



Whatcom County

COUNTY COURTHOUSE
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Agenda Bill Master Report

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TITLE FOR AGENDA ITEM:

Resolution requesting the County Executive provide staff resources and funding to allow Cascadia Law Group to complete Contract No. 201708008 related to 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 transshipments from the Cherry Point UGA

SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution requesting the County Executive provide staff resources and funding to allow Cascadia Law Group to complete Contract No. 201708008 related to 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 transshipments from the Cherry Point UGA

HISTORY OF LEGISLATIVE FILE

Date:	Acting Body:	Action:	Sent To:
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Attachments: Cherry Point Resolution With Proposed Amendment from Special Committee of the Whole

Final Action: 01/29/2019
Enactment Date:
Enactment #:

4 RESOLUTION NO. 2019-004
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6 **REQUESTING THE COUNTY EXECUTIVE PROVIDE STAFF RESOURCES AND FUNDING**
7 **TO ALLOW CASCADIA LAW GROUP TO COMPLETE CONTRACT NO. 201708008**
8 **RELATED TO LEGAL WAYS THE COUNTY MAY CHOOSE TO LIMIT THE NEGATIVE**
9 **IMPACTS ON PUBLIC SAFETY, TRANSPORTATION, THE ECONOMY, AND**
10 **ENVIRONMENT FROM CRUDE OIL, COAL, LIQUEFIED PETROLEUM GASES, AND**
11 **NATURAL GAS TRANSSHIPMENTS FROM THE CHERRY POINT UGA**
12

13
14 **WHEREAS**, RCW 36.70A.020 (Planning goals) requires legislators to balance
15 multiple goals including (5) Economic development, and (10) Environment; and
16

17 **WHEREAS**, the Council has significant concerns about protecting our environment,
18 has spoken extensively about the need to limit the ability of the existing facilities being
19 converted into unrefined fossil fuel transshipment facilities because of the opportunity for
20 the significant health, safety and transportation impacts that would result if the amount of
21 unrefined fossil fuels transiting Whatcom County was to increase significantly; and
22

23 **WHEREAS**, the Council recognizes that the existing refineries have made recent
24 investments in facilities such as renewable fuel production and blending-which it believes
25 will continue; and
26

27 **WHEREAS**, the Council is committed to preserving the thousands of family wage
28 jobs of those employed by the refineries and their contractors while the transition from
29 refined fossil fuels to renewables is underway; and
30

31 **WHEREAS**, the Council has frequently expressed that one of its key concerns about
32 increased transshipments of unrefined fossil fuels is the resulting increase in vessel traffic
33 within the waters of Whatcom County that would expose critical species such as herring,
34 salmon and Southern Resident Orca whales to additional risks. The county wants to reduce
35 the risk of spills and collisions with marine mammals by preventing the increase in Puget
36 Sound tanker traffic that would occur if regional demand had to be augmented with refined
37 fuels brought in from other, likely less efficient and environmentally responsible refineries
38 from other parts of the world – by ensuring the refineries at Cherry Point can continue to
39 meet the demands of regional markets,.
40

41 **WHEREAS**, in the 2017 budget the County allocated \$150,000 for legal assistance
42 and contracted to spend \$75,000 with Cascadia Law Group to undertake items (1) and (2)
43 in the Scope of Work as provided in EXHIBIT "A"; and
44

45 **WHEREAS**, the first and second tasks were completed, but the third "*developing*
46 *proposed Comprehensive Plan amendments and associated code and rule amendments for*
47 *Council consideration*", was not and the relevant budget allocation has since expired, and
48

49 **WHEREAS**, lacking the resources to undertake its own research, councilmembers
50 with assistance from third parties, produced a preliminary draft containing proposed
51 changes to the County Comprehensive Plan and County Code, which could have unintended
52 consequences; and
53

