

ORDINANCE NO. _____

**ADOPTING AMENDMENTS TO THE WHATCOM COUNTY
COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE RELATING TO
THE CHERRY POINT UGA, FOSSIL FUEL FACILITIES, RENEWABLE
FUEL FACILITIES, PIERS, SEPA, GREENHOUSE GAS EMISSIONS,
AND OTHER MATTERS**

WHEREAS, The Whatcom County Planning Commission held a public hearing and issued recommendations on the proposed amendments; and

WHEREAS, The County Council considered Planning Commission recommendations;

WHEREAS, The County Council considered the Joint Stakeholder Group recommendations, which were the result of a collaborative effort between industry, environmental, and labor representatives;

WHEREAS, The County Council held a public hearing; and

WHEREAS, The County Council has considered multiple alternatives and has reviewed and considered the State Environmental Policy Act (SEPA) review of the alternatives and the SEPA Determination of Nonsignificance (and Addendum) prepared by the County's SEPA Responsible Official; and

WHEREAS, The County Council hereby adopts the following findings of fact:

FINDINGS OF FACT

1. The Whatcom County Council approved Resolution 2019-037 on August 7, 2019, forwarding proposed Comprehensive Plan and code amendments to the Planning Commission for review. The subject amendments primarily relate to fossil fuel and renewable fuel facilities in the Cherry Point Area, although some of the amendments apply to various land uses on a countywide basis.

2. The subject amendments include the following:
 - a. Amending Whatcom County Comprehensive Plan Chapter 2 (Land Use).
 - b. Amending the State Environmental Policy Act (SEPA) code (WCC 16.08).
 - c. Amending the Light Impact Industrial District, Heavy Impact Industrial District, Cherry Point Industrial District, Major Project Permits, and Definitions chapters of the Whatcom County Zoning Code (Title 20).
 - d. Amending the Project Permit Procedures (WCC 22.05).
3. Notice was submitted to the Washington State Department of Commerce on August 15, 2019.
4. The Whatcom County Planning Commission held a town hall meeting on September 12, 2019.
5. The Whatcom County Planning Commission held work sessions on September 26, 2019, October 10, 2019, October 24, 2019, November 14, 2019, December 12, 2019, January 16, 2020, January 30, 2020, February 27, 2020, June 25, 2020, and July 9, 2020.
6. A Determination of Nonsignificance (DNS) was issued under the State Environmental Policy Act (SEPA) on July 28, 2020. A SEPA Determination of Nonsignificance (DNS) Addendum was issued on July 1, 2021.
7. Notice of the Planning Commission hearing was sent to citizens, media, cities, and others on the County's e-mail list on July 30, 2020.
8. Notice of the Planning Commission hearing was posted on the County website on August 3, 2020.
9. Notice of the Planning Commission hearing for the subject amendments was published in the Bellingham Herald on August 3, 2020.
10. The Planning Commission held a public hearing on the subject amendments on August 13, 2020.
11. The County Council and the Planning Commission have studied and considered multiple alternatives and various drafts for the amendments which are contained in the record.
12. The County Council held a public hearing on the subject amendments.

Comprehensive Plan Amendments

13. The Cherry Point UGA is approximately 7,030 acres. Whatcom County Comprehensive Plan Chapter 2 contains a specific section with text, goals, and policies relating to the Cherry Point UGA (other goals and policies in the Comprehensive Plan also apply).
14. The subject amendments modify text and Policies 2CC-11, 2CC-16, 2CC-17, and 2WW-4 in Whatcom County Comprehensive Plan Chapter 2. The subject amendments also add new Policy 2CC-18 to the Comprehensive Plan.
15. Whatcom County Comprehensive Plan Policy 2CC-11 already states that “It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers. . .” The subject amendments modify Policy 2CC-11. These amendments include:
 - a. Recognizing that the vested rights/enforceable agreement for an additional dock/pier no longer exist.
 - b. Recognizing the importance of preventing harm to habitat of the Cherry Point Herring stock and Southern Resident Killer Whales.
 - c. Recognizing that implementation of the Shoreline Program is an important way to preserve the natural character, result in long-term benefits, and protect the resources and ecology of the shoreline.
 - d. Deleting language that is unnecessary or no longer needed.
16. The Washington State Department of Natural Resources has prepared the Cherry Point Environmental Aquatic Reserve Management Plan which identifies management objectives and habitat concerns regarding the state waters adjacent to the Cherry Point UGA. And, by Commissioner’s Order dated January 3, 2017, has limited additional in-water development including restricting lease areas to preclude the addition of new piers in the Cherry Point Aquatic Reserve.
17. The Federal Government has enacted the “Magnuson Amendment” which limits the transport of crude oils out of Puget Sound waters.
18. The United States Army Corps of Engineers (The Corps) has recognized the regulatory importance of reserved tribal treaty fishing rights in federal permitting decisions related to Puget Sound and in the areas adjacent to Cherry Point. Reserved treaty fishing rights have been addressed both in recent regulatory decisions by The Corps (Gateway Pacific Terminal) where federal permits have been denied where there is more than a de minimis

impact on tribal fishing rights and in federal court decisions regarding Corps permitting such as *Northwest Sea Farms v. US Army Corps of Engineers*, 931 F. Supp 1515 (W.D. Wash. 1996).

19. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-16. These amendments include:
 - a. Recognizing that the study and recommendations to address negative impacts from fossil fuel facilities have been completed (see *Reducing Impacts from Fossil fuel Projects Report to the Whatcom County Council*, Cascadia Law Group, Feb. 12, 2018 and Whatcom County Council Resolution 2019-037, August 7, 2019) and that alternatives have been considered by the County and that extensive public testimony and input has been received and considered.
 - b. Stating that the County will, through SEPA and permitting, seek to limit negative impacts from fossil fuel facilities within the Cherry Point UGA.
 - c. Refining the language relating to notice to the County Council of fossil fuel projects.
 - d. Deleting language that is unnecessary or no longer needed.
20. The subject amendments modify Whatcom County Comprehensive Plan Policy 2CC-17. These amendments include:
 - a. Recognizing that limited fossil fuel facility expansions are subject to environmental review, greenhouse gas analysis, and Cherry Point policies in the Comprehensive Plan.
 - b. Deleting language that is unnecessary.
21. The subject amendments modify Whatcom County Comprehensive Plan Policy 2WW-4 by recognizing that existing marine port facilities and limited expansions are allowed consistent with the State of Washington Department of Natural Resources Cherry Point Aquatic Reserve Management Plan.
22. The subject amendments add new Whatcom County Comprehensive Plan Policy 2CC-18. This new policy recognizes that the following are allowed: The on-going operation, maintenance, and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational and site safety improvements, environmental improvements, and regulatory compliance projects.

23. Pursuant to WCC 22.10.060(1), in order to approve comprehensive plan amendments the County must find all of the following:
 - a. The amendment conforms to the requirements of the Growth Management Act, is internally consistent with the county-wide planning policies and is consistent with any interlocal planning agreements.
 - b. Further studies made or accepted by the Department of Planning and Development Services indicate changed conditions that show need for the amendment.
 - c. The public interest will be served by approving the amendment. In determining whether the public interest will be served, factors including but not limited to the following shall be considered:
 - i. The anticipated effect upon the rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan.
 - ii. The anticipated effect on the ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities.
 - iii. Anticipated impact upon designated agricultural, forest and mineral resource lands.
 - d. The amendment does not include or facilitate spot zoning.

Growth Management Act

24. The Growth Management Act (GMA) establishes planning goals in Revised Code of Washington (RCW) 36.70A.020 to guide adoption of comprehensive plan amendments.
25. GMA planning goal # 1 is to: "Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner."

26. GMA planning goal # 5 is to:

Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

27. The subject Comprehensive Plan amendments, when viewed in the context of the other Comprehensive Plan goals and policies, continue to encourage development in the Cherry Point industrial area while also addressing public safety and environmental protection. The amendments recognize that the existing industries provide significant employment and have shipped refined fossil fuel products for decades. The amendments also recognize that existing operations of fossil fuel facilities, along with limited expansions, are allowed as outright permitted uses with appropriate environmental review and analysis. In addition, beyond certain thresholds, the amendments provide for allowing expansions of existing fossil fuel refineries with conditional use permit review and appropriate environmental review and analysis.

28. GMA planning goal # 9 is to: "Retain open space, enhance recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks and recreation facilities."

29. GMA planning goal # 10 is to: "Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water."

30. The State Shoreline Management Act policies, which are incorporated as a GMA goal pursuant to RCW 36.70A.480, indicate that:

. . . It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto. . . (RCW 90.58.020)

31. Fossil fuel refineries and transshipment facilities have potential for accidents, which can release pollutants into the environment and impact fish habitat, wildlife habitat, water quality, and air quality. The subject amendments seek to limit negative impacts on public health, safety, and the environment.

Countywide Planning Policies

32. Countywide Planning Policy E-3 states:

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

33. Countywide Planning Policy I-2 indicates "New business development and expansion of existing businesses are key factors in providing 'family wage' jobs and a strong tax base. Economic development that pays family wage rates should be encouraged. . ."

34. Countywide Planning Policy I-8 states:

Economic development should be encouraged that:

- a. Does not adversely impact the environment;
- b. Is consistent with community values stated in local comprehensive plans;
- c. Encourages development that provides jobs to county residents;
- d. Addresses unemployment problems in the county and seeks innovative techniques to attract different industries for a more diversified economic base;
- e. Promotes reinvestment in the local economy;
- f. Supports retention and expansion of existing businesses.

35. Countywide Planning Policy N-2 states that "The Cities and the County in cooperation with other municipal corporations and tribal governments shall adopt zoning regulations and development standards to protect water resources. . ."

