

# Whatcom County

## Fossil Fuel Industrial Uses

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

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### Overview

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

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

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

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

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

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

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

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

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

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

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## Key Elements of Code Proposal

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### Restrict New Fossil Fuel Refineries and Transshipment Facilities

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

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### Allow Current Uses and Limited Expansions

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

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

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

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

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

53 *Service Area Population Growth*

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

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

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

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

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

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

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

68 *Other Population Options*

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

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

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

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

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

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

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

### 88 Allow for Renewable Fuels

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

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

### 96 Address Impacts and Mitigation

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

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

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

## 119   Consider Permit Review Options

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

127   Several different permitting options could also be considered:

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

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

## 145   Expansion Scenarios

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Source: BERK Consulting 2019.

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

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

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

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Source: BERK Consulting 2019.

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

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

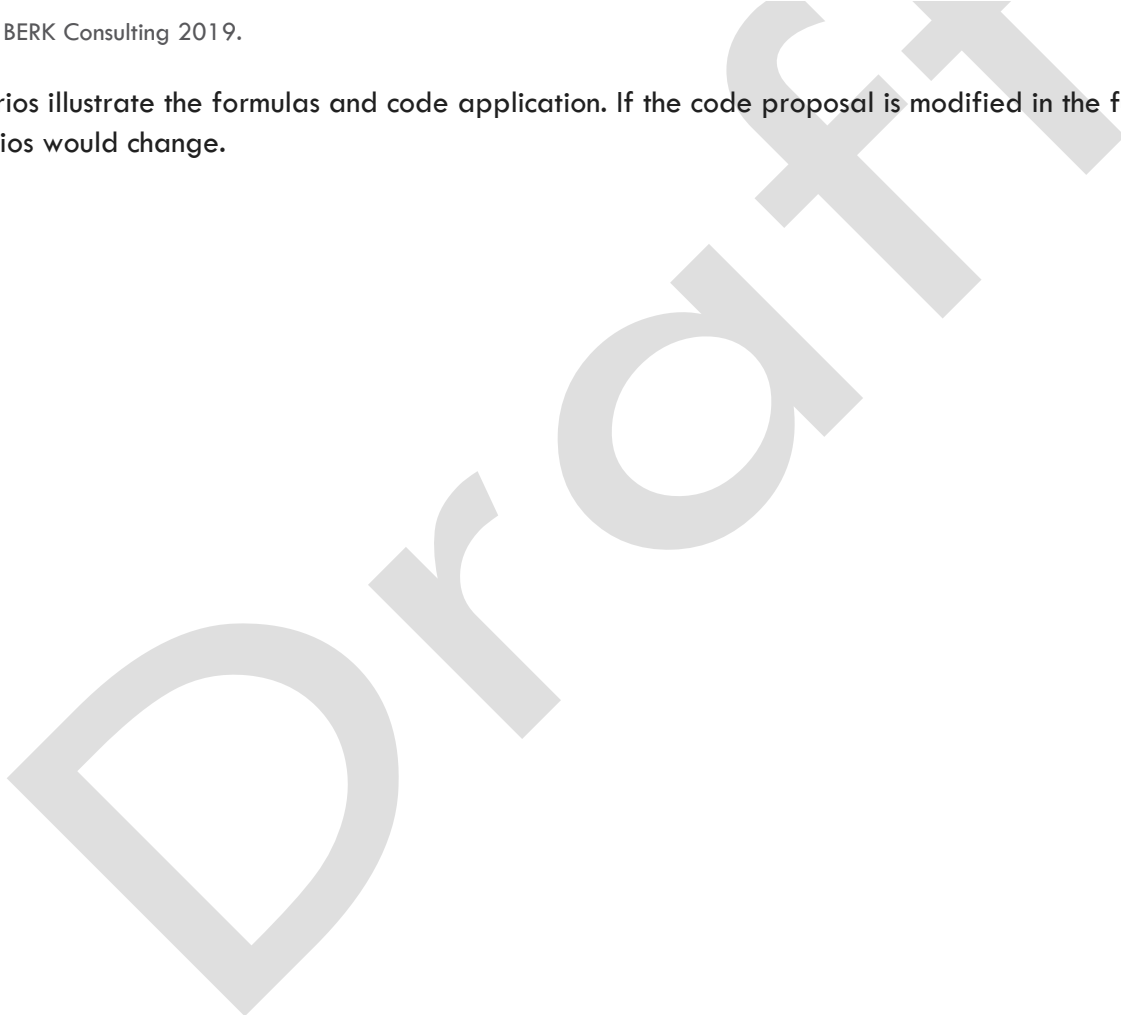


195 **Exhibit 8. Example Application: Year 5**

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

196  
197 Source: BERK Consulting 2019.

