivery to a Permitted Facility, or
  - 1068 (ii) being sent from a Permitted Facility.

1069 **CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS**

1070 **23.100.010 Shoreline use and development.**

1071 Shoreline use and development shall be classified by the administrator and regulated under one or more of the following

1072 applicable sections of Chapter [23.100](#) WCC. Unless otherwise stated, all use and development shall also comply with all of

1073 the general policies and regulations of Chapter [23.90](#) WCC and, if applicable, the policies of Chapter [23.40](#) WCC.

**WCC Table 23.100.010**  
**Shoreline Use by Area Designation<sup>(a)</sup>**

| Shoreline Uses                          | Shoreline Area Designation |                  |                      |                          |                  |                  |                  |                  |                        |                  |
|---|----------------------------|------------------|----------------------|--------------------------|------------------|------------------|------------------|------------------|------------------------|------------------|
|   | Urban                      | Urban<br>Resort  | Urban<br>Conservancy | Shoreline<br>Residential | Rural            | Resource         | Conservancy      | Natural          | Aquatic <sup>(b)</sup> | Cherry<br>Point  |
| <b>Agriculture</b>                      |                            |                  |                      |                          |                  |                  |                  |                  |                        |                  |
|   | P <sup>(-)</sup>           | X                | P <sup>(-)</sup>     | P <sup>(-)</sup>         | P                | P                | P                | P <sup>(+)</sup> | X                      |                  |
| <b>Aquaculture</b>                      |                            |                  |                      |                          |                  |                  |                  |                  |                        |                  |
|   | P                          | P <sup>(+)</sup> | P                    | P <sup>(+)</sup>         | P <sup>(+)</sup> | P                | P                | P <sup>(+)</sup> | P                      |                  |
| Commercial salmon<br>net pen facilities | X <sup>(*)</sup>           | X <sup>(*)</sup> | X <sup>(*)</sup>     | X <sup>(*)</sup>         | X <sup>(*)</sup> | X <sup>(*)</sup> | X <sup>(*)</sup> | X <sup>(*)</sup> | X <sup>(*)</sup>       |                  |
| <b>Boating Facilities</b>               |                            |                  |                      |                          |                  |                  |                  |                  |                        |                  |
| Launch ramps                            | P                          | P                | P                    | P                        | P                | P                | P                | X <sup>(*)</sup> | P                      |                  |
| Marinas                                 | P                          | P                | C                    | P                        | P                | P                | C                | X                | P                      |                  |
| Covered over-water<br>structures        | N/A                        | N/A              | N/A                  | N/A                      | N/A              | N/A              | N/A              | N/A              | P <sup>(+)</sup>       | P <sup>(+)</sup> |
| <b>Commercial</b>                       |                            |                  |                      |                          |                  |                  |                  |                  |                        |                  |
| Water-oriented                          | P                          | P <sup>(-)</sup> | C <sup>(-)</sup>     | P                        | P                | P <sup>(-)</sup> | C <sup>(-)</sup> | X                | X <sup>(*)</sup>       |                  |

**WCC Table 23.100.010  
Shoreline Use by Area Designation<sup>(a)</sup>**

| Shoreline Uses   | Shoreline Area Designation |                  |                      |                          |                  |                      |                  |                  |                        |                     |
|--|----------------------------|------------------|----------------------|--------------------------|------------------|----------------------|------------------|------------------|------------------------|---------------------|
|  | Urban<br>Urban             | Urban<br>Resort  | Urban<br>Conservancy | Shoreline<br>Residential | Rural            | Resource             | Conservancy      | Natural          | Aquatic <sup>(b)</sup> | Cherry<br>Point     |
| commercial   |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
| Non-water-oriented commercial  | C                          | C <sup>(-)</sup> | C <sup>(-)</sup>     | C                        | C                | C <sup>(-)</sup>     | C <sup>(-)</sup> | X                | X                      |                     |
| <b>Dredging</b>  |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
|  | C                          | C                | C                    | C                        | C                | C                    | C                | X <sup>(*)</sup> | C <sup>(*)</sup>       | X <sup>(*)</sup>    |
| <b>Essential Public Facilities</b>   |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
|  | C                          | C                | C                    | C                        | C                | C                    | C                | X                | C                      |                     |
| <b>Flood Control and Instream Structures</b>   |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
|  | P                          | P                | P                    | P                        | P                | P                    | P                | X                | P                      |                     |
| Channelization or dams for flood control   | P                          | P                | X                    | P                        | C                | C                    | X                | X                | P                      |                     |
| <b>Forest Practices</b>  |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
|  | X                          | X                | X                    | X                        | P                | P                    | P                | C                | X                      |                     |
| <b>Industrial and Port</b>   |                            |                  |                      |                          |                  |                      |                  |                  |                        |                     |
| <u>Existing legal fossil-fuel refinery operations or existing legal fossil fuel transshipment facilities</u>                           |                            |                  |                      |                          |                  |                      |                  |                  |                        | <b>P</b>            |
| <u>Expansion of existing legal fossil-fuel refinery operations or expansion of existing legal fossil fuel transshipment facilities</u> |                            |                  |                      |                          |                  |                      |                  |                  |                        | <b>C</b>            |
| <u>New or expansion of existing legal renewable fuel refinery operations or renewable fuel transshipment facilities</u>                |                            |                  |                      |                          |                  |                      |                  |                  |                        | <b>C</b>            |
| Water-oriented industrial and port development   | P                          | X <sup>(*)</sup> | X                    | X                        | P <sup>(-)</sup> | P <sup>(-)</sup> / C | X                | X                | P / C <sup>(-)</sup>   | P <sup>(-)(+)</sup> |
| Non-water-oriented industrial and port development   | C                          | X                | X                    | X                        | C                | C <sup>(-)</sup>     | X                | X                | X                      | X                   |
| Dams, diversion and tailrace structures for  | C                          | X                | C                    | C                        | C                | C                    | C                | X                | P                      |                     |

**WCC Table 23.100.010  
Shoreline Use by Area Designation<sup>(a)</sup>**

| Shoreline Uses                                     | Shoreline Area Designation |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|--|----------------------------|------------------|-------------------------------------|--------------------------|-------|---------------------|-------------------------------------|-------------------------|------------------------|---|
|  | Urban<br>Urban             | Urban<br>Resort  | Urban<br>Conservancy                | Shoreline<br>Residential | Rural | Resource            | Conservancy                         | Natural                 | Aquatic <sup>(b)</sup> | Cherry<br>Point                         |
| hydroelectric power generation                     |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
| <b>Institutional</b>                               |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|  | C                          | C                | C                                   | C                        | C     | C                   | C                                   | X                       | X                      | X                                       |
| <b>Landfill and Excavation</b>                     |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|  | P                          | P                | P                                   | P                        | P     | P                   | P <sup>(-)</sup> / C                | X <sup>(*)</sup>        | C <sup>(-)</sup> / X   | X <sup>(*)</sup>                        |
| <b>Mining</b>                                      |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|  | X                          | X                | X                                   | X                        | C     | C                   | C                                   | X                       | C <sup>(-)</sup> / X   |   |
| Surface oil or gas drilling                        | X                          | X                | X                                   | X                        | X     | X                   | X                                   | X                       | X                      | X                                       |
| <b>Moorage: Docks, Piers and Mooring Buoys</b>     |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
| Private and shared moorage                         | P                          | C                | P <sup>(-)</sup> / C <sup>(-)</sup> | P                        | P     | P                   | P <sup>(-)</sup> / C <sup>(-)</sup> | X <sup>(*)</sup>        | P                      |   |
| Public moorage                                     | C                          | C                | C                                   | C                        | C     | C                   | C                                   | X <sup>(*)</sup>        | P                      |   |
| Commercial moorage                                 | C                          | X <sup>(*)</sup> | C                                   | C                        | C     | C                   | C                                   | X <sup>(*)</sup>        | P                      |   |
| Industrial moorage                                 | C                          | X                | X                                   | X                        | C     | C                   | X                                   | X <sup>(*)</sup>        | P                      | Existing:<br>P <sup>(+)</sup><br>New: X |
| Covered moorage accessory to permitted moorage     | C                          | C                | X                                   | C                        | X     | X                   | X                                   | X                       | P                      | C                                       |
| Float plane moorage accessory to permitted moorage | C                          | C                | C                                   | C                        | C     | C                   | C                                   | X                       | P                      |   |
| <b>Recreational</b>                                |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
| Water-oriented recreation                          | P                          | P                | P <sup>(+)(-)</sup>                 | P                        | P     | P <sup>(+)</sup>    | P <sup>(+)(-)</sup>                 | P <sup>(+)(-)</sup>     | P / C <sup>(-)</sup>   | P <sup>(+)(-)</sup>                     |
| <b>Residential</b>                                 |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|  | P                          | P                | P <sup>(-)</sup> / C                | P                        | P     | P <sup>(+)(-)</sup> | P <sup>(-)</sup> / C                | C <sup>(+)(-)</sup> / X | X                      |   |
| <b>Restoration and Enhancement</b>                 |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
|  | P                          | P                | P                                   | P                        | P     | P                   | P                                   | P                       | P                      | P                                       |
| <b>Shoreline Stabilization</b>                     |                            |                  |                                     |                          |       |                     |                                     |                         |                        |   |
| Groins   | C                          | C                | X                                   | C                        | C     | C                   | X                                   | X                       | C                      | X                                       |
| Breakwaters and jetties                            | C                          | C                | C <sup>(+)(-)</sup>                 | C                        | C     | C                   | C <sup>(+)(-)</sup>                 | X                       | C                      | C <sup>(+)(-)</sup>                     |
| Bulkheads and revetments                           | C                          | C                | C                                   | C                        | C     | C                   | C                                   | X                       | X <sup>(*)</sup>       | C                                       |