36. Countywide Planning Policy N-3 states that "Jurisdictions shall cooperate to protect and restore water resources and fish habitat within UGA's and across jurisdictional boundaries to maintain quality of life and economic health in Whatcom County."

37. The Countywide Planning Policies recognize the significance of the Cherry Point UGA for industry, transportation, and good jobs. The Countywide Planning Policies also recognize the importance of environmental protection.
38. The Comprehensive Plan, including the subject amendments, allows a variety of industrial uses in the Cherry Point UGA, while encouraging review processes that will facilitate a full evaluation of fossil fuel development proposals and mitigation of negative impacts.

Interlocal Agreements

39. There are no interlocal agreements relating to the Cherry Point UGA.

Further Studies/Changed Conditions

40. The GMA, originally adopted in 1990, included a requirement to designate Urban Growth Areas (UGAs).
41. The Cherry Point UGA was adopted in 1997 when the Whatcom County Comprehensive Plan was adopted.
42. The Washington State Department of Natural Resources (DNR) originally issued the *Cherry Point Environmental Aquatic Reserve Management Plan* in November 2010, and amended the Plan in January 2017.
43. The primary focus of the *Cherry Point Environmental Aquatic Reserve Management Plan* is to:
 - . . . protect, enhance and restore habitats used by Cherry Point herring stock, salmon, migratory and resident birds, Dungeness crab, groundfish rearing areas and marine mammals, as well as the protection of submerged aquatic vegetation and water quality. . . (p. 4).
44. The *Cherry Point Environmental Aquatic Reserve Management Plan* states:
 - . . . the aquatic environment of Cherry Point: provides essential habitat and irreplaceable biological and ecological functions; is a portion of Treaty-protected usual and accustomed (U&A) grounds and stations of local Native American Indians; and provides significant economic benefits, recreational opportunities and other social values. . . (pp. 4 and 5).
45. The *Cherry Point Environmental Aquatic Reserve Management Plan* recognizes that:
 - . . . A number of species and habitats addressed in this plan have

experienced declines over the past 40 years, such as the Cherry Point herring stock, which has shrunk from approximately 15,000 tons to between 800 and 2,100 tons over the last ten years. Other key species in decline include Puget Sound Chinook salmon, bull trout, and certain species of rockfish, surf scoter, and Southern Resident orca whales . . . (pp. 1 and 2).

46. The *Cherry Point Environmental Aquatic Reserve Management Plan* specifically excludes certain areas, including the three existing industrial piers, from the Reserve (pp. 10 and 11).
47. The *Cherry Point Environmental Aquatic Reserve Management Plan* constitutes a further study that indicates a need for the subject amendments and the Washington Department of Natural Resources has taken action to further restrict leasing and development of additional piers in the Aquatic Reserve through a Commissioner's Order dated January 3, 2017.
48. According to the Washington State Department of Ecology website:

. . . on December 22, 2020 a BNSF train derailed at mile post 111.7 near Custer, WA. Ten rail cars derailed with several overturning, spilling Bakken crude oil. Three of those cars leaked oil and caught fire. . . An estimated 28,962 gallons of oil were lost in the incident. Much of that amount burned up, evaporated or was recovered afterward, leaving 5,400 to 8,000 gallons unrecovered. . .
49. Other areas of the U.S. and Canada have experienced community impacts and environmental degradation associated with fossil fuel industry accidents since the adoption of the Cherry Point UGA in 1997. Protecting public safety is a core element of the police power and the County recognizes that it is a fundamental responsibility of local government to establish and enforce laws protecting the welfare, safety and health of the public as allowed under the Tenth Amendment of the US Constitution.
50. Since the 1997 establishment of the Cherry Point UGA, one of the changed conditions considered by the County is the increased knowledge of the impacts of climate change, including reduced snowpack, the potential impacts of sea level rise, the potential for increased and more intense storm activity and resultant flooding and potential impacts on public infrastructure and the impacts of increased temperatures on public health and safety and flooding. These climate impacts have been summarized in a variety of reports prepared by the University of Washington's Climate Impacts Group which are part of the record for this decision. The ordinance requires evaluation and consideration of the greenhouse gas impacts of new industrial development on climate change and addresses the need for mitigation of those impacts at the federal, state and/or local level.

Public Interest

51. The Cherry Point area contains valuable fish and wildlife habitat (*Cherry Point Environmental Aquatic Reserve Management Plan*, DNR, amended 2017).
52. The Cherry Point UGA is a unique location, with important attributes, for industry (Whatcom County Comprehensive Plan, pp. 2-54 to 2-56). Existing industries provide high wage jobs and a substantial tax base (*Employment at Cherry Point*, Hodges, Rucker, and McCafferty, 2019).
53. The Cherry Point UGA text, goals and policies in the Whatcom County Comprehensive Plan, including the subject amendments, recognize the value of existing industrial uses and the importance of marine waters, fish and wildlife habitat, air quality and a healthy climate.
54. The subject comprehensive plan amendments should not adversely affect the overall rate or distribution of population growth, employment growth, development, and conversion of land as envisioned in the comprehensive plan. The Whatcom County Comprehensive Plan allocated an additional 890 jobs for the Cherry Point UGA for the 2013-2036 planning period. The *Employment at Cherry Point* report from 2014 estimated that there were 2,100 – 2,200 jobs in the Cherry Point industrial area at that time (p. 3). The *Employment at Cherry Point* report from 2019 estimates 3,318 jobs and indicates that, between 2014-2019, “. . . roughly 1,100 jobs have been added . . .” (pp. 6 and 14). However, most of the 700 jobs at Alcoa Intalco Works, along with related jobs, were lost with the shutdown of the aluminum smelter. Growth projections will be updated in the next periodic update of the Comprehensive Plan (due by June 2025). These updated projections will take into account conditions at that time and expectations for the future.
55. The subject comprehensive plan amendments should not adversely affect ability of the county and/or other service providers, such as cities, schools, water and/or sewer purveyors, fire districts, and others as applicable, to provide adequate services and public facilities including transportation facilities. The subject amendments do not expand the allowed uses that would be served by Fire District 7, which encompasses the Cherry Point UGA. Additionally, new residential uses are not allowed in the Cherry Point industrial area and, therefore, new students will not be generated by development in this area.
56. The closest designated Agricultural lands are over .80 of a mile to the southeast, the closest Mineral Resource designation is approximately .06 of a mile to the east, and the closest designated Forestry lands are over 4 miles to the southeast of the Cherry Point UGA. There is no evidence in

the record that the subject comprehensive plan amendments would adversely impact designated agricultural, forestry, or mineral resource lands.

57. The Cherry Point UGA goals and policies, including subject amendments, allow industrial uses in the Cherry Point UGA that provide family wage jobs and contribute to the tax base of the County and special purpose districts. The subject amendments allow existing fossil fuel facilities, along with certain improvements, as outright permitted uses subject to certain thresholds. Fossil fuel facility expansions are allowed by conditional use permit where newly established thresholds are exceeded while requiring appropriate environmental analysis and addressing impacts to public safety and the environment. Such planning is in the public interest.

Spot Zoning

58. "Illegal spot zoning" means a zoning action by which a smaller area is singled out of a larger area or district and specially zoned for a use classification totally different from, and inconsistent with, the classification of surrounding land and not in accordance with the Comprehensive Plan. Spot zoning is zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole (WCC 20.97.186).
59. The subject proposal does not involve nor facilitate illegal spot zoning.

Development Regulation Amendments

60. The subject amendments modify text of the Whatcom County SEPA rules (WCC 16.08), the Zoning Code (WCC 20), and Project Permit Procedures (WCC 22.05)
61. Pursuant to WCC 22.10.060(2), in order to approve development regulation amendments the County must find that the amendments are consistent with the Whatcom County Comprehensive Plan.

SEPA Code Amendments

62. Whatcom County Comprehensive Plan Policy 10A-6 states "Aim to meet or exceed national, state, and regional air quality standards. Work with the Northwest Clean Air Agency to ensure compliance with applicable air quality standards."
63. Whatcom County Comprehensive Plan Policy 10A-9 is to "Cooperate with state and federal agencies and neighboring jurisdictions to identify and protect threatened and endangered fish and wildlife species and their habitats."

64. Whatcom County Comprehensive Plan Goal 10D is to “Strengthen the sustainability of Whatcom County’s economy, natural environment, and built communities by responding and adapting to the impacts of climate change.”
65. Whatcom County Comprehensive Plan Goal 10L is to “Protect and enhance ecosystems that support native fish and wildlife populations and habitat.”
66. The Washington State Department of Ecology adopted a “Clean Air Rule,” which included greenhouse gas emission limits, in 2016 (Washington Administrative Code or WAC 173-442). The Clean Air Rule was developed under the authority granted in RCW 70.94 (Washington Clean Air Act) and RCW 70.235 (Limiting Greenhouse Gas Emissions). The Clean Air Rule was challenged and the Thurston County Superior Court issued a ruling in March 2018 that prevented Ecology from implementing the Clean Air Rule regulations. However, the Washington Supreme Court reversed the Superior Court in part on January 16, 2020, upholding the Clean Air rule as it relates to regulating stationary sources (Case No. 95885-8).
67. A [Directive of the Governor](#) (# 19-18), dated December 19, 2019, states:
- . . . I hereby direct the Department of Ecology to adopt rules by September 1, 2021, to strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects with significant environmental impacts.
- . .
- The rules should be uniform and apply to all branches of government, including state agencies, political subdivisions, public and municipal corporations and counties. The rules should cover major industrial projects and major fossil fuel projects; and establish uniform methods, processes, procedures, protocols or criteria that ensure a comprehensive assessment and quantification of direct and indirect greenhouse gas emissions resulting from the project.
- Rules for cumulative environmental assessments and reporting should include . . . Methods, procedures, protocols, criteria or standards for mitigation of greenhouse gas emissions, as necessary to achieve a goal of no net increase in greenhouse gas emissions . . .
68. The Washington State Department of Ecology sent an e-mail “Notice of Rulemaking for Proposed New Chapter 173-445 WAC – Greenhouse Gas Assessment for Projects Rulemaking” on May 1, 2020. An associated document entitled “[Preproposal Statement of Inquiry](#)” on Ecology’s website stated:

The Department of Ecology (Ecology) is beginning rulemaking as per

the Directive of the Governor #19-18. The purpose of this rulemaking is to create a new rule under Chapter 173-445 WAC Greenhouse Gas Assessment for Projects (GAP Rule). This rule will address analysis and mitigation of greenhouse gas emissions for environmental assessments of industrial and fossil fuel projects.