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



# Changes by Code Chapter

## CHAPTER 2.11 HEARING EXAMINER

### 2.11.205 Recommended decisions

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

#### 2.11.205 Recommended decisions.

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

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

B. Planned unit developments;

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

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

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

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

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

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

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

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

237 CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

238 16.08.160 Substantive authority.

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

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

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

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

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

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

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

- 275 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 276 Whatcom County Shoreline Management Program
- 277 Whatcom County Subdivision Ordinance
- 278 Whatcom County Solid Waste Management Plan
- 279 Whatcom County Critical Areas Ordinance

280 All official land use controls adopted by Whatcom County.

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



288 **F. Specific Environmental Policies**

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

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

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

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

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

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

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

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

323 iii. Greenhouse Gas Emissions – Other Uses:

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

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

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

333 **2. Plants and Animals:**

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

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

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

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

## CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

### 20.66.200 Prohibited uses.

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

.201 Reserved.

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

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

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

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

## CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

### 20.68.050 Permitted uses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

407 (5) Leather tanning and finishing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

440 .061 Heavy construction contractors.

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

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

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

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

450 .066 Marijuana production or processing facility.

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

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

453 .085 Type I solid waste handling facilities.

454 .086 Type II solid waste handling facilities.

## 455 20.68.100 Accessory uses.

456 .101 Employee recreation facilities and play areas.



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

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

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

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

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

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

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

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

485 **20.68.130 Administrative approval uses.**

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

489 **20.68.150 Conditional uses.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

531 [criteria 1-11 are the same]

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

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

- 534 (2) The most current state siting criteria under Chapter 173-303 WAC.
- 535 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,  
536 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those  
537 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- 538 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County  
539 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from  
540 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10  
541 percent of the total local hazardous waste stream.
- 542 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been  
543 constructed consistent with state requirements.
- 544 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,  
545 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to  
546 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit  
547 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,  
548 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be  
549 documented by county staff.
- 550 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of  
551 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county  
552 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and  
553 inspection reporting procedures.
- 554 If the state does not inspect the facility within the year, the applicant shall be required to arrange and bear all costs for an  
555 inspection by a qualified and independent inspection agency satisfactory to the county.
- 556 (8) Should the facility be found to consistently operate in a manner unsatisfactory to the county in regard to the public health  
557 and safety, the permit may be revoked by the approving body following a public hearing.
- 558 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.
- 559 .157 Trailheads with parking areas for more than 30 vehicles.
- 560 .158 Athletic fields.
- 561 **Option 3: Add renewable fuels as a Conditional Use Permit to match fossil fuel requirements.**
- 562 .159 Expansion of existing legal renewable fuels refinery operations or renewable fuels transshipment facilities when  
563 proposed in excess of expansion thresholds determined consistent with WCC 20.68.800 and subject to a conditional use  
564 permit and major project permit and the criteria identified in .153 (1) to (11).
- 565 .180 Major passenger intermodal terminals.
- 566 .187 Type III solid waste handling facilities; provided, that:
- 567 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site  
568 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at  
569 least three feet in elevation higher than the floodway elevation;
- 570 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
- 571 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 572 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 573 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 574 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

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

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

#### 617 **20.68.200 Prohibited uses.**

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

620 .201 Reserved.

621 .202 Adult businesses.

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

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

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

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

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

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

#### 633 **20.68.250 Minimum lot size.**

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

#### 636 **20.68.255 Minimum lot frontage.**

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

#### 640 **20.68.350 Building setbacks.**

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

#### 642 **20.68.400 Height limitations.**

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

#### 645 **20.68.450 Lot coverage.**

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

#### 647 **20.68.500 Open space.**

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

649 **20.68.550 Buffer area.**

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

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

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

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

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

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

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

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

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

677 **20.68.600 Sign regulations.**

678 Sign regulations shall be administered pursuant to WCC 20.80.400.

679 **20.68.650 Development criteria.**

680 (Ord. 96-056 Att. A § A1, 1996).

681 **20.68.651 Landscaping.**

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

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

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

687 **20.68.653 Drainage.**

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

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

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

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

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

702 **20.68.700 Performance standards.**

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

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

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

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

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

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

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

725 **20.68.708 Appearance.**

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

729 **20.68.709 Marijuana odor.**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

771 Replace (1) above:

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

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

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

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

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

781 (b) Storage tank capacity increases.

