

Exhibit B

CHAPTER 16.08 STATE ENVIRONMENTAL POLICY ACT (SEPA)

16.08.090. Environmental checklist

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

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

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

The **worksheet and supplemental** information **provided in the expert evaluation or Worksheet** required for fossil and renewable fuel facilities shall be considered procedures and criteria added to Whatcom County’s SEPA policies and procedures pursuant to WAC 197-11-906(1)(c) and are deemed necessary to be consistent with the provisions of SEPA contained in RCW 43.21C.020, RCW 43.21C.030 and RCW 43.21C.031.

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

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

38 **16.08.160 Substantive authority.**

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

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

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

50 Rationale for PDS Changes (shown in yellow): Subsections E and F below include
51 provisions relating to placing conditions on projects.
52

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

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

60 Rationale for PDS Changes (shown in yellow): Subsection F below includes a
61 provision relating to denying projects.
62

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

- 65 1. The county shall use all practicable means, consistent with other essential considerations of state policy, to improve
66 and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:
 - 67 a. Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
 - 68 b. Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing
69 surroundings;
 - 70 c. Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or
71 other undesirable and unintended consequences;

- 72 d. Preserve important historic, cultural, and natural aspects of our national heritage;
- 73 e. Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- 74 f. Achieve a balance between population and resource use which will permit high standards of living and a wide
75 sharing of life’s amenities; and
- 76 g. Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable
77 resources.

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

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

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

82 Whatcom County Shoreline Management Program

83 Whatcom County Subdivision Ordinance

84 Whatcom County Solid Waste Management Plan

85 Whatcom County Critical Areas Ordinance

86 All official land use controls adopted by Whatcom County.

87 E. Relationship to Federal, State and Regional Regulations. Many of the environmental impacts addressed by these
88 SEPA policies are also the subject of federal, state and regional regulations. In deciding whether these regulations
89 provide sufficient impact mitigation, the County shall consult orally or in writing with the responsible federal, state or
90 other agency with jurisdiction and environmental expertise and may expressly defer to that agency. The County shall
91 base or condition its project decision on compliance with these other existing regulations, rules, laws, or adopted
92 enforceable plans. The County shall not so defer if such regulations did not anticipate or are otherwise inadequate to
93 address a particular impact of a project.

94 F. Specific Environmental Policies

95 1. Air Quality and Climate:

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

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103 Rationale for PDS Changes (shown in yellow): The State Department of Ecology

104 requires a “Prevention of Significant Deterioration” permit for certain industrial

105 sources of air pollution (e.g. refineries). Using the term “public” nuisance will

106 maintain consistency with WCC 20.66.704 and WCC 20.68.704, the Light Impact

107 Industrial and Heavy Impact Industrial provisions relating to odors.

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

Rationale for PDS Changes (shown in yellow): The proposed greenhouse gas emission mitigation provisions referenced above are in the zoning code. The change above would direct the reader to this specific code (replacing a more generic reference to “land use and development regulations”).

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

(a) Emissions Calculated: The SEPA Responsible Official may require mitigation for greenhouse gas emissions of fossil fuel facilities and fossil fuel transshipment facilities, as calculated consistent with the definition of facility emissions in WCC 20.97.124.1.

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

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

ii. Greenhouse Gas Emissions – Renewable Fuels Facilities and Renewable Fuel Transshipment Facilities: The SEPA Responsible Official shall require documentation of lifecycle greenhouse gas emissions associated with renewable fuel facilities. If the applicant demonstrates that lifecycle greenhouse gas emissions will be reduced when compared to equivalent fossil fuels, then no further evaluation of greenhouse gas emissions will be required. The SEPA Responsible Official shall require documentation of emissions consistent with b.i(a) and b.i(b) above. The applicant shall demonstrate that the lifecycle greenhouse gas reductions associated with the renewable fuels provide a net reduction even when considering transportation and upstream emissions. If there is a net increase in emissions locally, the SEPA Responsible official may require mitigation per b.i(c) above.

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

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

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

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

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

2. Plants and Animals:

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

b. It is the County's policy to minimize or prevent the loss of fish and wildlife habitat that have substantial ecological, educational, and economic value. A high priority shall also be given to meeting the needs of state and

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federal threatened, endangered, and sensitive species of both plants and animals. Special consideration shall be given to anadromous fisheries and marine mammals.

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

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

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 PDS Changes (shown in yellow): 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).

234 CHAPTER 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

235 20.68.050 Permitted uses.

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

243 .051 The manufacture and processing of food including meat (including packinghouses and slaughterhouses), dairy, fruits,
244 vegetables, seafood, grain mill, large scale bakery, sugar and beverage products, provided the following criteria are met:

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

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

253 .052 Manufacturing and processing of textiles including weaving cotton, synthetic, silk or wool fabrics; knitting yarn and
254 thread mills; textile bleaching, dyeing and printing; and carpet manufacture.

255 .053 The manufacture and processing of lumber and wood including sawmills; planing mills; millwork; veneer, plywood and
256 prefabricated wood products; wooden containers and cooperage.

257 .054 The following are permitted uses except as otherwise prohibited:

- 258 (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill
- 259 products.
- 260 (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals;
- 261 synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac,
- 262 lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- 263 (3) Refining transshipment, and storage of ~~petroleum and asphalt~~ fossil fuels, limited as follows:

- 264 (a) fossil fuel refineries, existing legally as of [XXX effective date].
- 265 (b) fossil fuel transshipment facilities existing legally as of [XXX effective date].