**WCC Table 23.100.010  
Shoreline Use by Area Designation<sup>(a)</sup>**

| Shoreline Uses  | Shoreline Area Designation |                 |                      |                          |       |          |                      |                  |  |                     |
|---|----------------------------|-----------------|----------------------|--------------------------|-------|----------|----------------------|------------------|--|---------------------|
|   | Urban<br>Urban             | Urban<br>Resort | Urban<br>Conservancy | Shoreline<br>Residential | Rural | Resource | Conservancy          | Natural          | Aquatic <sup>(b)</sup>                     | Cherry<br>Point     |
| Bioengineering approaches                                     | P                          | P               | P                    | P                        | P     | P        | P                    | P <sup>(+)</sup> | P <sup>(+)</sup>                           | P                   |
| <b>Signs</b>  |                            |                 |                      |                          |       |          |                      |                  |  |                     |
|   | P                          | P               | P                    | P                        | P     | P        | P                    | X <sup>(*)</sup> | P <sup>(+)(-)</sup>                        | P                   |
| <b>Transportation</b>   |                            |                 |                      |                          |       |          |                      |                  |  |                     |
|   | P                          | P               | P <sup>(-)</sup>     | P                        | P     | P        | P <sup>(-)</sup>     | X <sup>(*)</sup> | P <sup>(-)</sup> / C <sup>(-)</sup>        | P <sup>(-)</sup>    |
| Transportation facilities not serving a specific approved use | C                          | C               | X                    | C                        | C     | C        | X                    | X                | C  | X                   |
| <b>Utilities</b>  |                            |                 |                      |                          |       |          |                      |                  |  |                     |
| Local distribution facilities                                 | P                          | P               | P <sup>(-)</sup> / C | P                        | P     | P        | P <sup>(-)</sup> / C | X <sup>(*)</sup> | P <sup>(-)(+)</sup> / C <sup>(-)</sup> / X | P <sup>(-)(+)</sup> |
| Regional transmission facilities                              | C                          | C               | C                    | C                        | C     | C        | C                    | X                | C <sup>(-)</sup> / X                       | C                   |
| Desalinization facilities                                     | C                          | C               | C                    | C                        | C     | C        | C                    | X                | P <sup>(-)</sup>                           | P <sup>(-)</sup>    |

1074 P = Permitted, may be subject to policies and regulations of this program and subject to shoreline substantial development  
1075 permit requirements.  
1076 C = Shoreline conditional use, subject to policies and regulations of this program and may be subject to shoreline substantial  
1077 development permit requirements.  
1078 X = Prohibited.  
1079 N/A = Not applicable.  
1080 (-) Subject to limitations.  
1081 (+) Subject to conditions.  
1082 (\*) Subject to exceptions.

1083 (a) In the event that there is a conflict between the use(s) identified in Table 23.100.010 and the policies or regulations in  
1084 Chapters [23.30](#), [23.90](#), or [23.100](#) WCC, the policies and regulations shall apply.  
1085 (b) Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area  
1086 designation.  
1087 (Ord. 2014-051 § 3; Ord. 2009-13 § 1 (Exh. 1)).  
1088

1089 **23.100.170 Cherry Point management area.**

1090 A. Policies.  
1091 1. Purpose and Intent.

1092 a. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and  
1093 balances the special port, industrial and natural resource needs associated with the development of this marine  
1094 resource. This section identifies policies and regulations for water-dependent industrial activities that apply in  
1095 addition to specific other elements of this program as referenced herein.

1096 b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry  
1097 Point management area as providing herring spawning habitat and other key habitat characteristics that warrant  
1098 special consideration due to their importance to regional fisheries and other elements of the aquatic environment.

1099 c. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require  
1100 marine access for marine cargo transfer, including oil and other materials. For this reason, water,

1101 i. Water-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management  
1102 area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the  
1103 number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

1104 d. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and  
1105 other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic  
1106 lands within the Cherry Point management area. The development of such a plan could provide a forum and  
1107 process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future  
1108 amendments to this program as appropriate.

1109 ii. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with  
1110 limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance  
1111 with the Shoreline Master Program and other applicable land use designation.

1112 iii. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing  
1113 three piers in operation or approved as of January 1, 1998, taking into account the need to:

1114 • Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the  
1115 Cherry Point Herring stock and Southern Resident Killer Whales;

1116 • Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance  
1117 per WCC 23.40;

1118 • Encourage the continued County use of best available science;

1119 • Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry  
1120 Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry  
1121 Point Aquatic Reserve designation and Management Plan;

1122 • Recognize federal actions upholding treaty rights;

1123 • Protect traditional commercial and tribal fishing; and

1124 • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil  
1125 or fuel spills.

1126 d. Whatcom County should ensure that shoreline development applicants demonstrate conformance with the State  
1127 of Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.

1128 e. All development that is to be located within the Cherry Point management area, as defined in Chapter 23.110  
1129 WCC, shall be subject to the policies and regulations found in this section, and shall not be subject to the policies  
1130 and regulations found in WCC 23.100.010 through 23.100.160, nor Chapter 23.90 WCC, unless otherwise  
1131 referenced in this section. The policies and regulations found in this section are applicable only within the  
1132 geographic boundaries of the Cherry Point management area and do not apply elsewhere in the county. In the event  
1133 that the provisions of this section conflict with other applicable referenced provisions of this program, the policies  
1134 and regulations that are most protective of shoreline resources shall prevail.

1135 *Discussion/Notes: Above amendments are similar to those in the Comprehensive Plan*  
1136 *policy changes.*

1137 2. Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be  
1138 allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated  
1139 in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.



- 1140 3. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other  
1141 accessory facilities are encouraged.
- 1142 4. Public Access.
- 1143 a. Where appropriate, industrial and port development within the Cherry Point management area should provide  
1144 public beach and shoreline access in a manner that does not cause interference with facility operations or present  
1145 hazards to life and property. This may be accomplished through individual action or by joint, coordinated action  
1146 with other developers and landowners, for example, by setting aside a common public access area.
- 1147 b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities  
1148 including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.
- 1149 c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks  
1150 and Recreation Open Space Plan.
- 1151 5. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the  
1152 Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological  
1153 functions and processes should be assessed with the other long-term statewide interests. New port development that  
1154 requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on  
1155 ecological functions, including fish and shellfish habitat and geohydraulic processes.
- 1156 6. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic character  
1157 of the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.
- 1158 7. Site Development. All development should be constructed and operated in a manner that, while permitting water-  
1159 dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the  
1160 following:
- 1161 a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water  
1162 quality, fish and wildlife habitat, and other natural site conditions;
- 1163 b. Adequate temporary and permanent management measures to control erosion and sediment impacts during  
1164 construction and operation; and
- 1165 c. Adequate stormwater management facilities.
- 1166 *Discussion/Notes: Be consistent with Comprehensive Plan Policies. Prohibit New Docks and*  
1167 *Piers.*
- 1168 B. Regulations.
- 1169 1. Allowed Use.
- 1170 a. Water-dependent industrial and port uses are allowed within the Cherry Point management area; provided, that  
1171 specific findings are made in a shoreline substantial development permit or conditional use permit that:
- 1172 i. Policies for optimum implementation of the statewide interest have been achieved through protection of  
1173 shoreline ecological functions and processes;
- 1174 ii. The long-term statewide benefits of the development have been considered with the potential adverse impacts  
1175 on ecological functions; and
- 1176 iii. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated  
1177 in the proposal.
- 1178 b. **Fuel Uses – Shoreline Permits and Requirements:**
- 1179 i. Existing legal fossil or renewable fuel refinery operations or existing legal fossil or renewable fuel  
1180 transshipment facilities [as of XXX effective date] are considered permitted shoreline substantial  
1181 developments.