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

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

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

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

790 (2) Greenhouse gas emission analysis required:

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

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

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

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

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

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

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

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

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

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

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

831 *Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-*  
832 *CO<sub>2</sub>) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide*  
833 *(CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages*  
834 *avoided for a small emission reduction (i.e., the benefit of a CO<sub>2</sub> reduction)."*

835 *See: [https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon .html](https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html). If*  
836 *the County wishes to increase the mitigation fee it may do so by ordinance with an*  
837 *accompanying rationale such as inflation, updated US EPA guidance or other factors.*

### 838 **.803 Non-Capacity Improvements**

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

841 (a) accessory buildings,

842 (b) office space,

843 (c) parking lots,

844 (d) radio communications facilities,

845 (e) regular equipment maintenance and replacement,

846 (f) safety upgrades,

847 (g) security buildings,

848 (h) storage buildings, and

849 (i) other similar structures or activities.

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

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

855 **.804 Renewable Fuels Facilities and Transshipment Facilities**

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

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

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

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

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

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

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

864 **20.74.010 Purpose.**

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

869 **20.74.020 Applicability.**

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

871 **20.74.030 Permitted uses.**

872 (1) Primary permitted uses:

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

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

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

880 **20.74.040 Accessory uses.**

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

883 **20.74.050 Conditional uses.**

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

886 **20.74.055 Prohibited uses.**

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

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

890 **20.74.060 Master site plan requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

920 **20.74.080 Design standards.**

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

925 **20.74.090 Traffic demand management.**

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

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

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

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

### 934 20.74.100 Drainage.

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

### 937 **20.74.110 Change of Use**

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

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

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

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

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

## 946 CHAPTER 20.88 MAJOR PROJECT PERMITS

### 947 20.88.100 Major project permits.

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

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

Cost

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

Size

retail 75,000 square feet

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

residential 300 dwelling units

motel/hotel 200 units

951

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

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

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

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

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

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

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

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

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

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

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

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

988 **20.88.200 Procedure.**

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

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

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

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

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

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

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

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

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

1016 .220 through .265 *Reserved.*

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

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

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

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

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

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

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

## 1032 CHAPTER 20.97 DEFINITIONS

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

### 1037 **20.97.052.1 Change of Use**

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

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

### 1040 **20.97.124.1 Facility Emissions.**

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

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

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

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

### 1048 **20.97.160.2 Fossil Fuels.**

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

### 1052 **20.97.160.3 Fossil Fuels Transshipment Facilities.**

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

### 1058 **20.97.160.4 Fossil Fuel Refinery.**

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



1063 **20.97.160.5 Fossil Fuel Refinery Capacity.**

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

1069 **20.97.163 Greenhouse Gas Emissions**

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

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

1076 **20.97.201 Living Wage**

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

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

1085 **20.97.350.1 Renewable Biomass**

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

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

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

1089 (3) Animal waste material and animal byproducts.

1090 (4) Slash and pre-commercial thinnings.

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

1092 (6) Algae.

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

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

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

1098 **20.97.350.2 Renewable Fuel**

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

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

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

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

1112 *Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,*  
1113 *common liquid fuel forms include ethanol and biodiesel.*

1114 See: [https://www.eia.gov/energyexplained/?page=renewable\\_home](https://www.eia.gov/energyexplained/?page=renewable_home).

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

1117 Limiting fossil fuel percentages to 5% is workable for buses and power cars.

1118 See <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes  
1119 15-25% fossil fuels and is used by flexibly fueled vehicles.

1120 See <https://www.fueleconomy.gov/feg/flextech.shtml>.

1121 Under the EPA renewable fuel standard, three of four renewable fuel categories must  
1122 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional  
1123 renewable ethanol must meet a 20% lifecycle GHG reduction.

1124 See: [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)  
1125 [fuel-standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

## 1126 20.97.434.1 Technical committee.

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

## 1130 CHAPTER 22.05 PROJECT PERMIT PROCEDURES

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

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

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

### 1134 22.05.020 Project permit processing table.

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

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
<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
<u>Change of Use, Cherry Point Industrial District</u>	<u>Chapter 20.74</u>							<u>Administrator</u>	<u>Hearing Examiner</u>
Commercial Site Plan Review								Administrator	Hearing Examiner
Exempt Land Division	21.03							Administrator	Hearing Examiner
Floodplain Development Permit	Title 17							Administrator	Hearing Examiner
Land Disturbance Permit	15.04 and 20.80							Administrator	Hearing Examiner
Lot of Record/Lot Consolidation	20.83 and 20.97.220							Administrator	Hearing Examiner
Nonconforming Use	20.83							Administrator	Hearing Examiner
Removal of Development Moratorium	20.80.738(3)								
Shoreline Exemption	23.60	(a)						Administrator	Hearing Examiner
Zoning Interpretation	22.20							Administrator	Hearing Examiner
<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)