266 Rationale for PDS Changes (shown in yellow): Transshipment is mentioned in
267 subsection (b) but not in the main clause that subsection (b) modifies. Therefore,
268 transshipment should be added to the main clause.

269 *Discussion/Notes: Allow existing legal fossil fuel uses.*

- 270 (4) The manufacture and processing of rubber and plastic products.

271 (5) Leather tanning and finishing.
272 (6) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic
273 mineral products.

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

277 (8) Storage of asphalt in the Heavy Impact Industrial Zone.

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

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

281 .055 The fabrication of metal products including metal cans, hardware, hand tools, cutlery, heating apparatus, plumbing
282 fixtures, structural metal and stamping.

283 .056 The manufacture of machinery including engines; turbines; farm machinery and equipment; construction, mining and
284 materials handling equipment; machine tools and dies; and special and general industrial equipment.

285 .057 The manufacture of electrical machinery including transmission and distribution equipment, and industrial apparatus.

286 .058 The manufacture of transportation equipment including automobiles, trucks, buses, airplanes, boat building and repair,
287 railroad equipment, bicycles and motorcycles.

288 .059 Bulk commodity storage facilities, and truck, rail, vessel and ~~pipeline~~ transshipment terminals and facilities except for
289 fossil fuel facilities or fossil fuel transshipment facilities subject to the provisions of 20.68.153. New fossil fuel storage and
290 transshipment facilities are expressly prohibited except as provided in Section 20.68.153.

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<p>Rationale for PDS Changes (shown in yellow): New fossil fuel facilities are 292 already prohibited by WCC 20.68.205. There is no need to repeat that they are 293 prohibited in the permitted use section of the code. Additionally, proposed WCC 294 20.68.153 addresses expansion of facilities, rather than new facilities.</p>

295 .060 Stationary thermal power plants with generating capacity of less than 250,000 kilowatts, floating thermal power plants
296 with generating capacity of less than 50,000 kilowatts, and other power plants utilizing renewable resources from solar, wind
297 (Chapter 20.14 WCC) or water sources.

298 .061 Heavy construction contractors.

299 .062 Public uses and community facilities including police and fire stations, libraries, activity centers, community centers,
300 park and recreation facilities identified in an adopted city or county Comprehensive Plan or Park Plan, and other similar
301 noncommercial uses, excluding state education facilities and correction facilities.

302 .063 One one-story detached accessory storage building per lot; provided, that the floor area shall not exceed 200 square feet
303 and shall only be used for personal storage and not for habitation or business; and provided further, that the storage building
304 shall contain no indoor plumbing but may be served with electrical power for lighting.

305 .064 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within
306 the Heavy Impact Industrial District in the Bellingham UGA.

307 .065 Trails, trailheads, restroom facilities and associated parking areas for no more than 30 vehicles.

308 .066 Marijuana production or processing facility.

309 .081 Freight railroad switching yards and terminals, excluding uses addressed in .059.

310 .082 Marine port facilities, excluding uses addressed in .059, and excluding new piers, docks, or wharves.

311 .085 Type I solid waste handling facilities.

312 .086 Type II solid waste handling facilities.

313 20.68.100 Accessory uses.

314 .101 Employee recreation facilities and play areas.

315 .102 Restaurants, cafes and cafeterias operated primarily for the convenience of employees, clients and customers of the
316 district.

317 .103 Temporary buildings for construction purposes for a period not to exceed the duration of such construction.

318 .104 When auxiliary to a principally permitted use: electric utility facilities; substations; generating plants, if less than 50
319 megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills and incinerators.

320 .105 Other accessory uses and buildings, including security services, customarily appurtenant to a principally permitted use.

321 .106 On-site treatment and storage facilities for hazardous wastes associated with outright permitted uses or approved
322 conditional uses subject to the most current siting criteria under Chapter 173-303 WAC.

323 .107 Mini-day care centers, and day care centers operated by, maintained by or funded by business in the district for the
324 purpose of serving the child care needs of employees whose place of employment lies within this zone district.

325 .108 Electric vehicle rapid charging stations and battery exchange facilities.

326 20.68.130 Administrative approval uses.

327 .131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the
328 requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities). (Ord. 2006-031 § 1
329 (Exh. A), 2006).

330 20.68.150 Conditional uses.

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

332 .152 Uses allowed in the Light Impact Industrial zone as permitted uses, WCC 20.66.100, subject to the following:

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

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

339 .153 Expansion of existing legal fossil or renewable fuel refinery operations and the primary manufacturing of products
340 thereof or expansion of existing legal fossil or renewable fuel transshipment facilities, subject to the conditional use criteria
341 below:

342 Rationale for PDS Changes (shown in yellow): Expansion of existing renewable fuel
343 facilities is addressed in proposed WCC 20.68.159. No need to repeat here.