It is anticipated that the GAP Rule will be adopted by the Department of Ecology and will prescribe the methodologies for analyzing the lifecycle greenhouse gas impacts of large facilities under the State Environmental Policy Act. It is also anticipated that the GAP Rule will take into account the provisions of SB 5126 and possibly, the impacts of HB 1091 pertaining to reducing carbon intensity of transportation fuels. The provisions of SB 5126 and HB 1091 are described in paragraph 68 below. The GAP Rule provisions will be incorporated into a new rule, WAC 173-445, contained in the Washington Administrative Code and will apply statewide to all jurisdictions, including Whatcom County. According to the Governor's directive, the new rule is to "strengthen and standardize the consideration of climate change risks, vulnerability, and impacts in environmental assessments for major projects...". The Governor has modified the original directive to extend the expected completion date for the rule to December 31, 2021.

69. On April 25, 2021, the Washington State Legislature adopted SB 5126, the Climate Commitment Act. This legislation, at Sections 8 and 9, establishes a cap and invest system to regulate greenhouse gas emissions from industrial sources producing over 25,000 metric tons per year of emissions and will apply to several of the existing industrial sources in the Cherry Point UGA as "covered entities". The legislation provides for rulemaking by the Department of Ecology to implement the provisions of the bill. The legislation is to take effect on January 1, 2023. The legislation requires that a cap and invest system be designed to reduce greenhouse gas emissions from covered entities in a manner that will meet the greenhouse gas emission limits established by the Legislature, which are: a 95% reduction below 1990 levels by 2050, with interim economy-wide emissions limits of 45% below 1990 levels by 2030 and 70% below 1990 levels by 2040 with the state achieving net zero emissions by 2050. The legislation, in Section 10, contains amendments to the State Environmental Policy Act, RCW 43.21C. The amendments preempt cities and counties from implementing a charge or tax based exclusively on the quantity of greenhouse gas emissions for a stationary source, preclude denial of a permit for new or expanded facilities with emissions covered by the legislation and also preempt the Department of Ecology's Clean Air Rule. The legislation, at Section 10 (9)(e), contains the following language regarding mitigation of greenhouse gas emissions from facilities covered by the legislation: "A lead agency under chapter 43.21C RCW or a permitting agency shall allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under this act and under any greenhouse gas mitigation

requirements for covered emissions under chapter 43.21C RCW by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period.” The legislation also provides that entities responsible for greenhouse gas emissions below the thresholds for “covered entities” may register as an “opt-in entity” or may register as a “general market participant” and reduce the entity’s greenhouse gas emissions through the cap and invest program.

70. In the 2021 session, the Legislature also adopted HB 1091, the Clean Fuel Standard. This legislation prescribes reductions in the carbon intensity of transportation fuels beginning January 1, 2023. The legislation addresses the downstream emissions of transportation fuels and would ultimately result in a 20 percent reduction in the carbon intensity of transportation fuels supplied for certain transportation uses by 2037 and could be extended beyond that date to provide further reductions. The GAP Rule may incorporate discussion of how this downstream emission reduction should be considered in analyzing and mitigating the greenhouse gas impacts of fuels produced by refineries.
71. The Washington State Legislature passed the Clean Energy Transformation Act (CETA) in the 2019 legislative session. CETA commits the State of Washington to an electricity supply free of greenhouse gas emissions by 2045. CETA will address indirect emissions for electricity supplied to facilities by utilities. The GAP Rule may address how these indirect emissions should be treated in environmental reviews for major facilities where lifecycle greenhouse gas analysis will be required and the County will be required to follow the provisions of the GAP Rule when it is finalized.
72. The subject amendments modify the County’s SEPA rules to require applicants for certain fossil fuel and renewable fuel projects to submit additional information on a number of topics including greenhouse gas and other emissions, tanker and barge traffic, stormwater, wastewater, and risk of spills and explosions. These provisions are intended to provide the SEPA Responsible Official with more information in order to make reasoned decisions on threshold determinations and possible mitigation of impacts. These provisions are consistent with the SEPA Rules established in Chapter 197-11 of the Washington Administrative Code.
73. The subject amendments include provisions on SEPA’s relationship to federal, state, and regional regulations (see WAC 197-11-158(4)). It is anticipated that these provisions will harmonize with the GAP Rule and the provisions of state legislation such as SB 5126 and HB 1091, if and when they become effective.
74. The subject amendments modify the County’s SEPA rules by adding provisions relating to air quality & climate and plants & animals. These

topics are specifically listed as "elements of the environment" under the State SEPA Rules (WAC 197-11-444).

75. The subject amendments include provisions that the decision maker may condition or deny projects (conditioning includes mitigating measures). This authority is already granted under RCW 43.21C.060, which states ". . . Any governmental action may be conditioned or denied pursuant to this chapter. . ." (the State Environmental Policy Act). These provisions may need to be further harmonized with the GAP Rule and/or the provisions of SB 5126 if and when the GAP Rule and the legislation become effective.
76. While State government is taking action to address air quality and greenhouse gas emissions, the County finds that the subject amendments will also provide assistance at the local government level in fulfilling responsibilities under SEPA. The provisions also allow reliance on SEPA analysis and mitigation by state, regional or federal entities under certain circumstances.

Zoning Code Amendments

77. The Cherry Point UGA is zoned Light Impact Industrial (LII) and Heavy Impact Industrial (HII). There are approximately 470 acres in the LII zone and 6,560 acres in the HII zone.
78. The subject amendments modify the LII zone, HII zone, Cherry Point Industrial District, Major Project Permits, and Definitions sections of the Whatcom County Zoning Code (Title 20).
79. Whatcom County Comprehensive Plan Goal 2H is to "Preserve private property rights while recognizing the importance of the rights of the community, including protecting the natural environment and conserving resources."
80. Whatcom County Comprehensive Plan Goal 7A is to "Promote a healthy economy providing ample opportunity for family-wage jobs for diverse segments of the community, which is essential to the quality of life in the area."
81. Whatcom County Comprehensive Plan Policy 7A-2 is to "Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses."
82. Whatcom County Comprehensive Plan Policy 7J-1 is to "Support creation of job opportunities for local residents, especially family wage jobs to decrease unemployment and underemployment."

83. The Zoning Code, as modified by the subject amendments, preserves private property rights and fosters economic development by continuing to allow a wide array of industrial land uses in the Cherry Point UGA. In the LII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, communications, and other similar uses. In the HII zone, allowed uses include manufacturing (except new fossil fuel refineries), fabrication, printing, storage, boat building and repair, power plants (except coal-fired plants), and solid waste handling facilities.
84. Additionally, the HII zone amendments allow continued operation, maintenance, and certain improvements to existing refineries and transshipment facilities (WCC 20.68.068).
85. Whatcom County Comprehensive Plan Goal 2G is to "Encourage citizen participation in the decision making process." Policy 2G-1 is to "Examine and improve methods to notify affected property owners of proposed land use changes."
86. The subject Zoning Code amendments provide greater public review of certain land uses that could impact public safety, transportation, and the environment. Specifically, the expansion of existing fossil fuel refineries and existing fossil fuel transshipment facilities beyond specified thresholds requires a conditional use permit in the HII zone (WCC 20.68.153 and WCC 20.68.154). The conditional use permit process requires notice, a public hearing, evaluation of the proposal for compliance with the approval criteria, and a decision by the hearing examiner. Existing operations, certain specified accessory uses (WCC 20.68.068) and expansions below the specified thresholds remain outright permitted uses under the amendments. New renewable fuel refineries which reduce lifecycle greenhouse gas emissions are permitted uses under the amendments.
87. Whatcom County Comprehensive Plan Policy 2CC-16 was adopted in 2017 (Ordinance 2017-027). This Policy, which is being modified by the subject amendments, stated:

The County shall undertake a study to be completed if possible by December of 2017 to examine existing County laws, including those related to public health, safety, development, building, zoning, permitting, electrical, nuisance, and fire codes, and develop recommendations for legal ways the County may choose to limit the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas exports from the Cherry Point UGA . . . Based on the above study, develop proposed Comprehensive Plan amendments and associated code and rule amendments. . .