Permit Application Processing Table	WCC Reference for Specific Requirements	Pre-Application Required (see 22.05.040)	Determination of Completeness Required (see 22.05.050)	Notice of Application Required (see 22.05.070)	Site Posting Required (see 22.05.080)	Notice of Open Record Hearing Required (see 22.05.090)	Open Record Hearing Held By: (see 22.05.090)	County Decision Maker (see 2.11.210, 22.05.120)	Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H))
Shoreline Conditional Use (c)	23.60	(a)						Administrator (d)	Hearing Examiner
Short Subdivision	21.04							Administrator	Hearing Examiner
<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 Areas Ordinance Variance	20.84.100 or 16.16.270						Hearing Examiner	Hearing Examiner	Superior Court
<b>Type IV Applications (County Council Decision with Public Notice and Public Hearing)</b>									
<u>CP Industrial District Conditional Use Permit for Fossil Fuel Refinery Expansion</u>	<u>20.68.150, 20.84.200</u>						<u>Hearing Examiner</u>	<u>County Council</u>	<u>Superior Court</u>
Development Agreement	2.11.205						Hearing Examiner	County Council	Superior Court
Major Project Permit	20.88						Hearing Examiner	County Council	Superior Court

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

1139

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

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

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

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

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

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

1153 (b) **Requirements:**

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

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

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

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

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

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

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

- 1173 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC  
 1174 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the  
 1175 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out  
 1176 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.
- 1177 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and  
 1178 Chapter 42.36 RCW.
- 1179 (4) For planned unit developments and major project permits the following shall apply:
- 1180 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall  
 1181 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.
- 1182 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days  
 1183 following the conclusion of the open record hearing.
- 1184 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection  
 1185 (4)(c)(iii) of this section:
- 1186 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28  
 1187 calendar days after receiving the hearing examiner's recommendation.
- 1188 (ii) Issue a final written decision within 21 calendar days of the public meeting.
- 1189 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council  
 1190 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes  
 1191 written findings that a specified amount of additional time is needed to process a specific application or project  
 1192 type, per RCW 36.70B.080(1).
- 1193 (5) The county council's final written decision may include conditions when the project is approved and shall state the  
 1194 findings of fact upon which the decision is based.

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

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

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

## 1204 22.05.125 Proof of insurance for hazards created in the County

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

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

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

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

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

1219 (3) Policy Limits: Policy limits shall be no less than \$50 million for each Loss / total for all Losses. The required limits may  
1220 be revised periodically by the County based on factors including inflation adjustments and Permit- or Facility-specific risks.

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

1228 (4) Policy Deductibles: The Insurer shall be liable for the payment of amounts within any deductible or self-insured retention  
1229 amount applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer.

1230 (5) Term and Cancellation Notice:

1231 (a) Insurance shall be carried for the lifetime of the fossil fuel refineries, fossil fuel transshipment facilities,  
1232 renewable fuel refineries, or renewable fuel transshipment facilities.

1233 (b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in  
1234 and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon  
1235 written notice and only after the expiration of 60 days after a copy of such written notice is received by the County  
1236 as evidenced by the return receipt.

1237 (6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

1238 (7) Primary to Other Insurance: The Policy shall provide primary coverage regardless of any other applicable insurance.

1239 (8) Choice of Law and Forum: The Policy shall provide that the laws of the State of Washington shall apply in the event of  
1240 any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any term,  
1241 condition, definition or provision of the Policy.

1242 (9) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating  
1243 from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or  
1244 the equivalent from another major financial rating agency.

1245 (10) Definitions: For the purposes of this section, terms are defined as follows:

1246 (a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any  
1247 fixed conveyances such as pipelines and terminal distribution systems.

1248 (b) Loss shall include:

1249 (i) monetary awards or settlements of compensatory damages;

1250 (ii) where allowable by law, punitive, exemplary, or multiple damages; and

1251 (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) 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 products, materials or waste, either:

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

(ii) being sent from a Permitted Facility.

## CHAPTER 23.100 SHORELINE USE POLICIES AND REGULATIONS

### 23.100.010 Shoreline use and development.

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

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

Shoreline Uses	Shoreline Area Designation									
	Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry 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 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 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 commercial	P	P <sup>(-)</sup>	C <sup>(-)</sup>	P	P	P <sup>(-)</sup>	C <sup>(-)</sup>	X	X <sup>(*)</sup>	
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>										



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

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
	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>Fossil Fuel Refineries, existing legal, below thresholds of the zoning code at WCC 20.68.800</u>										<u>P<sup>(-)(+)</sup></u>
<u>Fossil Fuel Refineries, existing legal, above thresholds of the zoning code at WCC 20.68.800</u>										<u>C</u>
<u>Renewable fuels</u>										<u>P<sup>(-)(+)</sup></u>
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 hydroelectric power generation	C	X	C	C	C	C	C	X	P	
<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	

