

## Cherry Point Amendments Stakeholder Revisions

For consideration by Whatcom County Council on November 24<sup>th</sup>, 2020

Jointly proposed by designated representatives of environmental advocacy groups, Cherry Point industries and organized labor.

Last Updated: November 23rd

### Color Coding Key:

- ~~Red strikethrough~~ – text removed
- Blue underline – text added
- Green (strikethrough/underline) – language moved from one section to another, but retained
- Black – CP Amendments Draft (Council approved as of October 28 2020) and/or existing WCC
- **Highlights** [overlaid on any text colors shown above]: stakeholders' proposed changes

## 20.66.200 Prohibited Uses [Light Impact Industrial (LII) District]

.204 New Fossil Fuel Refineries or new Fossil Fuel Transshipment Facilities

## 20.68.050 Permitted Uses [Heavy Impact Industrial (HII) District]

.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities, except as prohibited under WCC 20.68.200. for fossil fuel facilities or fossil fuel transshipment facilities.

.068 Existing Fossil Fuel Refineries, Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 to the county permitting authorities. Provided that a conditional use permit is not required by WCC 20.68.153, permitted uses include repairs, improvements, maintenance, modifications, remodeling or other changes including, but not limited to the following: [enumerated 1 – 25]

... (1) - (17) ...

### ~~(18) Storage Tanks~~

~~(19 18)~~ Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.

~~(20 19)~~ Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.

~~(21 20)~~ Renewable fuel production and shipment.

### ~~(22 ) Other similar structures or activities~~

~~(21) Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks;~~

~~(22) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;~~

~~(23) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.~~

~~(24) Storage Tanks, provided that the County decision maker shall include in any approval of an application for storage tanks at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or will not be used for transshipment.~~

~~(25) Other similar structures or activities~~

- .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves in the Cherry Pont Industrial District are prohibited.
- .071 Expansion of existing legal Renewable Fuel Refineries or ~~or~~ Renewable Fuel Transshipment Facilities, provided that the expansion is for Renewable Fuels only.
- .081 Freight railroad switching yards and terminals, **except as prohibited under WCC 20.68.200, excluding uses addressed in .059.**
- .082 Marine port facilities, **except as prohibited under WCC 20.68.200, excluding uses addressed in .059, and excluding new piers, docks or wharves.**

### 20.68.150 Conditional Uses [Heavy Impact Industrial (HII) District]

.153 Expansion of existing ~~legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities.~~ For purposes of this section, an expansion is any **Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility** development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following applicable thresholds:

- A. Cumulatively increases ~~its the facility's total M~~ maximum Atmospheric Crude Distillation Capacity of Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- B. Cumulatively increases **the facility's total Maximum Transshipment Capacity for Fossil Fuels** ~~its maximum transshipment capacity~~ by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation conducted by a licensed professional engineer in accordance with **20.97.230.2** ; or
- C. **Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.**

~~Cumulatively increases its maximum transshipment capacity of unrefined fossil fuels from the facility by more than 10,000 barrels (or 420,000 gallons) per day.~~

~~.154 Expansion of existing legal Fossil Fuel Refineries or expansion of existing legal Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with 20.97.230.2 .~~

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

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

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

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

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

- all of the anticipated types and volumes of substances to be processed, stored, or transferred in bulk **with the proposed expansion at the facility;**
- **changes** in maximum transshipment capacity **and/** or the maximum atmospheric crude distillation capacity **occurring as a result of the proposed expansion, as applicable; and**
- the mode of shipment vessels to be loaded or unloaded **with the proposed equipment and/or at the facility as a result of the proposed expansion.**

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

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

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

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

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

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

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

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

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

## **20.68.200 Prohibited Uses [Heavy Impact Industrial District]**

.204 New **F**ossil **F**uel **R**efineries.

.205 New Fossil Fuel Transshipment Facilities, **provided that, the following uses of facilities are not prohibited:** (i) inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods.

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

.207 Coal-fired power plants.