1182 | ii. Expansions of existing legal fossil-fuel refineries or expansions of existing legal fossil-fuel  
1183 | transshipment facilities shall require a shoreline conditional use permit.

1184 | iii. New or expansion of existing legal renewable fuel refinery or renewable fuel transshipment facility  
1185 | shall require a shoreline conditional use permit.

1186 | c. Water-related and water-enjoyment uses are allowed only as part of public access and public recreation  
1187 | development, subject to the findings in subsection (B)(1)(a) of this section.

1188 | ed. Accessory development, which does not require a shoreline location in order to carry out its support functions,  
1189 | shall be sited away from the land/water interface and landward of the principal use. Accessory development shall  
1190 | observe critical area buffers in Chapter 16.16 WCC. Accessory development includes, but is not limited to,  
1191 | parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land  
1192 | transport development.

1193 | de. Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that  
1194 | are located and designed to minimize shoreline alteration are permitted.

1195 | ef. Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are  
1196 | prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have  
1197 | been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

1198 | *Discussion/Notes: Consistency with Zoning Code changes.*

1199 | 2. Public Access.

1200 | a. Public access shall be provided in accordance with WCC 23.90.080 unless it is demonstrated that public access  
1201 | poses significant interference with facility operations or hazards to life or property.

1202 | b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access  
1203 | may be provided in accordance with WCC 23.90.080 at a location not directly adjacent to the water such as a  
1204 | viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include  
1205 | interpretive centers and displays that explain maritime history and industry; provided, that visual access to the  
1206 | water is also provided.

1207 | c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public  
1208 | access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

1209 | 3. Critical Areas. In addition to meeting the provisions of WCC 23.90.030, Ecological protection and critical areas,  
1210 | development and alteration shall not be located or expanded within critical areas designated pursuant to Chapter 16.16  
1211 | WCC except where the site is approved for water-dependent use, and the following are met:

1212 | a. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with  
1213 | WCC 23.90.030.

1214 | b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall  
1215 | demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade  
1216 | the existing water quality within the wetland.

1217 | c. The minimum required setback from the OHWM for all industrial and port facilities, including development  
1218 | components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs  
1219 | and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such  
1220 | setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.

1221 | d. Development and alteration other than recreation development for public and quasi-public shoreline access is  
1222 | prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations  
1223 | in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations  
1224 | of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained  
1225 | subject to the provisions of WCC 23.50.070.

1226 | 4. Location and Design.

- 1227 a. Piers.
- 1228 i. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the  
1229 movement of material and cargo from land to water and water to land. The length of piers shall not extend  
1230 beyond that which is necessary to accommodate the draft of the vessels intending to use the facility. Due to the  
1231 environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~  
1232 those in operation as of January 1, 1998.
- 1233 ii. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife  
1234 habitats.
- 1235 iii. Piers shall be designed to minimize impacts on steep shoreline bluffs.
- 1236 iv. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials  
1237 that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other  
1238 structural components shall be approved by applicable state agencies for contact with water to avoid discharge  
1239 of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or  
1240 pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated  
1241 wood is allowed for maintenance purposes where use of a different material such as steel or concrete would  
1242 result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds  
1243 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction  
1244 provisions of this section.
- 1245 v. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.
- 1246 vi. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers,  
1247 except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means  
1248 nonportable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- 1249 vii. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other  
1250 properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and  
1251 approved for compliance with U.S. Coast Guard regulations.
- 1252 b. Dredging.
- 1253 i. Dredging to accommodate water access to, or construction of, new development is prohibited. New  
1254 development shall be located and designed to avoid the need for dredging. Dredging for existing development  
1255 shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and  
1256 wildlife habitats.
- 1257 ii. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations  
1258 in WCC 23.90.120(B)(4) and (5), Dredging.
- 1259 iii. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of  
1260 this title.
- 1261 c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to  
1262 the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-  
1263 supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier  
1264 access that does not extend further toward the OHWM than existing topography.
- 1265 d. Excavation/Stabilization.
- 1266 i. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other  
1267 structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration  
1268 will adversely affect the existing littoral drift process. New development shall avoid, rather than modify, feeder  
1269 bluffs.
- 1270 ii. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.

1271 e. Shore defense works shall be regulated in accordance with WCC 23.100.130, Shoreline stabilization, and be  
1272 consistent with the conservancy and aquatic shoreline area regulations of that section.

1273 5. Adjacent Use.

1274 a. New or expanded port or industrial development adjacent to properties which are zoned for nonindustrial  
1275 purposes shall provide setbacks of adequate width, to attenuate proximity impacts such as noise, light and glare;  
1276 and may address scale and aesthetic impacts. Fencing or landscape areas may be required to provide a visual  
1277 screen.

1278 b. Exterior lighting shall be designed and operated to avoid illuminating nearby properties zoned for nonport or  
1279 nonindustrial purposes so as to not unreasonably infringe on the use and enjoyment of such property, and to prevent  
1280 hazards for public traffic. Methods of controlling illumination of nearby properties include, but are not limited to,  
1281 limits on height of structure, limits on light levels of fixtures, light shields and screening.

1282 c. The minimum setback from side property lines which intersect the OHWM for industrial and port development  
1283 shall be 60 feet; provided, that:

1284 i. The side yard setback shall not apply to utility or security structures such as poles, meters, fences, guard  
1285 houses, power vaults or transformers; and

1286 ii. The side yard setbacks for parcels adjoining the NW and SE boundaries of the Cherry Point management  
1287 area shall be administered in accordance with WCC 20.68.550 (Buffer Area).

1288 d. Required setbacks shall not be used for storage of industrial equipment or materials, or for waste disposal, but  
1289 may be used for public access or outdoor recreation.

1290 6. Oil and Hazardous Materials.

1291 a. Release of oil or hazardous materials on shorelines is prohibited.

1292 b. A management plan shall be developed for new permitted or conditionally permitted development for the safe  
1293 handling of cargo, fuels, bilge water, and toxic or hazardous materials to prevent them from entering aquatic  
1294 waters, surface or ground water. Specific provisions shall address prompt and effective clean-up of spills that may  
1295 occur. Management plans shall be coordinated with state or federal spill response plans. Where a spill  
1296 management/response plan has been approved by the state, said plan may be used to satisfy the requirements of this  
1297 section.

1298 c. Necessary spill containment facilities associated with existing development may be permitted within shoreline  
1299 jurisdiction where there are no feasible alternatives.

1300 7. Recreational Development. All recreational development shall comply with the policies and regulations of WCC  
1301 23.100.100 and be consistent with the conservancy and aquatic shoreline area regulations of that section.

1302 8. Archaeological, Historic and Cultural Resource Management. All development associated with archaeological,  
1303 historic or cultural site activities shall comply with the policies and regulations of WCC 23.90.070. (Ord. 2014-051 §§ 5,  
1304 6; Ord. 2009-13 § 1 (Exh. 1)).

1305 **CHAPTER 23.110 DEFINITIONS**

1306 *Discussion/Notes: Definitions added are based on a review of federal (US Energy*  
1307 *Information Administration, US Census, Code of the Federal Register, Revised Code of*  
1308 *Washington), County Ordinance NO. 2018-007, and examples addressed in the White*  
1309 *Paper. See also notes under Zoning Code definitions.*

1310 23.110.060 F definitions.