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

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
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: P <sup>(+)</sup> 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
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>

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

Shoreline Uses	Shoreline Area Designation									
	Urban Urban	Urban Resort	Urban Conservancy	Shoreline Residential	Rural	Resource	Conservancy	Natural	Aquatic <sup>(b)</sup>	Cherry Point
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>

- 1265 P = Permitted, may be subject to policies and regulations of this program and subject to shoreline substantial development  
 1266 permit requirements.  
 1267 C = Shoreline conditional use, subject to policies and regulations of this program and may be subject to shoreline substantial  
 1268 development permit requirements.  
 1269 X = Prohibited.  
 1270 N/A = Not applicable.  
 1271 (-) Subject to limitations.  
 1272 (+) Subject to conditions.  
 1273 (\*) Subject to exceptions.

1274 (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  
 1275 Chapters [23.30](#), [23.90](#), or [23.100](#) WCC, the policies and regulations shall apply.

1276 (b) Aquatic: Water-dependent use only, subject to the use and development regulations of the abutting upland shoreline area  
 1277 designation.

1278 (Ord. 2014-051 § 3; Ord. 2009-13 § 1 (Exh. 1)).  
 1279

### 1280 23.100.170 Cherry Point management area.

#### 1281 A. Policies.

##### 1282 1. Purpose and Intent.

1283 a. The purpose of the Cherry Point management area is to provide a regulatory framework that recognizes and  
 1284 balances the special port, industrial and natural resource needs associated with the development of this marine  
 1285 resource. This section identifies policies and regulations for water-dependent industrial activities that apply in  
 1286 addition to specific other elements of this program as referenced herein.

1287 b. Washington State natural resource agencies and Whatcom County have identified certain portions of the Cherry  
 1288 Point management area as providing herring spawning habitat and other key habitat characteristics that warrant  
 1289 special consideration due to their importance to regional fisheries and other elements of the aquatic environment.

1290 c. Development of the Cherry Point major port/industrial urban growth area will accommodate uses that require  
 1291 marine access for marine cargo transfer, including oil and other materials. For this reason, water,

1292 **i. Water**-dependent terminal facilities are encouraged as the preferred use in the Cherry Point management  
 1293 area. Due to the environmental sensitivity of the area, it is the policy of Whatcom County to limit the  
 1294 number of piers to one pier, in addition to those in operation or approved as of January 1, 1998.

1295 **d. Whatcom County should consider participation with local, state, and federal agencies, tribal governments and**  
 1296 **other stakeholders in the development of a plan to address integrated management of the uplands and public aquatic**  
 1297 **lands within the Cherry Point management area. The development of such a plan could provide a forum and**  
 1298 **process for addressing aquatic resources by all stakeholders. Elements of the plan could be adopted as future**  
 1299 **amendments to this program as appropriate.**

1300 ii. Existing legal fossil fuel refineries should be allowed to continue and maintain their operations with  
1301 limited expansions subject to environmental review, greenhouse gas emission mitigation, and conformance  
1302 with the Shoreline Master Program and other applicable land use designation.

1303 iii. It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing  
1304 three piers in operation or approved as of January 1, 1998, taking into account the need to:

1305 • Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the  
1306 Cherry Point Herring stock and Southern Resident Killer Whales;

1307 • Optimally implement the Shoreline Master Program policy regarding shorelines of statewide significance  
1308 per WCC 23.40;

1309 • Encourage the continued County use of best available science;

1310 • Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry  
1311 Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry  
1312 Point Aquatic Reserve designation and Management Plan;

1313 • Recognize federal actions upholding treaty rights;

1314 • Protect traditional commercial and tribal fishing; and

1315 • Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil  
1316 or fuel spills.

1317 d. Whatcom County should ensure that shoreline development applicants demonstrate conformance with the State  
1318 of Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.

1319 e. All development that is to be located within the Cherry Point management area, as defined in Chapter 23.110  
1320 WCC, shall be subject to the policies and regulations found in this section, and shall not be subject to the policies  
1321 and regulations found in WCC 23.100.010 through 23.100.160, nor Chapter 23.90 WCC, unless otherwise  
1322 referenced in this section. The policies and regulations found in this section are applicable only within the  
1323 geographic boundaries of the Cherry Point management area and do not apply elsewhere in the county. In the event  
1324 that the provisions of this section conflict with other applicable referenced provisions of this program, the policies  
1325 and regulations that are most protective of shoreline resources shall prevail.

1326 *Discussion/Notes: Above amendments are similar to those in the Comprehensive Plan*  
1327 *policy changes.*

1328 2. Water-Dependent Industrial Development. Only water-dependent facilities that serve industrial facilities should be  
1329 allowed in the Cherry Point management area. Industry within the major port/industrial urban growth area, as designated  
1330 in the County Comprehensive Plan, which is not water-dependent should locate away from shoreline jurisdiction.