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

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

- 346 (3) The applicant has documented to the satisfaction of the County decision maker all of the anticipated sources, types, and
347 volumes of substances transferred in bulk at the facility. The permit shall be limited exclusively to those types and volumes
348 of materials or products as documented and approved.
- 349 (4) Insurance requirements meet the provisions of WCC Section 22.05.125.
- 350 (5) Mitigation of transportation impacts consistent with Chapter 20.78 WCC, Transportation Concurrency Management, and
351 Chapter 16.24 WCC, Commute Trip Reduction.
- 352 (6) Mitigation of impacts to other services including fire and emergency response capabilities, water supply and fire flow, to
353 address risks created by expansions.
- 354 (7) Prior to issuance of any site preparation or construction permits, and prior to occupancy and/or operation of the expanded
355 facility, the applicant shall provide verifiable documentation to the county that the facility has been constructed consistent
356 with any applicable federal or state requirements, including but not limited to water rights and use.
- 357 (8) Plans for stormwater and wastewater releases have been approved.
- 358 (9) Prior to commencement of any site preparation or construction activities, all necessary state leases shall be acquired for
359 any piers or aquatic lands improvements, and it shall be demonstrated to the satisfaction of the zoning administrator that the
360 project applicant has met any federal or state permit or consultation requirements, including properly addressing tribal treaty
361 rights or the provisions of the Magnuson Amendment through state and federal permitting decisions;
- 362 (10) Greenhouse gas mitigation for fossil fuel facilities, if required by WCC 20.68.801 Minimization of greenhouse gas
363 emissions and inclusion of local carbon offset mitigation projects; and

364 Rationale for PDS Changes (shown in yellow): References the specific greenhouse gas mitigation
365 provisions in the code. Clarifies that greenhouse gas mitigation is not required for renewable fuel
366 facilities in accordance with Planning Commission direction on October 10, 2019.

- 367 (11) Demonstration that the proposal will retain or add living-wage jobs or contribute to the Whatcom County economy.
- 368 .154 Treatment and storage facilities for hazardous wastes subject to the following:
- 369 (1) The ~~eight~~ criteria for a conditional use listed under WCC 20.84.200.
- 370 (2) The most current state siting criteria under Chapter 173-303 WAC.
- 371 (3) It shall be the responsibility of the applicant to document to the satisfaction of the approving body the anticipated sources,
372 types, volumes and final disposition of hazardous wastes to be collected and the type of treatments associated with those
373 wastes. The permit shall be limited exclusively to those types of wastes and treatments as documented and approved.
- 374 (4) Total off-site facility capacity shall be limited to that needed to treat and store wastes generated within Whatcom County
375 by generators requiring off-site management of hazardous wastes; provided, however, waste streams may be sourced from
376 other jurisdictions through interagency zone designation agreements as approved by the county council, not to exceed 10
377 percent of the total local hazardous waste stream.
- 378 (5) Prior to occupancy of the facility, the State Department of Ecology shall certify to the county that the facility has been
379 constructed consistent with state requirements.
- 380 (6) As a condition of approval, the applicant shall be required to keep and maintain accurate and current records of the types,
381 amounts, sources, and final disposition of hazardous wastes collected. The applicant shall provide such records annually to
382 the county, or sooner upon county request. If the facility is found to be exceeding the waste stream limitations or permit
383 restrictions, the county staff shall so report to the approving body who shall have the authority to revoke the permit,
384 following a public hearing, if the limitation has been exceeded absent an emergency situation. Any emergency must be
385 documented by county staff.
- 386 (7) Annual inspections of the facility shall be a minimum requirement. The applicant shall be required to forward copies of
387 all facility inspection reports to the county. If deficiencies are found, the operator shall, within 15 days, submit to the county

388 for approval an implementation schedule of corrective measures. Such schedule shall include specific completion dates and
389 inspection reporting procedures.

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

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

394 .156 Public and private parks facilities not included in an adopted city or county Comprehensive Plan or Park Plan.

395 .157 Trailheads with parking areas for more than 30 vehicles.

396 .158 Athletic fields.

397 .159 New or expansion of existing legal renewable fuel refineries ~~operations~~ or renewable fuel transshipment facilities
398 subject to the conditional use permit criteria identified in WCC 20.68.153 (except criterion 10)(1) to (11).

399 Rationale for PDS Changes (shown in yellow): “Renewable fuel refinery” is defined in
400 proposed WCC 20.97.350.3 (no need to insert “operations”). Clarifies that greenhouse
401 gas mitigation is not required for renewable fuel facilities in accordance with Planning
402 Commission direction on October 10, 2019.

403 .180 Major passenger intermodal terminals.

404 .187 Type III solid waste handling facilities; provided, that:

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

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

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

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

411 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

412 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

413 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;

414 (f) This 1,500-foot buffer does not apply to:

415 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
416 the property line 100 feet or the standard zoning district setback, whichever is greater;

417 (ii) Inert landfills;

418 (3) Inert landfills shall be located at least 500 feet from the following:

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

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

421 (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;

422 (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;

- 423 (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
- 424 (f) This 500-foot buffer does not apply to:
- 425 (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from
426 the property line 100 feet or the standard zoning district setback, whichever is greater;
- 427 (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use
428 except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any
429 county or state road right-of-way;
- 430 (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic,
431 will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use
432 is shown to be intermittent and easily delayed until emergency conditions have passed;
- 433 (6) The facility or site has complied with the provisions of WCC 20.84.200 and all other ordinances and laws regulating solid
434 waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state
435 and federal regulations concerning solid waste facilities and sites;
- 436 (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the
437 closure plan includes:
- 438 (a) Reclamation in two to 10 acre increments, as appropriately responsive to the size and intensity of the particular
439 activity, with seeding to be accomplished annually but no later than September 30th; and
- 440 (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is
441 covered through the financial assurance for post-closure activities;
- 442 (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements
443 of WCC 20.80.300 (Landscaping);
- 444 (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's
445 delineated wellhead protection area;
- 446 (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving
447 turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be
448 measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from
449 the boundary of the airport property;
- 450 (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to
451 protect the value and enjoyment of existing adjacent uses.
- 452 .188 Mitigation banks as a form of compensatory mitigation for wetland and habitat conservation area impacts when
453 permitted in accordance with the provisions of Chapter 16.16 WCC; provided, applications for mitigation banks shall be
454 processed as a major development project pursuant to Chapter 20.88 WCC.