1311 27. "Fossil fuels" include coal, petroleum, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils. All  
1312 contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable fuels  
1313 are not fossil fuels.

1314 28. "Fossil Fuel Transshipment Facility" is a facility engaging in the process of off-loading of fossil fuel materials, refined or  
1315 unrefined, refinery feedstocks, products or by products from one transportation facility and loading it onto another  
1316 transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of  
1317 transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and  
1318 compressor stations and associated facilities. This definition excludes Small Oil Storage and Distribution Facilities.

1319 29. "Fossil-Fuel Refinery" means a facility that converts crude oil and other liquids into petroleum products including but not  
1320 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,  
1321 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of  
1322 fossil fuels or by products. This definition excludes Small Oil Storage and Distribution Facilities.

1323 Discussion/Notes: Consistency with Zoning Code changes.

1324 23.110.090 I definitions.

1325 4. "Industrial development" means facilities for processing, manufacturing, and storage of finished or semi-finished goods,  
1326 including but not limited to oil, metal or mineral product refining, power generating facilities, including hydropower, ship  
1327 building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of  
1328 fuels, commercial storage and repair of fishing gear, warehousing, construction contractors' offices and material/equipment  
1329 storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as  
1330 parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of  
1331 raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an  
1332 agricultural use. This definition excludes fossil or renewable fuel refineries or transshipment facilities.

1333 Discussion/Notes: Consistency with Zoning Code changes.

1334 23.110.150 O definitions.

1335 2. "Oil" means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to,  
1336 crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

1337 Discussion/Notes: Consistency with Zoning Code changes.

1338 23.110.160 P definitions.

1339 10. "Port development" means public or private facilities for transfer of cargo or passengers from water-borne craft to land  
1340 and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading  
1341 or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo  
1342 or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas,  
1343 boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat  
1344 building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil or  
1345 renewable fuel transshipment facilities.

1346 Discussion/Notes: Consistency with Zoning Code changes.

1347 23.110.180 R definitions.

1348 6. "Renewable biomass" includes but is not limited to the following:

1349 (1) Planted crops and crop residue harvested from agricultural land.

1350 (2) Planted trees and tree residue from a tree plantation.

1351 (3) Animal waste material and animal byproducts.

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- (4) Slash and pre-commercial thinnings.
- (5) Organic matter that is available on a renewable or recurring basis.
- (6) Algae.
- (7) Separated yard waste or food waste, including recycled cooking and trap grease.
- (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to customary feedstock production and transport.

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

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- 7. "Renewable Fuel" means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels. Common renewable fuels include ethanol and biodiesel:
- (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.
- (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.
- (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State Department of Ecology or US EPA.

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8. A "Renewable Fuel Refinery" means a facility that processes or produces renewable fuels. This definition excludes Small Oil Storage and Distribution Facilities.

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**23.110.190 S definitions.**

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- 22.1 "Small Oil Storage and Distribution Facilities" means:
- (1) Equipment used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or
- (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation, and that does not meet the definitions of fossil fuel or renewable refinery or transshipment facilities.

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

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# Whatcom County Fossil Fuel Policies and Potential Amendments

Policy Evaluation | Prepared by: Cascadia Law Group and BERK Consulting, Inc.

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## Countywide Planning Policies

### E. NON-CITY URBAN GROWTH AREAS

3. Cherry Point shall be designated as an unincorporated industrial urban growth area in recognition of existing large scale industrial land uses. Additional large scale development shall be encouraged consistent with the ability to provide needed services and consistent with protecting critical areas along with other environmental protection considerations. The Cherry Point industrial area is an important and appropriate area for industry due to its access to deep water shipping, rail, all-weather roads, its location near the Canadian border, and its contribution to the County's goal of providing family wage jobs.

*Evaluation Policy E.3: No specific change required. Even if fossil-fuel refinement and related fossil-fuel industries are limited with policy and code changes, a wide range of industrial uses are still allowed in upland industrially zoned areas in Cherry Point. In-water shipping is limited to existing facilities per the State of Washington Department of Natural Resources (DNR) Cherry Point Aquatic Reserve Management Plan.*

### I. ECONOMIC DEVELOPMENT AND EMPLOYMENT

2. New business development and expansion of existing businesses are key factors in providing “family wage” jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. Industrial land designations must be sufficient to permit the concentration of industry in appropriate locations beyond 20 years. In order to attract new industry and provide for expansion of existing industries, the county and the cities will designate land supply of sufficient size and diversity to provide a range of suitable locations for industrial development. The designation of this land shall be established in a way that preserves natural resource based industries and critical areas.

3. To provide sufficient land supply for industrial growth and development, industrial designations must not only include lands suitable for development, but also lands suitably zoned to provide adequate buffers. It is also important that these lands and buffers be conserved with appropriate land use and zoning provisions to ensure that they will be available for future use.

4. Encourage business location, retention, and expansion according to city and county comprehensive plans in order to meet current and future demand for diverse business and industry. Work with funding agencies and the private sector to facilitate extension of adequate sewer, water, telecommunications and road access to existing commercial and industrial-zoned properties, creating shovel-ready sites. Cities and county may utilize the “Quick Sites” economic development program through OTED, which links



35 strategic elements of planning, zoning, environmental review, and permitting with the business-siting  
36 effort.

37 11. Whatcom County encourages siting of industrial uses in proximity to and to further utilization of our  
38 access to deep water and port facilities for shipping, rail, airports, roadways, utility corridors and the  
39 international border.

40 *Evaluation, Policies 1.2, 1.3, 1.4 and 1.11: The proposed policy and code changes continue*  
41 *to allow development of non-fossil-fuel industries, and review criteria for expansion of*  
42 *existing uses relies on implementing existing critical area regulations and other state and*  
43 *federal requirements, e.g. Cherry Point Aquatic Reserve Management Plan, Magnuson Act.*

44 10. The cities and county agree to set policies for approving proposals to authorize siting of Major  
45 Industrial Developments for large or resource-based industries outside of Urban Growth Areas (as per  
46 RCW 36.70A.365). The master planning process for specific manufacturing, industrial, or commercial  
47 businesses shall address infrastructure, buffers, environmental protection, sprawl, resource lands, critical  
48 areas, and land supply.

49 *Evaluation 1.10: The code changes provide more explicit master plan process review*  
50 *criteria that implement this policy. The new code changes are designed to support*  
51 *environmental protection and critical areas.*

## 52 Comprehensive Plan

### 53 LAND USE ELEMENT

54 Policy 2D-6: Review and update the Whatcom County Shoreline Management Program in accordance  
55 with the schedule in the Shoreline Management Act (RCW 90.58.080). Updates should improve the  
56 integration of the Shoreline Program with Growth Management and with the Cherry Point Aquatic  
57 Reserve Management Plan in order to provide predictability and consistency in regulation, and eliminate  
58 regulatory redundancy.

59 *Evaluation, 2D-6: This policy supports proposed amendments to the SMP to address*  
60 *Cherry Point Aquatic Reserve Management Plan.*

61 Policy 2J-4: Protect culturally and spiritually significant places from nonessential development that is  
62 viewed as incompatible by the affected community.

63 *Evaluation, 2J-4: Per the Comprehensive Plan, the “Lummi Nation and Western*  
64 *Washington University have identified an ancestral village dating back over 3,000 years*  
65 *ago in this area. The Cherry Point UGA contains sites of primary archeological and*  
66 *cultural significance.” Policy 2CC-3 calls for Archeological review in Cherry Point. There*  
67 *are no implementing review criteria in the master site plan regarding avoiding impacts to*  
68 *cultural resources.*

69 Policy 2L-2: Retain and periodically review the adopted Subarea Plans (Lummi Island, Cherry Point-  
70 Ferndale, Urban Fringe, Birch Bay Community Plan, Foothills, and Point Roberts).



71 Evaluation, Policy 2L-2: This subarea plan is in the process of being repealed. Planning  
72 Commission staff  
73 report: <http://www.co.whatcom.wa.us/DocumentCenter/View/35465/Cherry-Point->  
74 [Packet](#) Listed in March 2019 public participation plan for docket in  
75 2019. <https://www.whatcomcounty.us/DocumentCenter/View/40344/pln2019-00009->  
76 [draft-ppp-March-2019](#)

## 77 Major Industrial Urban Growth Area / Port Industrial

### 78 Cherry Point – Text

79 The Cherry Point Urban Growth Area (UGA) contains approximately 7,000 acres of industrial land. The  
80 land has long been planned and designated by Whatcom County for industrial development and is  
81 currently the site of three major industrial facilities including two oil refineries and an aluminum smelter.  
82 Together, these three existing industries own about 4,400 acres of the total Cherry Point industrial lands.  
83 A fourth large tract of undeveloped land constituting approximately 1,500 acres is designated for  
84 industrial development.

