

Subject: Cherry Point Comprehensive Plan and Code amendments - Joint Stakeholder Proposal

Attachments: Exhibits B - D (Code Amendments - Oct, 2020) + Joint Stakeholder Proposal - 4-12-21.docx; Exhibits B - D (Code Amendments - Oct, 2020) + Stakeholder Proposal - 4-12-21.pdf

Honorable Councilmembers –

Please find attached the final code language proposal for the Cherry Point Comprehensive Plan and Code amendments, presented by the Joint Stakeholder group which consists of representatives from:

- Labor
- Industry
- Environmental advocates

Our proposal is presented as redline changes to the original Council proposal sent to the Planning Commission as follows:

- Underline and ~~strikethrough~~ represent changes to the Code recommended by Council in Resolution 2019-037
- **Yellow highlights** represent redline changes to the Council resolution as proposed to the Council from the Planning Commission on August 13, 2020
- **Gray highlights** represent redline changes to the Planning Commission document, presented to Council by the Joint Stakeholder group that received a positive vote during a previous Council meeting
- **Blue highlights** are Joint Stakeholder changes proposed as part of the final recommendation to Council that have not yet received a vote from Council

This proposal represents a significant effort by the stakeholder group to come together, discuss our differing viewpoints, resolve our differences, and seek a common ground proposal that the group found suitable to address numerous concerns from multiple perspectives.

The stakeholders jointly present this proposal for the Council's consideration. Though we may collectively find this proposal suitable as a whole for the Cherry Point Comprehensive Plan, this joint proposal does not indicate that any member of the stakeholder group fully agrees with each or all of the approaches adopted in the proposal for implementation in other jurisdictions, or in different situations. Each party may find that other approaches, threshold amounts, mitigation criteria, etc. may be more appropriate at state or federal levels.

We welcome your questions, and will have members available on the 15th to discuss our proposal with you.

Thank you in advance,

Brad Brown
Project Engineer

O: 360-384-8262 | M: 346-775-9473
3901 Unick Rd | Ferndale, WA 98248
phillips66.com



Exhibit B

NOTE: Changes from existing text are shown within underlines and strikethroughs

Color Coding:

- Planning Commission changes that differ from the County Council Resolution 2019-037 are highlighted in yellow
- County Council changes from fall 2020 are highlighted in gray
- Joint Stakeholder proposals are highlighted in blue

CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

16.08.090. Environmental checklist

E. **Evaluation** Worksheet for Fossil and Renewable Fuel Facilities: Air and environmental health are elements of the environment in WAC 197-11-444 and subjects addressed in WAC 197-11-960, Environmental Checklist. As provided in WAC 197-11-906(1)(c), Whatcom County hereby adds a procedure and criteria to help identify the affected environment, impacts, and **potential** mitigation regarding air quality and climate and risks from spills and/or explosions. For any proposed change of use or expansion of facilities pursuant to and in accordance with WCC 20.68.153, **WCC 20.68.154 or any new or expansions of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility** that manufacture, process, store or transport any fossil fuel, renewable fuel, or hydrocarbon feedstock, the proponent will **provide an expert evaluation or fill out the County’s SEPA “Worksheet for Fossil and Renewable Fuel Facilities.”** This **expert evaluation or Worksheet** provides detailed information required to evaluate impacts to air, land and water during review of a SEPA environmental checklist. The form of **the** worksheet shall be prepared and updated **as needed once per year** by the SEPA Responsible Official in consultation with **the Planning Commission and taking into account the comments of the Climate Impacts Advisory Group and its members.** The **expert evaluation or Worksheet** shall analyze the “significance” of direct, indirect, and cumulative impacts **including but not limited to those** arising from:

1. Windborne transport of fossil or renewable fuel emissions across Whatcom County;
2. Lifecycle greenhouse gas emissions **for the project’s incremental change for renewable facilities and facility emissions above existing levels for fossil fuel facilities;**
3. Transits of tankers or barges and their support vessels that have the potential to create risks of spills or explosion or interfere with commercial and treaty tribe fishing areas; **and**
4. Releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters; **and**
5. Potential for loss of life and/or property related to risks from spills or explosions associated with refining and transport of renewable or fossil fuels or related feedstocks within Whatcom County.

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

38 The worksheet and supplemental information provided in the expert evaluation or Worksheet required for fossil and
39 renewable fuel facilities shall be considered procedures and criteria added to Whatcom County's SEPA policies and
40 procedures pursuant to WAC 197-11-906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA
41 contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may
42 not be required if an environmental impact statement is prepared.

43 Discussion/Notes: Suggest reference to WAC 197-11-906(1)(c) as basis to require worksheet
44 since it allows for additional procedures and criteria. WAC 197-11-315 refers to Ecology and 30-
45 day review for planned actions, which is not proposed.

46 Rationale for Changes (shown within highlighting): The worksheet will take time to develop and likely will
47 not be available when Council adopts the ordinance. Additionally, larger or more complex projects would
48 benefit from expert evaluation of the issues listed above.

49 It may not be necessary to update the worksheet every year. Therefore, the proposed change is to update
50 the worksheet "as needed." On January 30, 2020, the Planning Commission passed a motion to remove the
51 reference to the Climate Impact Advisory Committee, as the SEPA Official may consult with any committee
52 (including but not limited to the Climate Impact Advisory Committee) when preparing/updating the
53 worksheet. On February 27, 2020, the Planning Commission inserted a clause that requires the SEPA
54 Official to consult with the Planning Commission when preparing/updating the worksheet.

55 The proposed SEPA rules authorize GHG mitigation for "facility emissions" for fossil fuel facilities (proposed
56 WCC 16.08.160.F.1.b.i(a) – Exhibit B, page 4). The proposed SEPA rules require "lifecycle" GHG emission
57 analysis for renewable facilities (proposed WCC 16.08.160.F.1.b.ii – Exhibit B, page 5). The information
58 required in the evaluation/worksheet should correspond to these SEPA requirements.

59 The evaluation/worksheet addresses impacts "including but not limited to" the five listed issues. The phrase
60 "including but not limited to" has been deleted because it is open-ended and undefined. Applicants will
not know what they are required to address if this phrase is retained.

Finally, if an environmental impact statement (EIS) is required, then the evaluation/worksheet will not be
needed since significant adverse impacts will be addressed in the EIS.

61 16.08.160 Substantive authority.

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

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

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

67 2. Such conditions are in writing; and

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

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

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

73 Rationale for Changes (shown with highlighting): Subsections E and F below
74 include provisions relating to placing conditions on projects.

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

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

82 Rationale for Changes (shown with highlighting): Subsection F below includes a
83 provision relating to denying projects.

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

- 87 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
88 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
- 89 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 90 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
91 surroundings;
- 92 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
93 other undesirable and unintended consequences;
- 94 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- 95 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- 96 f. Achieve a balance between population and resource use which will permit high standards of living and a wide
97 sharing of life's amenities; and
- 98 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable
99 resources.
- 100 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that
101 each person has a responsibility to contribute to the preservation and enhancement of the environment.

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

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

104 Whatcom County Shoreline Management Program

105 Whatcom County Subdivision Ordinance

106 Whatcom County Solid Waste Management Plan

107 Whatcom County Critical Areas Ordinance

108 All official land use controls adopted by Whatcom County.

109 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
110 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific
111 adverse environmental impact has been adequately addressed by an existing rule or law of another agency with
112 jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In
113 making this deferral, the County shall base or condition its project approval on compliance with these other existing
114 rules or laws. In deciding whether these regulations provide sufficient impact mitigation, the County shall consult orally
115 or in writing with the responsible federal, state or other agency with jurisdiction and environmental expertise and may
116 expressly defer to that agency. The County shall base or condition its project decision on compliance with these other
117 existing regulations, rules, laws, or adopted enforceable plans. The County need shall not so defer if such regulations did
118 not anticipate or are otherwise inadequate to address a particular impact of a project.

119
120 Rationale for Changes (shown with highlighting): The replacement language
121 above (the 2nd and 3rd sentences) is taken from the State SEPA rules (WAC 197-
122 11-158(4)) to better reflect these State rules.

123 124 F. Specific Environmental Policies

125 1. Air Quality and Climate:

126 a. Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality
127 of life. Mitigation of criteriaair pollutant impacts will normally be the subject of air permits required by the
128 Northwest Clean Air Agency (NWCAA) and/or State Department of Ecology (DOE) and no further mitigation by
129 the County shall be required. However, where a project being reviewed by the County generates public nuisance
130 impacts, or odors or greenhouse gas emissions impacts not addressed through the regulations of NWCAA or DOE,
131 the County may require mitigation under SEPA.

132 Rationale for Changes (shown with highlighting): Criteria pollutants are specific
133 types of pollutants identified in the Federal Clean Air Act. The NWCAA addresses
134 a wider variety of pollutants. Additionally, the State Department of Ecology may
135 require a “Prevention of Significant Deterioration” permit for certain industrial
136 sources of air pollution (e.g. refineries). Using the term “public” nuisance in the text
137 above will maintain consistency with WCC 20.66.704 and WCC 20.68.704, the
138 Light Impact Industrial and Heavy Impact Industrial provisions relating to odors.

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

147
148 Rationale for Changes (shown with highlighting): On October 24, 2019, the
149 Planning Commission approved a motion to remove the proposed GHG mitigation
150 requirements from the Zoning Code and keep proposed GHG provisions in SEPA
151 (with further discussion on the SEPA language at a later date). The above changes
152 would delete the reference to GHG mitigation in the Zoning Code. GHG
153 mitigation through SEPA is addressed below.

154 i. Greenhouse Gas Emissions— Fossil Fuel Facilities and Fossil Fuel Transshipment Facilities: The following
155 policies shall apply to fossil fuel facilities and fossil fuel transshipment facilities.

156 (a) Emissions Calculated: The SEPA Responsible Official may require mitigation for greenhouse gas emissions
157 of fossil fuel facilities and fossil fuel transshipment facilities, as calculated consistent with the definition of
158 facility emissions in WCC 16.08.17520.97.124.1.

159 (b) Assessment: Greenhouse gas emissions impacts shall be assessed using the most current scientifically valid
160 modeling techniques version of the GREET Model developed by Argonne National Laboratories or, where
161 feedstocks are from Canada, using the latest version of the GH Genius model developed by Canadian agencies
162 for quantification of upstream emissions from production of feedstocks produced in Canada.