88. The subject amendments prohibit entirely new fossil fuel refineries and new fossil fuel transshipment facilities (WCC 20.66.204, 20.68.204 and .205). Potential impacts from new refineries and associated transshipment facilities may include: Increased pollutant emissions to the air, increased chance of crude oil or refined product spills, increased chance of fire or explosion, increased rail traffic that can impact other modes of transportation (e.g. hold up motor vehicle, school bus, or emergency vehicle traffic at railroad crossings), increased chance of derailment, and increased vessel traffic.
89. The Whatcom County Comprehensive Plan states "Whatcom County lies within the influence of the convergent plate margin between the Pacific and North American Plate termed the Cascadia Subduction Zone. Regionally-extensive and damaging earthquakes, termed mega-thrusts, are possible when stress generated between the subducting Pacific Plate and over-riding North American Plate is released. . ." (Chapter 10, p. 10-12). Because new refineries and transshipment facilities would transport and process flammable and toxic materials there is heightened concern, based upon the geology of the region, that these facilities could increase risk to both public safety and the environment.
90. There are currently five oil refineries in Washington State. Two are in Whatcom County, two are in Skagit County, and one in Pierce County. Whatcom County has approximately 3% of the State's population, but 40% of the State's refineries. The County has accepted its fair share of such facilities in the state and region and wants to limit the local impacts on the community and environment of further concentration of such facilities.
91. The subject amendments prohibit new coal fired power plants in the HII zone (WCC 20.68.207).
92. According to the National Institute of Health's National Library of Medicine website in 2020:

. . . Air pollution from coal-fired power plants cause serious risk to human health. Coal-fired power plants emit 84 of the 187 hazardous air pollutants identified by the U.S. Environmental Protection Agency. These pollutants may cause cancer, according to the National Toxicology Program.

Hazardous air pollution released by coal-fired power plants can cause a wide range of health effects, including heart and lung diseases. Exposure to coal power plant pollution can damage the brain, eyes, skin, and breathing passages. It can affect the kidneys, lungs, and nervous and respiratory systems. Exposure can also affect learning, memory, and behavior.

. . . Coal-fired power plants are the biggest industrial sources of mercury and arsenic in the air. Mercury pollutes lakes, streams, and rivers, and builds up in fish. People who eat large amounts of fish from contaminated lakes and rivers are at the greatest risk of exposure to mercury.

. . . People who work at or live near coal-fired power plants have the greatest health risks from coal pollution. . .

93. The subject amendments continue to allow other types of power plants in the HII zone, but would prohibit coal-fired power plants because of the risks to the local community, public health, and environment.
94. Whatcom County Comprehensive Plan Policy 10D-10 is to "Create updates to Whatcom County land use policies and development regulations to support renewable energy development goals."
95. The subject amendments allow renewable fuel refineries as a permitted use in the HII zone (WCC 20.68.070 and .071).
96. The Whatcom County Comprehensive Plan states that ". . . Cherry Point is also important historically and culturally to the Coast Salish people, and part of the usual and accustomed fishing area for five treaty tribes, reserved under the Treaty of Point Elliot of 1855. . ." (Chapter 2, p. 2-54). Comprehensive Plan Policy 2CC-11 states:

It is the policy of Whatcom County to limit the number of industrial piers at Cherry Point to the existing three piers, taking into account the need to . . . Recognize federal actions upholding treaty rights. . .

97. The United States Department of the Army, Corps of Engineers denied a permit for a new pier under Section 10 of the Rivers and Harbors Act on May 9, 2016 because ". . . the proposed project would violate the Lummi Indian Nation's tribal Treaty Rights to access and utilize usual and accustomed fishing areas. . ."
98. The subject Zoning Code amendments implement the Comprehensive Plan by prohibiting new piers, docks, and wharves in the HII zone (WCC 20.68.206 and WCC 20.74.055). The Zoning Code amendments will also provide consistency with the Cherry Point Aquatic Reserve Management Plan and the order of the Commissioner regarding further aquatic leasing for piers, docks and wharves.

Project Permit Procedure Amendments

99. Whatcom County Comprehensive Plan Goal 2D is to "Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner."

100. Whatcom County Comprehensive Plan Policy 7G-1 is to "Recognize the natural environment as a major asset and manage environmental resources accordingly. We need both economic prosperity and environmental sustainability."

101. Whatcom County Comprehensive Plan Policy 10A-2 is to:

Protect the environment through a comprehensive program that includes voluntary activity, education, incentives, regulation, enforcement, restoration, monitoring, acquisition, mitigation, and intergovernmental coordination.

102. RCW 88.40 is entitled "Transport of Petroleum Products – Financial Responsibility." This State law, at RCW 88.40.005, indicates:

The legislature recognizes that oil and hazardous substance spills and other forms of incremental pollution present serious danger to the fragile marine environment of Washington state. It is the intent and purpose of this chapter to define and prescribe financial responsibility requirements for vessels that transport petroleum products as cargo or as fuel across the waters of the state of Washington and for facilities that store, handle, or transfer oil or hazardous substances in bulk on or near the navigable waters.

103. This State law requires a tank vessel that carries oil as cargo in bulk to demonstrate financial responsibility to ". . . meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses" (RCW 88.40.020).

104. WAC 480-62 is entitled "Railroad Companies – Operations." This State code, at WAC 480-62-300(2), requires any railroad company that transports crude oil in Washington to submit to the Washington Utilities and Transportation Commission a statement that contains:

- (a) All insurance carried by the railroad company that covers any losses resulting from a reasonable worst case spill.
- (b) Coverage amounts, limitations, and other conditions of the insurance.
- (c) Average and largest crude oil train, as measured in barrels, operated in Washington by the railroad company in the previous calendar year.
- (d) Information sufficient to demonstrate the railroad company's ability to pay the costs to clean up a reasonable worst case spill

of oil including, but not necessarily limited to, insurance, reserve accounts, letters of credit, or other financial instruments or resources on which the company can rely to pay all such costs.

105. The State Legislature adopted Engrossed Substitute House Bill (ESHB) 1578 in 2019. This bill amended the "Vessel Oil Spill Prevention and Response" law (RCW 88.46), the "Oil and Hazardous Substance Spill Prevention and Response" law (RCW 90.56), and other provisions of state law.

106. ESHB 1578 states:

The legislature finds that a variety of existing policies designed to reduce the risk of oil spills have helped contribute to a relatively strong safety record for oil moved by water, pipeline, and train in recent years in Washington state. Nevertheless, gaps exist in our safety regimen, especially deriving from shifts in the modes of overwater transportation of oil and the increased transport of oils that may submerge or sink, contributing to an unacceptable threat to Washington waters, where a catastrophic spill would inflict potentially irreversible damage on the endangered southern resident killer whales. . . Therefore, it is the intent of the legislature to enact certain new safety requirements designed to reduce the current, acute risk from existing infrastructure and activities of an oil spill that could eradicate our whales, violate the treaty interests and fishing rights of potentially affected federally recognized Indian tribes, damage commercial fishing prospects, undercut many aspects of the economy that depend on the Salish Sea, and otherwise harm the health and well-being of Washington residents. . . (Section 1).

107. Tug escorts have been required for larger loaded oil tankers for years. ESHB 1578 amended state law to require certain smaller oil tankers to be under the escort of tugs, require the Department of Ecology to develop and maintain a model to assess current and potential future risks of oil spills from vessels in Washington waters, and modify reporting requirements for railroad cars and pipelines that transport crude oil within the state.

108. While the Washington State legislature has enacted laws relating to the transportation and handling of fossil fuels, there have been a number of accidents involving fossil fuel refineries and transportation of fossil fuels in North America over the years. These accidents, involving flammable and/or toxic materials, have impacted local communities and the environment. On July 5, 2013, an oil train derailment, explosion and fire in Lac Magentic, Quebec resulted in the deaths of 47 people. On December 22, 2020, a train derailment and fire occurred at Custer in Whatcom County. The Custer derailment and fire resulted in the loss of 29,000 gallons of crude oil and required an evacuation and extensive emergency

response. On June 10, 1999 an Olympic Pipe Line Company pipeline ruptured and spilled over 236,000 gallons of gasoline into Hanna and Whatcom Creeks resulting in the deaths of 3 young people.

109. Overall, the subject amendments seek to minimize or avoid additional risk to the local community and environment from fossil fuel facilities. The amendments are intended to heighten the level of review or, in certain cases, prohibit uses in order to protect public health, safety & welfare, fisheries industries, fish & wildlife habitat, and the environment.
110. However, in case of accidents, the subject amendments include proof of insurance requirements (WCC 22.05.125), as it is a matter of fairness that responsible parties mitigate the consequences of any accidents.

County Charter and GMA Takings Provisions

111. Whatcom County Charter Section 1.11 states, "The rights of the individual citizen shall be guaranteed under the Constitutions of the United States and the State of Washington. No regulation or ordinance shall be drafted and adopted without consideration of and provisions for compensation to those unduly burdened."
112. GMA Planning Goal 6, relating to property rights, states "Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions" (RCW 36.70A.020(6)).
113. The Whatcom County Prosecuting Attorney's Office has rendered an opinion that the subject Comprehensive Plan and code amendments do not unduly burden property owners and do not take private property for public use.

CONCLUSIONS

1. The subject Whatcom County Comprehensive Plan amendments are consistent with the approval criteria in WCC 22.10.060(1).
2. The subject development regulation amendments are consistent with the approval criteria in WCC 22.10.060(2).

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

Section 1. Amendments to the Whatcom County Comprehensive Plan are hereby adopted as shown on Exhibit A.

Section 2. Amendments to Whatcom County Code 16.08 (State Environmental Policy Act) are hereby adopted as shown on Exhibit B.

Section 3. Amendments to Whatcom County Code Title 20 (Zoning) are hereby adopted as shown on Exhibit C.

Section 4. Amendments to Whatcom County Code 22.05 (Project Permit Procedures) are hereby adopted as shown on Exhibit D.

Section 5. Adjudication of invalidity of any of the sections, clauses, or provisions of this ordinance shall not affect or impair the validity of the ordinance as a whole or any part thereof other than the part so declared to be invalid.