1331 3. Multiple Use Facilities. Facilities that allow for multiple use of piers, cargo handling, storage, parking and other  
1332 accessory facilities are encouraged.

1333 4. Public Access.

1334 a. Where appropriate, industrial and port development within the Cherry Point management area should provide  
1335 public beach and shoreline access in a manner that does not cause interference with facility operations or present  
1336 hazards to life and property. This may be accomplished through individual action or by joint, coordinated action  
1337 with other developers and landowners, for example, by setting aside a common public access area.

1338 b. Special emphasis should be given to providing public beach and shoreline access for recreational opportunities  
1339 including but not limited to crabbing, small craft launching, surf fishing, picnicking, clamming, and beach walking.

1340 c. Public access within the Cherry Point management area should be consistent with the Whatcom County Parks  
1341 and Recreation Open Space Plan.

1342 5. Shoreline Ecological Functions and Processes. In recognition of the diverse and vital ecological resources in the  
1343 Cherry Point management area, consideration of probable effects of all development proposals on shoreline ecological  
1344 functions and processes should be assessed with the other long-term statewide interests. New port development that  
1345 requires dredge and fill should not be permitted in the Cherry Point management area due to potential adverse effects on  
1346 ecological functions, including fish and shellfish habitat and geohydraulic processes.

1347 6. Aesthetics. All development should be designed to avoid or minimize negative visual impacts on the scenic character  
1348 of the area and to ensure visual compatibility with adjacent nonindustrial zoned properties.

1349 7. Site Development. All development should be constructed and operated in a manner that, while permitting water-  
1350 dependent uses, also protects shoreline resources, their ecological functions and processes, and that incorporates the  
1351 following:

1352 a. Low impact development approaches to avoid or minimize adverse impact to topography, vegetation, water  
1353 quality, fish and wildlife habitat, and other natural site conditions;

1354 b. Adequate temporary and permanent management measures to control erosion and sediment impacts during  
1355 construction and operation; and

1356 c. Adequate stormwater management facilities.

1357 *Discussion/Notes: Be consistent with Comprehensive Plan Policies. Prohibit New Docks and*  
1358 *Piers.*

1359 B. Regulations.

1360 1. Allowed Use.

1361 a. Water-dependent industrial and port uses are allowed within the Cherry Point management area; provided, that  
1362 specific findings are made in a shoreline substantial development permit or conditional use permit that:

1363 i. Policies for optimum implementation of the statewide interest have been achieved through protection of  
1364 shoreline ecological functions and processes;

1365 ii. The long-term statewide benefits of the development have been considered with the potential adverse impacts  
1366 on ecological functions; and

1367 iii. Proposed mitigation measures to achieve no net loss of ecological functions and processes are incorporated  
1368 in the proposal.

1369 b. **Fuel Uses:**

1370 i. Fossil Fuel Refineries – Shoreline Permits and Requirements: Fossil fuel refineries existing legal as of  
1371 [XXX effective date] are permitted shoreline uses. Expansions of existing legal fossil fuel refineries below  
1372 thresholds of the zoning code at WCC 20.68.800 are subject to review as shoreline substantial development  
1373 permits. Expansions of existing legal fossil fuel refineries above thresholds at WCC 20.68.800 require a  
1374 shoreline conditional use permit.

1375 ii. Fossil fuels transshipment facilities as a primary use are prohibited. Those that are a necessary part of  
1376 providing raw materials to, and serving, a permitted expansion of an existing fossil fuel refinery shall  
1377 require either shoreline substantial development permit or a shoreline conditional use permit dependent on  
1378 the level of expansion as identified in subsection b.i.

1379 **Option 1: Treat renewable fuels as shoreline substantial development permit.**

1380 iii. Refining, storage, blending, and manufacture of renewable fuels is allowed as a shoreline substantial  
1381 development permit subject to requirements in WCC 20.68.801.

1382 **Option 2: Treat renewable fuels similar to (integrated) with b.i and b.ii with same thresholds.**

1383 | **c.** Water-related and water-enjoyment uses are allowed only as part of public access and public recreation  
1384 development, subject to the findings in subsection (B)(1)(a) of this section.

1385 | **ed.** Accessory development, which does not require a shoreline location in order to carry out its support functions,  
1386 shall be sited away from the land/water interface and landward of the principal use. Accessory development shall  
1387 observe critical area buffers in Chapter 16.16 WCC. Accessory development includes, but is not limited to,  
1388 parking, warehousing, open air storage, waste storage and treatment, stormwater control facilities, utility and land  
1389 transport development.