455 **20.68.200 Prohibited uses.**

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

458 .201 Reserved.

459 .202 Adult businesses.

460 .203 In the Bellingham Urban Growth Area the following uses are prohibited: petroleum refinery and the primary
461 manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and
462 products derived thereof; and primary metal industries.

463

464 .204 New Fossil fuel refineries and the primary manufacturing of products thereof [XXX effective date].

465 Rationale for PDS Changes (shown in yellow): “Fossil fuel refinery” is defined by
466 proposed WCC 20.97.160.4. The additional text is unnecessary.

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

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

470 Rationale for PDS Changes (shown in yellow): Cite the full name of the zoning
471 district.

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

474 .207 Coal-fired power plants.

475 (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-
476 075, 1991).

477 20.68.250 Minimum lot size.

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

480 20.68.255 Minimum lot frontage.

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

484 20.68.350 Building setbacks.

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

486 20.68.400 Height limitations.

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

489 20.68.450 Lot coverage.

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

491 20.68.500 Open space.

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

493 20.68.550 Buffer area.

494 .551 The industrial user shall establish a buffer for building sites adjoining the boundary of the Heavy Impact Industrial
495 District (HII), which shall be located adjacent to the district boundary. The purpose of the buffer is to optimize the visual
496 appearance of the site by obscuring industrial activity from view by passing motorists, to contribute to on-site and off-site
497 impact abatement, and to move towards attaining compatibility with surrounding nonindustrial land uses and character.

498 .552 To implement the buffer requirements of this district, minimum setbacks for heavy industrial buildings and accessory
499 structures shall be established consistent with the following options:

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

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

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

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

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

515 .553 Uses other than heavy industrial will conform to the normal setback requirements as set forth in WCC 20.80.200 and
516 20.80.254(3) and the buffering requirements for light impact industrial uses WCC 20.66.551.

517 .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
518 separated or sold shall be used only as a buffer area in accordance with the above requirements. (Ord. 2019-013 § 1 (Exh. A),
519 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,
520 1989; Ord. 87-12, 1987; Ord. 87-11, 1987).

521 **20.68.600 Sign regulations.**

522 Sign regulations shall be administered pursuant to WCC 20.80.400.

523 **20.68.650 Development criteria.**

524 (Ord. 96-056 Att. A § A1, 1996).

525 **20.68.651 Landscaping.**

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

527 **20.68.652 Off-street parking and loading.**

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

531 **20.68.653 Drainage.**

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

535 **20.68.654 Driveways.**

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

538 **20.68.655 Access.**

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

540 **20.68.656 Maintenance.**

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

543 **20.68.657 Enclosure.**

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

546 **20.68.700 Performance standards.**

547 **20.68.701 Pollution control and nuisance abatement.**

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

551 **20.68.702 Heat, light and glare.**

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

554 **20.68.703 Ground vibration.**

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

557 **20.68.704 Odors.**

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

561 **20.68.705 Noise.**

562 No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC. (Ord. 91-
563 075, 1991).

564 **20.68.706 Toxic gases and fumes.**

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

567 **20.68.707 Liquid pollutants.**

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

569 **20.68.708 Appearance.**

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

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20.68.709 Marijuana odor.

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

20.68.800. Fossil Fuel or Renewable Fuel Refineries or Transshipment Facilities

~~This section applies to fossil-fuel refineries, and fossil-fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities.~~

On October 10, 2019, the Planning Commission provided direction that renewable fuel facilities should not be required to mitigate greenhouse gas emissions if they reduce lifecycle greenhouse gas emissions. Therefore, the terms “renewable fuel refineries” and “renewable fuel transshipment facilities” have been deleted from proposed WCC 20.68.800 above.

.801. Environmental Review and Greenhouse Gas Mitigation

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

Rationale for PDS Changes (shown in yellow): The first sentence in proposed WCC 20.68.801(1) already references SEPA. The second sentence is redundant.

~~(2) Greenhouse gas emission analysis required:~~

~~(a) For the first expansion or project subject to WCC 20.68.802(2) requiring County land use project permits after the date of this ordinance, a baseline calculation of existing facility emissions of greenhouse gases shall be provided by the applicant addressing the average of the prior three-year emissionsthrughput. See facility emissions definition in WCC 20.97.124.1 for the scope and geography of the analysis. Calculation of baseline greenhouse gas emissions shall follow the methodology used for facility greenhouse gas reports to the State of Washington Department of Ecology, and to the US Environmental Protection Agency Electronic Greenhouse Gas Reporting Tool (e-GGRT), or successor state or federal emissions reporting tool or requirements.~~

~~(i) The data used to calculate the current actual throughput average shall be 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. This information shall be provided by the project applicant and verified by the County at the time of application for any land use or construction project permits and verified by the County.~~

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

613 Rationale for PDS Changes (shown in yellow): Proposed WCC 20.68.802(2) specifically states that the
614 uses listed are subject to WCC 20.68.801. However, replacement and other listed uses would not
615 constitute an “expansion.” The above modification clarifies that expansions and uses in .802(2) are
included.