ADOPTED this _____ day of _____, 2021.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

ATTEST:

Dana Brown-Davis, Council Clerk

Barry Buchanan, Chairperson

APPROVED as to form:

() Approved () Denied

/s/ Karen Frakes

Civil Deputy Prosecutor

Satpal Sidhu, Executive

Date: _____

Exhibit A

Comprehensive Plan (Chapter 2)

Major Industrial Urban Growth Area / Port Industrial

Cherry Point – Text

Change Second Paragraph of Cherry Point Text

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

Amend Policy 2CC-11

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

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

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

31 **Amend Policy 2CC-16**

32 ~~2CC-16: The County will, through its adopted SEPA policies and applicable permitting processes, shall~~
33 ~~undertake a study to be completed if possible by December of 2017 to examine existing County laws,~~
34 ~~including those related to public health, safety, development, building, zoning, permitting, electrical,~~
35 ~~nuisance, and fire codes, and develop recommendations for legal ways the County may choose to seek to~~
36 ~~limit the negative impacts on public safety, transportation, the economy, and environment from new fossil~~
37 ~~fuel facilities, including new or expanded crude oil, coal, liquefied petroleum gases, and natural gas~~
38 ~~exports from facilities within the Cherry Point UGA above levels in existence as of March 1, 2017.~~

39
40
41 ~~To provide clear guidance to current and future county councils on the County's legal rights,~~
42 ~~responsibilities and limitations regarding interpretation and application of project evaluation~~
43 ~~under Section 20.88.130 (Major Projects Permits) of the Whatcom County Code. The County should~~
44 ~~consider any legal advice freely submitted to the County by legal experts on behalf of a variety of~~
45 ~~stakeholder interests, and make that advice publicly available.~~

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

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

54
55 **Amend Policy 2CC-17**

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

60
61 Add a new policy as follows:

62 **Policy 2CC-18:** This chapter is intended to allow the on-going operation, maintenance, and
63 repair of existing facilities, modifications designed to comply with
64 adoption and implementation of new product standards and fuel
65 standards, operational and site safety improvements, environmental
66 improvements, and regulatory compliance projects.

67

68 Essential Public Facilities

69 Amend Policy 2WW-4

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

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

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

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

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

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

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

Exhibit B

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 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, 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 by the SEPA Responsible Official in consultation with the Planning Commission and the County Council. The expert evaluation or Worksheet shall analyze the “significance” of direct, indirect, and cumulative impacts 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 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;
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 information in the expert evaluation or the Worksheet 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.”

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

37

38 **16.08.160 Substantive authority.**

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

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

- 42 1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in
43 environmental documents prepared pursuant to this chapter; and
- 44 2. Such conditions are in writing; and
- 45 3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and
- 46 4. The county has considered whether other local, state, or federal mitigation measures applied to the proposal are
47 sufficient to mitigate the identified impacts; and
- 48 5. Such conditions are based on one or more policies or provisions in subsection D, E, or F of this section and cited in
49 the license or other decision document.

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

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

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

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

- 75 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 76 Whatcom County Shoreline Management Program
- 77 Whatcom County Subdivision Ordinance
- 78 Whatcom County Solid Waste Management Plan
- 79 Whatcom County Critical Areas Ordinance
- 80 All official land use controls adopted by Whatcom County.

81 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
82 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific
83 adverse environmental impact has been adequately addressed by an existing rule or law of another agency with
84 jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In
85 making this deferral, the County shall base or condition its project approval on compliance with these other existing
86 rules or laws. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to address
87 a particular impact of a project or would be less restrictive than County Code.

88 F. Specific Environmental Policies

89 1. Air Quality and Climate:

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

96 b. Climate change is resulting in increased temperatures, reduced summertime snowpack, reduced stream flows
97 and increased stream temperatures, more intense storms with increased potential for flooding and damage to roads,
98 dikes and critical infrastructure such as water and waste treatment facilities. While climate change is a global
99 phenomenon, it is the policy of Whatcom County to do its fair share to reduce local emissions and to ensure that
100 projects with a likelihood of more than a moderate adverse impact on air quality and climate that may be
101 authorized by the County address greenhouse gas emissions impacts.

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

109 (a) Emissions Assessed: The SEPA Responsible Official shall require assessment of the lifecycle
110 greenhouse gas emissions of the project, with a focus on the reasonably foreseeable, probable, direct and
111 indirect, gross greenhouse gas emissions caused by the project, consistent with WAC 197-11-060(4)(d).
112 The assessment shall estimate the incremental gross direct emissions change from a baseline established in
113 current Prevention of Significant Deterioration and/or Minor New Source Review Permit Technical
114 Support Documents.

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

120 (c) Mitigation: The County decision-maker shall require the applicant to identify options for mitigation of
121 greenhouse gas emissions that are caused by the project pursuant to WAC 197-11-660 and WCC
122 16.08.160.B, and in accordance with the following considerations:

123 (1) Mitigation measures must be imposed on the permittee as provided in WAC 197-11-660(1)(d).
124 The County decision maker must require mitigation to address the project's direct greenhouse gas
125 emissions and may require mitigation to address the project's indirect emissions. Voluntary
126 additional mitigation may occur, per WAC 197-11-660(1)(d). Mitigation shall not be required for
127 projects shown in SEPA assessment to reduce greenhouse gas emissions of existing facilities on a
128 lifecycle basis.

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

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

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

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

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

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

158 (d) Should a Washington state greenhouse gas assessment and mitigation permitting or project requirement
159 be adopted, such as a rule adopted pursuant to the Washington Governor's Directive 19- 18, Environmental
160 Assessment of Greenhouse Gas Emissions, Title 16.08.160.F.1.b.i shall no longer apply as of the effective
161 date of the requirement or rule. Should a new Federal greenhouse gas assessment and mitigation permitting
162 or project requirement with the same force and effect of Title 16.08.160.F.1.b.i be adopted Title
163 16.08.160.F.1.b.i shall no longer apply as of the effective date of the requirement or rule.

164 ii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:

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

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

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

175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217

2. Plants and Animals:

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

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

c. The decision-maker may condition or deny the project to mitigate its specific adverse environmental impacts if the decision-maker finds that a proposed project would reduce or damage rare, uncommon, unique or exceptional plant or wildlife habitat, designated wildlife corridors, or habitat diversity for plants or animals species of substantial educational, ecological, or economic value, or interfere with treaty rights, clean water rights, or endangered species protection.

16.08.175 Purpose of this article and adoption by reference.

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

WAC

- 197-11-700 Definitions.
- 197-11-702 Act.
- 197-11-704 Action.
- 197-11-706 Addendum.
- 197-11-708 Adoption.
- 197-11-710 Affected tribe.
- 197-11-712 Affecting.
- 197-11-714 Agency.
- 197-11-716 Applicant.
- 197-11-718 Built environment.
- 197-11-720 Categorical exemption.
- 197-11-721 Closed record appeal.
- 197-11-722 Consolidated appeal.
- 197-11-724 Consulted agency.
- 197-11-726 Cost-benefit analysis.
- 197-11-728 County/city.
- 197-11-730 Decision maker.
- 197-11-732 Department.
- 197-11-734 Determination of nonsignificance (DNS).
- 197-11-736 Determination of significance (DS).
- 197-11-738 EIS.

218	197-11-740	Environment.
219	197-11-742	Environmental checklist.
220	197-11-744	Environmental document.
221	197-11-746	Environmental review.
222	197-11-750	Expanded scoping.
223	197-11-752	Impacts.
224	197-11-754	Incorporation by reference.
225	197-11-756	Lands covered by water.
226	197-11-758	Lead agency.
227	197-11-760	License.
228	197-11-762	Local agency.
229	197-11-764	Major action.
230	197-11-766	Mitigated DNS.
231	197-11-768	Mitigation.
232	197-11-770	Natural environment.
233	197-11-772	NEPA.
234	197-11-774	Nonproject.
235	197-11-775	Open record hearing.
236	197-11-776	Phased review.
237	197-11-778	Preparation.
238	197-11-780	Private project.
239	197-11-782	Probable.
240	197-11-784	Proposal.
241	197-11-786	Reasonable alternative.
242	197-11-788	Responsible official.
243	197-11-790	SEPA.
244	197-11-792	Scope.
245	197-11-793	Scoping.
246	197-11-794	Significant.
247	197-11-796	State agency.
248	197-11-797	Threshold determination.
249	197-11-799	Underlying governmental action.

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

- 252 A. “Direct Emissions” means greenhouse gas emissions associated with Fossil Fuel Refineries, Fossil Fuel
 253 Transshipment Facilities, Renewable Fuel Refineries, or Renewable Fuel Transshipment Facilities based upon
 254 the refining and processing of Fossil Fuels located within the Cherry Point Heavy Industrial area.”
- 255 B. “Early notice” means the county’s response to an applicant stating whether it considers issuance of a
 256 determination of significance (DS) likely for the applicant’s proposal (mitigated determination of
 257 nonsignificance (MDNS) procedures).
- 258 C. “ERC” means environmental review committee established in WCC 16.08.045.

259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295

D. "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), state clean air act (Chapter 70A.15 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.45 RCW) or any directly superseding provisions of state or federal law.

E. Gross emissions mean the actual incremental emissions increases or decreases resulting from the project. Gross emissions do not include reductions or additions from offsite mitigation or lifecycle impacts.

F. Indirect emissions mean emissions resulting from offsite generation of power purchased for consumption at the facility and emissions from other contiguous or adjacent utilities directly supplying the facility (examples include cogeneration of steam, offsite hydrogen production).

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

H.C. "Ordinance" means the procedure used by the county to adopt regulatory requirements.

I.D. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee.

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

Exhibit C

296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324

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 Facilities.

325 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

326 20.68.050 Permitted uses.