1 **WHEREAS**, the Council has expressed goals for a more robust permitting, SEPA and
2 EIS processes related to new and expanded fossil fuel facilities in the County Council's and
3 October 9, 2018 and January 15, 2019 proposals; and
4

5 **WHEREAS**, the County Council has summited draft Comprehensive Plan, Title 20,
6 Title 22, and Tile 16 language related to new and expanded fossil fuel facilities at Cherry
7 Point on January 15, 2019 for the Planning Commission to consider; and
8

9 **WHEREAS**, the County Council recognizes the Council's proposal would benefit from
10 additional legal review and recommendations for Comprehensive Plan and Code language,
11 per the Scope of Work with Cascadia Law Group [Exhibit A], particularly with regard to
12 proposed language affecting waivers and exemptions from conditional use permitting that
13 may be too restrictive; and
14

15 **WHEREAS**, the County Council also recognizes the final language should, without
16 delay, allow minor projects associated with fossil fuel facilities, such as office expansion,
17 parking lots, regular maintenance, equipment replacement, accessory buildings, safety
18 upgrades, radio communications facilities, storage buildings, guard buildings, etc. that do
19 not expand capacity for fossil fuel shipments, processing, storage, and emissions at existing
20 fossil fuel facilities, nor result in substantive changes in uses of existing fossil fuel facilities;
21 and
22

23 **WHEREAS**, the County Council respectfully recognizes that the County Executive
24 and a majority of the Council have different perspectives on changes to regulations related
25 to Cherry Point, nonetheless the Council believes it is in the best interests of the community
26 to bring this issue to a conclusion sooner rather than later.
27

28 **NOW, THEREFORE, BE IT RESOLVED**, that in order for the Council to bring this
29 issue to a speedy conclusion the Council respectfully requests that the County Executive
30 approve up to an additional \$40,000 of the \$75,000 remaining of the original budget
31 allocation for the Cascadia Law Group to work with the Planning and Development Services
32 department as it assists the Council in its deliberations; and
33

34 **BE IT FURTHER RESOLVED**, that Council requests Planning and Development
35 Services (PDS) work with Cascadia Law Group to provide the County Council with draft
36 Comprehensive Plan and code language that addresses each of the following issues, and
37 where possible identifies and uses established code language from other jurisdictions, to be
38 forwarded to the Planning Commission, that:
39

- 40 a. Prohibits additional new fossil fuel refineries in Cherry Point beyond the existing
41 British Petroleum, Phillips 66 and Petrogras facilities as our community has
42 already taken on "our fair share" of the public health, safety and environmental
43 risks associated with fossil fuel facilities and does not deserve any additional
44 increase in risk that new facilities would bring; and
45
- 46 b. Prohibits any new crude oil transshipment facilities that have any other purpose
47 other than supplying raw materials to the existing refineries; and
48
- 49 c. Prohibits conversion of any existing refinery into a facility primarily serving as a
50 crude oil transshipment facility; and
51
- 52 d. Allows expansion of existing refining capacity in proportion to certain criteria,
53 such as a to a rolling five year projection of the combined regional population

