

1 NOTE: Changes from existing text are shown within underlines and strikethroughs (Planning Commission  
 2 changes that differ from the County Council Resolution 2019-037 are also highlighted in yellow).

## Exhibit B

### CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

#### 16.08.090. Environmental checklist

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

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

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

34 The worksheet and supplemental information provided in the expert evaluation or Worksheet required for fossil and  
 35 renewable fuel facilities shall be considered procedures and criteria added to Whatcom County’s SEPA policies and  
 36 procedures pursuant to WAC 197-11-906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA

37 contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031. However, the expert evaluation or Worksheet may  
38 not be required if an environmental impact statement is prepared.

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

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

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

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

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

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

## 57 16.08.160 Substantive authority.

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

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

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

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

- 71 C. The county may deny a permit or approval for a proposal on the basis of SEPA so long as:
- 72 1. A finding is made that approving the proposal would result in probable significant adverse environmental impacts that  
73 are identified in a FEIS or final SEIS prepared pursuant to this chapter; and
- 74 2. A finding is made that there are no reasonable mitigation measures capable of being accomplished that are sufficient  
75 to mitigate the identified impact; and
- 76 3. The denial is based on one or more policies **or provisions** identified in subsection D **or F** of this section and identified  
77 in writing in the decision document.

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

- 80 D. The county designates and adopts by reference the following policies as the basis for the county’s exercise of SEPA  
81 authority pursuant to this section:
- 82 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve  
83 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
- 84 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- 85 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing  
86 surroundings;
- 87 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or  
88 other undesirable and unintended consequences;
- 89 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- 90 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- 91 f. Achieve a balance between population and resource use which will permit high standards of living and a wide  
92 sharing of life’s amenities; and
- 93 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable  
94 resources.
- 95 2. The county recognizes that each person has a fundamental and inalienable right to a healthful environment and that  
96 each person has a responsibility to contribute to the preservation and enhancement of the environment.
- 97 3. The county adopts by reference the policies in the following county documents:
- 98 Whatcom County Comprehensive Land Use Plan (inclusive of goal statements and all subarea components)
- 99 Whatcom County Shoreline Management Program
- 100 Whatcom County Subdivision Ordinance
- 101 Whatcom County Solid Waste Management Plan
- 102 Whatcom County Critical Areas Ordinance
- 103 All official land use controls adopted by Whatcom County.

104 **E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these**  
105 **SEPA policies are also the subject of federal, state and regional regulations. In deciding whether a project specific**  
106 **adverse environmental impact has been adequately addressed by an existing rule or law of another agency with**  
107 **jurisdiction, the County shall consult orally or in writing with that agency and may expressly defer to that agency. In**  
108 **making this deferral, the County shall base or condition its project approval on compliance with these other existing**  
109 **rules or laws. In deciding whether these regulations provide sufficient impact mitigation, the County shall consult orally**

110 or in writing with the responsible federal, state or other agency with jurisdiction and environmental expertise and may  
111 expressly defer to that agency. The County shall base or condition its project decision on compliance with these other  
112 existing regulations, rules, laws, or adopted enforceable plans. The County need shall not so defer if such regulations did  
113 not anticipate or are otherwise inadequate to address a particular impact of a project.

114  
115 Rationale for Changes (shown with highlighting): The replacement language  
116 above (the 2<sup>nd</sup> and 3<sup>rd</sup> sentences) is taken from the State SEPA rules (WAC 197-  
117 11-158(4)) to better reflect these State rules.

## 118 119 F. Specific Environmental Policies

### 120 1. Air Quality and Climate:

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

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

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

142  
143 Rationale for Changes (shown with highlighting): On October 24, 2019, the  
144 Planning Commission approved a motion to remove the proposed GHG mitigation  
145 requirements from the Zoning Code and keep proposed GHG provisions in SEPA  
146 (with further discussion on the SEPA language at a later date). The above changes  
147 would delete the reference to GHG mitigation in the Zoning Code. GHG  
148 mitigation through SEPA is addressed below.

149 i. Greenhouse Gas Emissions – Fossil Fuel Facilities and Fossil Fuel Transshipment Facilities: The following  
150 policies shall apply to fossil fuel facilities and fossil fuel transshipment facilities.

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

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

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159 Rationale for Changes (shown with highlighting): Industry representatives have  
160 indicated concern about the models referenced above. The proposed changes  
161 would allow appropriate methods to be used in calculating greenhouse gas  
162 emissions.

163  
164 (c) Mitigation: Greenhouse gas emissions that create specific adverse environmental impacts may be offset  
165 for proposals subject to WCC 20.68.801 through either code requirements or, if not addressed through code  
166 requirements, through mitigation projects that provide real, additional and quantifiable greenhouse gas  
167 mitigation. Such mitigation must not be required by any other regulatory mechanism and there shall be no  
168 double counting of emission reductions where identified as mitigation of greenhouse gas emissions impacts  
169 for permits subject to WCC 20.68.801.

170  
171 Rationale for Changes (shown with highlighting): On October 24, 2019, the  
172 Planning Commission approved a motion to remove the proposed GHG mitigation  
173 requirements from the Zoning Code and keep proposed GHG provisions in SEPA  
174 (with further discussion on the SEPA language at a later date). The above changes  
175 would delete the reference to GHG mitigation in the Zoning Code. The double  
176 counting language above is somewhat confusing. It seems to indicate that, if  
177 mitigation is required by a different agency, then County-required mitigation must  
178 be different and additional. But a general concept is that, if another agency  
179 requires adequate mitigation, County mitigation is not required. Therefore, this  
180 language has been deleted.