327 Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of
328 Chapter 20.80 WCC, Supplementary Requirements, and Chapter ~~22.0520.84~~ WCC, Project Permit Procedures, Variances,
329 Conditional Uses, Administrative Uses and Appeals, the Whatcom County SEPA Ordinance, the Whatcom County
330 Subdivision Ordinance and the Whatcom County Shoreline Management Program- and implementing regulations. ~~The~~
331 ~~purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use~~
332 ~~identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular~~
333 ~~subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity~~
334 ~~listed below.)~~

335 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
336 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

- 337 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate
338 animals intended for processing within 24 hours.
- 339 (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered
340 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.
- 341 (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:
 - 342 (a) State waste discharge permit (Chapter 173-216 WAC);
 - 343 (b) Industrial stormwater permit – general permit (Chapter 173-226 WAC);
 - 344 (c) An NPDES permit (Chapter 90.48 RCW and Chapter 173-220 WAC).

345 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
346 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

347 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
348 prefabricated wood products; wooden containers and cooperage.

349 .054 The following are permitted uses except as otherwise prohibited:

- 350 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill
351 products.
- 352 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;
353 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,
354 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- 355 ~~(3) Refining and storage of petroleum and asphalt.~~
- 356 ~~(34)~~ The manufacture and processing of rubber and plastic products.
- 357 ~~(45)~~ Leather tanning and finishing.
- 358 ~~(56)~~ The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
359 mineral products.
- 360 ~~(67)~~ Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting,
361 refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture
362 of miscellaneous metal products.
- 363 (7) Storage of asphalt in the Heavy Impact Industrial Zone.

364 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
365 fixtures, structural metal and stamping.

366 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
367 materials handling equipment; machine tools and dies; and special and general industrial equipment.

368 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

369 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
370 railroad equipment, bicycles and motorcycles.

371 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except as
372 conditionally permitted under WCC 20.68.153 and .154 or prohibited under WCC 20.68.200.

373 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
374 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
375 (Chapter 20.14 WCC) or water sources, except that coal-fired power plants are prohibited.

376 .061 Heavy construction contractors.

377 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
378 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
379 noncommercial uses, excluding state education facilities and correction facilities.

380 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
381 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
382 shall contain no indoor plumbing but may be served with electrical power for lighting.

383 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
384 the Heavy Impact Industrial District in the Bellingham UGA.

385 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

386 .066 Marijuana production or processing facility.

387 .068 Existing Fossil Fuel Refineries, existing Fossil Fuel Transshipment Facilities, Renewable Fuel Refineries, Renewable
388 Fuel Transshipment Facilities, piers and docks legally established as of [XXX effective date of ordinance], provided that
389 when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must
390 disclose any capacity changes defined under WCC 20.68.153 and WCC 20.68.154 to the county permitting authorities.
391 Provided that a conditional use permit is not required by WCC 20.68.153 or WCC 20.68.154, permitted uses include repairs,
392 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following.:

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

394 (2) Office space.

395 (3) Parking lots.

396 (4) Radio communications facilities.

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

398 (6) Storage buildings.

399 (7) Routine maintenance and repair.

400 (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with
401 federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing
402 biomass with petroleum.

403 (9) Road projects and bridges.

- 404 (10) Temporary trailers.
- 405 (11) Heating and cooling systems.
- 406 (12) Cable installation.
- 407 (13) Information technology improvements.
- 408 (14) Continuous emissions monitoring systems or analyzer shelters.
- 409 (15) Wastewater and stormwater treatment facilities.
- 410 (16) Replacement and upgrading of existing equipment.
- 411 (17) Safety upgrades.
- 412 (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial zoning district.
- 413 (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial zoning district.
- 414 (20) Renewable fuel production and shipment.
- 415 (21) Transferring Fossil Fuels during emergency scenarios where contingencies require Fossil Fuels to be moved;
- 416 (22) Necessary Fossil Fuels transfers during turn-arounds or maintenance periods.
- 417 (23) Storage tanks, provided that the County decision maker shall include in any approval of an application for storage tanks
418 at an existing Fossil Fuel Refinery, Fossil Fuel Transshipment Facility, Renewable Fuel Refinery, or Renewable Fuel
419 Transshipment Facility a condition that the storage tank shall only be used in the manner described in the application and
420 approved in the permit. The application and permit shall describe the intended use of the storage tank, including the type of
421 fuel to be stored and, if located within a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the storage tank will or
422 will not be used for transshipment.
- 423 (24) Other similar structures or activities.
- 424 .070 New Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, except that new piers, docks, or wharves
425 in the Cherry Point Industrial District are prohibited.
- 426 .071 Expansion of existing legal Renewable Fuel Refineries or Renewable Fuel Transshipment Facilities, provided that the
427 expansion is for Renewable Fuels only.
- 428 .081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.
- 429 .082 Marine port facilities, except as prohibited under WCC 20.68.200.
- 430 .085 Type I solid waste handling facilities.
- 431 .086 Type II solid waste handling facilities.
- 432 **20.68.100 Accessory uses.**
- 433 .101 Employee recreation facilities and play areas.
- 434 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
435 district.
- 436 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.
- 437 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
438 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.
- 439 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

440 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
441 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

442 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
443 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

444 .108 Electric vehicle rapid charging stations and battery exchange facilities.

445 .109 Inter-refinery shipments of refined products and Intermediate Materials such as unfinished oils and blendstocks.

446 20.68.130 Administrative approval uses.

447 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
448 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
449 (Exh. A), 2006).

450 20.68.150 Conditional uses.

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

452 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

459 .153 Expansion of existing Fossil Fuel Refineries. For purposes of this section, an expansion is any development (including
460 otherwise permitted or accessory uses), vested after the effective date of this ordinance, that meets any one of the following
461 applicable thresholds:

- 462 A. Cumulatively increases the facility's total Maximum Atmospheric Crude Distillation Capacity for Fossil Fuels by
463 more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations
464 conducted by a licensed professional engineer; or
- 465 B. Cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000
466 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a
467 licensed professional engineer in accordance with 20.97.230.1; or
- 468 C. Increases the frequency of Fossil Fuel unit train shipments by rail unloaded or loaded at an existing facility in excess
469 of limits, if any, established by County, State or Federal authorities (where applicable) as of [XXX effective date of
470 ordinance] or the effective date of a previously approved conditional use permit, whichever is more recent.

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

472 .154 Expansion of existing Fossil Fuel Transshipment Facilities. For purposes of this section, an expansion is any
473 development (including otherwise permitted or accessory uses), vested after the effective date of this ordinance, that
474 cumulatively increases the facility's total Maximum Transshipment Capacity for Fossil Fuels by more than 10,000 barrels (or
475 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with
476 20.97.230.1.

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

478

479

480

481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520

.1554 Treatment and storage facilities for hazardous wastes subject to the following:

- (1) The ~~eight~~ criteria for a conditional use listed under WCC ~~22.05.026-20.84.200~~.
- (2) The most current state siting criteria under Chapter 173-303 WAC.
- (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources, types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10 percent of the total local hazardous waste stream.
- (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been constructed consistent with state requirements.
- (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types, amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit, following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be documented by county staff.
- (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and inspection reporting procedures.

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

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

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

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

.158 Athletic fields.

.180 Major passenger intermodal terminals.

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

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

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

- (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

- 521 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 522 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 523 (f) This 1,500-foot buffer does not apply to:
- 524 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
525 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 526 (ii) Inert landfills;
- 527 (3) Inert landfills shall be located at least 500 feet from the following:
- 528 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 529 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 530 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 531 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 532 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 533 (f) This 500-foot buffer does not apply to:
- 534 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
535 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 536 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
537 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
538 county or state road right-of-way;
- 539 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
540 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
541 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 542 (6) The facility or site has complied with the provisions of WCC ~~22.05.026~~20.84.200 and all other ordinances and laws
543 regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as
544 well as state and federal regulations concerning solid waste facilities and sites;
- 545 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
546 closure plan includes:
- 547 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
548 activity, with seeding to be accomplished annually but no later than September 30th; and
- 549 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
550 covered through the financial assurance for post-closure activities;
- 551 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
552 of WCC 20.80.300 (Landscaping);
- 553 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
554 delineated wellhead protection area;
- 555 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
556 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
557 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
558 the boundary of the airport property;
- 559 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
560 protect the value and enjoyment of existing adjacent uses.

561 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
562 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
563 processed as a major development project pursuant to Chapter 20.88 WCC.

564 **20.68.200 Prohibited uses.**

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

567 .201 Reserved.

568 .202 Adult businesses.

569 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
570 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
571 products derived thereof; and primary metal industries.

572 .204 New Fossil Fuel Refineries.

573 .205. New Fossil Fuel Transshipment Facilities.

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

575 .207 Coal-fired power plants.

576 (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-
577 075, 1991).

578 **20.68.250 Minimum lot size.**

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

581 **20.68.255 Minimum lot frontage.**

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

585 **20.68.350 Building setbacks.**

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

587 **20.68.400 Height limitations.**

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

590 **20.68.450 Lot coverage.**

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

592 **20.68.500 Open space.**

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

594 **20.68.550 Buffer area.**

595 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
596 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual

597 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
598 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

599 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
600 structures shall be established consistent with the following options:

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

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

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

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

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

616 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
617 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

618 .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
619 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
620 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,
621 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

622 **20.68.600 Sign regulations.**

623 Sign regulations shall be administered pursuant to WCC 20.80.400.

624 **20.68.650 Development criteria.**

625 (Ord. 96-056 Att. A § A1, 1996).