- 1 growth of Washington State and British Columbia as determined by their
2 respective published government forecasts; and
3
- 4 e. Considers requiring an initial and updated greenhouse gas analysis each time a
5 refinery and/or storage capacity of an existing facility is expanded by more than
6 one (1) percent over the baseline ("Baseline") as of the date code changes are
7 adopted; and
8
- 9 f. Requires identification of "Facility Emissions" which are defined as the
10 greenhouse gas emissions associated with local fossil fuel facilities, including but
11 not limited to
12
- 13 I. the transportation within the borders of Whatcom County of refined and
14 unrefined fossil fuels to and from a facility located within the Cherry Point
15 Heavy industrial area, and
16
- 17 II. the refining and processing of fossil fuels located within the Cherry Point
18 Heavy industrial area; and
19
- 20 g. At a minimum require local mitigation of (such as carbon offset programs that are
21 deployed within Whatcom County's borders) Facility Emissions, above the
22 Baseline; and
23
- 24 h. Considers credits for the Net Positive environmental impacts of modifications to
25 facilities such as programs such as energy recovery from animal waste and when
26 calculating carbon offset obligations. "Net Positive" shall mean the net impact
27 after factoring in:
28
- 29 I. fossil fuel inputs for transportation, as well as reduced landfill use and
30 methane emissions in the case of animal or plant waste; and
31
- 32 II. fossil fuel inputs, environmental degradation, habit loss ect. in the
33 case of biofuels such as palm oil or corn grown for bio fuels; and
34
- 35 i. Aims to reduce the opportunity for the significant transportation, health and
36 safety risks to the community that would likely occur should the existing
37 refineries be converted to crude oil transshipment facilities by prohibiting the
38 construction of additional fossil fuel storage tanks above the current ratio of
39 Storage Capacity to Refining Capacity in existence as the date code changes are
40 adopted. For this section "Storage Capacity" is defined as total volume of all
41 tanks at a facility and "Refining Capacity" is defined as the average monthly
42 volume of refining, in the preceding calendar year; and
43
- 44 j. Considers that any expansion in storage or refining capacity greater than one (1)
45 percent above Baseline shall require ongoing identification of all responsible
46 parties involved in the transportation of crude and refined fossil fuels, the storage
47 and refining of such, and proof of insurance great enough to cover any
48 "Reasonable Worst Case Scenario" that could occur within the borders of
49 Whatcom County. The insurance shall be required for as long as the particular
50 refinery is operating and shall be increased annually to reflect any increase in the
51 Consumer Price Index; and
52

1 k. Recognizes that the term "Reasonable Worst Case Scenario" shall mean the
2 derailment and subsequent explosion, fire and extensive contamination of air,
3 soil, marine environments, all local public and private infrastructure, including but
4 limited to roads, buildings, parks and sewer systems. The scenario shall assume
5 the event occurs in high wind conditions, during an earthquake, in the downtown
6 core of Bellingham, involves a train of maximum possible operating length train,
7 travelling three times faster than normal, fully loaded with the most volatile
8 cargo transported to or from Cherry Point, transported in the least safe tankers in
9 use anywhere in North America, that the cleanup shall take a minimum of ten
10 years, require the relocation of all businesses and residents within a minimum of
11 a five mile radius and include the cost of fully compensating all the individuals
12 and businesses directly and indirectly affected. Please note this scenario is in
13 direct proportion to what happened during the Lac-Mégantic rail disaster which
14 involved a train of less than maximum size that occurred in Quebec, Canada on
15 July 6, 2013 and which five years on the community has yet to recover from.

16
17 **BE IT FURTHER RESOLVED that** Council requests the Planning and Development
18 department ensure any changes to the county code do NOT cause any of the following:

- 19
20 1. Unnecessarily delay the implementation of future safety upgrades that if not
21 made could potentially place the workers or environment at any risk.
22
23 2. Unnecessarily delay improvements that would have a positive impact on climate
24 change, such as increased efficiency, reduced pollution or greenhouse gas
25 emissions; and
26
27 3. "Catch 22's" where the County withholds permits until other agencies have issued
28 theirs, such as the Army Core of Engineers which will traditionally refuse to issue
29 a permit until the local government has approved the project; and
30
31
32 4. Contradictory language such as providing exemptions from the Conditional Use
33 Permit "CUP" for minor projects, but which later language then forbids being
34 issued because they are located in Cherry Point or are related to fossil fuels.

35
36 **ADOPTED** this 29th day of January, 2019.