85 Because of the special characteristics of Cherry Point, including deep water port access, rail access, and  
86 proximity to Canada, this area has regional significance for the siting of large industrial or related  
87 facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet  
88 constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry  
89 Point Refinery in 1971.

90 Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual  
91 and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. The  
92 Lummi Nation and Western Washington University have identified an ancestral village dating back over  
93 3,000 years ago in this area. The Cherry Point UGA contains sites of primary archeological and cultural  
94 significance.

95 Since the designation of this area for industrial development years ago, newer scientific study of the  
96 shoreline ecology has identified Cherry Point's unique function as part of the Fraser River/Georgia Strait  
97 and greater Salish Sea ecosystem and the associated Cherry Point Aquatic Reserve has been designated  
98 by the state Department of Natural Resources to recognize the ecological importance of the aquatic  
99 lands in this area.

100 Since adoption of earlier versions of this Comprehensive Plan, governments have increased their  
101 recognition of the observed and projected effects that fossil fuel extraction, transportation and use have  
102 on human health and the environment.

103 *Evaluation: The background conditions are generally the same today. The proposed*  
104 *policy/code changes do not require a consistency amendment. However, the Preliminary*  
105 *Draft Text Changes dated January 15, 2019 (to the second paragraph) are compatible.*

- 106 • *Because of the special characteristics of Cherry Point, including deep water port*  
107 *access, rail access, and proximity to Canada, this area has regional significance*  
108 *for the siting of large industrial or related facilities. General Petroleum constructed*  
109 *the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the*  
110 *Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the*

111 Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA,  
112 which provide significant employment, have produced and shipped refined fossil  
113 fuels and other products for decades.

114 *Environmental – Text*

115 The Cherry Point shoreline has great importance to the fisheries and ecology of Northern Puget Sound  
116 because it provides essential spawning habitat for what once was the largest herring stock in Washington  
117 State. This herring stock has supported important commercial fisheries in the past and provides forage for  
118 salmonids and other important marine species. In 2000, 2010, and 2017 the State Lands Commissioner  
119 ordered the Cherry Point tidelands and bedlands withdrawn from the state’s general leasing program  
120 and designated them as the “Cherry Point Aquatic Reserve.” The following DNR Use Authorizations are  
121 exempted from withdrawal: Lease application numbers 20-A09122 (British Petroleum), 20-A11714  
122 (Phillips 66), 20-A08488 (Intalco Aluminum Corporation), and 20-010521 (Birch Bay Water and Sewer  
123 District). In December 2010, the DNR recognized the need to “protect the significant environmental  
124 resource of aquatic lands at Cherry Point” (CPAR Management Plan p. 1), and completed the Cherry  
125 Point Environmental Aquatic Reserve Management Plan to ensure long-term environmental protection of  
126 the Aquatic Reserve. The Reserve extends from the southern boundary of Birch Bay State Park to the  
127 northern border of the Lummi Indian Nation Reservation.

128 *Evaluation: Allow for existing in-water facilities consistent with DNR Management Plan.*

129 ...Much of the Aquatic Reserve shoreline is in substantially natural riparian vegetation and bluff  
130 processes proceed without interference. Existing shoreline and upland stream and wetland functions and  
131 values are of continuing importance to the recovery and protection of species identified in the Aquatic  
132 Reserve Management Plan. The area includes undeveloped intertidal wetlands with importance to  
133 juvenile salmon and other species. Existing industries can serve the Aquatic Reserve’s objectives so long as  
134 they are managed according to the Plan and so long as the lessees actively work to further goals for the  
135 Reserve (CPAR MP p. 2).

136 *Evaluation: Allow for existing industrial facilities consistent with DNR Management Plan.*

137 ...Whatcom County does not enforce the Magnuson Amendment through the local permitting process.  
138 However, the County does encourage federal agencies to enforce the Magnuson Amendment. Therefore,  
139 the County will strive to make appropriate federal agencies aware of applications for development  
140 permits submitted to the County that may be subject to federal agency review under the Magnuson  
141 Amendment before issuing local permits when possible (see Policy 2CC-15).

142 *Policy 2CC-15 addresses this text. Language like the Policy could be implemented in*  
143 *master site plan criteria:*

- 144 • *Policy 2CC-15: Whatcom County will encourage federal agencies, including the*  
145 *U.S. Army Corps of Engineers, to enforce the provisions of the Magnuson*  
146 *Amendment (33 USC Sec. 476). To accomplish this the County will make*  
147 *appropriate federal agencies aware of applications for development permits*  
148 *submitted to the County that staff thinks may be subject to federal agency review*  
149 *under the Magnuson Amendment.*

150 Cherry Point UGA Features: Port Access – Text

151 The marine waters off Cherry Point provide deepwater access for shipping. Deepwater access for  
152 shipping was a major siting consideration for the three major industries currently located at Cherry Point.

153 *Evaluation: Allow for existing in-water facilities consistent with DNR Management Plan.*

154 Cherry Point UGA Features: Proximity to Canada, Alaska and Foreign Ports – Text

155 Cherry Point occupies a unique location for the siting of industry because of its close proximity to Canada  
156 and because of its shorter travel distance than other regional port facilities for shipping to and from  
157 Alaska and to other Pacific Rim locations. The large acreage, good rail access and proximity to  
158 Washington State and Canadian ports makes the remaining upland area at Cherry Point suitable for  
159 commercial or industrial production with emphasis on major sustainable clean energy manufacturing or  
160 production (see Policy 2CC-3). The Cherry Point industrial area benefits from proximity to Canada, as  
161 trade between the U.S. and Canada grows in response to the lifting of trade barriers under the Free  
162 Trade Agreement. Canadian exports to the U.S. are expected to increase and Canadian firms exporting  
163 to the U.S. are expected to seek locations in the U.S. as a way of improving access to U.S. markets.  
164 Compared to other port facilities in Washington and Canada, Cherry Point is not constrained by  
165 extensive upland development or vessel draft limitations.

166 *Evaluation: Proposed policy and code amendments continue to allow for port uses. Existing  
167 fossil fuel industrial can continue; growth of existing facilities could occur based on growth  
168 in demand in the facility service area.*

169 Cherry Point: Use Compatibility and Land Use Designation – Text

170 The industries currently located at Cherry Point are a substantial part of the economic base of Whatcom  
171 County and the region and the economic welfare of the county is strongly tied to the health of these  
172 industries and their ability to flourish and expand as opportunities present themselves. These industries  
173 need to be protected from the inappropriate encroachment of incompatible uses; particularly residential  
174 uses that could affect their ability to expand, at the same time, the expansion of these industries needs to  
175 be done in ways that do not significantly impact the ecology of the Salish Sea or encourage expanded  
176 transshipment of unrefined fossil fuels. The best means for protecting these industries from incompatible  
177 adjoining uses and to assure their continued regulatory conformity is to maintain the industrial land use  
178 designation of these lands and adjoining properties currently designated for industrial development. The  
179 Cherry Point industrial lands have been designated for industrial development and as a direct result of  
180 the industrial designation, incompatible and inappropriate residential development has been curtailed.

181 *Evaluation: Proposed code changes are meant to avoid ecological impacts and without  
182 expanded transshipment of unrefined fossil fuels.*

183 Goal 2CC: Maintain Cherry Point as an unincorporated urban growth area based on its unique location,  
184 characteristics and its significant contribution to the overall industrial land supply and Whatcom County's  
185 tax base.

186 Policy 2CC-1: Designate Cherry Point as a major industrial Urban Growth Area to accommodate major  
187 users that need to be located away from concentrated urban residential areas and that can manage

188 their activities in such a way that they do not conflict with the goals of the Aquatic Reserve Management  
189 Plan.

190 Policy 2CC-2: Encourage developments in the Cherry Point UGA to maintain and operate under  
191 management plans consistent with the Aquatic Reserve Management Plan.