626 **20.68.651 Landscaping.**

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

628 **20.68.652 Off-street parking and loading.**

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

632 **20.68.653 Drainage.**

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

636
637
638

639
640

641
642
643

644
645
646

647

648
649
650
651

652
653
654

655
656
657

658
659
660
661

662
663
664

665
666
667

668
669

20.68.654 Driveways.

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

20.68.655 Access.

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

20.68.656 Maintenance.

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

20.68.657 Enclosure.

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

20.68.700 Performance standards.

20.68.701 *Pollution control and nuisance abatement.*

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

20.68.702 *Heat, light and glare.*

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

20.68.703 *Ground vibration.*

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

20.68.704 *Odors.*

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

20.68.705 *Noise.*

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

20.68.706 *Toxic gases and fumes.*

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

20.68.707 *Liquid pollutants.*

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

670
671
672
673

674
675
676
677
678
679
680

681

682

683

684

685

686

687

688

689

690

691

692

693

694

695

696

697

698

699

700

701

702

703

704

20.68.708 Appearance.

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

20.68.709 Marijuana odor.

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

705

706

CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

707

20.74.010 Purpose.

708

709

710

711

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

712

20.74.020 Applicability.

713

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

714

20.74.030 Permitted uses.

715

(1) Primary permitted uses:

716

717

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

718

719

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

720

721

722

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

723

20.74.040 Accessory uses.

724

725

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

726

20.74.050 Conditional uses.

727

728

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

729

20.74.055 Prohibited uses.

730

731

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

732

(1) New piers, docks, or wharves.

733

734

(2) Conversion of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facility to a Fossil Fuel Refinery or Fossil Fuel Transshipment Facility.

735

20.74.060 Master site plan requirements.

736

737

738

739

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

740

741

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

742 (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
743 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
744 shall be waived.

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

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

752 **20.74.070 Minimum lot size and parcelization.**

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

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

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

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

761 (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
762 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

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

765 **20.74.080 Design standards.**

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

770 **20.74.090 Traffic demand management.**

771 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
772 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
773 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
774 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

779 **20.74.100 Drainage.**

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

782

783

784 CHAPTER 20.88 MAJOR PROJECT PERMITS

785 20.88.100 Major project permits.

786 .110 All major developments shall, prior to any construction, obtain a major project permit.

787 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
788 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

789

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

793 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
794 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
795 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application
796 based on the following criteria:

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

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

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

803

804 (3) Prior to commencement of any site preparation or construction activities, will obtain, if required, a state aquatic lands
805 lease, and all other necessary permit consultations and authorizations, including federal determinations that the project will
806 not interfere with treaty fishing rights of tribal nations, the limits set forth in the “Magnuson Amendment” under 33 U.S.C. §
807 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal
808 Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean
809 Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into
810 waters of the U.S.) and a state Section 401 water quality certification.

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

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

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

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

819 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
820 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
821 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
822 the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a
823 major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting
824 requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it
825 has fulfilled that condition.

826 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
827 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
828 and provide relief from the specific standards and requirements thereof.

829 20.88.200 Procedure.

830 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the
831 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
832 part of the application for a major project permit. The master plan document shall include all elements required per the
833 department’s administrative manual.

834 .210 Development Standards. The ~~master plan~~major project permit may propose standards that will control development of
835 the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as
836 height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade
837 treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to
838 county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally
839 within an urban growth area, concurrence of the affected city will be required.

840 .215 Procedures. ~~Master Plan~~Major project permit review shall be conducted under current review procedures. Other land use
841 reviews may be conducted concurrently with the ~~master plan~~major project permit review.

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

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

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

847 (2) Minor changes are those amendments which may affect the dimensions, location and type of
848 improvements of facilities; provided, the amendment maintains the basic character of the major project
849 permit application approved by the county council including general type and location of dwellings and

850 other land use activities, arrangement of buildings, density of the development, and provisions of the
851 project to meet density bonus and open space requirements, or capacity limits, and maintains required
852 conditions or mitigation.

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

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

857 .220 through .265 *Reserved.*

858 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a
859 conditional use permit.

860 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that
861 project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

862 .280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District
863 requires a major project permit, the major project permit shall be concurrently processed with other required land use permits
864 including but not limited to: planned unit development or development agreement.

865

866

867

868

869

870

871

872

873

874

875

876

877

878

879

880

881

882

883

884

885

CHAPTER 20.97 DEFINITIONS

20.97.160.2 Fossil Fuels.

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

20.97.160.3 Fossil Fuel Refinery.

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

20.97.160.4 Fossil Fuel Transshipment Facility.

"Fossil Fuel Transshipment Facility" is an entire complex, consisting of its individual units, equipment, or components, which in aggregate, engages primarily in the process of off-loading Fossil Fuels from one or more modes of shipment (i.e., rail, truck, pipeline, etc.), then storing and/or loading such Fossil Fuels without processing through a Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or Renewable Fuel Storage and Distribution Facilities.

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), state clean air act (Chapter 70A.15 RCW) or state limiting greenhouse gas emissions law (Chapter 70A.45 RCW) **or any directly superseding provisions of state or federal law.**

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.

20.97.201 Lifecycle Greenhouse Gas Emissions

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

925 **20.97.230 Maximum Atmospheric Crude Distillation Capacity.**

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

930 **20.97.230.1 Maximum Transshipment Capacity**

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

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

- 940 (i) loading equipment;
- 941 (ii) offloading equipment;
- 942 (iii) pumps and/or compressors;
- 943 (iv) bulk storage;
- 944 (v) piping hydraulics; or
- 945 (vi) any combination of the above.

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

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

952 **20.97.340.3 Renewable Biomass.**

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

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

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

956 (3) Animal waste material and animal byproducts.

957 (4) Slash and pre-commercial thinnings.

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

959 (6) Algae.

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

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

963 **20.97.340.4 Renewable Fuel.**

964 “Renewable Fuel” means liquid or gaseous fuels produced from renewable biomass, woody biomass or landfill wastes and
965 limited in terms of blending with fossil fuels. Renewable fuels shall also include fuels produced from renewable electricity
966 including hydrogen and synthetic fuels. Common renewable fuels include ethanol, renewable diesel and biodiesel:

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

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

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

978 **20.97.340.5 Renewable Fuel Refinery.**

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

981 **20.97.340.6 Renewable Fuel Transshipment Facility.**

982 “Renewable Fuel Transshipment Facility” is an entire complex, consisting of its individual units, equipment, or components
983 which in aggregate engages primarily in the process of off-loading Renewable Fuels and/or Renewable Biomass from one
984 mode of shipment (i.e., rail, truck, pipeline, etc.) then storing and/or loading such fuels without processing through a
985 Renewable Fuel Refinery or Fossil Fuel Refinery, onto another mode of shipment to be transported outside of the designated
986 zoning district boundaries, such as the Cherry Point Industrial District. This definition shall exclude Small Fossil or
987 Renewable Fuel Storage and Distribution Facilities.

988 **20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities.**

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

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

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

994 **20.97.434.1 Technical committee.**

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

998 *NOTE: Renumber definitions in existing code as necessary.*

Exhibit D

999

1000 **22.05.026 Conditional use permits.**

1001 (1) Application. Conditional use permit applications shall be processed per the provisions of this chapter.

1002 (2) Conditional use permits shall be nontransferable unless said transfer is approved by the hearing
1003 examiner.

1004 (3) Approval Criteria. Before approving an application, the director or hearing examiner shall ensure
1005 that any specific standards of the zoning district defining the use are fulfilled, and shall find adequate
1006 evidence showing that the proposed use at the proposed location:

1007

1008 (a) Will be harmonious and in accordance with the general and specific objectives of Whatcom
1009 County’s Comprehensive Plan, zoning regulations, and any other applicable regulations.

1010 (b) Will be designed, constructed, operated, and maintained so as to be harmonious and
1011 appropriate in appearance with the existing or intended character of the general vicinity, and
1012 that such use will not change the essential character of the same area.

1013 (c) If located in a rural area (as designated in the Comprehensive Plan), will be consistent with
1014 rural land use policies as designated in the rural lands element of the Comprehensive Plan.

1015 (d) Will not be hazardous or disturbing to existing or future neighboring uses.

1016 (e) Will be serviced adequately by necessary public facilities such as highways, streets, police
1017 and fire protection, drainage structures, refuse disposal, water, sewers, and schools; or that the
1018 persons or agencies responsible for the establishment of the proposed use shall be able to
1019 provide adequately any such services.

1020 (f) Will not create excessive additional requirements at public cost for public facilities and
1021 services, and will not be detrimental to the economic welfare of the community.

1022 (g) Will not involve uses, activities, processes, materials, equipment, and conditions of operation
1023 that will be detrimental to any persons, property, or the general welfare by reasons of excessive
1024 production of traffic, noise, smoke, fumes, glare or odors.

1025 (h) Will have vehicular approaches to the property which shall be so designed as not to create an
1026 interference with traffic on surrounding public streets.

1027 (i) Will not result in the destruction, loss or damage of any natural, scenic, or historic feature of
1028 major importance.

1029

1030

1031

1032

1033

1034

1035 (4) Approval Criteria for expansion of Fossil Fuel Refineries pursuant to WCC 20.68.153 and expansion
1036 of Fossil Fuel Transshipment Facilities pursuant to WCC 20.68.154. Before approving an application, the
1037 hearing examiner shall ensure that any specific standards of the zoning district defining the use are
1038 fulfilled, and shall find adequate evidence showing that:

1039 (a) The conditional use permit approval criteria listed under WCC 22.05.026(3) are met;

1040 (b) Within shorelines, if applicable, County approval shall be contingent upon approval of a
1041 shoreline permit;

1042 (c) The applicant has documented to the County decision maker (as applicable):

1043 (i) All of the anticipated types and volumes of substances to be processed, stored, or
1044 transferred in bulk with the proposed expansion,

1045 (ii) Changes in the Maximum Transshipment Capacity or the Maximum Atmospheric
1046 Crude Distillation Capacity occurring as a result of the proposed expansion, as
1047 applicable; and

1048 (iv) The mode of shipment vessels to be loaded or unloaded with the proposed
1049 equipment and/or as a result of the proposed expansion.