37
38
39 ATTEST:

40
41
42 Dana Brown-Davis, Clerk of the Council

43
44
45 WHATCOM COUNTY COUNCIL
46 WHATCOM COUNTY, WASHINGTON

47
48 Rud Browne, Council Chair

49
50
51 APPROVED AS TO FORM:

52
53
Civil Deputy Prosecutor

EXHIBIT "A"
(SCOPE OF WORK)

1
2
3
4 The Contractor shall represent Whatcom County and assist in (1) examining existing
5 County laws including those related to public health, safety, development, building, zoning,
6 permitting, electrical, nuisance, and fire codes and develop recommendations for legal ways
7 the County may choose to limit the negative impacts on public safety, transportation, the
8 economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas
9 exports from the Cherry Point UGA above levels in existence as of March 1, 2017; (2)
10 providing clear guidance to current and future county councils on the County' s legal rights,
11 responsibilities and limitations regarding interpretation and application of project evaluation
12 under Section 20. 88. 130 (Major Projects Permits) of the Whatcom County Code; and (3)
13 based on the above study, developing proposed Comprehensive Plan amendments and
14 associated code and rule amendments for Council consideration as soon as possible.

Exhibit D

Whatcom County Code Title 16 Amendments

Amend WCC Chapter 16.08, State Environmental Policy Act (SEPA), as follows:

16.08.065 Purpose of this article and adoption by reference.

A. This article contains the rules for deciding whether a proposal has a “probable significant, adverse environmental impact” requiring an EIS to be prepared. This article also contains rules for evaluating the impacts of proposals not requiring an EIS. The county adopts the following sections by reference, as supplemented in this part:

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/initiation of scoping.
- 197-11-390 Effect of threshold determination.
- 197-11-800 Categorical exemptions.
- 197-11-880 Emergencies.
- 197-11-890 Petitioning Ecology to change exemptions.

B. The County also adopts supplemental procedures that shall be incorporated into SEPA review, including, but not limited to Whatcom County’s SEPA Worksheet for Fossil Fuel Facilities, New or Modified.

16.08.080 Use of exemptions.

A. Each department within the county that receives an application for a license, or, in the case of governmental proposals, the department initiating the proposal, shall determine whether the license and/or the proposal is exempt. The department's determination that a proposal is exempt shall be final and not subject to administrative review. If a proposal is exempt, none of the procedural requirements of this chapter apply to the proposal. The county shall not require completion of an environmental checklist for an exempt proposal.

B. In determining whether or not a proposal is exempt, the department shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the department shall determine the lead agency, even if the license application that triggers the department's consideration is exempt.

C. If a proposal includes both exempt and nonexempt actions, the county may authorize exempt actions prior to compliance with the procedural requirements of this chapter, except that:

1. The county shall not give authorization for:
 - a. Any nonexempt action,
 - b. Any action that would have an adverse environmental impact, or
 - c. Any action that would limit the choice of alternatives;
2. A department may withhold approval of an exempt action that would lead to modification of the physical environment, when such modifications would serve no purpose if nonexempt action(s) were not approved; and
3. A department may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

D. Proposals for Fossil Fuel Facilities, new or modified, are not exempt actions.

(Ord. 98-048 Exh. A; Ord. 84-122 Part 3 (part)).

16.08.090 Environmental Checklist

A. Except as provided in subsection D of this section, a completed environmental checklist (or a copy), in the form provided in WAC 197-11-960, shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this chapter; except, a checklist is not needed if the county and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The county shall use the environmental checklist to determine the lead agency and, if the county is the lead agency, for determining the responsible official and for making the threshold determination.

B. For private proposals, the county will require the applicant to complete the environmental checklist, providing assistance as necessary. For county proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

C. The county may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if anyeither of the following occurs:

1. The county has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration; or
3. The proposal is for a Fossil Fuel Facility, new or modified.

D. For proposals submitted as planned actions under WAC 197-11-164, the county shall use its existing environmental checklist form or may modify the environmental checklist form as provided in WAC 197-11-315. If a modified form is prepared, it must be sent to the Department of Ecology to allow at least a 30-day review prior to use. (Ord. 98-048 Exh. A; Ord. 84-122 Part 3 (part)).