163
164 Rationale for Changes (shown with highlighting): Industry representatives have
165 indicated concern about the models referenced above. The proposed changes
166 would allow appropriate methods to be used in calculating greenhouse gas
167 emissions.
168

169 (c) Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset for
170 proposals subject to WCC 20.68.801 through either code requirements or, if not addressed through code
171 requirements, through mitigation projects that provide real, additional and quantifiable greenhouse gas
172 mitigation. Such mitigation must not be required by any other regulatory mechanism and there shall be no
173 double counting of emission reductions where identified as mitigation of greenhouse gas emissions impacts for
174 permits subject to WCC 20.68.801.

175
176 Rationale for Changes (shown with highlighting): On October 24, 2019, the
177 Planning Commission approved a motion to remove the proposed GHG mitigation
178 requirements from the Zoning Code and keep proposed GHG provisions in SEPA
179 (with further discussion on the SEPA language at a later date). The above changes
180 would delete the reference to GHG mitigation in the Zoning Code. The double
181 counting language above is somewhat confusing. It seems to indicate that, if
182 mitigation is required by a different agency, then County-required mitigation must
183 be different and additional. But a general concept is that, if another agency
184 requires adequate mitigation, County mitigation is not required. Therefore, this
185 language has been deleted.

186 Additionally, SEPA allows for mitigation of “specific adverse environmental
187 impacts” (RCW 43.21C.060). This language has been inserted above.

188 i. Greenhouse Gas Emissions: The following shall apply to projects that: (1) are expansions of Fossil Fuel
189 Refineries and Fossil Fuel Transshipment Facilities, as defined in WCC 20.68.153 and WCC 20.68.154, or new,
190 or expansion of Renewable Fuel Refineries and Renewable Fuel Transshipment Facilities; and (2) will have
191 reasonably foreseeable, probable, direct greenhouse gas emissions resulting from new or modified equipment of
192 greater than 10,000 MT/year (CO₂e) as determined by the Northwest Clean Air Agency using methodology
193 consistent with 40 CFR § 98.253, Calculating GHG Emissions (for Petroleum Refineries) and 40 CFR § 98.33,
194 Calculating GHG Emissions (for Stationary Fuel Combustion Sources), as applicable.

195 (a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle
196 greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and

197 indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d).
198 The assessment shall estimate the incremental gross facility emissions change from a baseline established
199 in current Prevention of Significant Deterioration and/or Minor New Source Review Permit Technical
200 Support Documents.

201 (b) Impact Assessment: Greenhouse gas emissions impacts shall be assessed using current scientifically
202 valid modeling techniques, accounting for project emissions and gross increases of existing facility
203 emissions resulting from the proposed expansion project. The range of greenhouse gas emissions impacts
204 assessed may be greater than the range of greenhouse gas emissions impacts for which mitigation is
205 required.

206 (c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of
207 greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC
208 16.08.160.B, and in accordance with the following considerations:

209 (1) Mitigation measures must be imposed on the permittee, but only to the extent attributable to
210 the identified direct emissions of the project proposal as permitted, as provided in WAC 197-11-
211 660(d). Required mitigation may be limited to the project's direct greenhouse gas emissions and
212 may also be required for indirect emissions. Voluntary additional mitigation may occur, per WAC
213 197-11-660(d). Mitigation shall not be required for projects shown in SEPA assessment to reduce
214 greenhouse gas emissions of existing facilities on a lifecycle basis.

215 (2) The SEPA Responsible Official shall not require duplicative mitigation of greenhouse gas
216 emissions (MT CO₂e) that are reasonably foreseeable, probable, and caused by the project to the
217 extent these emissions or a portion of these emissions are otherwise mitigated under other local,
218 state, or federal laws, rules, or permits.

219 (3) Mitigation may be achieved through on-site mitigation measures, such as efficiency
220 improvements and reduced generation, and through local and regional projects, so long as such
221 measures or projects are reasonable, capable of being accomplished, are likely to protect or
222 enhance environmental quality, and meet current state rules and standards. Alternatively,
223 mitigation may be achieved through 1) projects located outside of the local area/region, or 2)
224 through purchase of carbon offsets from any carbon registry approved by the Planning
225 Department, NWCAA, or any Washington state agency, subject to the provisions of item (6).
226 below. Mitigations for the project being permitted may concurrently satisfy any other
227 requirements imposed by County, State or Federal governments for the same project.

228 (4) When considering the total mitigation required, a multiplier of 1.5 shall be applied to the
229 tonnage of all mitigations performed locally (including those selected from the current Whatcom
230 County Climate Action Plan) after [the effective date of this ordinance] as a means to encourage
231 local investment. This multiplier shall not apply to emission reduction units generated by and
232 purchased from local third-party projects or activities that were implemented prior to the effective
233 date of this ordinance.

234 (5) Applicants are encouraged, but not required, to select mitigation proposals from the Whatcom
235 County Climate Action Plan and to select projects that yield energy efficiency gains, local
236 economic benefits such as creation of jobs with living wage or use of prevailing wages, and/or
237 local economic development.

238 (6) Mitigations based on emissions reductions from activities or programs must be: (a) real,
239 specific, identifiable, and quantifiable; (b) permanent; (c) enforceable; (d) verifiable; and (e)
240 except as allowed by (3) above, additional to reductions required under other laws, rules, or
241 permits for unrelated projects or expansions.

242 (7) The County decision maker may not deny a permit based upon lack of availability of local or
243 regional mitigation.

244 (d) Should a Washington state greenhouse gas assessment and mitigation permitting or project requirement
245 be adopted, such as a rule adopted pursuant to the Washington Governor's Directive 19- 18, Environmental
246 Assessment of Greenhouse Gas Emissions, Title 16.08.160.F.1.b.i shall no longer apply as of the effective
247 date of the requirement or rule. Should a new Federal greenhouse gas assessment and mitigation permitting
248 or project requirement with the same force and effect of Title 16.08.160.F.1.b.i be adopted Title
249 16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule.

250 (e) For the purposes of 16.08.160.F.1.b.i., the following definitions apply:

251 (1) Gross emissions are defined as the actual incremental emissions increases or decreases
252 resulting from the project. Gross emissions do not include reductions or additions from offsite
253 mitigation or lifecycle impacts.

254 (2) Indirect emissions are defined as emissions resulting from offsite generation of power
255 purchased for consumption at the facility and emissions from other contiguous or adjacent utilities
256 directly supplying the facility (examples include cogeneration of steam, offsite hydrogen
257 production).

258
259
260
261 ~~ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuel Transshipment Facilities: The~~
262 ~~SEPA Responsible Official shall require documentation of lifecycle greenhouse gas emissions associated with~~
263 ~~renewable fuel facilities. The SEPA Responsible Official will consider the lifecycle greenhouse gas emissions~~
264 ~~analysis when making the threshold determination. The SEPA Responsible Official shall require~~
265 ~~documentation of emissions consistent with b.i(a) and b.i(b) above. The applicant shall demonstrate that the~~
266 ~~lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when~~
267 ~~considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA~~
268 ~~Responsible official may require mitigation per b.i(c) above.~~

269
270 On October 10, 2019, the Planning Commission provided direction that renewable fuel
271 facilities should not be required to mitigate greenhouse gas emissions if they reduce
272 lifecycle greenhouse gas emissions. Therefore, the greenhouse gas language above has
273 been modified, including deletion of the mitigation language.

274
275 ~~iii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:~~

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

278 ~~(b) Mitigation: Determined by SEPA Responsible Official. See 1.c.~~
279

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

286 2. Plants and Animals:

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

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

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

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

306
307 Rationale for Changes (shown with highlighting): Federal and state agencies
308 would typically determine compliance with federal and state laws when they issue
309 or deny a permit or other authorization for a project. The language above implies
310 that certain federal and state permits/authorizations must be issued before the
311 County can do SEPA review on a project. The State SEPA rules (WAC 197-11-
158(4)) indicate:

312 In deciding whether a project specific adverse environmental impact has
313 been adequately addressed by an existing rule or law of another agency
314 with jurisdiction, the GMA county/city shall consult orally or in writing with
315 that agency and may expressly defer to that agency. In making this
316 deferral, the GMA county/city shall base or condition its project approval
on compliance with these other existing rules or laws.

317 This concept of consultation is already embodied in the proposed amendments in
318 WCC 16.08.160.E above. Therefore, the language highlighted above should be
319 deleted.

324 **16.08.175 Purpose of this article and adoption by reference.**

325 This article contains uniform usage and definitions of terms under SEPA. The county adopts the following sections
326 by reference, as supplemented by WAC 173-806-040:

327

328 WAC

- 329 197-11-700 Definitions.
- 330 197-11-702 Act.
- 331 197-11-704 Action.
- 332 197-11-706 Addendum.
- 333 197-11-708 Adoption.
- 334 197-11-710 Affected tribe.
- 335 197-11-712 Affecting.
- 336 197-11-714 Agency.
- 337 197-11-716 Applicant.
- 338 197-11-718 Built environment.
- 339 197-11-720 Categorical exemption.
- 340 197-11-721 Closed record appeal.
- 341 197-11-722 Consolidated appeal.
- 342 197-11-724 Consulted agency.
- 343 197-11-726 Cost-benefit analysis.
- 344 197-11-728 County/city.
- 345 197-11-730 Decision maker.
- 346 197-11-732 Department.
- 347 197-11-734 Determination of nonsignificance (DNS).
- 348 197-11-736 Determination of significance (DS).
- 349 197-11-738 EIS.
- 350 197-11-740 Environment.
- 351 197-11-742 Environmental checklist.
- 352 197-11-744 Environmental document.
- 353 197-11-746 Environmental review.
- 354 197-11-750 Expanded scoping.
- 355 197-11-752 Impacts.
- 356 197-11-754 Incorporation by reference.
- 357 197-11-756 Lands covered by water.
- 358 197-11-758 Lead agency.
- 359 197-11-760 License.
- 360 197-11-762 Local agency.
- 361 197-11-764 Major action.
- 362 197-11-766 Mitigated DNS.

| | | |
|-----|------------|---------------------------------|
| 363 | 197-11-768 | Mitigation. |
| 364 | 197-11-770 | Natural environment. |
| 365 | 197-11-772 | NEPA. |
| 366 | 197-11-774 | Nonproject. |
| 367 | 197-11-775 | Open record hearing. |
| 368 | 197-11-776 | Phased review. |
| 369 | 197-11-778 | Preparation. |
| 370 | 197-11-780 | Private project. |
| 371 | 197-11-782 | Probable. |
| 372 | 197-11-784 | Proposal. |
| 373 | 197-11-786 | Reasonable alternative. |
| 374 | 197-11-788 | Responsible official. |
| 375 | 197-11-790 | SEPA. |
| 376 | 197-11-792 | Scope. |
| 377 | 197-11-793 | Scoping. |
| 378 | 197-11-794 | Significant. |
| 379 | 197-11-796 | State agency. |
| 380 | 197-11-797 | Threshold determination. |
| 381 | 197-11-799 | Underlying governmental action. |

382 In addition to those definitions contained within WAC 197-11-700 through 197-11-799, when used in this article,
383 the following terms shall have the following meanings, unless the context indicates otherwise:

384 A. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a
385 determination of significance (DS) likely for the applicant’s proposal (mitigated determination of
386 nonsignificance (MDNS) procedures).