616 Some facilities subject to the greenhouse gas emission rules will require a building permit under
617 proposed WCC 20.68.802(2) but not a conditional use permit (which is traditionally thought of as a
618 “land use permit). “Project permit” is defined by existing WCC 20.97.321 to include a number of
different County permits, including a building permit.

619 It appears more appropriate to directly state that the baseline greenhouse gas emissions are calculated
620 based upon the average greenhouse gas emissions reported to state or federal agencies rather than
621 upon “throughput.” Additionally, the County may not be able to verify information on the day the
application is submitted, but will verify the information later on as part of the permit review process.

622 Finally, “Refinery capacity” is not otherwise referenced in proposed WCC 20.68.800. Therefore, it’s not
623 necessary to define or establish the parameters for refinery capacity in this section.

624
625 (b) Baseline and Facility emissions, defined in WCC 20.97.124.1, shall be quantified for each expansion of refining
626 and storage capacity or project subject to WCC 20.68.802(2) in the application for land use or construction project
627 permits and in SEPA documents analyzing the impacts of the proposal an expanded facility.

628 Rationale for PDS Changes (shown in yellow): Baseline emissions are quantified
629 for the initial application under subsection (a) above. However, baseline emissions
630 will change over time and will also have to be calculated for subsequent
631 applications under subsection (b) above.

632 Again, expansions and projects subject to .802(2) are required to do the GHG
633 analysis.

634 (c) The emissions analysis shall identify how mitigation will offset greenhouse gas emissions generated above the
635 baseline emissions.

636 Rationale for PDS Changes (shown in yellow): Mitigation is required for emissions
637 above the baseline average (see subsection 3 below).

638
639 (d) Calculations of the baseline facility emissions and the projected increases shall be consistent with rules and
640 methods adopted by the State of Washington Department of Ecology and shall include upstream greenhouse gas
641 emission calculations for feedstocks used in the refining process as provided in (e) below.

642 Rationale for PDS Changes (shown in yellow): Methods of calculating emissions
643 are addressed in subsection (a) above, subsection (e) below, and proposed WCC
644 16.08.160.F. Therefore, to reduce unnecessary language, we recommend
645 deleting subsection (d).
646

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

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652 Rationale for PDS Changes (shown in yellow): Proposed WCC 20.68.800 sets
653 forth the facilities subject to the greenhouse gas emission analysis: Refineries and
654 transshipment facilities. Subsection (e) above only references refineries (and not
transshipment facilities).

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

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660 Rationale for PDS Changes (shown in yellow): The deleted language above
661 already appears in subsection (3)(a) below relating to mitigation. Reducing
redundancy will help streamline the code for ease of use.

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

664
665 Rationale for PDS Changes (shown in yellow): The above provision is redundant.
It is similar to (3)(c) below.

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

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

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

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

681 *Discussion/Note: Regarding the fee in lieu, per the US EPA, the Social cost of carbon (SC-*
682 *CO₂) "is a measure, in dollars, of the long-term damage done by a ton of carbon dioxide*
683 *(CO₂) emissions in a given year. This dollar figure also represents the value of damages*
684 *avoided for a small emission reduction (i.e., the benefit of a CO₂ reduction)." See:*
685 *https://19january2017snapshot.epa.gov/climatechange/social-cost-carbon_.html. If the*
686 *County wishes to increase the mitigation fee it may do so by ordinance with an*
687 *accompanying rationale such as inflation, updated US EPA guidance or other factors.*

688 .802 Non-Capacity, Maintenance, Safety, and Environmental Improvements

689 (1) Expansions of Improvements to existing legal fossil-fuel refineries, fossil-fuel transshipment facilities, renewable fuel
690 refineries, or renewable fuel transshipment facilities for non-capacity purposes are outright permitted uses and are not subject
691 to WCC 20.68.801. Examples of non-capacity improvements include, but are not limited to:

- 692 (a) accessory buildings.
- 693 (b) office space.
- 694 (c) parking lots.
- 695 (d) radio communications facilities.
- 696 (e) security buildings.
- 697 (f) storage buildings.
- 698 (g) routine equipment maintenance, and
- 699 (g) other similar structures or activities.

701 Rationale for PDS Changes (shown in yellow): The uses listed above in proposed WCC
702 20.68.802(1) are permitted outright. Expansions would require a conditional use permit under
703 proposed WCC 20.68.153. Substituting the word “improvements” for “expansions” in the clause
704 above would make a clear distinction between expansions that require a conditional use permit
705 and other improvements that are permitted outright.

706 Since the improvement projects in proposed WCC 20.68.802(2) below are specifically subject to
707 the greenhouse gas provisions on WCC 20.68.801, it is presumed that the improvements in WCC
708 20.68.802(1) are not. The proposed change makes this explicit.

709 The uses listed above in proposed WCC 20.68.802(1) are permitted outright and do not require
710 GHG analysis/mitigation. The uses listed below in proposed WCC 20.68.802(2) are permitted
711 outright but require GHG analysis and, potentially, mitigation. We are proposing to move
712 equipment maintenance from subsection (2) to subsection (1). “Maintain” is defined by the
713 Merriam-Webster on-line dictionary as “to keep in an existing state (as of repair, efficiency, or
714 validity) : preserve from failure or decline.” Current Comprehensive Plan Policy 2CC-17 (and the
715 proposed changes to this policy) allows maintenance of existing fossil fuel facilities. It seems that
716 moving maintenance into the permitted use section that does not require GHG analysis/mitigation
717 is more in-line with the intent of this Policy.