E. For any proposed Fossil Fuel Facility, new or modified, the proponent will complete Whatcom County's SEPA Checklist, including the County's SEPA Worksheet for Fossil Fuel Facilities, New or Modified which shall be considered a part of the Checklist.

[NOTE: The Worksheet for Fossil Fuel Facilities, new or modified, will be developed and codified with the ordinance. The worksheet assists the Responsible Official and applicant to analyze the "significance" of impacts that may occur from continued or increased activity, including but not limited to analysis of both direct, indirect and cumulative impacts resulting from:

- windborne transport of burned fossil fuel emissions into Whatcom County;
- life cycle greenhouse gas emissions above existing levels;
- transits of tankers or barges and their support vessels that have the potential to interfere with commercial and treaty tribe fishing areas;
- releases of stormwater and wastewater to groundwater, marine waters, intertidal wetlands, streams within the shorelines, and to their headwaters].

16.08.105 Determination of Significance for Fossil Fuel Facilities, New or Modified.

The SEPA Responsible Official shall issue a determination of significance, requiring preparation of an EIS, for any Fossil Fuel Facility, new or modified, that does not apply for or qualify for the CUP exemption made available in WCC 20.84.230. The decision not to apply for a CUP exemption, or the Director’s determination that a Fossil Fuel Facility does not qualify for a CUP exemption, shall be determinative that an EIS is required under SEPA to address the environmental impacts described in WCC 16.08.121, in addition to other factors required by this chapter.

16.08.120 Preparation of EIS – Additional considerations.

A. Preparation of draft and final EISs (DEIS and FEIS) and draft and final supplemental EISs (SEIS) is the responsibility of planning and development services under the direction of the responsible official. Before the county issues an EIS, the responsible official shall be satisfied that it complies with this chapter and Chapter [197-11](#) WAC.

B. The DEIS and FEIS or draft and final SEIS shall be prepared by county staff, the applicant, or by a consultant selected consistent with WCC 16.08.200.B.2. If the responsible official requires an EIS for a proposal and determines that someone other than the county will prepare the EIS, the responsible official shall notify the applicant immediately after completion of the threshold determination. The responsible official shall also notify the applicant of the county’s procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

C. The county may require an applicant to provide information the county does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under this chapter or that is being requested from another agency. (This does not apply to information the county may request under another ordinance or statute.

D. The SEPA responsible official shall administer and have signatory authority for all EIS bank accounts.

E. Documents prepared by the applicant or their third party consultants, including draft reports (which shall be stamped “draft”), submitted to the County during the Draft EIS or Draft SEIS preparation process shall become public records to be posted on any county project websites and otherwise disclosed to the public, simultaneous with the first review of the documents by any County staff.

(Ord. 98-048 Exh. A; Ord. 84-122 Part 4 (part)).

16.08.121 Preparation of EIS – Analysis of Greenhouse Gases, Habitat and Species of Significance and Tribal Treaty Rights.

A. If a draft and final EIS or SEIS is required for a proposal, the EIS or SEIS shall include a greenhouse gas analysis which includes at a minimum:

- (1) All direct, on-site, emissions related to the project;
- (2) All emissions from electricity--to be generated off-site but used on-site--related to the project;
- (3) All indirect or lifecycle emissions associated with the extraction, transport and refining or processing of the bulk fossil fuel;
- (4) The emissions associated with combustion of the fuel;
- (5) If the project is a change in use, an analysis of the change in emissions compared to the existing use;
- (6) A plan to mitigate, through verified offsets, 100% of emissions in sections (1) through (4), herein, with a preference for mitigation that will occur in, or near, Whatcom County;

Nothing in this section will be used to justify the use of emissions offsets to allow for increases in toxic or air criteria pollution sources affecting human health. The Director shall consult regularly with the Council-appointed Climate Impacts Advisory Group on the adequacy of these criteria and the need for code amendments adding to or modifying these SEPA EIS requirements.