387 B. “ERC” means environmental review committee established in WCC 16.08.045.

388 C. "Facility Emissions" means greenhouse gas emissions associated with ~~Fossil Fuel Refineries, or Fossil~~
389 ~~Fuel Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based~~
390 ~~upon the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area.~~

391
392 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission
393 approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and
394 keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date).
395 The definition of “facility emissions” was in the proposed Zoning Code language. However, this term no
396 longer is used in the Zoning Code. Therefore, the definition was moved from the Zoning Code to the
397 County’s SEPA rules. On June 25, 2020, the Planning Commission approved a motion to remove the
398 following elements from the original Council definition of facility emissions:

- 398 ● The transportation within the borders of Whatcom County of refined and unrefined fossil fuels to
399 and from a facility located within the Cherry Point Heavy Industrial area, and
- 400 ● The upstream emissions generated by the production and transport of raw products to the facility
401 such as crude oil feedstocks or other fuels used in production or energy generation at facilities.
402

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

408
409 E. "Lifecycle greenhouse gas emissions" means the aggregate quantity of greenhouse gas emissions (including
410 direct emissions and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel
411 and feedstock production and distribution, from feedstock generation or extraction through the distribution and
412 delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are
413 adjusted to account for their relative global warming potential.

414
415 **Joint Stakeholder Note to PDS:**

416 This definition is duplicated word-for-word in 20.97.201 but is used in portions of
417 both Title 16 and Title 20. The Joint Stakeholder group was unsure of the
418 preferred method to handle duplicate definitions for multiple Titles at the time the
419 language was finalized. In our discussions, we noted that a cross-reference or
420 carrying a definition in both locations would work.
421

422
423 Rationale for Changes (shown with highlighting): On October 24, 2019, the
424 Planning Commission approved a motion to remove the proposed GHG mitigation
425 requirements from the Zoning Code and keep proposed GHG provisions in SEPA
426 (with further discussion on the SEPA language at a later date). The definitions of
427 "greenhouse gas emissions" and "lifecycle greenhouse gas emissions" are in the
428 proposed Zoning Code language. However, these terms are only used in the
429 definition of "renewable fuels" in the Zoning Code. They are most often used in
430 the proposed SEPA rules. Therefore, these terms were inserted into the County's
431 SEPA rules.

432
433 FC. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

434
435 GD. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA
436 process or his/her designee.

437
438 HE. "SEPA rules" means Chapter 197-11 WAC adopted by the Department of Ecology. (Ord. 98-048 Exh. A;
439 Ord. 84-122 Part 8).

Exhibit C

442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464

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, or new Fossil Fuel Transshipment or Facilities, unless permitted as a part of an existing refinery modification otherwise permitted under this code.~~

Rationale for Changes (shown with highlighting): The existing refineries are south of Grandview Rd., in the Heavy Impact Industrial zone. There are no refineries north of Grandview in the Light Impact Industrial zone.

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).

465 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

466 20.68.050 Permitted uses.

467 Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of
468 Chapter 20.80 WCC, Supplementary Requirements, and Chapter 20.84 WCC, Variances, Conditional Uses, Administrative
469 Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County Subdivision Ordinance and the Whatcom
470 County Shoreline Management Program- and implementing regulations. ~~The purpose of the SIC numbers listed within this~~
471 ~~chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea~~
472 ~~Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the~~
473 ~~applicable subarea plan to determine the appropriateness of a land use activity listed below.)~~

474 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
475 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

- 476 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate
477 animals intended for processing within 24 hours.
- 478 (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered
479 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.
- 480 (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:

- 481 (a) State waste discharge permit (Chapter 173-216 WAC);
- 482 (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
- 483 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

484 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
485 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

486 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
487 prefabricated wood products; wooden containers and cooperage.

488 .054 The following are permitted uses except as otherwise prohibited:

- 489 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill
490 products.
- 491 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;
492 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,
493 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

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

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

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

497 ~~Discussion/Notes: Allow existing legal fossil fuel uses.~~

498

Rationale for Changes (shown with highlighting): Existing fossil fuel facilities have
499 been moved to proposed WCC 20.68.068 below.

501 ~~(3)~~ (4) The manufacture and processing of rubber and plastic products.

502 ~~(4)~~ (5) Leather tanning and finishing.

503 (56) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
504 mineral products.

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

508 (7) Storage of asphalt in the Heavy Impact Industrial Zone.

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

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

512 **Rationale for Changes (shown with highlighting): Existing renewable facilities are**
513 **addressed in proposed WCC 20.68.068 and 20.68.071 below.**

515 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
516 fixtures, structural metal and stamping.

517 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
518 materials handling equipment; machine tools and dies; and special and general industrial equipment.

519 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

520 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
521 railroad equipment, bicycles and motorcycles.

522 ~~.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities, except as prohibited~~
523 ~~under WCC 20.68.200, subject to the provisions of 20.68.153. New fossil fuel storage and transshipment facilities are~~
524 ~~expressly prohibited except as provided in Section 20.68.153.~~

525 **Rationale for Changes (shown with highlighting): Proposed WCC 20.68.068, WCC 20.68.153,**
526 **and WCC 20.68.205 address permitted, conditionally permitted, and prohibited fossil fuel**
527 **facilities. The above change would simplify the proposed language by indicating that fossil**
528 **fuel facilities are not addressed by WCC 20.68.059.**

530 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
531 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
532 (Chapter 20.14 WCC) or water sources, ~~except that coal-fired power plants are prohibited.~~

533 **Rationale for Changes (shown with highlighting): The Council's proposed amendments would**
534 **prohibit coal fired power plants (proposed WCC 20.68.207). However, power plants are**
535 **already permitted in the HII zone (WCC 20.68.060). Therefore, WCC 20.68.060 should be**
536 **modified to clarify that permitted power plants do not include coal fired power plants.**

537
538 .061 Heavy construction contractors.

539 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
540 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
541 noncommercial uses, excluding state education facilities and correction facilities.

542 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
543 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
544 shall contain no indoor plumbing but may be served with electrical power for lighting.

545 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
546 the Heavy Impact Industrial District in the Bellingham UGA.

547 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

548 .066 Marijuana production or processing facility.

549 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries,
550 Renewable Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance],
551 provided that when a permit is sought for a project proposed within or attached to a facility of such classification, the
552 applicant must disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting
553 authorities. pProvided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses
554 including repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the
555 following.:

556 (1) Accessory and appurtenant buildings, structures, and processing equipment.

557 (2) Office space.

558 (3) Parking lots.

559 (4) Radio communications facilities.

560 (5) Security buildings, fire stations, and operation centers.

561 (6) Storage buildings.

562 (7) Routine maintenance and repair.

563 (8) Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local
564 regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.

565 (9) Road projects and bridges.

566 (10) Temporary trailers.

567 (11) Heating and cooling systems.

568 (12) Cable installation.

569 (13) Information technology improvements.

570 (14) Continuous emissions monitoring systems or analyzer shelters.

571 (15) Wastewater and stormwater treatment facilities.

572 (16) Replacement and upgrading of existing equipment.

573 (17) Safety upgrades.

574 (18) Storage tanks.

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

576 ~~(2019) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.~~

577 ~~(204) Renewable fuel production and shipment.~~

578 ~~(22) Other similar structures or activities.~~

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

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

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

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

588 (25) Other similar structures or activities

Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing refineries and transshipment facilities from former proposed WCC 20.68.802 to the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code. Additional items have been inserted as permitted uses to address public comments, including pipelines (# 19 and 20) added on July 9, 2020. On August 13, 2020, the Planning Commission added the co-processing language to # 8 and inserted # 21 above.

595 ~~.070 New #Renewable #Fuel #Refineries or #Renewable #Fuel #Transshipment #Facilities, except that new piers, docks, or~~
596 ~~wharves in the Cherry Point Industrial District are prohibited.~~

Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by Council).

The Council's original proposed amendments would prohibit new piers, docks, or wharves in the Cherry Point Industrial District (proposed WCC 20.68.206 and 20.74.055). This is recognized in proposed WCC 20.68.070 by indicating that this provision does not apply to piers, docks, or wharves.

605 ~~0.71 Expansion of existing legal #Renewable #Fuel #Refineries or #Renewable #Fuel #Transshipment #Facilities, provided that~~
606 ~~the expansion is for #Renewable #Fuels only.~~

Rationale for Changes (shown with highlighting): On January 16, 2020, the Planning Commission passed a motion that expansion of renewable fuel facilities be allowed as a permitted use (instead of a conditional use, as proposed by the County Council).

611 .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200, excluding uses addressed in
612 .059.

613 .082 Marine port facilities, except as prohibited under WCC 20.68.200, excluding uses addressed in .059, and excluding new
614 piers, docks, or wharves.

615 .085 Type I solid waste handling facilities.

616 .086 Type II solid waste handling facilities.

617 20.68.100 Accessory uses.

618 .101 Employee recreation facilities and play areas.

619 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
620 district.

621 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

622 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
623 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

624 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

625 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
626 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

627 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
628 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

629 .108 Electric vehicle rapid charging stations and battery exchange facilities.

630 20.68.130 Administrative approval uses.

631 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
632 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
633 (Exh. A), 2006).

634 20.68.150 Conditional uses.