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

182 ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuel Transshipment Facilities: The  
183 SEPA Responsible Official shall require documentation of lifecycle greenhouse gas emissions associated with  
184 renewable fuel facilities. The SEPA Responsible Official will consider the lifecycle greenhouse gas emissions  
185 analysis when making the threshold determination. The SEPA Responsible Official shall require  
186 documentation of emissions consistent with b.i(a) and b.i(b) above. The applicant shall demonstrate that the  
187 lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when  
188 considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA  
189 Responsible official may require mitigation per b.i(c) above.

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

198 iii. Greenhouse Gas Emissions – Other Uses Within the Heavy Impact Industrial District:

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

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

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

208 2. Plants and Animals:

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

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

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

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

228  
229 Rationale for Changes (shown with highlighting): Federal and state agencies  
230 would typically determine compliance with federal and state laws when they issue  
231 or deny a permit or other authorization for a project. The language above implies  
232 that certain federal and state permits/authorizations must be issued before the  
233 County can do SEPA review on a project. The State SEPA rules (WAC 197-11-  
234 158(4)) indicate:

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

239 This concept of consultation is already embodied in the proposed amendments in  
240 WCC 16.08.160.E above. Therefore, the language highlighted above should be  
241 deleted.

243 **16.08.175 Purpose of this article and adoption by reference.**

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

246

247 WAC

- 248 197-11-700 Definitions.
- 249 197-11-702 Act.
- 250 197-11-704 Action.
- 251 197-11-706 Addendum.
- 252 197-11-708 Adoption.
- 253 197-11-710 Affected tribe.
- 254 197-11-712 Affecting.
- 255 197-11-714 Agency.
- 256 197-11-716 Applicant.
- 257 197-11-718 Built environment.
- 258 197-11-720 Categorical exemption.
- 259 197-11-721 Closed record appeal.
- 260 197-11-722 Consolidated appeal.
- 261 197-11-724 Consulted agency.
- 262 197-11-726 Cost-benefit analysis.
- 263 197-11-728 County/city.
- 264 197-11-730 Decision maker.
- 265 197-11-732 Department.
- 266 197-11-734 Determination of nonsignificance (DNS).
- 267 197-11-736 Determination of significance (DS).
- 268 197-11-738 EIS.
- 269 197-11-740 Environment.
- 270 197-11-742 Environmental checklist.
- 271 197-11-744 Environmental document.
- 272 197-11-746 Environmental review.
- 273 197-11-750 Expanded scoping.
- 274 197-11-752 Impacts.
- 275 197-11-754 Incorporation by reference.
- 276 197-11-756 Lands covered by water.
- 277 197-11-758 Lead agency.
- 278 197-11-760 License.
- 279 197-11-762 Local agency.
- 280 197-11-764 Major action.
- 281 197-11-766 Mitigated DNS.

282	197-11-768	Mitigation.
283	197-11-770	Natural environment.
284	197-11-772	NEPA.
285	197-11-774	Nonproject.
286	197-11-775	Open record hearing.
287	197-11-776	Phased review.
288	197-11-778	Preparation.
289	197-11-780	Private project.
290	197-11-782	Probable.
291	197-11-784	Proposal.
292	197-11-786	Reasonable alternative.
293	197-11-788	Responsible official.
294	197-11-790	SEPA.
295	197-11-792	Scope.
296	197-11-793	Scoping.
297	197-11-794	Significant.
298	197-11-796	State agency.
299	197-11-797	Threshold determination.
300	197-11-799	Underlying governmental action.

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

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

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

307 C. “Facility Emissions” means greenhouse gas emissions associated with fossil fuel refineries or fossil fuel  
308 transshipment facilities based upon the refining and processing of fossil fuels located within the Cherry Point  
309 Heavy Industrial area.

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

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

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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 70.94 RCW) or state limiting greenhouse gas emissions law (Chapter 70.235 RCW).

E. "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.

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

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

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

HE. "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

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## CHAPTER 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

### 20.66.200 Prohibited uses.

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

.201 Reserved.

.202 Adult businesses except those allowed as an administrative approval use under WCC 20.66.131.

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

~~.204 New fossil-fuel refinery; or new fossil fuel transshipment or facility unless permitted as a part of an existing refinery modification otherwise permitted under this code.~~

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

*Discussion/Notes: Prohibit fossil fuel related industries in the LII District; already prohibited in the Bellingham UGA. It does not appear that such uses exist in the LII zone; thus, we have only addressed the prohibition of fossil-fuel refinery and fossil fuel transshipment facility unless part of an existing refinery (e.g. transshipment).*

393 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

394 20.68.050 Permitted uses.

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

402 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,  
403 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

404 (1) Holding pens associated with packinghouses and slaughterhouses shall be limited to that necessary to accommodate  
405 animals intended for processing within 24 hours.

406 (2) The facility shall comply with the solid waste handling standards as set forth in Chapter 173-350 WAC, as administered  
407 by the Whatcom County health department as adopted by reference in Chapter 24.06 WAC.

408 (3) If required by the Washington State Department of Ecology, the following permits shall be obtained:

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

412 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and  
413 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

414 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and  
415 prefabricated wood products; wooden containers and cooperage.

416 .054 The following are permitted uses except as otherwise prohibited:

417 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill  
418 products.

419 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;  
420 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,  
421 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.

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

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

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

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

426 

Rationale for Changes (shown with highlighting): Existing fossil fuel facilities have  
427 been moved to proposed WCC 20.68.068 below.  
428

429 ~~(34)~~ The manufacture and processing of rubber and plastic products.

430 ~~(45)~~ Leather tanning and finishing.

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

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

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

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

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

440 **Rationale for Changes (shown with highlighting): Existing renewable facilities are**  
441 **addressed in proposed WCC 20.68.068 and 20.68.071 below.**  
442

443 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing  
444 fixtures, structural metal and stamping.

445 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and  
446 materials handling equipment; machine tools and dies; and special and general industrial equipment.