192 *Evaluation Policy 2CC-1 and 2CC-2: Proposed policy and code amendments are*  
193 *compatible with this policy. Proposed code amendments address the DNR Aquatic Reserve*  
194 *Management Plan.*

195 Policy 2CC-3: Encourage that future developments or expansions within the Cherry Point UGA are  
196 consistent with the following:

- 197 • Clean and reduced carbon emitting technology;
- 198 • Avoidance of estuaries and near shore wetlands;
- 199 • Archeological review;
- 200 • Water recycling technology to minimize water use; and
- 201 • Enhance existing and future industries.

202 *Evaluation: Existing industries may continue and supporting facilities may be enhanced.*  
203 *Future industries that meet allowed uses and master site plan criteria are allowed.*  
204 *Environmental and archaeological review is required; review criteria in these respects are*  
205 *enhanced.*

206 Policy: 2CC-4: Assure that Cherry Point's unique features of large parcelization, port access, and  
207 pipeline, vehicular and rail transportation availability are maintained and protected from incompatible  
208 development.

209 *Evaluation: Proposed policy and code amendments are compatible with this policy. The*  
210 *amendments do not affect parcelization. Port access is allowed to existing sites per the*  
211 *DNR Cherry Point Aquatic Reserve Management Plan. Proposed amendments do not*  
212 *change the range of supporting transportation and utility services or their plans.*

213 Policy: 2CC-5: Require the master planning of each large parcel in advance of any development or  
214 subdivision at Cherry Point.

215 *Evaluation: The proposed code amendments update master site plan and major project*  
216 *permit review criteria.*

217 Policy: 2CC-6: Require the designation and site plan for a major user (generally 40 acres or more)  
218 before the development of accessory or supporting uses to assure that accessory or supporting uses are  
219 compatible with and will not interfere with the major industrial user.

220 *Evaluation: The proposed code amendments address accessory/supporting uses for*  
221 *existing facilities designed to ensure that existing fossil fuel terminal facilities can maintain*  
222 *and enhance their current businesses.*

223 Policy: 2CC-7: Specify 160 acres as a minimum area for planning, prior to the commitment of a parcel  
224 for a major user (40 acres or more, singularly or as a cluster or group).

225 *Evaluation: No change to the major user or planning area is proposed.*

226 Policy 2CC-8: Permit support activities, warehousing, shipping, machine repair and service, educational  
227 services, food service and conveniences, to locate on a parcel only after the completion of a master plan,  
228 and the identification and site plan approval for the major user.

229 *Evaluation: Policies or code amendments would not change the need for a master plan or*  
230 *major user standards.*

231 Policy 2CC-9: Exclude Cherry Point as part of any future incorporation of Birch Bay.

- 232 • to protect interests of the property owner in terms of taxation and urban regulations;
- 233 • to preclude urbanism near "smokestack" industries;
- 234 • to preserve county government tax base.

235 *Evaluation: The proposed policy and code changes do not change the County's approach*  
236 *to incorporation of Birch Bay or the exclusion of Cherry Point from incorporation.*

237 Policy 2CC-10: Continue to work with service providers that serve Cherry Point to ensure the delivery of  
238 services and to allow it to develop to its fullest potential.

239 *Evaluation: The proposed policy and code changes do not change the delivery of*  
240 *transportation or utility services.*

241 Policy 2CC-11: It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point  
242 to the existing three piers, taking into account the need to:

- 243 • Honor any existing vested rights or other legally enforceable agreements for an additional dock/pier;
- 244 • Update the Whatcom County Shoreline Master Program to conform with this policy;
- 245 • Encourage the continued agency use of best available science;
- 246 • Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry  
247 Point tidelands and bedlands from the general leasing program and the species recovery goals of the  
248 Cherry Point Aquatic Reserve designation and Management Plan;
- 249 • Recognize federal actions upholding treaty rights;
- 250 • Protect traditional commercial and tribal fishing; and
- 251 • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil  
252 or fuel spills.

253 *Evaluation: The proposed policy and code changes fulfill this policy.*

254 *The County had proposed a change to the first bullet in January 15, 2019 amendments as*  
255 *follows:*

- 256 • ~~Honor any existing vested rights or other legally enforceable agreements for an~~  
257 ~~additional dock/pier; Act conservatively in land use matters at Cherry Point to prevent~~  
258 ~~further harm to habitat important to the Cherry Point Herring stock and Southern Resident~~  
259 ~~Killer Whales;~~

260 This policy change is consistent with the purpose and intent of the fossil-fuel policy/code  
261 changes and could be carried forward.

262 Since the SMP amendments are being crafted now, the second bullet can be changed. It  
263 would support the County's duty to fulfill the State policy in RCW 90.58.020 for  
264 shorelines of statewide significance. Suggest changing bullet 2 as follows:

265 • ~~Update the~~ Optimally implement the Whatcom County Shoreline Master Program  
266 ~~to conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide  
267 significance policy to preserve natural character, result in long-term over short-term  
268 benefit, and protect the resources and ecology of the shoreline;

269 Policy 2CC-12: RCW 36.70A.365 requires the implementation of Traffic Demand Management (TDM)  
270 programs for the designating of a Major Industrial Urban Growth Area. Any employer in the Cherry  
271 Point Urban Growth Area that employs one hundred or more fulltime employees at a single worksite who  
272 begin their regular work day between 6:00 am and 9:00 am on weekdays for at least twelve continuous  
273 months during the year are required to meet the TDM requirements of WCC 16.24.

274 Evaluation: The proposed policy and code changes do not change the County's approach  
275 to Traffic Demand Management.

276 Policy 2CC-13: Work with the Cherry Point industries to maximize public access to the Cherry Point  
277 beaches without compromising industrial security.

278 Evaluation: The proposed policy and code changes do not change the County's approach  
279 to shoreline public access.

280 Policy 2CC-14: Cooperate with the DNR and existing industries to monitor the effects of industrial  
281 activities on water quality and habitat functions in and adjacent to the Cherry Point Aquatic Reserve.

282 Evaluation: The proposed policy and code changes do not change the County's approach

283 Policy 2CC-15: Whatcom County will encourage federal agencies, including the U.S. Army Corps of  
284 Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). To accomplish this  
285 the County will make appropriate federal agencies aware of applications for development permits  
286 submitted to the County that staff thinks may be subject to federal agency review under the Magnuson  
287 Amendment.

288 Evaluation: The proposed code changes implement this policy.

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

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



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

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

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

306 *Evaluation: Once the policy and code amendments are adopted this policy could be*  
307 *eliminated. Alternatively, it could be amended to match the January 15, 2019 policy*  
308 *language below but would exclude “radioactive substance” since that is not a focus of the*  
309 *fossil fuel related policy/code changes. It could be its own policy topic.*

310 ~~2CC-16: The County will, through its adopted SEPA policies and applicable permitting~~  
311 ~~processes, shall undertake a study to be completed if possible by December of 2017 to examine~~  
312 ~~existing County laws, including those related to public health, safety, development, building,~~  
313 ~~zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal~~  
314 ~~ways the County may choose to seek to limit the negative impacts on public safety, transportation,~~  
315 ~~the economy, and environment from new fossil fuel facilities, including new or expanded crude oil,~~  
316 ~~coal, liquefied petroleum gases, natural gas, and radioactive substance exports from facilities~~  
317 ~~within the Cherry Point UGA above levels in existence as of March 1, 2017.~~

318 ~~To provide clear guidance to current and future county councils on the County's legal rights,~~  
319 ~~responsibilities and limitations regarding interpretation and application of project evaluation~~  
320 ~~under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County~~  
321 ~~should consider any legal advice freely submitted to the County by legal experts on behalf of a~~  
322 ~~variety of stakeholder interests, and make that advice publicly available.~~

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

325 ~~• Until the above mentioned amendments are implemented, †The Prosecuting Attorney and/or the~~  
326 ~~County Administration should provide the County Council written notice of all known preapplication~~  
327 ~~correspondence or permit application submittals and notices, federal, state, or local that involve~~  
328 ~~activity with the potential to expand the export of fossil fuels from Cherry Point “Fossil Fuel~~  
329 ~~Refinery or Fossil Fuel Transshipment Facilities,” as defined in the Whatcom County Code (Chapter~~  
330 ~~20.97).<sup>1</sup>~~

331 Policy 2CC-17: Policy 2CC-16 shall not limit existing operations or maintenance of existing facilities as of  
332 March 1, 2017.