B. For Fossil Fuel Facilities, New or Modified, proposed within the county's shoreline jurisdiction or associated wetlands and streams and if a draft and final EIS or SEIS is required, the EIS or SEIS shall include an analysis of:

Any probable significant adverse environmental impacts on fisheries and marine mammals, including Cherry Point Herring, Chinook Salmon and Southern Resident Killer Whales. Any adverse impact to these species and their habitat in the Salish Sea will be presumed to be "significant" under SEPA in the absence of specific scientific proof to the contrary as to causation or probability; and

To ensure consistency with federal law, an analysis of proposal impacts on physical interference with past, current and future fishing rights of the Lummi, Nooksack, Suquamish, Swinomish and Tulalip Tribes, including data sets reviewed by these tribes in writing.

16.08.150 Purpose of this article and adoption by reference.

This article contains rules for using and supplementing existing environmental documents prepared under SEPA or National Environmental Policy Act (NEPA) for the county's own environmental compliance. The county adopts the following sections by reference:

WAC

- 197-11-164 Planned actions – Definitions and criteria.
- 197-11-168 Ordinances or resolutions designating planned actions – Procedure for adoption.
- 197-11-172 Planned actions – Project review.
- 197-11-600 When to use existing environmental documents.
- 197-11-610 Use of NEPA documents.
- 197-11-620 Supplemental environmental impact statement – Procedures.
- 197-11-625 Addenda – Procedures.
- 197-11-630 Adoption – Procedures.
- 197-11-635 Incorporation by reference –Procedures.
- 197-11-640 Combining documents.

(Ord. 98-048 Exh. A; Ord. 84-122 Part 6).

In the case of SEPA review for Fossil Fuel Facilities, New or Modified, the County hereby declines to exercise its option of adopting NEPA documents. The Department shall not utilize the Planned action or Addenda procedures in the evaluation of these facilities, in order to ensure that SEPA environmental review and SEPA appeals take place at the same time as review and appeals of the underlying project permit.

16.08.160 Substantive authority.

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

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

1. Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this chapter; and
2. Such conditions are in writing; and
3. The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

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

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

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

1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this chapter; and

2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

3. The denial is based on one or more policies identified in subsection D of this section and identified in writing in the decision document.

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

1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

d. Preserve important historic, cultural, and natural aspects of our national heritage;

e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

f. Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

3. [\[Placeholder: citing protection of treaty rights, clean water rights, and ESA as basis for action\]](#)

4. [Placeholder: archeological and cultural significance]

5. The County acknowledges the Nooksack River is critical habitat for important marine and freshwater species such as Chinook Salmon which are listed as threatened under the Endangered Species Act.

6. The county adopts by reference the policies in the following federal and state documents:

The WA Growth Management Act, RCW ch. 36.70A.

The WA Shoreline Management Act, RCW ch. 90.58.

The WA Water Pollution Control Act, RCW ch. 90.48.

The WA Clean Air Act, RCW ch. 70.94.

The Federal Clean Air Act, 42 U.S.C. § 7401, et seq.

Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1251, et seq.

73. The county adopts by reference the policies in the following county and state documents:

Washington State Archeological and Historic Preservation Laws, RCW ch. 27.53; ch. 43.334; ch. 68.60.

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

Whatcom County Shoreline Management Program

Whatcom County Subdivision Ordinance

Whatcom County Solid Waste Management Plan

Whatcom County Critical Areas Ordinance

Washington State Department of Natural Resources Cherry Point Aquatic Reserve Management Plan;

All official land use controls adopted by Whatcom County, including this chapter.