447 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

448 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,  
449 railroad equipment, bicycles and motorcycles.

450 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities **except for**  
451 **fossil fuel facilities or fossil fuel transshipment facilities subject to the provisions of 20.68.153. New fossil fuel storage and**  
452 **transshipment facilities are expressly prohibited except as provided in Section 20.68.153.**

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

456 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants  
457 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind  
458 (Chapter 20.14 WCC) or water sources **except that coal-fired power plants are prohibited.**

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

463 .061 Heavy construction contractors.

464 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,  
465 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar  
466 noncommercial uses, excluding state education facilities and correction facilities.

467 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet  
468 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building  
469 shall contain no indoor plumbing but may be served with electrical power for lighting.

470 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within  
471 the Heavy Impact Industrial District in the Bellingham UGA.

472 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

473 .066 Marijuana production or processing facility.

474 .068 Existing fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel refineries, renewable fuel  
475 transshipment facilities, piers and docks legally established as of [XXX effective date of ordinance], uses including repairs,  
476 improvements, maintenance, modifications, remodeling or other changes including but not limited to the following, provided  
477 that a conditional use permit is not required by WCC 20.68.153:

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

479 (2) Office space.

480 (3) Parking lots.

481 (4) Radio communications facilities.

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

483 (6) Storage buildings.

484 (7) Routine maintenance and repair.

485 (8) Environmental improvements and other projects that are required on the subject site by federal, state, regional, or local  
486 regulations.

487 (9) Road projects and bridges.

488 (10) Temporary trailers.

489 (11) Heating and cooling systems.

490 (12) Cable installation.

491 (13) Information technology improvements.

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

493 (15) Wastewater and stormwater treatment facilities.

494 (16) Replacement and upgrading of existing equipment.

495 (17) Safety upgrades.

496 (18) Storage tanks.

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

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

499 (21) Other similar structures or activities.

500 Rationale for Changes (shown with highlighting): Moving permitted uses associated with  
501 existing refineries and transshipment facilities from former proposed WCC 20.68.802  
502 to the permitted use section of the Heavy Impact Industrial Zoning District for consistency  
503 with other sections of the Code. Additional items have been inserted as permitted uses  
to address public comments, including pipelines added on July 9, 2020.

504 .070 New renewable fuel refineries or renewable fuel transshipment facilities, except that new piers, docks, or wharves in the  
505 Cherry Point Industrial District are prohibited.

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

509 The Council's original proposed amendments would prohibit new piers, docks, or  
510 wharves in the Cherry Point Industrial District (proposed WCC 20.68.206 and  
511 20.74.055). This is recognized in proposed WCC 20.68.070 by indicating that  
512 this provision does not apply to piers, docks, or wharves.

513  
514 0.71 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities, provided that the  
515 expansion is for renewable fuels only.

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

520 .081 Freight railroad switching yards and terminals, excluding uses addressed in .059.

521 .082 Marine port facilities, excluding uses addressed in .059, and excluding new piers, docks, or wharves.

522 .085 Type I solid waste handling facilities.

523 .086 Type II solid waste handling facilities.

## 524 20.68.100 Accessory uses.

525 .101 Employee recreation facilities and play areas.

526 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the  
527 district.

528 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

529 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50  
530 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

531 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

532 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved  
533 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

534 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the  
535 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

536 .108 Electric vehicle rapid charging stations and battery exchange facilities.

537 **20.68.130 Administrative approval uses.**

538 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the  
539 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1  
540 (Exh. A), 2006).

541 **20.68.150 Conditional uses.**

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

543 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

550 .153 Expansion of existing legal fossil or renewable fuel refineries operations and the primary manufacturing of products  
551 thereof or expansion of existing legal fossil or renewable-fuel transshipment facilities. For purposes of this section, an  
552 expansion is any fossil fuel refinery and/or transshipment facility development (including otherwise permitted or accessory  
553 uses), vested after the effective date of this ordinance, that meets any one of the following thresholds:

554 A. Cumulatively increases its maximum atmospheric crude distillation capacity of fossil fuels by more than 10,000  
555 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a  
556 licensed professional engineer; or

557 B. Cumulatively increases the maximum transshipment capacity of the facility by more than 10,000 barrels (or 420,000  
558 gallons) per day; or

559 C. Cumulatively increases the maximum transshipment capacity of unrefined fossil fuels from the facility by more than  
560 10,000 barrels (or 420,000 gallons) per day; or

561 D. Cumulatively increases fossil fuel storage tank capacity of the facility by more than 200,000 barrels (or 8,400,000  
562 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing.

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

564  
565 Rationale for Changes (shown with highlighting): On January 16 and 30,  
566 2020, the Planning Commission approved motions defining what activities  
567 constitute an “expansion” and when a conditional use permit is required. On  
568 January 16, 2020, the Planning Commission also approved a motion to move  
569 expansion of renewable fuel facilities from conditional use to permitted use, as  
570 long as the expansion is for the increased production of renewable fuels.

571 Such expansions shall be subject to the conditional use criteria below:

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

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

574 (3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated sources, types, and  
575 volumes of substances transferred in bulk at the facility. The permit shall be limited exclusively to those types and volumes  
576 of materials or products as documented and approved.

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

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

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

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

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

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

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

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

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

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

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

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

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

608 .154 Treatment and storage facilities for hazardous wastes subject to the following:

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

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



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

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

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

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

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

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

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

634 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

635 .157 Trailheads with parking areas for more than 30 vehicles.

636 .158 Athletic fields.

637 ~~.159 New renewable fuel refineries or renewable fuel transshipment facilities, subject to the conditional use permit criteria~~  
638 ~~identified in WCC 20.68.153.~~

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

644 .180 Major passenger intermodal terminals.