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

636 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

643 .153 Expansion of existing legal Fossil or renewable Fuel Refineries operations and the primary manufacturing of
644 products thereof or expansion of existing legal Fossil or renewable Fuel Transshipment Facilities. For purposes of this
645 section, an expansion is any Fossil Fuel Refinery and/or Fossil Fuel Transshipment Facility development (including
646 otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following
647 applicable thresholds:

648 A. Cumulatively increases the facility's total Maximum Atmospheric Crude Distillation Capacity for Fossil
649 Fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment
650 limitations conducted by a licensed professional engineer; or

651 B. Cumulatively increases its the facility's total Maximum Transshipment Capacity for Fossil Fuels of the facility
652 by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment
653 limitations conducted by a licensed professional engineer in accordance with 20.97.230.4; or

654 C. Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in
655 excess of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective
656 date of ordinance] or the effective date of a previously approved conditional use permit, whichever is more
657 recent. Cumulatively increases its the maximum transshipment capacity of unrefined fossil fuels from the facility by
658 more than 10,000 barrels (or 420,000 gallons) per day.

659 .154 Expansion of existing Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any
660 development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that
661 cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or
662 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with
663 20.97.230.4.

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

665
666 Rationale for Changes (shown with highlighting): On January 16 and 30, 2020, the
667 Planning Commission approved motions defining what activities constitute an "expansion"
668 and when a conditional use permit is required. On January 16, 2020, the Planning
669 Commission also approved a motion to move expansion of renewable fuel facilities from
670 conditional use to permitted use, as long as the expansion is for the increased production of
671 renewable fuels. On August 13, 2020, in response to the joint Industry/RE Sources
672 proposal, the Planning Commission approved a motion to remove certain fossil fuel storage
673 tank capacity increases from the above list of improvements that require a conditional use
674 permit (storage tanks are a permitted use under proposed WCC 20.68.068).

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

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

675 **Joint Stakeholder Note to PDS:**

676 20.84.220 appears to have been moved as part of Ord. 2020-045. Since the Stakeholder
677 Group did not modify this language, we have not updated this code reference.

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

680 (3) The applicant has documented to the satisfaction of the County decision maker (as applicable):

- 681 • all of the anticipated sources, types, and volumes of substances to be processed, stored, or transferred in bulk at the
682 facility with the proposed expansion
- 683 • changes in the Maximum Transshipment Capacity and/or the Maximum Atmospheric Crude Distillation
684 Capacity occurring as a result of the proposed expansion, as applicable; and
- 685 • (as applicable), and the mode of shipment vessels to be loaded or unloaded with the proposed equipment and/or as a
686 result of the proposed expansion at the facility.

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

689 Rationale for Changes (shown with highlighting): Sources of raw materials may change over time
690 and new sources may come on-line. It may be very difficult, if not impossible, to predict sources
691 of materials over the life of a project.

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

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

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

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

700 Rationale for Changes (shown with highlighting): Criterion 7 above, addressing federal and state
701 requirements appears to be unnecessary because criterion 9 already addresses federal and
702 state permitting.

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

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

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

711 (10) The permittee must inform the county permitting authorities of a change in the aforementioned disclosures so that the
712 department can document current capacity levels to ensure that the cumulative thresholds under WCC 20.68.153 or WCC
713 20.68.154 (as applicable) have not been exceeded.

714 (11) The County decision maker shall include, in any approval of an application for an expansion, as per 20.68.153 or
715 20.68.154, a condition that the permitted equipment shall only be used in the manner described by the project proponent in
716 the application and approved in the permit. The application shall describe the intended use, including the type of fuel to be
717 stored and, if located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will not be used
718 for transshipment.

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

720 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission
721 approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code
722 and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a
723 later date).

724 (11) Demonstration that the proposal will retain or add living wage jobs or contribute to the Whatcom County economy;

725 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission
726 approved a motion to delete the living wage job language from the conditional use permit
727 approval criteria.

729 .15~~5~~⁴ Treatment and storage facilities for hazardous wastes subject to the following:

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

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

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

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

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

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

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

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

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

755 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

756 .157 Trailheads with parking areas for more than 30 vehicles.

757 .158 Athletic fields.

758 ~~.159 New renewable fuel refineries or renewable fuel transshipment facilities, subject to the conditional use permit criteria~~
759 ~~identified in WCC 20.68.153.~~

Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission passed a motion that new renewable fuel facilities should be allowed as a permitted use (instead of a conditional use, as proposed by Council). Therefore, a new code section, WCC 20.68.070, has been inserted indicating that new renewable fuel facilities would be permitted outright uses.

765 .180 Major passenger intermodal terminals.

766 .187 Type III solid waste handling facilities; provided, that:

- 767 (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site
768 will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at
769 least three feet in elevation higher than the floodway elevation;
- 770 (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
- 771 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - 772 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - 773 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - 774 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - 775 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - 776 (f) This 1,500-foot buffer does not apply to:
 - 777 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
778 the property line 100 feet or the standard zoning district setback, whichever is greater;
 - 779 (ii) Inert landfills;
- 780 (3) Inert landfills shall be located at least 500 feet from the following:
- 781 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - 782 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - 783 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - 784 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - 785 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - 786 (f) This 500-foot buffer does not apply to:
 - 787 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
788 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 789 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
790 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
791 county or state road right-of-way;
- 792 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
793 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
794 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 795 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
796 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
797 and federal regulations concerning solid waste facilities and sites;
- 798 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
799 closure plan includes:
- 800 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
801 activity, with seeding to be accomplished annually but no later than September 30th; and
 - 802 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
803 covered through the financial assurance for post-closure activities;

804 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
805 of WCC 20.80.300 (Landscaping);

806 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system’s
807 delineated wellhead protection area;

808 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
809 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
810 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
811 the boundary of the airport property;

812 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
813 protect the value and enjoyment of existing adjacent uses.

814 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
815 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
816 processed as a major development project pursuant to Chapter 20.88 WCC.

817 20.68.200 Prohibited uses.

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

820 .201 Reserved.

821 .202 Adult businesses.

822 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
823 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
824 products derived thereof; and primary metal industries.

825 ~~.204 New Fossil Fuel Refineries and the primary manufacturing of products thereof [XXX effective date].~~

826 Rationale for Changes (shown with highlighting): On December 12, 2019, the Planning Commission
827 passed a motion that new fossil fuel refineries should be prohibited, as proposed by Council.
828 “Fossil fuel refinery” is defined by proposed WCC 20.97.160.4. The “primary manufacturing”
829 text is unnecessary. It is also unnecessary to insert the effective date into the code.

830 ~~.205. New Fossil Fuel Transshipment Facilities provided that, the following uses of facilities are not prohibited: (i) inter-
831 refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks, (ii) transferring
832 petroleum products Fossil Fuels during emergency scenarios where contingencies require petroleum products Fossil Fuels to
833 be moved, and (iii) necessary petroleum product Fossil Fuels transfers during turn-arounds or maintenance periods,
834 including bulk storage or transfer facilities for fossil fuels [XXX effective date].~~

835 **Joint Stakeholder note:**

836 These clauses moved to 20.68.050 in Joint Stakeholder proposal

837

838 Rationale for Changes (shown with highlighting): On August 13, 2020, in
839 response to the joint Industry/RE Sources proposal, the Planning Commission
840 approved a motion to modify proposed WCC 20.68.205 as shown above.

843 [.206. New piers, docks, or wharves in Cherry Point Industrial District.](#)

844 **Rationale for Changes (shown with highlighting):** Cite the full name of the zoning
845 **district.**

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

848 [.207 Coal-fired power plants.](#)

849 (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-
850 075, 1991).

851 **20.68.250 Minimum lot size.**

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

854 **20.68.255 Minimum lot frontage.**

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

858 **20.68.350 Building setbacks.**

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

860 **20.68.400 Height limitations.**

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

863 **20.68.450 Lot coverage.**

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

865 **20.68.500 Open space.**

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

867 **20.68.550 Buffer area.**

868 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
869 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
870 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
871 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

872 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
873 structures shall be established consistent with the following options:

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

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

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

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

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

889 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
890 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

891 .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
892 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
893 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,
894 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

895 **20.68.600 Sign regulations.**

896 Sign regulations shall be administered pursuant to WCC 20.80.400.

897 **20.68.650 Development criteria.**

898 (Ord. 96-056 Att. A § A1, 1996).

899 **20.68.651 Landscaping.**

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

901 **20.68.652 Off-street parking and loading.**

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

905 **20.68.653 Drainage.**

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

909 **20.68.654 Driveways.**

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

912 **20.68.655 Access.**

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

914 **20.68.656 Maintenance.**

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

- 917 **20.68.657 Enclosure.**
- 918 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,
919 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).
- 920 **20.68.700 Performance standards.**
- 921 **20.68.701 Pollution control and nuisance abatement.**
- 922 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when
923 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or
924 regulations provide for the level of technology to be employed, the appropriate standards shall apply.
- 925 **20.68.702 Heat, light and glare.**
- 926 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used
927 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.
- 928 **20.68.703 Ground vibration.**
- 929 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is
930 discernible without instruments, at or beyond the property line for the use concerned.
- 931 **20.68.704 Odors.**
- 932 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in
933 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe
934 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).
- 935 **20.68.705 Noise.**
- 936 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
937 075, 1991).
- 938 **20.68.706 Toxic gases and fumes.**
- 939 Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control
940 Authority standards. (Ord. 91-075, 1991).
- 941 **20.68.707 Liquid pollutants.**
- 942 There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants. (Ord. 91-075, 1991).
- 943 **20.68.708 Appearance.**
- 944 New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so
945 as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such
946 uses shall not change the essential character of the same area. (Ord. 2018-006 § 3 (Exh. C), 2018; Ord. 99-078, 1999).
- 947 **20.68.709 Marijuana odor.**
- 948 For indoor facilities no odor or smoke shall be emitted that is detectable at or beyond the walls of the facility, in such a
949 concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon
950 the use and enjoyment of neighboring use. The applicant shall install an exhaust system that is designed and constructed to
951 capture sources of contaminants to prevent spreading of contaminants or odors to other occupied parts of the building or

952 surrounding area. The system must be designed by a licensed Washington State professional engineer. (Ord. 2015-006 Exh.
953 A, 2015).

954 20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities

955 This section applies to fossil fuel refineries fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel
956 transshipment facilities.

957 .801. Environmental Review and Greenhouse Gas Mitigation

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

961 (2) Greenhouse gas emission analysis required:

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

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

973 (ii) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day),
974 consistent with data collected by the US Energy Information Administration. The zoning administrator may approve
975 another measure of capacity or source that is consistent with (a) and (a)(i). (b) Facility emissions, defined in WCC
976 20.97.124.1, shall be quantified for each expansion of refining and storage capacity in the application for land use or
977 construction permits and in SEPA documents analyzing the impacts of an expanded facility.

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

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

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

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

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

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

994 (a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected
995 greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas

mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any other regulatory mechanism.

