

# Whatcom County Fossil Fuel Policies and Potential Amendments

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

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## Comprehensive Plan

### Major Industrial Urban Growth Area / Port Industrial

#### *Cherry Point – Text*

#### **Change Second Paragraph of Cherry Point Text**

Because of the special characteristics of Cherry Point, including deep water port access, rail access, and proximity to Canada, this area has regional significance for the siting of large industrial or related facilities. General Petroleum constructed the Ferndale Refinery in 1954, Alumax/Pechiney/Howmet constructed the Aluminum Smelter in 1966, and the Atlantic Richfield Company constructed the Cherry Point Refinery in 1971. The existing industries in the Cherry Point UGA, which provide significant employment, have produced and shipped refined fossil fuels and other products for decades.

#### **Amend Policy 2CC-11**

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

- ~~Honor any existing vested rights or other legally enforceable agreements for an additional dock/ pier;~~  
Act conservatively in land use matters at Cherry Point to prevent further harm to habitat important to the Cherry Point Herring stock and Southern Resident Killer Whales;
- ~~Update the~~ Optimally implement the Whatcom County Shoreline Master Program to ~~conform with this policy~~ fulfill the Shoreline Management Act's shorelines of statewide significance policy to preserve natural character, result in long-term over short-term benefit, and protect the resources and ecology of the shoreline;
- Encourage the continued agency use of best available science;
- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing; and
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills.

32 **Amend Policy 2CC-16**

33 ~~2CC-16: The County will, through its adopted SEPA policies and applicable permitting processes, shall~~  
34 ~~undertake a study to be completed if possible by December of 2017 to examine existing County laws,~~  
35 ~~including those related to public health, safety, development, building, zoning, permitting, electrical,~~  
36 ~~nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to~~  
37 ~~limit the negative impacts on public safety, transportation, the economy, and environment from new fossil~~  
38 ~~fuel facilities, including new or expanded crude oil, coal, liquefied petroleum gases, natural gas, and~~  
39 ~~exports from facilities within the Cherry Point UGA above levels in existence as of March 1, 2017 [XXX,~~  
40 ~~2019].~~

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

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

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

54 **Amend Policy 2CC-17**

55 ~~Policy 2CC-16 shall not limit~~ Allow existing operations or maintenance of existing fossil-fuel  
56 related facilities operating at levels as of March 1, 2017 [XXX, 2019] with limited expansions  
57 subject to environmental review, greenhouse gas emission mitigation, and conformance with  
58 Policies 2CC-3 and -11.

59 **Add a new policy on renewable fuels:**

60 2CC-18. Treat renewable fuels facilities similar to fossil fuel facilities.

61 **Essential Public Facilities**

62 **Amend Policy 2WW-4**

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

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

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

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

- 79 • In a manner that minimizes or mitigates noise impacts to surrounding residential areas.
- 80 • Outside of the Lake Whatcom Watershed, unless there are no viable alternatives.
- 81 • In a manner that allows continued fish passage beyond the road or railroad tracks or restores blocked  
82 passage.
- 83 • In a manner that avoids or mitigates wetland impacts.
- 84 • In a manner that minimizes impacts of additional impervious surfaces by treating stormwater runoff.
- 85 • In a manner that encourages a vibrant economy by facilitating the efficient movement of people and  
86 freight.
- 87 • In a manner that accommodates pedestrians, bicycles, and transit.

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

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

91 Marine port facilities should be located within the Heavy Impact Industrial zone of the Cherry Point  
92 Major/Port Industrial Urban Growth Area. Allow existing facilities and limited expansions consistent with  
93 the State of Washington Department of Natural Resource Cherry Point Aquatic Reserve Management  
94 Plan.

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