645 .187 Type III solid waste handling facilities; provided, that:

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

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

650 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;

651 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;

- 652 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 653 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 654 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 655 (f) This 1,500-foot buffer does not apply to:
- 656 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
- 657 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 658 (ii) Inert landfills;
- 659 (3) Inert landfills shall be located at least 500 feet from the following:
- 660 (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
- 661 (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
- 662 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
- 663 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
- 664 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 665 (f) This 500-foot buffer does not apply to:
- 666 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
- 667 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 668 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
- 669 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
- 670 county or state road right-of-way;
- 671 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
- 672 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
- 673 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 674 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
- 675 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
- 676 and federal regulations concerning solid waste facilities and sites;
- 677 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
- 678 closure plan includes:
- 679 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
- 680 activity, with seeding to be accomplished annually but no later than September 30th; and
- 681 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
- 682 covered through the financial assurance for post-closure activities;
- 683 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
- 684 of WCC 20.80.300 (Landscaping);
- 685 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
- 686 delineated wellhead protection area;
- 687 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
- 688 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
- 689 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
- 690 the boundary of the airport property;

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

693 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when  
694 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be  
695 processed as a major development project pursuant to Chapter 20.88 WCC.

## 696 20.68.200 Prohibited uses.

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

699 .201 Reserved.

700 .202 Adult businesses.

701 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary  
702 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and  
703 products derived thereof; and primary metal industries.

704 ~~.204 New Fossil fuel refineries and the primary manufacturing of products thereof [XXX effective date].~~

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

709 ~~.205. New Fossil fuel transshipment facilities, including bulk storage or transfer facilities for fossil fuels [XXX effective  
710 date].~~

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

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

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

716 ~~.207 Coal-fired power plants.~~

717 (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-  
718 075, 1991).

## 719 20.68.250 Minimum lot size.

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

## 722 20.68.255 Minimum lot frontage.

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

## 726 20.68.350 Building setbacks.

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

728 **20.68.400 Height limitations.**

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

731 **20.68.450 Lot coverage.**

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

733 **20.68.500 Open space.**

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

735 **20.68.550 Buffer area.**

736 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial  
737 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual  
738 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site  
739 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

740 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory  
741 structures shall be established consistent with the following options:

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

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

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

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

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

757 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and  
758 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

759 .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  
760 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),  
761 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,  
762 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

763 **20.68.600 Sign regulations.**

764 Sign regulations shall be administered pursuant to WCC 20.80.400.

765 **20.68.650 Development criteria.**

766 (Ord. 96-056 Att. A § A1, 1996).

- 767 **20.68.651 Landscaping.**  
768 Refer to WCC 20.80.300 for landscaping requirements. (Ord. 89-117, 1989).
- 769 **20.68.652 Off-street parking and loading.**  
770 Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must  
771 be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on  
772 public rights-of-way.
- 773 **20.68.653 Drainage.**  
774 All development activities are subject to the stormwater management provisions of WCC 20.80.630 through 20.80.635. No  
775 project permit shall be issued prior to meeting those requirements. (Ord. 2019-013 § 1 (Exh. A), 2019; Ord. 96-056 Att. A §  
776 A2, 1996; Ord. 94-022, 1994).
- 777 **20.68.654 Driveways.**  
778 Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of  
779 Transportation, as applicable. (Ord. 2013-057 § 1 (Exh. A), 2013; Ord. 84-38, 1984).
- 780 **20.68.655 Access.**  
781 Access shall conform to the provisions of WCC 20.80.565 and 20.80.660. (Ord. 89-117, 1989).
- 782 **20.68.656 Maintenance.**  
783 The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties, and shall be  
784 responsible for assuring the care and maintenance of any natural growth, where appropriate.
- 785 **20.68.657 Enclosure.**  
786 All manufacturing or fabrication processes which have the potential to produce off-site impacts of a detrimental nature,  
787 including light, glare, odors and noise impacts, shall be sufficiently enclosed to mitigate the impacts. (Ord. 99-078, 1999).
- 788 **20.68.700 Performance standards.**
- 789 **20.68.701 *Pollution control and nuisance abatement.***  
790 Each industry is required to continuously employ the best pollution control and nuisance abatement technology when  
791 reasonably and practicably available for each particular industry; provided, that where federal, state, or regional laws or  
792 regulations provide for the level of technology to be employed, the appropriate standards shall apply.
- 793 **20.68.702 *Heat, light and glare.***  
794 All operations and facilities producing heat, light or glare, including exterior lights, shall be so constructed, screened or used  
795 as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.
- 796 **20.68.703 *Ground vibration.***  
797 No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted, which is  
798 discernible without instruments, at or beyond the property line for the use concerned.
- 799 **20.68.704 *Odors.***  
800 No odors, dust, dirt, or smoke shall be emitted that are detectable, at or beyond the property line for the use concerned, in  
801 such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe  
802 upon the use and enjoyment of property beyond the boundaries of the district. (Ord. 91-075, 1991).

803 **20.68.705 Noise.**

804 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-  
805 075, 1991).

806 **20.68.706 Toxic gases and fumes.**

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

809 **20.68.707 Liquid pollutants.**

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

811 **20.68.708 Appearance.**

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

815 **20.68.709 Marijuana odor.**

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

822 **20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities**

823 **This section applies to fossil fuel refineries fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel**  
824 **transshipment facilities.**

825 **.801. Environmental Review and Greenhouse Gas Mitigation**

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

829 **(2) Greenhouse gas emission analysis required:**

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

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

841 **(ii) For crude oil, refinery capacity is based on atmospheric Crude Distillation Capacity (barrels per calendar day),**  
842 **consistent with data collected by the US Energy Information Administration. The zoning administrator may approve**  
843 **another measure of capacity or source that is consistent with (a) and (a)(i). (b) Facility emissions, defined in WCC**

844 20.97.124.1, shall be quantified for each expansion of refining and storage capacity in the application for land use or  
845 construction permits and in SEPA documents analyzing the impacts of an expanded facility.