333 *Evaluation: The policy and code amendments reinforce allowing existing uses and their*  
334 *maintenance. The shaded language was proposed in January 15, 2019, otherwise the*  
335 *other adjustments are based on the latest policy/code amendment direction:*

336 *Amend this policy: Policy 2CC-16 shall not limit Allow existing operations or maintenance*  
337 *of existing fossil-fuel related facilities operating at levels as of March 1, 2017 with*

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<sup>1</sup> The reference to a definition in the Whatcom County Code could be removed to avoid a policy with a code reference. A definition could be added to the Comprehensive Plan if thought necessary. Typically, the code is more detailed.



338 limited expansions subject to environmental review, greenhouse gas emission mitigation,  
339 and conformance with Policies 2CC-3 and -11.

340 *Other*

341 Add a new policy on renewable fuels: Support industries that create or use renewable fuels.

342 Essential Public Facilities

343 **Goal 2WW: Utilize the established siting criteria for essential public facilities.**

344 Policy 2WW-4 State and regional highways in unincorporated Whatcom County that have been  
345 designated as essential state or regional transportation facilities are I-5, State Route 539 (the Guide  
346 Meridian), State Route 546/9 (Badger from the Guide to Sumas), and State Route 20 to eastern  
347 Washington. Other transportation facilities in unincorporated Whatcom County that have been  
348 designated as essential public facilities are Amtrak Cascades passenger rail service, the Burlington  
349 Northern Santa Fe railroad tracks, and the Cherry Point marine port facilities. Such facilities in the City of  
350 Bellingham include Fairhaven Station (intercity passenger rail terminal), Bellingham Cruise Terminal  
351 (Alaska Ferry), and the Port of Bellingham (marine port). Additionally, State Route 543 (the truck route at  
352 the Blaine border) is an essential public facility located within the city limits of Blaine.

353 Widening of existing state highways or railroad tracks (including construction of sidings) and siting new  
354 state highways or railroad tracks should be planned in the Washington Highway System Plan, Amtrak  
355 Cascades Plan and the Freight Rail Plan. The state will invite the Regional Transportation Planning  
356 Organization and the County to participate in planning studies, review design plans, and provide  
357 comments when siting new or expanded state highways or railroad tracks.

358 Highways and railroad tracks that qualify as essential public facilities should be sited in accordance with  
359 all of the following principles. These facilities should be located:

- 360 • In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- 361 • Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- 362 • In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked  
363 passage.
- 364 • In a manner that avoids or mitigates wetland impacts.
- 365 • In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- 366 • In a manner that encourages a vibrant economy by facilitating the efficient movement of people and  
367 freight.
- 368 • In a manner that accommodates pedestrians, bicycles, and transit.

369 Major passenger intermodal terminals should be located in General Commercial, Airport Operations,  
370 Urban Residential-Medium Density or industrial zones.

371 Freight railroad switching yards and terminals should be located in industrial zones.

372 Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point  
373 Major/Port Industrial Urban Growth Area.

374 *Evaluation: Amend final sentence to address that the Port facilities are limited to existing*  
375 *ones by the DNR Cherry Point Aquatic Reserve Management Plan. While fossil-fuel*  
376 *terminals are restricted in the County’s proposed policies and code, other uses are not.*

377 *Proposed Amendment language: Marine port facilities should be located within the Heavy*  
378 *Impact Industrial zone of the Cherry Point Major/Port Industrial Urban Growth*  
379 *Area. Allow existing facilities and limited expansions consistent with the State of*  
380 *Washington Department of Natural Resource Cherry Point Aquatic Reserve Management*  
381 *Plan.*

382 **Policy 2YY-2: County regulations will not preclude the siting of essential public facilities in designated**  
383 **zoning districts.**

384 *Evaluation: Per RCW 36.70A.200 and RCW 47.06.140, and policy 2WW-4, marine*  
385 *port facilities and services that are related solely to marine activities affecting*  
386 *international and interstate trade are essential public facilities. The port facilities at Cherry*  
387 *Point can continue and limitations on expansion are based on DNR Cherry Point Aquatic*  
388 *Reserve Management Plan. Proposed policy and code changes limit fossil fuel terminals*  
389 *but allow for their continuation and limited expansion. A wide range of other allowed uses*  
390 *is still possible, if consistent with environmental regulations.*

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WHATCOM COUNTY COUNCIL  
**Special Committee of the Whole**

July 30, 2019

**CALL TO ORDER**

Council Chair Rud Browne called the meeting to order at 1:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

**ROLL CALL**

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

**Absent:** Tyler Byrd.

**COMMITTEE DISCUSSION**

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

The following staff answered questions:

- Mark Personius, Planning and Development Services Department Director, submitted a staff report (*on file*) and gave a staff report
- Nick Smith, Planning and Development Services
- Karen Frakes, Prosecutor's Office

Councilmembers and staff discussed working from the July 29, 2019 version of the ordinance the following motions:

***Browne moved*** to amend Whatcom County Code (WCC) Sections 20.68.802:

**.802 Non-Capacity, Maintenance, and Safety Improvements**

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

- (a) accessory buildings,
- (b) office space,
- (c) parking lots,
- (d) radio communications facilities,
- (e) regular equipment maintenance and replacement,
- (f) safety or environmental upgrades, whose primary purpose is to reduce pollution, energy consumption, or greenhouse gas emissions.
- (g) security buildings,
- (h) storage buildings, and

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1 (i) other similar structures or activities.

2 (2) ~~Regular equipment maintenance and replacement and safety~~  
3 ~~upgrades are outright permitted uses, but shall mitigate greenhouse gas~~  
4 ~~emission if required by WCC xx.~~ This allowance does not include  
5 improvements that would expand the capacity of the refinery **to process**  
6 **unrefined fossil fuels** or the transshipment facility which requires a conditional  
7 use permit per 20.68.153 or non-capacity improvements that would cause a  
8 net increase in or greenhouse gas emissions above subsection .801.  
9

10 The motion was seconded.

11  
12 Councilmembers and staff discussed the possibility of safety upgrades that would  
13 increase greenhouse gas emissions.

14  
15 **Browne withdrew his motion and moved** to amend to approve the Planning  
16 Department recommended motion.

17  
18 **.802 Non-Capacity, Maintenance, Safety, and Environmental**  
19 **Improvements**

20 (1) Expansions of existing legal fossil-fuel refineries, fossil-fuel  
21 transshipment facilities, renewable fuel refineries, or renewable fuel  
22 transshipment facilities for non-capacity purposes are outright permitted  
23 uses. Examples of non-capacity improvements include, but are not limited to:

- 24 (a) accessory buildings,  
25 (b) office space,  
26 (c) parking lots,  
27 (d) radio communications facilities,  
28 ~~(e) regular equipment maintenance and replacement,~~  
29 ~~(f) safety upgrades~~  
30 (g) security buildings,  
31 (h) storage buildings, and  
32 (i) other similar structures or activities.  
33

34 (2) Regular equipment maintenance, replacement, safety upgrades,  
35 **and environmental improvements** are outright permitted uses, but shall  
36 mitigate greenhouse gas emission if required by WCC 20.68.801. ~~This~~  
37 ~~allowance does not include improvements that would expand the capacity of~~  
38 ~~the refinery or the transshipment facility which requires a conditional use~~  
39 ~~permit per 20.68.153 or non-capacity improvements that would cause a net~~  
40 ~~increase in or greenhouse gas emissions above subsection .801.~~  
41

42 The motion was seconded.

43  
44 The motion carried by the following vote:

45 **Ayes:** Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

46 **Nays:** None (0)

47 **Absent:** Byrd (1)  
48

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1           **Donovan moved** to approve item two in the staff memo dated July 30, and ask  
2 Cascadia to create definitions, to amend WCC 16.08.090(2), "Life cycle greenhouse gas  
3 emissions **and facility emissions** above existing levels."

4  
5           The motion was seconded.