### 20.74.055 Prohibited Uses [Cherry Point Industrial District]

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

- 1) New piers, docks, or wharves in the Cherry Point Industrial District
- (2) Conversion of **a** Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities **iesy** to become a Fossil Fuel Refinery or Fossil Fuel Transshipment Facilities **iesy**

### 20.97 Definitions

**Note: in reviewing existing Whatcom County Code, it appears that 20.97.160 (.1-.5) and 20.97.350.1 refer to other defined terms, which could be an error in the draft amendments or otherwise is meant to align with a code scrub that has not yet been published online.**

**We adjusted numbering of definitions simply to avoid the need for additional numeric re-assigning. If this is numbering is unintentional, then other defined terms in the Cherry Point Amendments (not shown here) would also need to be renumbered. We will defer to PDS on preference for numbering, and would accept alternate numbers and ordering of defined terms as long as the definitional text shown below is amended as follows:**

- **20.97.230.1 Maximum Atmospheric Crude Distillation Capacity**

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

- **20.97.160.230.2 Fossil Fuels.**

"Fossil Fuels" **refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the remains of organic matter, including but not limited to coal, petroleum products and byproducts,** crude oil, **intermediate materials (such as unfinished oils and blendstock),** natural gas, oil shales, bitumens, tar sands, **liquified petroleum gases,** propane, butane, and heavy oils. Renewable fuels are not **Fossil Fuels.**

- **20.97.160.x230.3 Intermediate Materials:**

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

- **20.97.230.4 Maximum Transshipment Capacity**

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

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

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

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

- **20.97.160.3230.5 Fossil Fuel Transshipment Facilities.**

"Fossil Fuel Transshipment Facility" is ~~a facility, as an entire complex, consisting of its individual units, equipment, or components, which in aggregate,~~ engaging primarily in the process of off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), ~~transportation method (such as ship, truck or railcar) and then~~ storing and/or loading such Fossil Fuels ~~it,~~ without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. ~~transportation method for the purposes of transporting the shipment into and/or out of Whatcom County.~~ This definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming the Cherry Point Industrial District and shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

- **20.97.350.4230.6 Renewable Fuel Transshipment Facility**  
“Renewable Fuel Transshipment Facility” **a facility, is an entire complex, consisting of its individual units, equipment, or components which in aggregate** engages primarily in the process of off-loading renewable fuels **and/or renewable biomass** from one **mode of shipment (i.e., rail, truck, pipeline, etc.) transportation method (such as a ship, truck, or railcar)** then storing and/or loading **such fuels without processing through a Renewable Fuel Refinery or Fossil Fuel Refinery,** onto another **mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. transportation method for the purposes of transporting the shipment renewable fuel into and/or out of Whatcom County.** This definition shall exclude Small Fossil or Renewable **Fuel** Storage and Distribution Facilities.

#### **20.97.350.3230.7 Renewable Fuel Refinery**

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

**Note: we did not discuss a change to the definition of Renewable Fuel Refinery, but it may warrant revisiting to maintain consistency with the definition of fossil fuel refinery.**

- **20.97.160.4230.8 Fossil Fuel Refinery**  
A “Fossil Fuel Refinery” is **a facility, an entire complex, consisting of its individual units, equipment, or components, which in aggregate that engages primarily in receiving and converting Fossil Fuels and other liquids** into **petroleum** products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, **Intermediate Materials,** and asphalt. Fossil Fuel Refinery **facility** uses include **but are not limited to: receiving feedstocks,** bulk storage, manufacturing, or processing of **Fossil Fuels, Intermediate Materials** or byproducts, and shipment of those processed materials to downstream customers. **The following activities do not render a Fossil-Fuel Refinery a Fossil-Fuel Transshipment Facility: (i) inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks, (ii) transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved, and (iii) necessary Fossil Fuels transfers during turn-arounds or maintenance periods.** This definition shall exclude Small Fossil or Renewable **Fuel** Storage and Distribution Facilities.