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

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

Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC- CO_2) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide (CO_2) emissions in a given year. This dollar figure also represents the value of damages avoided for a small emission reduction (i.e., the benefit of a CO_2 reduction)." See: <https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. If the County wishes to increase the mitigation fee it may do so by ordinance with an accompanying rationale such as inflation, updated US EPA guidance or other factors.

Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning Commission approved a motion to remove the proposed GHG mitigation requirements from the Zoning Code and keep proposed GHG provisions in SEPA (with further discussion on the SEPA language at a later date). The above changes would delete the proposed GHG provisions from the Zoning Code.

.802 Non-Capacity Improvements

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

(a) accessory buildings;

(b) office space;

(c) parking lots;

(d) radio communications facilities;

(e) security buildings;

(f) storage buildings; and

(g) other similar structures or activities.

(2) Regular equipment maintenance, replacement, safety upgrades, and environmental improvements are outright permitted uses, but shall mitigate greenhouse gas emissions if required by WCC 20.68.801.

1034 Rationale for Changes (shown with highlighting): Moving permitted uses associated with existing
1035 refineries and transshipment facilities from proposed WCC 20.68.802 above to the permitted
1036 use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the
1037 Code, where additional items have been inserted as permitted uses to address public comments.
1038 Additionally, the reference to GHG mitigation provisions in the Zoning Code has been deleted.

1039 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

1040 20.74.010 Purpose.

1041 The purpose of the Cherry Point Industrial District is to implement the policies of the Cherry Point Major Industrial Urban
1042 Growth Area section of the Whatcom County Comprehensive Plan by establishing a range of land uses and types of
1043 development appropriate for the Cherry Point UGA and to encourage large scale master planning of industrial sites to
1044 preserve sites of sufficient size to accommodate major port and industrial development. (Ord. 98-083 Ex. A § 57, 1998).

1045 20.74.020 Applicability.

1046 This chapter is applicable to the entire Cherry Point Major Industrial Urban Growth Area. (Ord. 98-083 Ex. A § 57, 1998).

1047 20.74.030 Permitted uses.

1048 (1) Primary permitted uses:

1049 (a) Area south of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Heavy
1050 Impact Industrial District, Chapter 20.68 WCC, as well as large scale high technology businesses.

1051 (b) Area north of Grandview: Uses shall include the range of port and large scale industrial uses allowed in the Light
1052 Impact Industrial District, Chapter 20.66 WCC.

1053 (2) Secondary permitted uses shall include smaller scale industrial uses, nonretail commercial uses, and industry-related
1054 professional services, provided the secondary use supports or is supported by primary permitted uses in the Cherry Point
1055 Industrial Urban Growth Area. (Ord. 98-083 Ex. A § 57, 1998).

1056 20.74.040 Accessory uses.

1057 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
1058 083 Ex. A § 57, 1998).

1059 20.74.050 Conditional uses.

1060 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
1061 083 Ex. A § 57, 1998).

1062 20.74.055 Prohibited uses.

1063 Prohibited uses shall be the same as those prohibited in the Light Impact Industrial District as applicable (Chapter 20.66), and
1064 the Heavy Impact Industrial District as applicable, (Chapter 20.68 WCC), as applicable, and the following:

1065 Rationale for Changes (shown with highlighting): The Cherry Point Industrial District
1066 includes both the Heavy Impact Industrial and Light Impact Industrial zone.
1067 Therefore, both should be referenced.

1068 (1) New piers, docks, or wharves.

1069 ~~(2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or~~
1070 ~~Fossil Fuel Transshipment Facility by fossil fuel facilities is prohibited, except as allowed under WCC 20.74.115 and WCC~~
1071 ~~20.68.153.~~

1072 20.74.060 Master site plan requirements.

1073 (1) Development in the Cherry Point Industrial District requires the review and approval of a master site plan, including
1074 SEPA review. Acceptable master site plans include site plans and supporting information submitted and approved for
1075 applications for a building permit, a short subdivision, a preliminary plat, a binding site plan, a major project permit or a
1076 planned unit development.

1077 (2) The minimum area for a master site plan (planning block) shall be 160 acres, or the entire property under common
1078 ownership if the common ownership is less than 160 acres.

1079 (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
1080 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
1081 shall be waived.

1082 (4) Within a planning block, one or more parcels smaller than 40 acres may be created for secondary uses.

1083 (5) Review and approved of a master site plan for a planning block shall be included in the approval of any building permit,
1084 short subdivision, preliminary plat, binding site plan, major project permit or a planned unit development and shall be subject
1085 to the same review and approval standards, including SEPA review, as the plat, binding site plan or permit. Each master site
1086 plan shall identify, as appropriate, the proposed phasing of the development including the construction of public and private
1087 facilities and utilities. The master site plan or supporting documentation as appropriate shall also include any mitigation
1088 required under SEPA and the county critical areas ordinance. (Ord. 98-083 Exh. A § 57, 1998).

1089 20.74.070 Minimum lot size and parcelization.

1090 The minimum lot size in the Cherry Point Industrial District shall be 40 acres; provided, that lots less than 40 acres may be
1091 permitted as follows:

1092 (1) When the lots are to be located within a development approved as a major project under Chapter 20.88 WCC consistent
1093 with the master site plan requirements in this chapter.

1094 (2) When the lots are to be located within a development approved as a planned unit development under Chapter 20.85 WCC
1095 consistent with the master site plan requirements of this chapter.

1096 (3) When the lots are part of a short subdivision, long subdivision or binding site plan approved as consistent with the master
1097 site plan requirements of this chapter.

1098 (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
1099 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

1100 (5) When an existing lot of record is less than 40 acres, provided further division is consistent with this section. (Ord. 98-083
1101 Exh. A § 57, 1998).

1102 20.74.080 Design standards.

1103 Unless otherwise modified by this chapter, building height, setbacks, landscaping, open space and other building and site
1104 design standards for areas south of Grandview Road shall be the same as those of the Heavy Impact Industrial District,
1105 Chapter 20.68 WCC; and for the area north of Grandview Road, the same as those of the Light Impact Industrial District,
1106 Chapter 20.66 WCC. (Ord. 98-083 Exh. A § 57, 1998).

1107 20.74.090 Traffic demand management.

1108 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
1109 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
1110 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
1111 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

- 1112 (1) Employers located in Cherry Point who have not implemented a TDM program shall implement a TDM program by
1113 December 1, 2011.
- 1114 (2) Employers in Cherry Point meeting the criteria for having to complete a plan after December 1, 2011, shall meet the
1115 requirements of this section within one year of having met the criteria. (Ord. 2009-071 § 2 (Exh. B), 2009).

1116 **20.74.100 Drainage.**

1117 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No
1118 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019).

1119 ~~**20.74.110 Change of Use**~~

1120 ~~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~~
1121 ~~change of use permit is required to document a change of use, even where no alterations are planned or required by the code.~~
1122 ~~This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:~~

1123 ~~(1) Applicable building and construction codes are met per Title 15;~~

1124 ~~(2) Consistency with the requirements of the CP Industrial District, Chapter 20.74, and base zone; and~~

1125 ~~(3) Transportation concurrency requirements are met per Chapter 20.78.~~

1126 ~~Discussion/Notes: Change of Use Provisions. Focus is on consistency with the CP district where this permit~~
1127 ~~applies.~~

1128

1129 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning
1130 Commission passed a motion to delete the proposed change of use provisions above.
Concerns have been expressed relating to the potential conversion of an existing
refinery/transshipment facility into a crude oil transshipment facility (e.g. see Resolution
2019-037). The Planning Commission language for proposed WCC 20.68.153 addresses
this potential situation by requiring a conditional use permit if shipping capacity of
unrefined fossil fuels were to increase over a certain level.

1133

1134 ~~**20.74.115 Change of Use of Renewable Fuels Facilities.**~~

1135 ~~A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the~~
1136 ~~boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes~~
1137 ~~of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.~~

1138
1139
1140

1141 CHAPTER 20.88 MAJOR PROJECT PERMITS

1142 20.88.100 Major project permits.

1143 .110 All major developments shall, prior to any construction, obtain a major project permit.

1144 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
1145 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost

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

Size

Retail 75,000 square feet

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

Residential 300 dwelling units

motel/hotel 200 units

Number of Employees 250

SEPA Review An EIS is required

1146
1147 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the
1148 technical review committee that any project be considered a major development, if in the opinion of the administration it is of
1149 a nature that council review would be appropriate.

1150 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
1151 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
1152 examiner’s recommendation and county council’s decision shall determine the adequacy of a major project permit application
1153 based on the following criteria:

1154 (1) Will comply with the development standards and performance standards of the zone in which the proposed major
1155 development will be located; provided where a proposed major development has obtained a variance from the development
1156 and performance standards, standards as varied shall be applied to that project for the purposes of this act.

1157 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for
1158 the issuance of a conditional use permit for the zone in which the project is located.

1159 ~~(3) Will be consistent with applicable laws and regulations.~~

1160 (3) Prior to commencement of any site preparation or construction activities, Ww will obtain, if required, a state aquatic lands
1161 lease, and all other necessary permits consultations and authorizations, including federal determinations that the project will

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

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

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

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

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

.140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it has fulfilled that condition.

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

20.88.200 Procedure.

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

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

.215 Procedures. Master plan Major project permit review shall be conducted under current review procedures. Other land use reviews may be conducted concurrently with the master plan major project permit review.

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

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

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

(2) Minor changes are those amendments which may affect the dimensions, location and type of improvements of facilities; provided, the amendment maintains the basic character of the major project permit application approved by the county council including general type and location of dwellings and other land use activities, arrangement of buildings, density of the development, and provisions of the

1208 project to meet density bonus and open space requirements, or capacity limits, and maintains required
1209 conditions or mitigation.

1210 (ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in
1211 the unified fee schedule.

1212 (iii) ~~Master plans~~Major project permits may include, as a condition of their approval, a requirement for periodic
1213 progress reports and mandatory updates on a predetermined interval.

1214
1215 Rationale for Changes (shown with highlighting): A master plan is one component
1216 of the major project permit. The procedures above should relate to the entire
1217 permit (not just one component of the permit).

1218 .220 through .265 *Reserved.*

1219 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a
1220 conditional use permit.

1221 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that
1222 project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

1223 .280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District
1224 requires a major project permit, the major project permit shall be concurrently processed with other required land use permits
1225 including but not limited to: ~~Cherry Point master site plan, conditional use permit,~~planned unit development, or development
1226 agreement.