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

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

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

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

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

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

862 ~~(a) The applicant shall identify local carbon offset projects including the type and extent, duration, and expected~~  
863 ~~greenhouse gas reductions, to the satisfaction of the County's SEPA Responsible Official. Greenhouse gas~~  
864 ~~mitigation proposed by the applicant shall be additional, real and quantifiable and shall not be required under any~~  
865 ~~other regulatory mechanism.~~

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

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

875 ~~Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-~~  
876 ~~CO<sub>2</sub>) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide~~  
877 ~~(CO<sub>2</sub>) emissions in a given year. This dollar figure also represents the value of damages~~  
878 ~~avoided for a small emission reduction (i.e., the benefit of a CO<sub>2</sub> reduction)." See:~~  
879 ~~<https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon.html>. If the~~  
880 ~~County wishes to increase the mitigation fee it may do so by ordinance with an~~  
881 ~~accompanying rationale such as inflation, updated US EPA guidance or other factors.~~

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

887 ~~20.68.802 Non-Capacity Improvements~~

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

891 ~~(a) accessory buildings,~~

892 ~~(b) office space,~~

893 ~~(c) parking lots,~~

894 ~~(d) radio communications facilities,~~

895 ~~(e) security buildings,~~

896 ~~(f) storage buildings, and~~

897 ~~(g) other similar structures or activities.~~

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

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

906 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

907 20.74.010 Purpose.

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

912 20.74.020 Applicability.

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

914 20.74.030 Permitted uses.

915 (1) Primary permitted uses:

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

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

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



923 **20.74.040 Accessory uses.**

924 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
925 083 Exh. A § 57, 1998).

926 **20.74.050 Conditional uses.**

927 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-  
928 083 Exh. A § 57, 1998).

929 **20.74.055 Prohibited uses.**

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

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

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

936 (2) Conversion of Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities is prohibited,  
937 except as allowed under WCC 20.74.115 and WCC 20.68.153.

938 **20.74.060 Master site plan requirements.**

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

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

945 (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  
946 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site  
947 shall be waived.

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

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

955 **20.74.070 Minimum lot size and parcelization.**

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

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

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

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

964 (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  
965 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

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

#### 968 20.74.080 Design standards.

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

#### 973 20.74.090 Traffic demand management.

974 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major  
975 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time  
976 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  
977 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

#### 982 20.74.100 Drainage.

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

#### 985 ~~20.74.110 Change of Use~~

986 ~~A change of use occurs when the occupancy of a building or a site use changes from one use to another in whole or in part. A~~  
987 ~~change of use permit is required to document a change of use, even where no alterations are planned or required by the code.~~  
988 ~~This shall be processed as a Type I permit in Chapter 22.05 WCC. The new use shall ensure:~~

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

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

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

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

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

997

998 20.74.115 Change of Use of Renewable Fuels Facilities.

999 A change of use of a Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to a fossil fuel facility inside the  
1000 boundary of an existing legal fossil fuel refinery requires a conditional use permit subject to WCC 20.68.153. Other changes  
1001 of use from Renewable Fuel Refinery or Renewable Fuel Transshipment Facilities to fossil fuel facilities are prohibited.

1002

1003

1004 CHAPTER 20.88 MAJOR PROJECT PERMITS

1005 20.88.100 Major project permits.

1006 .110 All major developments shall, prior to any construction, obtain a major project permit.

1007 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter  
1008 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 200,000 square feet  
floor space)

Residential 300 dwelling units

motel/hotel 200 units

Number of Employees 250

SEPA Review An EIS is required

1009

1010 In addition, the zoning administrator may make an administrative determination after receiving a recommendation from the  
1011 technical review committee that any project be considered a major development, if in the opinion of the administration it is of  
1012 a nature that council review would be appropriate.

1013

1014 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval  
with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing

1015 examiner's recommendation and county council's decision shall determine the adequacy of a major project permit application  
1016 based on the following criteria:

1017 (1) Will comply with the development standards and performance standards of the zone in which the proposed major  
1018 development will be located; provided where a proposed major development has obtained a variance from the development  
1019 and performance standards, standards as varied shall be applied to that project for the purposes of this act.

1020 (2) Where the project is conditionally permitted in the zone in which it is located, the project must satisfy the standards for  
1021 the issuance of a conditional use permit for the zone in which the project is located.

1022 ~~(3) Will be consistent with applicable laws and regulations.~~

1023 (3) Prior to commencement of any site preparation or construction activities, W will obtain, if required, a state aquatic lands  
1024 lease, and all other necessary permits consultations and authorizations, including federal determinations that the project will  
1025 not interfere with treaty fishing rights of tribal nations, the limits set forth in the "Magnuson Amendment" under 33 U.S.C. §  
1026 476(b) (2004), Section 10 of the Rivers and Harbors Act (for structures in or over navigable waters of the U.S.), the Coastal  
1027 Zone Management Act (including any state Department of Ecology shoreline conditional use or variance approval), the Clean  
1028 Air Act, and/or under the Clean Water Act, including but not limited to a federal Section 404 authorization (for fill into  
1029 waters of the U.S.) and a state Section 401 water quality certification, prior to issuance of any site preparation or construction  
1030 permits necessary to construct a facility authorized under a major project permit.

1031 (4) Will not substantially interfere with the operation of existing uses.

1032 (5) Will be served by, or will be provided with essential utilities, facilities and services necessary to its operation, such as  
1033 roads, drainage facilities, electricity, water supply, sewage disposal facilities, and police and fire protection. Standards for  
1034 such utilities, facilities and services shall be those currently accepted by the state of Washington, Whatcom County, or the  
1035 appropriate agency or division thereof.