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

717 NOTE: Consider moving the uses listed in proposed WCC 20.68.802 to WCC
718 20.68.050, where permitted uses are normally listed.

721 CHAPTER 20.74 CHERRY POINT INDUSTRIAL (CP) DISTRICT

722 20.74.010 Purpose.

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

727 20.74.020 Applicability.

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

729 20.74.030 Permitted uses.

730 (1) Primary permitted uses:

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

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

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

738 20.74.040 Accessory uses.

739 Accessory uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
740 083 Exh. A § 57, 1998).

741 20.74.050 Conditional uses.

742 Conditional uses shall be the same as those permitted in the Heavy Impact Industrial District, Chapter 20.68 WCC. (Ord. 98-
743 083 Exh. A § 57, 1998).

744 20.74.055 Prohibited uses.

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

747 **Rationale for PDS Changes (shown in yellow): The Cherry Point Industrial District**
748 **includes both the Heavy Impact Industrial and Light Impact Industrial zone.**
749 **Therefore, both should be referenced.**

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

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

753 20.74.060 Master site plan requirements.

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

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

760 (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
761 industrial activity; provided, that if the planning block is 40 acres or smaller, the requirement for the major industrial site
762 shall be waived.

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

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

770 **20.74.070 Minimum lot size and parcelization.**

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

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

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

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

779 (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
780 and will not interfere with the development of the primary large uses intended by the Comprehensive Plan.

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

783 **20.74.080 Design standards.**

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

788 **20.74.090 Traffic demand management.**

789 RCW 36.70A.365 requires the implementation of traffic demand management (TDM) programs for designating a Major
790 Industrial Urban Growth Area. Any employer in the Cherry Point Urban Growth Area that employs 100 or more full-time
791 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
792 continuous months during the year are required to meet the TDM requirements of Chapter 16.24 WCC.

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

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

797 **20.74.100 Drainage.**

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

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20.74.110 Change of Use

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

Rationale for PDS Changes (shown in yellow): In order to streamline the process, a “change of use permit” would only be required if no other County permit is needed that documents the change of use.

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

(2) Consistency with the requirements of the CPCherry Point Industrial District, Chapter 20.74, and base zone; and

Rationale for PDS Changes (shown in yellow): Cite the full name of the zoning district.

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

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

20.74.115 Change of Use of Renewable Fuels Facilities.

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

Rationale for PDS Changes (shown in yellow): The above change would simply clarify that conversion of renewable fuel facilities to new fossil fuel facilities outside of the refinery boundary is not allowed.

833 CHAPTER 20.88 MAJOR PROJECT PERMITS

834 20.88.100 Major project permits.

835 .110 All major developments shall, prior to any construction, obtain a major project permit.

836 .120 A major project permit will be required for mitigation banks proposed in accordance with the provisions of Chapter
837 16.16 WCC and for any proposed development that meets any two of the following conditions:

Cost

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

Size

retail 75,000 square feet

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

residential 300 dwelling units

motel/hotel 200 units

Number of Employees 250

SEPA Review An EIS is required

838

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

842 .130 Pursuant to WCC 22.05.120 the hearing examiner shall recommend to the county council project approval, approval
843 with conditions, or denial, based upon written findings and conclusions supported by the evidence of record. The hearing
844 examiner’s recommendation and county council’s decision shall determine the adequacy of a major project permit application
845 based on the following criteria:

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

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

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

852 (3) Will obtain, if required, a state aquatic lands lease, and all other necessary permits and authorizations, including federal
853 determinations that the project will not interfere with treaty fishing rights of tribal nations, the limits set forth in the

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

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

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

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

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

868 .140 In addition, the hearing examiner may recommend or county council may impose any reasonable conditions precedent
869 to the establishment of the major development as may be required to mitigate impacts of the proposal on the natural
870 environment of the county, and to protect the health, safety and general welfare of the people of the county consistent with
871 the policies for environmental protection set forth in the Comprehensive Plan.

872 .150 The hearing examiner may recommend or county council may also approve alternative mitigation plans for major
873 project permits in accordance with WCC 16.16.260(E) which may be used to satisfy the requirements of Chapter 16.16 WCC
874 and provide relief from the specific standards and requirements thereof.

875 **20.88.200 Procedure.**

876 .205 If a major project permit is determined to be required, an application shall be completed and filed along with the
877 appropriate fees, and the application shall be processed in accordance with Chapter 22.05 WCC. A master plan is required as
878 part of the application for a major project permit. The master plan document shall include all elements required per the
879 department’s administrative manual.

880 .210 Development Standards. The master planmajor project permit may propose standards that will control development of
881 the possible future uses that are in addition to, or substitute for, requirements of this chapter. These may be such things as
882 height limits, setbacks, frontage, landscaping requirements, parking requirements, signage, view corridors or facade
883 treatments. Proposed standards that do not meet the minimum county standards must obtain the appropriate variance prior to
884 county approval of the proposed standards. If the proposed design standards will apply to property located partially or totally
885 within an urban growth area, concurrence of the affected city will be required.