1227
1228 Rationale for Changes (shown with highlighting): The master plan is part of a permit application (not a permit in
itself). Additionally, when a major project permit is required, it is exempt from the conditional use permit (WCC
20.88.270 above).

1229 CHAPTER 20.97 DEFINITIONS

1230 Discussion/Notes: Definitions added are based on a review of federal (US Energy
1231 Information Administration, US Census, Code of the Federal Register, Revised Code of
1232 Washington), County Ordinance NO. 2018-007, Resolution 2019-004 and examples
1233 addressed in the White Paper.

1234 20.97.052.1 Change of Use

1235 “Change of use” means when a building or occupancy is altered or replaced, for example from manufacturing to office.

1236 Renumber Section 20.97.052.1 Child care facilities to 20.97.052.2 Child care facilities.

1237 20.97.124.1 Facility Emissions:

1238 “Facility Emissions” are greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or
1239 renewable fuel transshipment facilities based upon:

1240 (1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility
1241 located within the Cherry Point Heavy Industrial area, and

1242 (2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and

1243 (3) the upstream emissions generated by the production and transport of raw products to the facility such as crude oil
1244 feedstocks or other fuels used in production or energy generation at facilities.

1245 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning
1246 Commission approved a motion to remove the proposed GHG mitigation requirements
1247 from the Zoning Code and keep proposed GHG provisions in SEPA (with further
1248 discussion on the SEPA language at a later date). The term “facility emissions” is no
1249 longer is used in the Zoning Code. Therefore, this definition has been moved to the
County’s SEPA rules, where it would be used.

1250 20.97.160.2 Fossil Fuels:

1251 “Fossil fuels” include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils.
1252 All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable
1253 fuels are not fossil fuels.

1254 **Joint Stakeholder Note:**
1255 This definition moved to 20.97.230.2 and updated. See below.
1256

1262
1263 Rationale for Changes (shown with highlighting): The U.S. Energy Information
1264 Administration defines “Petroleum” as:

1265 A broadly defined class of liquid hydrocarbon mixtures. Included are
1266 crude oil, lease condensate, unfinished oils, refined products obtained from
1267 the processing of crude oil, and natural gas plant liquids. Note: Volumes of
1268 finished petroleum products include non hydrocarbon compounds, such as
additives and detergents, after they have been blended into the products.

1269 While crude oil is a type of petroleum, it might be useful to insert it in the
1270 definition so the reader can know that without going to another source. This would
1271 be consistent with the definition of “Fossil-Fuel Refinery” below, which specifically
refers to crude oil.

1272 **20.97.160.3 Fossil or Renewable Fuel Transshipment Facilities.**

1273 “Fossil Fuel Transshipment Facility” is a facility engaging primarily in the process of off loading of fossil fuels or renewable
1274 fuel materials, refined or unrefined, refinery feedstocks, products or by products, from one transportation method (such as a
1275 ship, truck, or railcar) facility and loading it onto another transportation method facility for the purposes of transporting the
1276 fossil fuelsuch products into and/or out of Whatcom County. Examples of transportation facilities include ship, truck, or
1277 freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This
1278 definition shall include bulk storage or transfer facilities for the shipment of crude oil without refining or consuming within
1279 the Cherry Point Industrial District and shall excludes Small Fossil or Renewable Storage and Distribution Facilities.

1280 **Joint Stakeholder Note:**

1281
1282 This definition split into separate definitions, moved to 20.97.230.5 and 6 and updated
1283 to suit updated proposed code language. See below.

1284
1285 Rationale for Changes (shown with highlighting): On August 13, 2020, in response to
1286 the joint Industry/RE Sources proposal, the Planning Commission approved a motion to
1287 modify proposed WCC 20.68.160.3 as shown above. Planning Commission also
1288 approved a motion to insert a separate definition of Renewable Fuel Transshipment
Facilities (proposed WCC 20.97.350.4 below).

1289 **20.97.160.4 Fossil-Fuel Refinery.**

1290 A “Fossil Fuel Refinery” means a facility that converts crude oil Fossil Fuels and other liquids into petroleum products
1291 including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes,
1292 lubricating oils, intermediate materials and asphalt. Activities that support refineries Fossil Fuel Refinery facility uses include
1293 but are not limited to: bulk storage, manufacturing, or processing of fossil fuels, intermediate materials or by products, and
1294 shipment of those processed materials to downstream customers. This definition excludes Small Fossil or Renewable Storage
1295 and Distribution Facilities.

1296 **Joint Stakeholder Note:**

1297
1298 This definition moved to 20.97.230.8 and updated from the above definition, which
1299 contains language previously proposed to Council. See below.

1296
1297
1298
1299
1300
1301
1302
1303
1304
1305
1306
1307
1308
1309
1310
1311
1312
1313
1314
1315
1316
1317
1318
1319
1320
1321
1322
1323
1324
1325

20.97.160.5 Fossil-Fuel Refinery Capacity:

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

Rationale for Changes (shown with highlighting): “Fossil-Fuel Refinery Capacity” does not occur in the proposal. “Refinery Capacity” appeared one time (proposed WCC 20.68.801(2)(a)(ii)), but the Planning Commission recommends deleting this section of the proposal. Therefore, a definition is not needed.

20.97.163 Greenhouse Gas Emissions.

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

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

20.97.190.2 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.~~

Joint Stakeholder Note:
This definition moved to 20.97.230.3 and unchanged from the language previously presented to Council except to capitalize defined terms. See below.

1326 **20.97.201 Lifecycle Greenhouse Gas Emissions**

1327 “Lifecycle greenhouse gas emissions” means the aggregate quantity of greenhouse gas emissions (including direct emissions
1328 and significant indirect emissions), related to the full fuel lifecycle, including all stages of fuel and feedstock production and
1329 distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the
1330 ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming
1331 potential.

1332 *Discussion/Notes: Considers a definition under the Clean Air Act. See:*

1333 [https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel)
1334 [gas-emissions-under-renewable-fuel](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel) and

1335 <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010->
1336 [title42-chap85.htm.](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm)

1337
1338 **20.97.202 Living Wage**

1339 “Living wage” means the hourly rate that an individual must earn to support their family, if they are the sole provider and are
1340 working full time (2080 hours per year). For the purposes of this definition family includes four individuals.

1341 *Discussion/Notes: Based on a definition published by Massachusetts Institute of*
1342 *Technology. See <http://livingwage.mit.edu/counties/53073>. There is a living wage*
1343 *calculator for each state and each county within. Living wage ordinances vary in their*
1344 *wage rates, and they often set the hourly wage a full-time, year-round worker must earn*
1345 *to bring a family of four out of poverty. See:*
1346 [http://www.forworkingfamilies.org/resources/policy-tools-living-wage.](http://www.forworkingfamilies.org/resources/policy-tools-living-wage)

1347
1348 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission
1349 passed a motion to delete the “living wage” job language from the conditional use permit approval
1350 criteria (proposed WCC 20.68.153). This term does not appear elsewhere in the proposal.

1351 **20.97.230.1 Maximum Atmospheric Crude Distillation Capacity.**

1352 “Maximum Atmospheric Crude Distillation Capacity” or “MACDC” is the maximum number of barrels of input that the
1353 atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is
1354 defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer
1355 licensed in the State of Washington and shall be measured in barrels per day.

NOTE: Renumber existing WCC 20.97.230 (definition of “May”) to WCC 20.97.231.

1356
1357 Rationale for Changes (shown with highlighting): On January 30, 2020, the
1358 Planning Commission approved a motion adding the above definition to the Zoning
1359 Code (the definition was proposed by industry). This term is used in proposed
WCC 20.68.153.

1360 **20.97.160.2 Fossil Fuels.**

1361 "Fossil fuels" refers to hydrocarbon compounds and composites formed as a result of geologic processes acting on the
1362 remains of organic matter, including but not limited to include coal, petroleum products and byproducts, crude oil,
1363 Intermediate Materials (such as unfinished oils and blendstocks), natural gas, oil shales, bitumens, tar sands, liquified
1364 petroleum gases, propane, butane, and heavy oils. All contain carbon and were formed as a result of geologic processes acting
1365 on the remains of organic matter. Renewable fuels are not Fossil Fuels.

1366 **Joint Stakeholder Note:**

1367 Moved from 20.97.160.2, above and updated.
1368

1369 **20.97.230.3 Intermediate Materials:**

1370 "Intermediate Materials" refers to refined or partially refined Fossil Fuel products that are produced at a refinery by
1371 processing crude oil and other petroleum-based feedstocks that can be further processed to produce refined products or other
1372 blending components. Under this definition, feedstocks such as "topped crude" are not Intermediate Materials.

1373 **Joint Stakeholder Note:**

1374 Moved from 20.97.190.2, above, with capitalization changes only.
1375
1376

1377 **20.97.230.4 Maximum Transshipment Capacity**

1378 The calculation of Maximum Transshipment Capacity shall be conducted by a professional engineer licensed in the State of
1379 Washington and shall consist of one or a combination of the following limitations:

1380 (a) The maximum physical limit of a facility's capacity for off-loading Fossil Fuels from one or more modes of
1381 shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels, without processing through a
1382 Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district
1383 boundaries such as the Cherry Point Industrial District, based on the facility's maximum physical limits to move Fossil
1384 Fuels from the receipt points of all its inbound shipment methods to the delivery points of all its outbound shipment
1385 methods, including the capacities or other physical attributes of the facility's equipment, including but not limited to
1386 capacities of:

- 1387 (i) loading equipment;
- 1388 (ii) offloading equipment;
- 1389 (iii) pumps and/or compressors;
- 1390 (iv) bulk storage;
- 1391 (v) piping hydraulics; or
- 1392 (vi) any combination of the above.

1393
1394 The capacity calculation shall exclude any equipment installed with a permit condition that prohibits that equipment
1395 from being used for transshipment purposes.

1396
1397 (b) Shipment limitations imposed by County, State or Federal authorities that can be demonstrated by the applicant to
1398 restrict the frequency and/or annual amount of Fossil Fuel shipments at its facility. If any such limitations form the
1399 basis of a Maximum Transshipment Capacity calculation, then any future increases in Fossil Fuel shipments above
1400 those previously imposed limits would constitute an increase in Maximum Transshipment Capacity.