1036 (6) Will not impose uncompensated requirements for public expenditures for additional utilities, facilities and services, and  
1037 will not impose uncompensated costs on other property owned.

1038 (7) Will be appropriately responsive to any EIS prepared for the project.

1039 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent  
1040 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural  
1041 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with  
1042 the policies for environmental protection set forth in the Comprehensive Plan. The County decision maker may approve a  
1043 major project permit with a condition to obtain relevant leases and complete any necessary federal and state permitting  
1044 requirements, and may restrict the major project permittee from undertaking site preparation or construction activities until it  
1045 has fulfilled that condition.

1046 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major  
1047 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC  
1048 and provide relief from the specific standards and requirements thereof.

## 1049 20.88.200 Procedure.

1050 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the  
1051 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as  
1052 part of the application for a major project permit. The master plan document shall include all elements required per the  
1053 department's administrative manual.

1054 .210 Development Standards. The master plan major project permit may propose standards that will control development of  
1055 the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as  
1056 height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade  
1057 treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to  
1058 county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally  
1059 within an urban growth area, concurrence of the affected city will be required.

1060 .215 Procedures. ~~Master plan~~ Major project permit review shall be conducted under current review procedures. Other land  
1061 use reviews may be conducted concurrently with the ~~master plan~~ major project permit review.

1062 (a) Any modifications, additions or changes to an approved master plan are subject to the following:

1063 (i) Minor changes shall be reviewed for compliance and compatibility with the approved ~~master plan~~ major project  
1064 permit.

1065 (1) A determination is made by the director. The director is authorized to consult a technical committee at  
1066 his/her discretion.

1067 (2) Minor changes are those amendments which may affect the dimensions, location and type of  
1068 improvements of facilities; provided, the amendment maintains the basic character of the major project  
1069 permit application approved by the county council including general type and location of dwellings and  
1070 other land use activities, arrangement of buildings, density of the development, and provisions of the  
1071 project to meet density bonus and open space requirements, or capacity limits, and maintains required  
1072 conditions or mitigation.

1073 (ii) Major changes shall be subject to the original procedural application type, subject to the fees as contained in  
1074 the unified fee schedule.

1075 (iii) ~~Master plans~~ Major project permits may include, as a condition of their approval, a requirement for periodic  
1076 progress reports and mandatory updates on a predetermined interval.

1077

1078 Rationale for Changes (shown with highlighting): A master plan is one component  
1079 of the major project permit. The procedures above should relate to the entire  
1080 permit (not just one component of the permit).

1081 .220 through .265 Reserved.

1082 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a  
1083 conditional use permit.

1084 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that  
1085 project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

1086 .280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District  
1087 requires a major project permit, the major project permit shall be concurrently processed with other required land use permits  
1088 including but not limited to: ~~Cherry Point master site plan, conditional use permit, planned unit development,~~ or development  
1089 agreement.

1090

1091 Rationale for Changes (shown with highlighting): The master plan is part of a  
1092 permit application (not a permit in itself).

1093 Additionally, when a major project permit is required, it is exempt from the  
1094 conditional use permit (WCC 20.88.270 above).

1094

1095

1096

1097

1098 CHAPTER 20.97 DEFINITIONS

1099 Discussion/Notes: Definitions added are based on a review of federal (US Energy  
1100 Information Administration, US Census, Code of the Federal Register, Revised Code of  
1101 Washington), County Ordinance NO. 2018-007, Resolution 2019-004 and examples  
1102 addressed in the White Paper.

1103 20.97.052.1 Change of Use

1104 “Change of use” means when a building or occupancy is altered or replaced, for example from manufacturing to office.

1105 Renumber Section 20.97.052.1 Child care facilities to 20.97.052.2 Child care facilities.

1106 20.97.124.1 Facility Emissions.

1107 “Facility Emissions” are greenhouse gas emissions associated with fossil fuel or renewable fuel refineries or fossil or  
1108 renewable fuel transshipment facilities based upon:

1109 (1) the transportation within the borders of Whatcom County of refined and unrefined fossil fuels to and from a facility  
1110 located within the Cherry Point Heavy Industrial area, and

1111 (2) the refining and processing of fossil fuels located within the Cherry Point Heavy Industrial area, and

1112 (3) the upstream emissions generated by the production and transport of raw products to the facility such as crude oil  
1113 feedstocks or other fuels used in production or energy generation at facilities.

1114 Rationale for Changes (shown with highlighting): On October 24, 2019, the Planning  
1115 Commission approved a motion to remove the proposed GHG mitigation requirements  
1116 from the Zoning Code and keep proposed GHG provisions in SEPA (with further  
1117 discussion on the SEPA language at a later date). The term “facility emissions” is no  
1118 longer is used in the Zoning Code. Therefore, this definition has been moved to the  
County’s SEPA rules, where it would be used.

1119 20.97.160.2 Fossil Fuels.

1120 “Fossil fuels” include coal, petroleum, crude oil, natural gas, oil shales, bitumens, tar sands, propane, butane, and heavy oils.  
1121 All contain carbon and were formed as a result of geologic processes acting on the remains of organic matter. Renewable  
1122 fuels are not fossil fuels.

1123 Rationale for Changes (shown with highlighting): The U.S. Energy Information  
1124 Administration defines “Petroleum” as:  
1125 A broadly defined class of liquid hydrocarbon mixtures. Included are  
1126 crude oil, lease condensate, unfinished oils, refined products obtained from  
1127 the processing of crude oil, and natural gas plant liquids. Note: Volumes of  
1128 finished petroleum products include non hydrocarbon compounds, such as  
additives and detergents, after they have been blended into the products.  
1129 While crude oil is a type of petroleum, it might be useful to insert it in the  
1130 definition so the reader can know that without going to another source. This would  
be consistent with the definition of “Fossil-Fuel Refinery” below, which specifically  
refers to crude oil.