6  
7           The motion carried by the following vote:

8           **Ayes:**           Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

9           **Nays:**           None (0)

10          **Absent:**        Byrd (1)

11  
12          **Browne moved** to amend WCC 22.05.125:

13  
14          **22.05.125 Proof of insurance for hazards created in the County**

15                At the time of Type I, II, III, or IV applications addressing production  
16 capacity or storage tank increases at fossil fuel refineries, fossil fuel  
17 transshipment facilities, renewable fuel refineries, or renewable fuel  
18 transshipment facilities, the applicant shall **1) provide proof of insurance or**  
19 **other financial security acceptable to the prosecuting attorney, and 2) a**  
20 **parent company corporate guarantee** to cover loss or damages to the County  
21 and to County residents from any fire, explosion, spill or other incident from  
22 operations of the refinery or from transport of raw materials or finished  
23 products within the boundaries of Whatcom County. This requirement shall  
24 also be met for Type I changes in use from fossil fuel refineries or  
25 transshipment facilities to renewable fuel refineries or transshipment facilities.  
26 The required policies **and parent company corporate guarantee** shall contain  
27 the following Coverage Terms:

28  
29          The motion was seconded.

30  
31          The motion carried by the following vote:

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

33          **Nays:**           Brenner (1)

34          **Absent:**        Byrd (1)

35  
36          Councilmembers and staff discussed insurance requirements and whether or not to  
37 include pipelines in transshipment activities.

38  
39          **Browne moved** to amend WCC 22.05.125(9), "e) Transportation shall include  
40 movement by any vehicle or mode of transit including **but not limited to automobile, truck,**  
41 **railway** or watercraft, **including pump and compressor stations and related facilities,**  
42 including loading, temporary placement during transit prior to final delivery, or unloading, of  
43 materials or waste, either:"

44  
45          The motion was seconded.

46  
47          The motion carried by the following vote:

48          **Ayes:**           Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

49          **Nays:**           Brenner (1)

50          **Absent:**        Byrd (1)

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1  
2 **Donovan moved** to amend WCC 20.97.425.1, .160.3, .160.4, and .350.3:  
3

4 **20.97.425.1 Small Fossil or Renewable Fuel ~~Oil~~ Storage and**  
5 **Distribution Facilities**  
6

7 "Small Fossil or Renewable Fuel ~~Oil~~ Storage and Distribution Facilities"  
8 means:  
9

10 The motion was seconded.

11  
12 **Sidhu moved** to amend WCC 20.97.425.1 "(1), Equipment used for purposes of  
13 direct retail sale or distribution to consumers of fossil fuels or renewable fuels, or."  
14

15 The motion was seconded.

16  
17 **Sidhu withdrew** the motion.

18  
19 Browne's motion to amend carried by the following vote:

20 **Ayes:** Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

21 **Nays:** None (0)

22 **Absent:** Byrd (1)  
23

24 Brenner moved to delete WCC 16.08.160.F.1.b.iii. The motion was not seconded.  
25

26 **Browne moved** to amend WCC 16.08.160.F.1.b.iii "Greenhouse Gas Emissions –  
27 Other Uses Within the Heavy Industrial District:"  
28

29 The motion was seconded.

30  
31 The motion carried by the following vote:

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

33 **Nays:** Brenner (1)

34 **Absent:** Byrd (1)  
35

36 **Donovan moved** to get clarification from Cascadia on item six from the staff memo  
37 dated July 30 regarding State Environmental Policy Act (SEPA) rules.  
38

39 The motion was seconded.

40  
41 The motion carried by the following vote:

42 **Ayes:** Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

43 **Nays:** Brenner (1)

44 **Absent:** Byrd (1)  
45

46 **Buchanan moved** to accept staff's recommendation for Standard Industrial  
47 Classification (SIC) in the July 30 staff memo, to amend WCC 20.68.050, "Unless  
48 otherwise...and implementing regulations. ~~The purpose of the SIC numbers...and any~~  
49 ~~applicable subarea plan."~~  
50

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1 The motion was seconded.

2  
3 The motion carried by the following vote:

4 **Ayes:** Brenner, Browne, Buchanan, Donovan, Frazey, and Sidhu (6)

5 **Nays:** None (0)

6 **Absent:** Byrd (1)

7  
8 **Browne moved** for staff to scrub the entire document to make sure there are no  
9 undefined abbreviations in the document.

10  
11 The motion was seconded.

12  
13 Browne's motion to amend carried by the following vote:

14 **Ayes:** Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

15 **Nays:** None (0)

16 **Absent:** Byrd (1)

17 **Abstains:** Brenner (1)

18  
19 **Browne moved** to amend WCC 20.74.055, "(2) Conversion of Renewable Fuels  
20 Facilities and Transshipment Facilities to fossil fuel facilities unless a new permit is issued  
21 under the conditions applicable for increases in capacity for fossil fuel facilities in Chapter  
22 20.68"

23  
24 The motion was seconded.

25  
26 The motion carried by the following vote:

27 **Ayes:** Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

28 **Nays:** Brenner (1)

29 **Absent:** Byrd (1)

30  
31 **Browne moved** to add a section, "20.74.115 Change of Use of Renewable Fuels  
32 Facilities. A change of use of a Renewable Fuels Facilities or Transshipment Facilities to a  
33 fossil fuel facility is prohibited unless a new permit is issued under the conditions applicable  
34 for increases in capacity for fossil fuel facilities in Chapter 20.68"

35  
36 The motion was seconded.

37  
38 **Buchanan requested a friendly amendment** that the any change in use from a  
39 renewable fossil fuel to another transshipment facility requires a change of use permit per  
40 those provisions.

41  
42 **Browne accepted** the friendly amendment.

43  
44 Browne's motion to amend carried by the following vote:

45 **Ayes:** Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

46 **Nays:** None (0)

47 **Absent:** Byrd (1)

48 **Abstains:** Brenner (1)



DISCLAIMER: This document is a draft and is provided as a courtesy. This document is not to be considered as the final minutes. All information contained herein is subject to change upon further review and approval by the Whatcom County Council.

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1            **Browne moved** to amend to add a new section to WCC 20.68.200, ".207 Coal-fired  
2 **power plants."**  
3

4            The motion was seconded.  
5

6            Browne's motion to amend carried by the following vote:

7            **Ayes:**            Browne, Buchanan, Donovan, Frazey, and Sidhu (5)

8            **Nays:**            None (0)

9            **Absent:**        Byrd (1)

10          **Abstains:**     Brenner (1)  
11

12            Councilmembers and staff discussed next steps. Council will schedule this item on  
13 August 7 to finalize and forward to Planning Commission.  
14

15  
16            **OTHER BUSINESS**  
17

18            There was no other business.  
19

20  
21            **ADJOURN**  
22

23            The meeting adjourned at 2:56 p.m.  
24

25            The Council approved these minutes on \_\_\_\_\_, 2019.  
26

27            ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

28  
29  
30  
31  
32 \_\_\_\_\_  
33 Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Rud Browne, Council Chair

34  
35  
36  
37 \_\_\_\_\_  
38 Jill Nixon, Minutes Transcription  
39  
40  
41  
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Memorandum

July 22, 2019

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

FROM: Mark Personius, Director

RE: Cherry Point Amendments (PLN2018-00009)

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

**Council Direction Requested on Options in the Draft**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Option 1 – Allow renewable fuel projects as an outright permitted use.<sup>2</sup>

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

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

### **Council Direction Requested on Other Issues**

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

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

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

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

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

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

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

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

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

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

20.68.150. Conditional uses.

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

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

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

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

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

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

23.100.170 Cherry Point management area

B. 1. b. Fuel uses

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



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

20.68.150. Conditional uses.

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

23.100.170 Cherry Point management area.

B. 1. b. Fuel uses

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

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

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



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

20.88 Major project permits

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

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

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

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

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

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

20.88.200 Procedure.

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

## Amendment 4: Supplemental SEPA worksheet

### 16.08.090. Environmental checklist

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

Windborne transport of burned fossil fuel emissions into Whatcom County;

Life cycle greenhouse gas emissions above existing levels;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**20.74.055 Prohibited uses.**

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

(1) New piers, docks, or wharves.

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

**20.74.115 Change of Use of Renewable Fuels Facilities**

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

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

**22.05.125 Proof of insurance for hazards created in the County**

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

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

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

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

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

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

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

(5) Term and Cancellation Notice:

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

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

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

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

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

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

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

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

(b) Loss shall include:

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

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

(iii) civil fines, penalties, or assessments.

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

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

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

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

(ii) being sent from a Permitted Facility.

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