1401
1402 **20.97.160.3230.5 Fossil Fuel Transshipment Facilities.**

1403 “Fossil Fuel Transshipment Facility” is a facility, as an entire complex, consisting of its individual units, equipment, or
1404 components, which in aggregate, engages primarily in the process of off-loading Fossil Fuels from one or more modes of
1405 shipment (i.e., rail, truck, pipeline, etc.), transportation method (such as ship, truck or railcar) and then storing and/or loading
1406 such Fossil Fuels, without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported
1407 outside of the designated zoning district boundaries, such as the Cherry Point Industrial District, transportation method for
1408 the purposes of transporting the shipment into and/or out of Whatcom County. This definition shall include bulk storage or
1409 transfer facilities for the shipment of crude oil without refining or consuming the Cherry Point Industrial District and shall
1410 exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

1411
1412 **Joint Stakeholder Note:**

1413 Moved from 20.97.160.3, above, split into 5 and 6, and updated.

1414
1415
1416 **20.97.350.4230.6 Renewable Fuel Transshipment Facilities.**

1417 “Renewable Fuel Transshipment Facility” a facility, is an entire complex, consisting of its individual units, equipment, or
1418 components which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable
1419 Biomass from one mode of shipment (i.e., rail, truck, pipeline, etc.) transportation method (such as a ship, truck, or railcar)
1420 then storing and/or loading such fuels # without processing through a Renewable Fuel Refinery or Fossil Fuel Refinery, onto
1421 another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point
1422 Industrial District, transportation method for the purposes of transporting the shipment renewable fuel into and/or out of
1423 Whatcom County. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

1424
1425 **Joint Stakeholder Note:**

1426 Moved from 20.97.160.3, above, split into 5 and 6, and updated.

428 **20.97.350.3 ~~230.7~~ Renewable Fuel Refinery.**

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

431 **Joint Stakeholder Note:**

432 Moved from 20.97.350.3 and unchanged.

434 **20.97.160.4 ~~230.8~~ Fossil Fuel Refinery**

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

446 **Joint Stakeholder Note:**

447 Moved from 20.97.160.4 and updated.

449 **20.97. 350.1 Renewable Biomass.**

450 “Renewable biomass” includes but is not limited to the following:

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

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

453 (3) Animal waste material and animal byproducts.

454 (4) Slash and pre-commercial thinnings.

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

456 (6) Algae.

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

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

460 *Discussion/Notes: Adapted from based on federal renewable fuel definition,*
461 [https://www.law.cornell.edu/cfr/text/40/80.1401.](https://www.law.cornell.edu/cfr/text/40/80.1401)

1462 **20.97.350.2 Renewable Fuel.**

1463 “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.
1464 Common renewable fuels include ethanol and biodiesel:

1465 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
1466 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
1467 American society of testing and materials specification D 5798.

1468 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
1469 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal
1470 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) and meets the requirements of
1471 American society of testing and materials specification D 975.

1472 Rationale for Changes (shown with highlighting): Federal regulations may be amended over time.
1473

1474 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
1475 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
1476 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State
1477 Department of Ecology or US EPA.

1478 Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,
1479 common liquid fuel forms include ethanol and biodiesel. See:
1480 https://www.eia.gov/energyexplained/?page=renewable_home.

1481 Washington State defines renewable diesel and E85 motor fuel in the motor fuel
1482 quality act (Chapter 19.112 RCW), which are integrated in the definition.

1483 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See
1484 <http://www.cleairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-
1485 25% fossil fuels and is used by flexibly fueled vehicles. See
1486 <https://www.fueleconomy.gov/feg/flextech.shtml>.

1487 Under the EPA renewable fuel standard, three of four renewable fuel categories must
1488 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional
1489 renewable ethanol must meet a 20% lifecycle GHG reduction. See:
1490 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)
1491 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

1492 ~~**20.97.350.3 Renewable Fuel Refinery**~~

1493 ~~A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small~~
1494 ~~Fossil or Renewable Storage and Distribution Facilities.~~

1495 **Joint Stakeholder Note:**

1496 Moved to 20.97.230.7 and unchanged.
1497

1498 Rationale for Changes (shown with highlighting): On August 13, 2020, the
1499 Planning Commission approved a motion to insert a new definition of
1500 Renewable Fuel Transshipment Facilities (it was previously combined with the
definition of Fossil Fuel Transshipment Facilities).

1501
1502
1503
1504
1505
1506
1507
1508
1509
1510
1511
1512
1513
1514
1515

20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities.

“Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

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

Rationale for Changes (shown with highlighting): Buildings may also be needed at small scale facilities.

20.97.434.1 Technical committee.

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

Exhibit D

1516

1517

1518

CHAPTER 22.05 PROJECT PERMIT PROCEDURES

1519

22.05.020 Project permit processing table.

1520

1521

1522

1523

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

| Permit Application Processing Table | WCC Reference for Specific Requirements | Pre-Application Required (see 22.05.040) | Determination of Completeness Required (see 22.05.050) | Notice of Application Required (see 22.05.070) | Site Posting Required (see 22.05.080) | Notice of Open Record Hearing Required (see 22.05.090) | Open Record Hearing Held By: (see 22.05.090) | County Decision Maker (see 2.11.210, 22.05.120) | Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H)) |
|---|---|--|--|--|---------------------------------------|--|--|---|---|
| Type I Applications (Administrative Decision with No Public Notice or Hearing) | | | | | | | | | |
| Boundary Line Adjustment | 21.03 | | | | | | | Administrator | Hearing Examiner |
| Building Permit | 15.04 | (f) | | | | | | Administrator | Hearing Examiner (i) |
| Natural Resource Assessment | Title 16 | | | | | | | Administrator | Hearing Examiner |
| Change of Use, Cherry Point Industrial District | Chapter 20.74 | | | | | | | Administrator | Hearing Examiner |
| Commercial Site Plan Review | | | | | | | | Administrator | Hearing Examiner |
| Exempt Land Division | 21.03 | | | | | | | Administrator | Hearing Examiner |
| Floodplain Development Permit | Title 17 | | | | | | | Administrator | Hearing Examiner |
| Land Disturbance Permit | 15.04 and 20.80 | | | | | | | Administrator | Hearing Examiner |
| Lot of Record/Lot Consolidation | 20.83 and 20.97.220 | | | | | | | Administrator | Hearing Examiner |
| Nonconforming Use | 20.83 | | | | | | | Administrator | Hearing Examiner |
| Removal of Development Moratorium | 20.80.738(3) | | | | | | | | |
| Shoreline Exemption | 23.60 | (a) | | | | | | Administrator | Hearing Examiner |
| Zoning | 22.20 | | | | | | | Administrator | Hearing |

| Permit Application Processing Table | WCC Reference for Specific Requirements | Pre-Application Required (see 22.05.040) | Determination of Completeness Required (see 22.05.050) | Notice of Application Required (see 22.05.070) | Site Posting Required (see 22.05.080) | Notice of Open Record Hearing Required (see 22.05.090) | Open Record Hearing Held By: (see 22.05.090) | County Decision Maker (see 2.11.210, 22.05.120) | Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H)) |
|--|---|--|--|--|---------------------------------------|--|--|---|---|
| Interpretation | | | | | | | | | Examiner |
| Type II Applications (Administrative Decision with Public Notice; No Public Hearing) | | | | | | | | | |
| Administrative Use | 20.84.235 | | | | | | | Administrator | Hearing Examiner |
| Lot Consolidation Relief | 20.83.070 | | | | | | | Administrator | Hearing Examiner |
| Reasonable Use (b) | 16.16 | | | | | | | Administrator | Hearing Examiner |
| Shoreline Substantial (c) | 23.60 | (a) | | | | | | Administrator (d) | Shorelines Hearings Board (h) |
| Shoreline Conditional Use (c) | 23.60 | (a) | | | | | | Administrator (d) | Hearing Examiner |
| Short Subdivision | 21.04 | | | | | | | Administrator | Hearing Examiner |
| Type III Applications (Hearing Examiner Decision with Public Notice and Public Hearing) | | | | | | | | | |
| Conditional Use | 20.84.200 | | | | | | Hearing Examiner | Hearing Examiner | Superior Court |
| Floodplain Development Variance | Title 17 | | | | | | Hearing Examiner | Hearing Examiner | Superior Court |
| Long Subdivision | 21.05 | | | | | | Hearing Examiner | Hearing Examiner (g) | Superior Court |
| Binding Site Plan | 21.07 | | | | | | Hearing Examiner | Hearing Examiner (g) | Superior Court |
| Reasonable Use (e) | 16.16 | | | | | | Hearing Examiner | Hearing Examiner | Superior Court |
| Removal of Development Moratorium | 20.80.738(2) | | | | | | Hearing Examiner | Hearing Examiner | Superior Court |
| Shoreline Conditional Use | 23.60 | (a) | | | | | Hearing Examiner | Hearing Examiner (d) | Shorelines Hearings Board (h) |
| Shoreline Substantial | 23.60 | (a) | | | | | Hearing Examiner | Hearing Examiner (d) | Shorelines Hearings Board (h) |
| Shoreline Variance | 23.60 | (a) | | | | | Hearing Examiner | Hearing Examiner (d) | Shorelines Hearings Board (h) |
| Zoning or Critical | 20.84.100 or | | | | | | Hearing | Hearing | Superior Court |

| Permit Application Processing Table | WCC Reference for Specific Requirements | Pre-Application Required (see 22.05.040) | Determination of Completeness Required (see 22.05.050) | Notice of Application Required (see 22.05.070) | Site Posting Required (see 22.05.080) | Notice of Open Record Hearing Required (see 22.05.090) | Open Record Hearing Held By: (see 22.05.090) | County Decision Maker (see 2.11.210, 22.05.120) | Appeal Body (see 2.11.210, 22.05.160, 23.60.150(H)) |
|---|---|--|--|--|---------------------------------------|--|--|---|---|
| Areas Ordinance Variance | 16.16.270 | | | | | | Examiner | Examiner | |
| Type IV Applications (County Council Decision with Public Notice and Public Hearing) | | | | | | | | | |
| Development Agreement | 2.11.205 | | | | | | Hearing Examiner | County Council | Superior Court |
| Major Project Permit | 20.88 | | | | | | Hearing Examiner | County Council | Superior Court |
| Planned Unit Development | 20.85 | | | | | | Hearing Examiner | County Council | Superior Court |

1524

1525 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

1526 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*
 1527 *desired review process.*

1528 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning
 1529 Commission passed a motion to delete the proposed change of use provisions of WCC
 20.74.110. Therefore, the “Change of Use” permit type is no longer needed.

1530

1531 **22.05.110 Final decisions – Type I, II, and III applications.**

1532 (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
 1533 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
 1534 comply with all applicable codes.