886 .215 Procedures. Master plan-major project permit review shall be conducted under current review procedures. Other land use
887 reviews may be conducted concurrently with the master plan-major project permit review.

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

889 (i) Minor changes shall be reviewed for compliance and compatibility with the approved master planmajor project
890 permit.

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

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

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

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

903

Rationale for PDS Changes (shown in yellow): A master plan is one component of the major project permit. The procedures above should relate to the entire permit (not just one component of the permit).

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905

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907 .220 through .265 *Reserved*.

908 .270 Where a project requires a major project permit, that project shall be exempt from the requirement of obtaining a
909 conditional use permit.

910 .275 Major project permits: Where an applicant has applied for a planned unit development or a development agreement, that
911 project shall be exempt from the requirement to obtain a major project permit except in the Cherry Point Industrial District.

912 .280 Major project permits in the Cherry Point Industrial District: where a project in the Cherry Point Industrial District
913 requires a major project permit, the major project permit shall be concurrently processed with other required land use permits
914 including but not limited to: Cherry Point master site plan, conditional use permit, planned unit development, or development
915 agreement.

916

Rationale for PDS Changes (shown in yellow): The master plan is part of a permit application (not a permit in itself).

917

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

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930 CHAPTER 20.97 DEFINITIONS

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

935 20.97.052.1 Change of Use

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

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

938 20.97.124.1 Facility Emissions.

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

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

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

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

946 20.97.160.2 Fossil Fuels.

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

950 20.97.160.3 Fossil or Renewable Fuel Transshipment Facilities.

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

957 20.97.160.4 Fossil-Fuel Refinery.

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

966 **20.97.160.5 Fossil-Fuel Refinery Capacity:**

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

972
973 Rationale for PDS Changes (shown in yellow): "Fossil-Fuel Refinery Capacity"
974 does not occur in the proposal. "Refinery Capacity" appears one time (proposed
975 WCC 20.68.801(2)(a)(ii)), but we are suggesting deleting it. Therefore, a
definition is not needed.

976 **20.97.163 Greenhouse Gas Emissions**

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

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

983 **20.97.201 Lifecycle Greenhouse Gas Emissions**

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

989 Discussion/Notes: Considers a definition under the Clean Air Act. See:
990 [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)
991 [gas-emissions-under-renewable-fuel](https://www.epa.gov/renewable-fuel-standard-program/lifecycle-analysis-greenhouse-gas-emissions-under-renewable-fuel) and
992 [https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm)
993 [title42-chap85.htm](https://www.govinfo.gov/content/pkg/USCODE-2010-title42/html/USCODE-2010-title42-chap85.htm).

994 **20.97.202 Living Wage**

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

997 Discussion/Notes: Based on a definition published by Massachusetts Institute of
998 Technology. See <http://livingwage.mit.edu/counties/53073>. There is a living-wage
999 calculator for each state and each county within. Living wage ordinances vary in their
1000 wage rates, and they often set the hourly wage a full-time, year-round worker must earn
1001 to bring a family of four out of poverty. See:
1002 <http://www.forworkingfamilies.org/resources/policy-tools-living-wage>.

1003 **20.97.350.1 Renewable Biomass**

1004 “Renewable biomass” includes but is not limited to the following:

1005 (1) Planted crops and crop residue harvested from agricultural land.

1006 (2) Planted trees and tree residue from a tree plantation.

1007 (3) Animal waste material and animal byproducts.

1008 (4) Slash and pre-commercial thinnings.

1009 (5) Organic matter that is available on a renewable or recurring basis.

1010 (6) Algae.

1011 (7) Separated yard waste or food waste, including recycled cooking and trap grease.

1012 (8) Items 1 through 7 including any incidental, de minimis contaminants that are impractical to remove and are related to
1013 customary feedstock production and transport.

1014 *Discussion/Notes: Adapted from based on federal renewable fuel definition,*
1015 <https://www.law.cornell.edu/cfr/text/40/80.1401>.

1016 **20.97.350.2 Renewable Fuel**

1017 “Renewable Fuel” means liquid fuels produced from renewable biomass and limited in terms of blending with fossil fuels.
1018 Common renewable fuels include ethanol and biodiesel:

1019 (1) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is
1020 nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of
1021 American society of testing and materials specification D 5798.

1022 (2) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable
1023 oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal
1024 environmental protection agency in 40 Code of Federal Regulations (C.F.R.) Part 79 (2008) and meets the requirements of
1025 American society of testing and materials specification D 975.

1026

Rationale for PDS Changes (shown in yellow): Federal regulations may be 1027 amended over time.
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1029 (3) Renewable fuels shall include those designed to result in a lifecycle greenhouse gas emission reduction of at least 50% or
1030 more under the Federal Clean Air Act. Renewable fuels shall not include products produced from palm oil or other
1031 feedstocks that cannot be proven to reduce greenhouse gas emissions utilizing accepted methods of the Washington State
1032 Department of Ecology or US EPA.

1033 *Discussion/Notes: A basic renewable fuel energy source is biomass. From biomass,*
1034 *common liquid fuel forms include ethanol and biodiesel. See:*
1035 https://www.eia.gov/energyexplained/?page=renewable_home.

1036 Washington State defines renewable diesel and E85 motor fuel in the motor fuel
1037 quality act (Chapter 19.112 RCW), which are integrated in the definition.