8. It is the policy of Whatcom County to ensure that actions do not increase probable significant adverse environmental impacts on: (a) the populations of fisheries and marine mammals, including Cherry Point Herring, Chinook Salmon and Southern Resident Killer Whales; (b) the effectiveness of population recovery efforts in the Salish Sea for Cherry Point Herring, Chinook Salmon and Southern Resident Killer Whales; or (c) net habitat recovery efforts within Whatcom County or adjacent jurisdictions. Any adverse impact to these species and their habitat in the Salish Sea will be presumed to be "significant" under SEPA in the absence of specific scientific proof to the contrary as to causation or probability.

9. It is the policy of Whatcom County, consistent with federal law, to ensure that actions do not interfere with current and future treaty-reserved fishing rights of the Lummi, Nooksack, Suquamish, Swinomish and Tulalip Tribes, and to ensure that project impact analysis under this policy include data sets reviewed by these tribes in writing.

10. It is the policy of Whatcom County to promote and ultimately achieve energy use by the public and private sectors that is 100% reliant on renewable energy. In furtherance of this goal, the County defines SEPA probable significant adverse environmental impacts related to air quality to mean emissions that result in an increase in one percent of County emissions (total County emissions identified in the most recent greenhouse gas inventory published by Whatcom County, as of the date of the application filing date), or twenty five thousand metric tons per year, whichever is less, based on single project emissions or the cumulative emissions for all projects applied for or approved on a single site (or aggregation of adjacent sites under common control) applied for over a period of five years.

(Ord. 98-048 Exh. A; Ord. 92-33 § 3; Ord. 84-122 Part 7 (part)).

Article VIII. Definitions

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.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
197-11-758 Lead agency.
197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
197-11-772 NEPA.
197-11-774 Nonproject.
197-11-775 Open record hearing.
197-11-776 Phased review.
197-11-778 Preparation.
197-11-780 Private project.
197-11-782 Probable.
197-11-784 Proposal.
197-11-786 Reasonable alternative.
197-11-788 Responsible official.
197-11-790 SEPA.

- 197-11-792 Scope.
- 197-11-793 Scoping.
- 197-11-794 Significant.
- 197-11-796 State agency.
- 197-11-797 Threshold determination.
- 197-11-799 Underlying governmental action.

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

- A. "Early notice" means the county's response to an applicant stating whether it considers issuance of a determination of significance (DS) likely for the applicant's proposal (mitigated determination of nonsignificance (MDNS) procedures).
- B. "ERC" means environmental review committee established in WCC 16.08.045.
- C. "Ordinance" means the procedure used by the county to adopt regulatory requirements.
- D. "Responsible official" shall mean the director of the department which bears responsibilities for the SEPA process or his/her designee, except that in the case of SEPA determinations for Fossil Fuel Facilities, New or Modified, the signature of the director in the exercise of SEPA responsibilities may not be delegated to a designee.
- E. "SEPA rules" means Chapter [197-11](#) WAC adopted by the Department of Ecology.

F. "Fossil Fuel Facilities"

Within the Heavy Impact Industrial (HII) District, Light Impact Industrial (LII) District, or Cherry Point Industrial (CP) District, facilities for (a) the transportation, storage, receipt, or processing of crude oil or natural gas; (b) the transportation, storage, receipt, or processing of their liquid or gaseous products, whether refined, manufactured or the result of petrochemical processes, regardless of origin; and (c) the servicing, bunkering, lightering, or refueling of ships of any kind used in transportation of any of the above.

G. "Fossil Fuel Facilities, New or Modified"

Any new or modified activity directly related to or supporting Fossil Fuel Facilities, including but not limited to any new facilities, new uses within existing or new facilities, changes in type of refining, manufacturing and processing use, increases in use volume authorized by prior permit, changes in the location of facilities, replacement of existing facilities, increases in storage volume or change in location of storage, increases in power or water demands, increases in volume or type of stormwater or wastewater releases, increases in production capacity, or changes in methods or volumes of transport of raw materials or processed product.

(Ord. 98-048 Exh. A; Ord. 84-122 Part 8).