### 20.97.160.3 Fossil or Renewable Fuel Transshipment Facilities.

“Fossil or Renewable Fuel Transshipment Facility” is a facility engaging in the process of off-loading of fossil or renewable fuel materials, refined or unrefined, refinery feedstocks, products or by products, from one transportation facility and loading it onto another transportation facility for the purposes of transporting such products into or out of Whatcom County. Examples of transportation facilities include ship, truck, or freight car. Fossil fuel transshipment facilities may also include pump and compressor stations and associated facilities. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

Rationale for Changes (shown with highlighting): The definition of “Fossil or Renewable Fuel Transshipment Facilities” omits “Renewable” in the first sentence of the definition.

### 20.97.160.4 Fossil-Fuel Refinery.

A “Fossil-Fuel Refinery” means a facility that converts crude oil and other liquids into petroleum products including but not limited to gasoline, distillates such as diesel fuel and heating oil, jet fuel, petrochemical feedstocks, waxes, lubricating oils, and asphalt. Activities that support refineries include but are not limited to: bulk storage, manufacturing, or processing of fossil fuels or by products. This definition excludes Small Fossil or Renewable Storage and Distribution Facilities.

### 20.97.160.5 Fossil-Fuel Refinery Capacity.

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

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

### 20.97.163 Greenhouse Gas Emissions

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

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

### 20.97.201 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.

1169 Discussion/Notes: Considers a definition under the Clean Air Act. See:  
1170 [https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel)  
1171 [gas-emissions-under-renewable-fuel](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel) and  
1172 <https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010->  
1173 [title42-chap85.htm](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm).

### 20.97.202 Living Wage

1175 “Living wage” means the hourly rate that an individual must earn to support their family, if they are the sole provider and are  
1176 working full time (2080 hours per year). For the purposes of this definition family includes four individuals.

1177 Discussion/Notes: Based on a definition published by Massachusetts Institute of  
1178 Technology. See <http://livingwage.mit.edu/counties/53073>. There is a living wage  
1179 calculator for each state and each county within. Living wage ordinances vary in their  
1180 wage rates, and they often set the hourly wage a full-time, year-round worker must earn  
1181 to bring a family of four out of poverty. See:  
1182 <http://www.forworkingfamilies.org/resources/policy-tools-living-wage>.

1183 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning Commission  
1184 passed a motion to delete the “living wage” job language from the conditional use permit approval  
1185 criteria (proposed WCC 20.68.153). This term does not appear elsewhere in the proposal.

### 20.97.230 Maximum Atmospheric Crude Distillation Capacity

1187 “Maximum Atmospheric Crude Distillation Capacity” or “MACDC” is the maximum number of barrels of input that the  
1188 atmospheric distillation unit can process within a 24-hour period when running at maximum capacity. Maximum capacity is  
1189 defined as the physical constraints of the atmospheric distillation process equipment as determined by a professional engineer  
1190 licensed in the State of Washington and shall be measured in barrels per day.

1191 NOTE: Renumber existing WCC 20.97.230 (definition of “May”) to WCC 20.97.231.

1192 Rationale for Changes (shown with highlighting): On January 30, 2020, the  
1193 Planning Commission approved a motion adding the above definition to the Zoning  
1194 Code (the definition was proposed by industry). This term is used in proposed  
1195 WCC 20.68.153.

### 20.97.350.1 Renewable Biomass

1197 “Renewable biomass” includes but is not limited to the following:

1198 (1) Planted crops and crop residue harvested from agricultural land.

1199 (2) Planted trees and tree residue from a tree plantation.

1200 (3) Animal waste material and animal byproducts.

1201 (4) Slash and pre-commercial thinnings.

1202 (5) Organic matter that is available on a renewable or recurring basis.

1203 (6) Algae.



1204 (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1205 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to  
1206 customary feedstock production and transport.

1207 *Discussion/Notes: Adapted from based on federal renewable fuel definition,*  
1208 <https://www.law.cornell.edu/cfr/text/40/80.1401>.

## 1209 20.97.350.2 Renewable Fuel

1210 “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.  
1211 Common renewable fuels include ethanol and biodiesel:

1212 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is  
1213 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of  
1214 American society of testing and materials specification D 5798.

1215 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable  
1216 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal  
1217 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) and meets the requirements of  
1218 American society of testing and materials specification D 975.

1219 

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

1221 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or  
1222 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other  
1223 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State  
1224 Department of Ecology or US EPA.

1225 *Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,*  
1226 *common liquid fuel forms include ethanol and biodiesel. See:*  
1227 [https://www.eia.gov/energyexplained/?page=renewable\\_home](https://www.eia.gov/energyexplained/?page=renewable_home).

1228 Washington State defines renewable diesel and E85 motor fuel in the motor fuel  
1229 quality act (Chapter 19.112 RCW), which are integrated in the definition.

1230 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See  
1231 <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-  
1232 25% fossil fuels and is used by flexibly fueled vehicles. See  
1233 <https://www.fueleconomy.gov/feg/flextech.shtml>.

1234 Under the EPA renewable fuel standard, three of four renewable fuel categories must  
1235 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional  
1236 renewable ethanol must meet a 20% lifecycle GHG reduction. See:  
1237 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)  
1238 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

## 1239 20.97.350.3 Renewable Fuel Refinery

1240 A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small  
1241 Fossil or Renewable Storage and Distribution Facilities.

1242 20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities

1243 “Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

1244 (1) Equipment and buildings used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

1245 (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation,  
1246 and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel  
1247 transshipment facilities.

1248 

Rationale for Changes (shown with highlighting): Buildings may also be needed at 1249 small scale facilities. 1250
--

1251 20.97.434.1 Technical committee.