1050 The permit shall be limited exclusively to those types and volumes of materials or products
1051 as documented and approved.

1052 (d) Insurance requirements meet the provisions of WCC 22.05.125.

1053 (e) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation
1054 Concurrency Management, and Chapter 16.24 WCC, Commute Trip Reduction.

1055 (f) Mitigation of impacts to other services including fire and emergency response capabilities,
1056 water supply and fire flow, to address risks created by expansions.

1057 (g) Plans for stormwater and wastewater releases have been approved.

1058 (h) Prior to commencement of any site preparation or construction activities, all necessary state
1059 leases shall be acquired for any piers or aquatic lands improvements, and it shall be
1060 demonstrated to the zoning administrator that the project applicant has met any federal or state
1061 permit consultation requirements, including tribal treaty rights or the provisions of the Magnuson
1062 Amendment through state and federal permitting decisions.

1063 (i) The County decision maker may approve a conditional use permit with a condition to obtain
1064 relevant leases and complete any necessary federal and state permitting requirements, and may
1065 restrict the conditional use permittee from undertaking site preparation or construction activities
1066 until it has fulfilled that condition.

1067 (j) The permittee must inform the county permitting authorities of a change in the aforementioned
1068 disclosures so that the department can document current capacity levels to ensure that the
1069 cumulative thresholds under WCC 20.68.153 or WCC 20.68.154 (as applicable) have not been
1070 exceeded.

1071 (k) The County decision maker shall include, in any approval of an application for an expansion,
1072 as per 20.68.153 or 20.68.154, a condition that the permitted equipment shall only be used in
1073 the manner described by the project proponent in the application and approved in the permit.

1074 The application shall describe the intended use, including the type of fuel to be stored and, if
1075 located at a Fossil Fuel Refinery or Renewable Fuel Refinery, whether the equipment will or will
1076 not be used for transshipment.

1077 (54) Revisions. The hearing examiner may administratively approve revisions to conditional use permits;
1078 provided, that the proposed changes are within the scope and intent of the original permit. “Within the
1079 scope and intent of the original permit” shall mean the following:

1080 (a) Lot coverage and height may be increased a maximum of 10 percent from the provisions of
1081 the original permit; provided, that:

1082 (i) Revisions involving new structures not shown on the original site plan shall require a new
1083 permit;

1084 (ii) Any revisions shall not exceed height, lot coverage, setback, or any other requirements
1085 of the regulations for the area in which the project is located; and

1086 (iii) Any revisions shall be reviewed for consistency with the Comprehensive Plan;

1087 (b) Landscaping may be added to a project without necessitating an application for a new
1088 permit; provided, that the landscaping is consistent with conditions (if any) attached to the original
1089 permit and is consistent with the regulations for the area in which the project is located;

1090 (c) The use authorized pursuant to the original permit is not changed;

1091 (d) No additional over-water construction will be involved for shoreline conditional use permits;

1092 (e) No substantial increase in adverse environmental impact will be caused by the project revision.
1093 (Ord. 2020-045 § 1 Exh. A).

1094 **22.05.110 Final decisions – Type I, II, and III applications.**

1095 (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
1096 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
1097 comply with all applicable codes.

1098 (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)
1099 shall either grant or deny the application or appeal.

1100 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
1101 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
1102 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
1103 of Whatcom County.

1104 (b) Requirements:

1105 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
1106 compliance with the conditions, modifications and restrictions.

1107 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1108 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section
1109 22.05.125.

1110 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
1111 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
1112 based on the record to support the decision.

1113 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
1114 provided herein.

1115 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
1116 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
1117 032 § 1 (Exh. A)).

1118 **22.05.120 ~~Recommended~~ Recommendations and final decisions ~~to county council.~~ Type**
1119 **IV applications**

1120 (1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to
1121 grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions,
1122 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
1123 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
1124 objectives of Whatcom County.

1125 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
1126 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
1127 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
1128 and conforms to the county’s comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1129 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
1130 Chapter 42.36 RCW.

1131 (4) For planned unit developments and major project permits the following shall apply:

1132 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
1133 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1134 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
1135 following the conclusion of the open record hearing.

1136 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
1137 (4)(c)(iii) of this section:

1138 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
1139 calendar days after receiving the hearing examiner’s recommendation.

1140 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1141 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
1142 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
1143 written findings that a specified amount of additional time is needed to process a specific application or project
1144 type, per RCW 36.70B.080(1).

1145 (5) The county council’s final written decision may include conditions when the project is approved and shall state the
1146 findings of fact upon which the decision is based.

1147 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
1148 with the conditions, modifications and restrictions.

1149 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1150 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1151 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
1152 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code, applicable
1153 county code, the county comprehensive plan if applicable, and the county shoreline management program, including
1154 compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the county code, and the county’s adopted
1155 SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1156 22.05.125 Proof of insurance for hazards created in the County

1157 For expansion projects requiring approval under a Conditional Use Permit or Major Project Permit at new or existing
1158 facilities per WCC 20.68.153 or WCC 20.68.154, financial assurance for the benefit of Whatcom County shall be required.
1159 For such expansion projects, a permittee must demonstrate proof of financial assurance (such as trust funds, letters of credit,
1160 insurance, self-insurance, financial tests, corporate guarantees, payment bonds, or performance bonds) sufficient to comply
1161 with the financial responsibility requirements set forth in State and Federal law, as applicable, prior to permit approval by a
1162 Whatcom County Decision Maker. If the financial assurance is in the form of insurance policies, the policies must name
1163 Whatcom County as an additional insured and provide Whatcom County with a certificate of insurance to that effect.

1164 The permittee must maintain the approved level of financial assurance coverage for new or expanded uses while operating
1165 the permitted facility. At the request of the permittee, the Whatcom County Decision Maker may approve new or altered
1166 forms of financial assurance to meet the requirements of this section, provided that the new or altered form is consistent with
1167 the scope and intent of the original permit condition.

1168
1169 22.05.126 Supplemental Procedures for Fossil Fuel Refinery and Fossil Fuel Transshipment
1170 Facility Permitting

1171
1172 (1) Upon request of the County, Fossil Fuel Refineries or Fossil Fuel Transshipment Facilities shall fill out a supplemental
1173 checklist for the purpose of determining whether a project qualifies as a permitted use or requires a conditional use
1174 permit as specified in WCC 20.68.153 or WCC 20.68.154. The checklist shall contain supplemental information to
1175 include:

1176 (a) Impact on Maximum Atmospheric Crude Distillation Capacity (MACDC), Maximum Transshipment Capacity, and
1177 fossil fuel unit train shipment frequency from the proposed activity;

1178 (b) Confirmation of the acceptance of potential permit conditions as outlined in 20.68.068 subsection (23);

1179 (c) Applicant name, property owner information, and parcel information as appropriate; and

1180 (d) An attestation by the applicant regarding the accuracy of the information contained therein, signed by the applicant
1181 and certified by a Notary Public.

1182 (2) Confidential Business Information

1183 (a) For the purpose of checklists, permit applications and all other materials submitted by Fossil Fuel Refineries or
1184 Fossil Fuel Transshipment Facilities for activities in the Cherry Point Heavy Impact Industrial District, the following
1185 shall apply:

1186 (i) The applicant shall clearly identify information the applicant considers to be Confidential
1187 Business Information, not subject to disclosure under chapter 42.56 RCW (Public Records
1188 Act) and/or WCC 1.32.090. If such information is contained in submittal documents, the
1189 applicant shall submit two copies of materials for County use as follows:

1190 1. A copy with Confidential Business Information clearly identified, with a watermark
1191 indicating the document contains such information; and

1192 2. A copy with Confidential Business Information redacted, and a watermark added
1193 indicating that the document does not contain such information and is suitable for public
1194 disclosure.

1195
1196
1197
1198
1199
1200
1201
1202
1203
1204
1205
1206
1207
1208
1209
1210
1211
1212
1213
1214
1215
1216
1217
1218
1219
1220
1221
1222
1223
1224

- (ii) Confidential Business Information may include:

 - 1. Processing equipment technical specifications on internals, sidestream/pumparounds, design specifications, and process controls;
 - 2. Process unit design, instrumentation and controls;
 - 3. Feedstock, product, or process unit pump capacity and configuration; and
 - 4. Contractual agreements and all terms contained therein.
 - (iii) The information listed above is not meant to be all-inclusive. Other information related to the applicant's processing activities, feedstock and product purchase, and/or sale and transportation methods and costs may be Confidential Business Information and, if so, shall be marked as such when submitted.
 - (iv) Calculation and permit material submittals may contain, but are not required to contain any of the above information.
 - (v) Where no increase to MACDC, Maximum Transshipment Capacity, or unit train frequency is proposed, submittal of Confidential Business Information specifically related to the criteria of WCC 20.68.153 and WCC 20.68.154 shall not be required to be submitted with the permit application materials.
- (3) Where calculations are to be submitted for Maximum Transshipment Capacity of Maximum Atmospheric Crude Distillation Capacity, the applicant shall provide calculations performed and certified by a professional engineer licensed in the state of Washington, clearly indicating the impact on MACDC and Transshipment Capacity. Confidential Business Information shall be clearly identified as required by WCC 22.05.126(2)(a)(i) above.
- (4) If the County receives a public records request for records containing information the applicant has clearly indicated to be Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i), the County will notify the applicant of the request and provide the applicant with a reasonable period of time of at least 1530 days to file for an injunction under RCW 42.56.540 to prevent the disclosure of such information. If the applicant does not file for an injunction within the period of time set by the County, the County will disclose the records containing the information that the applicant has designated as Confidential Business Information pursuant to WCC 22.05.126(2)(a)(i).