1390 | **de.** Road, railway and utility facilities serving approved waterfront facilities related to water-dependent uses that  
1391 are located and designed to minimize shoreline alteration are permitted.

1392 | **ef.** Waste water disposal/treatment facilities for storage or disposal of industrial or domestic waste water are  
1393 prohibited, except that elements such as conveyances and outfalls shall be allowed if alternate inland sites have  
1394 been demonstrated to be infeasible. Waste water conveyance systems for ships at berth shall be permitted.

1395 *Discussion/Notes: Consistency with Zoning Code changes.*

1396 2. Public Access.

1397 a. Public access shall be provided in accordance with WCC 23.90.080 unless it is demonstrated that public access  
1398 poses significant interference with facility operations or hazards to life or property.

1399 b. If public access meeting the criteria above is demonstrated to be infeasible or inappropriate, alternative access  
1400 may be provided in accordance with WCC 23.90.080 at a location not directly adjacent to the water such as a  
1401 viewpoint, observation tower, or other areas serving as a means to view public waters. Such facilities may include  
1402 interpretive centers and displays that explain maritime history and industry; provided, that visual access to the  
1403 water is also provided.

1404 c. As an alternative to on-site public access facilities, public access may be provided in accordance with a public  
1405 access plan adopted as an element of the Whatcom County Parks and Recreation Open Space Plan.

1406 3. Critical Areas. In addition to meeting the provisions of WCC 23.90.030, Ecological protection and critical areas,  
1407 development and alteration shall not be located or expanded within critical areas designated pursuant to Chapter 16.16  
1408 WCC except where the site is approved for water-dependent use, and the following are met:

1409 a. Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with  
1410 WCC 23.90.030.

1411 b. Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall  
1412 demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade  
1413 the existing water quality within the wetland.

1414 c. The minimum required setback from the OHWM for all industrial and port facilities, including development  
1415 components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs  
1416 and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such  
1417 setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.

1418 d. Development and alteration other than recreation development for public and quasi-public shoreline access is  
1419 prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations  
1420 in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations  
1421 of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained  
1422 subject to the provisions of WCC 23.50.070.

1423 4. Location and Design.

1424 a. Piers.

- 1425 i. Piers shall be designed to accommodate only the necessary and intrinsic activities associated with the  
1426 movement of material and cargo from land to water and water to land. The length of piers shall not extend  
1427 beyond that which is necessary to accommodate the draft of the vessels intending to use the facility. Due to the  
1428 environmental sensitivity of the area, Whatcom County shall limit the number of piers to ~~one pier, in addition to~~  
1429 those in operation as of January 1, 1998.
- 1430 ii. Piers shall be designed to minimize interference in the intertidal zone and adverse impacts to fish and wildlife  
1431 habitats.
- 1432 iii. Piers shall be designed to minimize impacts on steep shoreline bluffs.
- 1433 iv. All pilings in contact with water shall be constructed of materials such as concrete, steel, or other materials  
1434 that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other  
1435 structural components shall be approved by applicable state agencies for contact with water to avoid discharge  
1436 of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or  
1437 pentachlorophenol is prohibited; provided, that replacement of existing wood pilings with chemically treated  
1438 wood is allowed for maintenance purposes where use of a different material such as steel or concrete would  
1439 result in unreasonable or unsafe structural complications; further provided, that where such replacement exceeds  
1440 20 percent of the existing pilings over a 10-year period, such pilings shall conform to the standard construction  
1441 provisions of this section.
- 1442 v. All piers on piling structures shall have a minimum vertical clearance of one foot above extreme high water.
- 1443 vi. Bulk storage of gasoline, oil and other petroleum products for any use or purpose is not allowed on piers,  
1444 except for temporary storage under emergency situations, including oil spill cleanup. Bulk storage means  
1445 nonportable storage in fixed tanks. Secondary containment shall be provided for portable containers.
- 1446 vii. All piers shall be located and designed to avoid impediments to navigation and to avoid depriving other  
1447 properties of reasonable access to navigable waters. All piers shall be marked with navigational aids and  
1448 approved for compliance with U.S. Coast Guard regulations.
- 1449 b. Dredging.
- 1450 i. Dredging to accommodate water access to, or construction of, new development is prohibited. New  
1451 development shall be located and designed to avoid the need for dredging. Dredging for existing development  
1452 shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and  
1453 wildlife habitats.
- 1454 ii. Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations  
1455 in WCC 23.90.120(B)(4) and (5), Dredging.
- 1456 iii. Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of  
1457 this title.
- 1458 c. Landfill is prohibited, except for the minimum necessary to access piers or other structures that provide access to  
1459 the water. Pier design should accommodate the connection between the pier and uplands by employing a pile-  
1460 supported structure to the point of intersection with stable upland soils. Limited landfill may be allowed for pier  
1461 access that does not extend further toward the OHWM than existing topography.
- 1462 d. Excavation/Stabilization.
- 1463 i. Excavation/stabilization of bluffs is prohibited, except for the minimum necessary to access piers or other  
1464 structures that provide access to the water; provided, that active feeder bluffs shall not be altered if alteration  
1465 will adversely affect the existing littoral drift process. New development shall avoid, rather than modify, feeder  
1466 bluffs.
- 1467 ii. Excavation/stabilization is prohibited on accretion shoreforms and in wetlands in the backshore area.
- 1468 e. Shore defense works shall be regulated in accordance with WCC 23.100.130, Shoreline stabilization, and be  
1469 consistent with the conservancy and aquatic shoreline area regulations of that section.