1252 “Technical committee” or “technical review committee” means the designated representatives of the Whatcom County  
1253 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and  
1254 the Whatcom County Health Department Director.

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# Exhibit D

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## CHAPTER 22.05 PROJECT PERMIT PROCEDURES

1280

### 22.05.020 Project permit processing table.

1281

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

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

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

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

1285

1286 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

1287 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*  
 1288 *desired review process.*

1289 Rationale for Changes (shown with highlighting): On January 30, 2020, the Planning  
 1290 Commission passed a motion to delete the proposed change of use provisions of WCC  
 20.74.110. Therefore, the “Change of Use” permit type is no longer needed.

1291

1292 **22.05.110 Final decisions – Type I, II, and III applications.**

1293 (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  
 1294 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to  
 1295 comply with all applicable codes.

1296 (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)  
 1297 shall either grant or deny the application or appeal.

1298 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the  
 1299 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives  
 1300 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives  
 1301 of Whatcom County.

1302 (b) Requirements:

1303 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure  
 1304 compliance with the conditions, modifications and restrictions.

1305 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall  
 1306 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section  
 1307 22.05.125.

1308 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony  
 1309 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions  
 1310 based on the record to support the decision.

1311 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as  
1312 provided herein.

1313 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing  
1314 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-  
1315 032 § 1 (Exh. A)).

1316 **22.05.120 ~~Recommended~~ Recommendations and final decisions ~~to county council.~~ Type**  
1317 **IV applications**

1318 (1) For Type IV applications per WCC 22.05.020 the hearing examiner's recommendations to the county council may be to  
1319 grant, grant with conditions or deny an application. The hearing examiner's recommendation may include conditions,  
1320 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the  
1321 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and  
1322 objectives of Whatcom County.

1323 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC  
1324 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the  
1325 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out  
1326 and conforms to the county's comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1327 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and  
1328 Chapter 42.36 RCW.

1329 (4) For planned unit developments and major project permits the following shall apply:

1330 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall  
1331 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1332 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days  
1333 following the conclusion of the open record hearing.

1334 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection  
1335 (4)(c)(iii) of this section:

1336 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28  
1337 calendar days after receiving the hearing examiner's recommendation.

1338 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1339 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council  
1340 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes  
1341 written findings that a specified amount of additional time is needed to process a specific application or project  
1342 type, per RCW 36.70B.080(1).

1343 (5) The county council's final written decision may include conditions when the project is approved and shall state the  
1344 findings of fact upon which the decision is based.

1345 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance  
1346 with the conditions, modifications and restrictions.

1347 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall  
1348 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1349 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by  
1350 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code, applicable state  
1351 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management  
1352 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the  
1353 county code, and the county's adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1354

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

## 22.05.125 Proof of insurance for hazards created in the County

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

(1) Expansion of existing fossil fuel refinery or existing fossil fuel transshipment facility;

(2) Expansion of or new renewable fuel refinery or renewable fuel transshipment facility.

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

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

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

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

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

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

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

*Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50 million to \$100 million may not be available in the insurance market. We suggest taking out the \$100 million liability limit and substituting language that determines the liability limit as each permit is reviewed and made part of a development agreement. Other forms of financial assurance instruments could be allowed such as a letter of credit a parent company corporate guarantee or other financial assurance acceptable to the County Prosecutor as a substitute for commercial insurance. We have included code language to*

1393 ~~that effect in this draft. The County could also indicate that the amount of financial~~  
1394 ~~assurance is to be determined at the point of an approval decision for a facility expansion~~  
1395 ~~rather than specifying an amount here.~~

1396 ~~(4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any~~  
1397 ~~deductible or self insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any~~  
1398 ~~such payment made by the Insurer. If the Policy has a self insured retention (SIR) amount, the Primary Named Insured shall~~  
1399 ~~declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of~~  
1400 ~~financial assurance are letters of credit and certificates of deposit.~~

1401 ~~(5) Term and Cancellation Notice:~~

1402 ~~(a) Insurance shall be carried for the lifetime of the Permitted Facility.~~

1403 ~~(b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in~~  
1404 ~~and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon~~  
1405 ~~written notice and only after the expiration of 60 days after a copy of such written notice is received by the County~~  
1406 ~~as evidenced by the return receipt.~~

1407 ~~(6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.~~

1408 ~~(7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply~~  
1409 ~~in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any~~  
1410 ~~term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.~~

1411 ~~(8) Insurance Company Financial Strength — Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating~~  
1412 ~~from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or~~  
1413 ~~the equivalent from another major financial rating agency.~~

1414 ~~(9) Definitions: For the purposes of this section, terms are defined as follows:~~

1415 ~~(a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any~~  
1416 ~~fixed conveyances and terminal distribution systems, as well as pump and compressor stations and related facilities.~~

1417 ~~(b) Loss shall include:~~

1418 ~~(i) monetary awards or settlements of compensatory damages; and~~

1419 ~~(ii) where allowable by law, punitive, exemplary, or multiple damages; and~~

1420 ~~(iii) civil fines, penalties, or assessments.~~

1421 ~~(c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,~~  
1422 ~~liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors,~~  
1423 ~~soot, fumes, acids, alkalis, or other chemicals.~~

1424 ~~(d) Sudden pollution conditions may be defined by reasonable time limits for discovery and reporting to the insurer.~~

1425 ~~(e) Transportation means movement by any vehicle or mode of transit including but not limited to automobile, truck, or~~  
1426 ~~watercraft, as well as and is inclusive of loading, temporary placement during transit prior to final delivery, or~~  
1427 ~~unloading, of materials goods, products or waste, either:~~

1428 ~~(i) intended for delivery to a Permitted Facility, or~~

1429 ~~(ii) being sent from a Permitted Facility.~~

1430