1535 (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)
 1536 shall either grant or deny the application or appeal.

1537 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
 1538 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
 1539 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
 1540 of Whatcom County.

1541 (b) Requirements:

1542 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
 1543 compliance with the conditions, modifications and restrictions.

1544 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
 1545 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section
 1546 22.05.125.

1547 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
 1548 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
 1549 based on the record to support the decision.

1550 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
1551 provided herein.

1552 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
1553 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
1554 032 § 1 (Exh. A)).

1555 22.05.120 ~~Recommended~~ Recommendations and final decisions to county council. Type
1556 IV applications

1557 (1) For Type IV applications per WCC 22.05.020 the hearing examiner's recommendations to the county council may be to
1558 grant, grant with conditions or deny an application. The hearing examiner's recommendation may include conditions,
1559 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
1560 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
1561 objectives of Whatcom County.

1562 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
1563 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
1564 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
1565 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1566 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
1567 Chapter 42.36 RCW.

1568 (4) For planned unit developments and major project permits the following shall apply:

1569 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
1570 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1571 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
1572 following the conclusion of the open record hearing.

1573 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
1574 (4)(c)(iii) of this section:

1575 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
1576 calendar days after receiving the hearing examiner's recommendation.

1577 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1578 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
1579 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
1580 written findings that a specified amount of additional time is needed to process a specific application or project
1581 type, per RCW 36.70B.080(1).

1582 (5) The county council's final written decision may include conditions when the project is approved and shall state the
1583 findings of fact upon which the decision is based.

1584 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
1585 with the conditions, modifications and restrictions.

1586 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1587 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1588 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
1589 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code, applicable state
1590 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management
1591 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the
1592 county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1593

1594
1595
1596
1597
1598

Rationale for Changes (shown with highlighting): Other parts of the proposal require that state permits be obtained. However, that is different than the County Council or hearing examiner evaluating criteria in state laws and regulations. It's the applicable state agency's job to evaluate state criteria, determine if those criteria are met, and then issue the permit. A copy of that permit can then be submitted to the County.

1599 22.05.125 Proof of insurance for hazards created in the County

1600
1601 For expansion projects requiring approval under a Conditional Use Permit at new or existing facilities per WCC 20.68.153 or
1602 WCC 20.68.154, financial assurance for the benefit of Whatcom County shall be required. For such expansion projects, a
1603 permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit, insurance, self-insurance,
1604 financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply with the financial
1605 responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by a Whatcom County
1606 Decision Maker. If the financial assurance is in the form of insurance policies, the policies must name Whatcom County as an
1607 additional insured and provide Whatcom County with a certificate of insurance to that effect.

1608 The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating
1609 the permitted facility. At the request of the permittee, the Whatcom County Decision Maker may approve new or altered
1610 forms of financial assurance to meet the requirements of this section, provided that the new or altered form is consistent with
1611 the scope and intent of the original permit condition.

1612 Permit applicant to provide proof of insurance naming Whatcom County as additional insured for any of the following that
1613 require a conditional use permit or major project permit:

1614
1615 Expansion of existing fossil fuel refinery or existing fossil fuel transshipment facility;

1616 Expansion of or new renewable fuel refinery or renewable fuel transshipment facility;

1617
1618
1619
1620
1621

Rationale for Changes (shown with highlighting): On November 14, 2019 and June 25, 2020, the Planning Commission approved motions inserting the insurance language above. The Planning Commission recommended deleting the insurance language below from the original Council proposal.

1622 At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel
1623 refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities (Facilities),
1624 the applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney, which may
1625 include a parent company corporate guarantee to cover loss or damages to the County and to County residents from any fire,
1626 explosion, spill or other sudden incident from operations of the Facility or from transport of materials, goods, products or
1627 waste within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil
1628 fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and
1629 any parent company corporate guarantee shall contain the following Coverage Terms:

1630 (1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional
1631 Insured and shall be provided complete copies of applicable insurance policies and endorsements.

1632 (2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third party bodily injury, property
1633 damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or
1634 after the Permit effective date, either:

1635 (a) emanating from and beyond the boundaries of a Permitted Facility, or

1636 (b) arising from materials or waste during transportation to or from a Permitted Facility.

1637 (3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses. The required limits may
1638 be revised periodically by the County based on factors including inflation adjustments and Permit or Facility specific risks.

1639 *Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50*
1640 *million to \$100 million may not be available in the insurance market. We suggest taking*
1641 *out the \$100 million liability limit and substituting language that determines the liability*
1642 *limit as each permit is reviewed and made part of a development agreement. Other forms*
1643 *of financial assurance instruments could be allowed such as a letter of credit a parent*
1644 *company corporate guarantee or other financial assurance acceptable to the County*
1645 *Prosecutor as a substitute for commercial insurance. We have included code language to*
1646 *that effect in this draft. The County could also indicate that the amount of financial*
1647 *assurance is to be determined at the point of an approval decision for a facility expansion*
1648 *rather than specifying an amount here.*

1649 (4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any
1650 deductible or self insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any
1651 such payment made by the Insurer. If the Policy has a self insured retention (SIR) amount, the Primary Named Insured shall
1652 declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of
1653 financial assurance are letters of credit and certificates of deposit.

1654 (5) Term and Cancellation Notice:

1655 (a) Insurance shall be carried for the lifetime of the Permitted Facility.

1656 (b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in
1657 and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon
1658 written notice and only after the expiration of 60 days after a copy of such written notice is received by the County
1659 as evidenced by the return receipt.

1660 (6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

1661 (7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply
1662 in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any
1663 term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.

1664 (8) Insurance Company Financial Strength— Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating
1665 from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or
1666 the equivalent from another major financial rating agency.

1667 (9) Definitions: For the purposes of this section, terms are defined as follows:

1668 (a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any
1669 fixed conveyances and terminal distribution systems, as well as pump and compressor stations and related facilities.

1670 (b) Loss shall include:

1671 (i) monetary awards or settlements of compensatory damages; and

1672 (ii) where allowable by law, punitive, exemplary, or multiple damages; and

1673 (iii) civil fines, penalties, or assessments.

1674 (e) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,
1675 liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors,
1676 soot, fumes, acids, alkalis, or other chemicals.

1677 (d) Sudden pollution conditions may be defined by reasonable time limits for discovery and reporting to the insurer.

1678 (e) Transportation means movement by any vehicle or mode of transit including but not limited to automobile, truck, or
1679 watercraft, as well as and is inclusive of loading, temporary placement during transit prior to final delivery, or
1680 unloading, of materials goods, products or waste, either:

1681 (i) intended for delivery to a Permitted Facility, or

1682 (ii) being sent from a Permitted Facility.

1684 22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment 1685 Facility Permitting

1687 (1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out a supplemental
1688 checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use permit as
1689 specified in WCC 20.68.153 or WCC 20.68.154. The checklist shall contain supplemental information to include:

1690 (a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum Transshipment Capacity, and
1691 fossil fuel unit train shipment frequency from the proposed activity

1692 (b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (24).

1693 (c) Applicant name, property owner information, and parcel information as appropriate

1694 (d) Clear indication of information considered confidential and non-disclosable under the Public Records Act, including
1695 the provisions of WCC 1.32.090 and RCW 42.56

1696 (e) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant
1697 and certified by a Notary Public

1699 (2) The checklist shall establish the procedure to be followed by the County upon receipt of a request for disclosure of any
1700 information identified by the applicant as confidential. This procedure shall establish, at a minimum, that information
1701 identified as confidential may be disclosed only after the County has:

1702 (a) Notified the applicant in writing of the request;

1703 (b) Determined that the requested information is not exempt from disclosure under WCC 1.32.090 and Chapter 42.56
1704 RCW;

1705 (c) Notified the applicant in writing of the County's intention to disclose the information and provided the applicant
1706 with 10 days from the date of written notice to file an objection with the Public Records Officer; and

1707 (d) Notified the applicant in writing of the County's decision to disclose the information despite the applicant's
1708 objections and provided the applicant with a reasonable opportunity (at least 30 days from the date of written notice) to
1709 file an injunction under RCW 42.56.540.

1710
1711 **(3) Confidential Business Information**

1712 (a) For the purpose of permit applications and materials submitted by Fossil Fuel Refineries or Fossil Fuel
1713 Transshipment Facilities for activities in the Cherry Point Heavy Impact Industrial District, the following shall apply:

1714 (i) Applicants shall clearly identify information considered to be confidential and non-disclosable under the Public
1715 Records Act, including the provisions of WCC 1.32.090 and RCW 42.56, and if confidential information is
1716 contained in submittal documents, submit two copies of materials for County use as follows:

1717 1. A copy with confidential information clearly identified, with a watermark indicating the document contains
1718 confidential information

1719 2. A copy with confidential information redacted, and a watermark added indicating that the document does
1720 not contain confidential information and is suitable for public disclosure

1721 (ii) The following may be considered confidential and non-disclosable under the Public Records Act, WCC
1722 1.32.090, and RCW 42.56, and may be exempt from disclosure by the County in accordance with WCC 1.32.090:

1723 1. Processing equipment technical specifications on internals, sidestream/pumparounds, design specifications,
1724 and process controls

1725 2. Process unit design, instrumentation and controls

1726 3. Feedstock, product, or process unit pump capacity and configuration

1727 4. Contractual agreements and all terms contained therein

1728 (iii) The information listed above is not meant to be all-inclusive. Other information related to the applicant's
1729 processing activities, feedstock and product purchase, and/or sale and transportation methods and costs may be
1730 non-disclosable under the County's Public Record provisions and/or provisions of RCW 42.56 and other state
1731 provisions. In all cases, such information will be marked as Confidential Business Information when submitted as
1732 part of an application.

1733 (iv) Calculation and permit material submittals may contain, but are not required to contain any of the above
1734 information.

1735 (v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is proposed,
1736 submittal of Confidential Business Information specifically related to the criteria of WCC 20.68.153 and WCC
1737 20.68.154 shall not be required to be submitted with the permit application materials

1738
1739 (4) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum Atmospheric Crude
1740 Distillation Capacity, the applicant shall provide calculations performed and certified by a professional engineer licensed in
1741 the state of Washington, clearly indicating the impact on MACDC and Transshipment Capacity. Sections of the report
1742 containing confidential business information shall be separated as noted in WCC 20.05.130 subsection (2).

1743 **Joint Stakeholder Note to PDS:**

22.05.126 used as a possible section numbering; may need to be adjusted accordingly based on standard numbering philosophy.