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5. Adjacent Use.

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

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

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

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

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

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

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6. Oil and Hazardous Materials.

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

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

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

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

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

1502

## CHAPTER 23.110 DEFINITIONS

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

1507

### 23.110.060 F definitions.

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



1511 28. “Fossil Fuel Transshipment Facility” is a facility engaging in the process of off-loading of fossil fuel materials, refined or  
1512 unrefined, refinery feedstocks, products or by products from one transportation facility and loading it onto another  
1513 transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of  
1514 transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and  
1515 compressor stations and associated facilities.

1516 29. “Fossil Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not  
1517 limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils,  
1518 and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of  
1519 fossil fuels or by products.

1520 *Discussion/Notes: Consistency with Zoning Code changes.*

### 1521 23.110.090 I definitions.

1522 4. “Industrial development” means facilities for processing, manufacturing, and storage of finished or semi-finished goods,  
1523 including but not limited to oil, metal or mineral product refining, power generating facilities, including hydropower, ship  
1524 building and major repair, storage and repair of large trucks and other large vehicles or heavy equipment, related storage of  
1525 fuels, commercial storage and repair of fishing gear, warehousing, construction contractors’ offices and material/equipment  
1526 storage yards, wholesale trade or storage, and log storage on land or water, together with necessary accessory uses such as  
1527 parking, loading, and waste storage and treatment. Excluded from this definition are mining, including on-site processing of  
1528 raw materials, and off-site utility, solid waste, road or railway development, and methane digesters that are accessory to an  
1529 agricultural use. This definition excludes fossil fuel refineries.

1530 *Discussion/Notes: Consistency with Zoning Code changes.*

### 1531 23.110.150 O definitions.

1532 2. “Oil” means petroleum or any petroleum product in liquid, semi-liquid, or gaseous form including, but not limited to,  
1533 crude oil, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredging spoil. See Fossil Fuels.

1534 *Discussion/Notes: Consistency with Zoning Code changes.*

### 1535 23.110.160 P definitions.

1536 10. “Port development” means public or private facilities for transfer of cargo or passengers from water-borne craft to land  
1537 and vice versa, including, but not limited to: piers, wharves, sea islands, commercial float plane moorages, offshore loading  
1538 or unloading buoys, ferry terminals, and required dredged waterways, moorage basins, and equipment for transferring cargo  
1539 or passengers between land and water modes. Excluded from this definition and addressed elsewhere are airports, marinas,  
1540 boat ramps or docks used primarily for recreation, cargo storage and parking areas not essential for port operations, boat  
1541 building or repair. The latter group is considered industrial or accessory to other uses. This definition excludes fossil fuels  
1542 transshipment facilities.

1543 *Discussion/Notes: Consistency with Zoning Code changes.*

### 1544 23.110.180 R definitions.

1545 6. “Renewable biomass” includes but is not limited to the following:

1546 (1) Planted crops and crop residue harvested from agricultural land.

1547 (2) Planted trees and tree residue from a tree plantation.

1548 (3) Animal waste material and animal byproducts.

1549 (4) Slash and pre-commercial thinnings.

1550 (5) Organic matter that is available on a renewable or recurring basis.

1551 (6) Algae.

1552 | (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1553 | (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to  
1554 | customary feedstock production and transport.

1555 | *Discussion/Notes: Consistency with Zoning Code changes.*

1556 | 7. "Renewable Fuel" means liquid fuels produced from renewable biomass, and limited in terms of blending with fossil  
1557 | fuels. Common renewable fuels include ethanol and biodiesel:

1558 | (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is  
1559 | nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of  
1560 | American society of testing and materials specification D 5798.

1561 | (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable  
1562 | oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal  
1563 | environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and  
1564 | materials specification D 975.

1565 | (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or  
1566 | more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other  
1567 | feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State  
1568 | Department of Ecology or US EPA.

1569 | *Discussion/Notes: Consistency with Zoning Code changes.*