1038 Limiting fossil fuel percentages to 5% is workable for buses and power cars. See
1039 <http://www.cleanairtrust.org/Differences-Between-E85-and-E95.html>. E85 includes 15-

1040 25% fossil fuels and is used by flexibly fueled vehicles. See
1041 <https://www.fueleconomy.gov/feg/flextech.shtml>.

1042 Under the EPA renewable fuel standard, three of four renewable fuel categories must
1043 meet a 50% or 60% lifecycle greenhouse gas (GHG) reduction. A fourth conventional
1044 renewable ethanol must meet a 20% lifecycle GHG reduction. See:
1045 [https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard)
1046 [standard](https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard).

1047 **20.97.350.3 Renewable Fuel Refinery**

1048 A “Renewable Fuel Refinery” means a facility that processes or produces renewable fuels. This definition excludes Small
1049 Fossil or Renewable Storage and Distribution Facilities.

1050 **20.97.425.1 Small Fossil or Renewable Fuel Storage and Distribution Facilities**

1051 “Small Fossil or Renewable Fuel Storage and Distribution Facilities” means:

1052 (1) Equipment used for purposes of direct sale or distribution to consumers of fossil fuels or renewable fuels, or

1053 (2) Accessory equipment that supplies fossil fuels or renewable fuels to an onsite allowed commercial or industrial operation,
1054 and that does not meet the definitions of fossil-fuel refinery, renewable fuel refinery, or fossil or renewable fuel
1055 transshipment facilities.

1056 **20.97.434.1 Technical committee.**

1057 “Technical committee” or “technical review committee” means the designated representatives of the Whatcom County
1058 Planning and Development Services Director, who shall act as chairperson, the Whatcom County Public Works Director, and
1059 the Whatcom County Health Department Director.

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Exhibit D

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CHAPTER 22.05 PROJECT PERMIT PROCEDURES

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22.05.020 Project permit processing table.

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

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

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

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

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1082 Check marks indicate a step is required; reference letters refer to the notes in subsection (2) of this section.

1083 *Discussion/Notes: Scrubbing the Existing Code for consistency with new provisions and*
 1084 *desired review process.*

1085 **22.05.110 Final decisions – Type I, II, and III applications.**

1086 (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
 1087 permit. The determination or permit may be granted subject to conditions, modifications, or restrictions that are necessary to
 1088 comply with all applicable codes.

1089 (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)
 1090 shall either grant or deny the application or appeal.

1091 (a) The hearing examiner may grant Type III applications subject to conditions, modifications or restrictions that the
 1092 hearing examiner finds are necessary to make the application compatible with its environment, carry out the objectives
 1093 and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and objectives
 1094 of Whatcom County.

1095 (b) Requirements:

1096 (i) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure
 1097 compliance with the conditions, modifications and restrictions.

1098 (ii) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
 1099 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section
 1100 22.05.125.

1101 (c) The hearing examiner shall render a final decision within 14 calendar days following the conclusion of all testimony
 1102 and hearings. Each final decision of the hearing examiner shall be in writing and shall include findings and conclusions
 1103 based on the record to support the decision.

1104 (d) No final decision of the hearing examiner shall be subject to administrative or quasi-judicial review, except as
 1105 provided herein.

1106 (e) The applicant, any person with standing, or any county department may appeal any final decision of the hearing
 1107 examiner to superior court, except as otherwise specified in WCC 22.05.020. (Ord. 2019-013 § 1 (Exh. A); Ord. 2018-
 1108 032 § 1 (Exh. A)).

1109 22.05.120 Recommended Recommendations and final decisions to county council. Type
1110 IV applications

1111 (1) For Type IV applications per WCC 22.05.020 the hearing examiner’s recommendations to the county council may be to
1112 grant, grant with conditions or deny an application. The hearing examiner’s recommendation may include conditions,
1113 modifications or restrictions as may be necessary to make the application compatible with its environment, carry out the
1114 objectives and goals of the comprehensive plan, statutes, ordinances and regulations as well as other official policies and
1115 objectives of Whatcom County.

1116 (2) Each recommended decision of the hearing examiner for an application identified as a Type IV application per WCC
1117 22.05.020 shall be in writing to the clerk of the county council and shall include findings and conclusions based upon the
1118 record to support the decision. Such findings and conclusions shall also set forth the manner in which the decision carries out
1119 and conforms to the county’s comprehensive plan and complies with the applicable statutes, ordinances or regulations.

1120 (3) The deliberation of the county council on quasi-judicial actions shall be in accordance with WCC 22.05.090(4) and
1121 Chapter 42.36 RCW.

1122 (4) For planned unit developments and major project permits the following shall apply:

1123 (a) The recommendation of the hearing examiner regarding planned unit developments and major project permits shall
1124 be based upon the criteria set forth in WCC 20.85.335 and 20.88.130, respectively.

1125 (b) The hearing examiner shall file the recommendation with the clerk of the county council within 21 calendar days
1126 following the conclusion of the open record hearing.

1127 (c) The county council shall conduct the following within the specified time frames, except as provided in subsection
1128 (4)(c)(iii) of this section:

1129 (i) Hold a public meeting, not an open record public hearing, to deliberate on the project application within 28
1130 calendar days after receiving the hearing examiner’s recommendation.

1131 (ii) Issue a final written decision within 21 calendar days of the public meeting.

1132 (iii) The county council may exceed the time limits in subsection (4)(c)(i) or (ii) of this section if the county council
1133 meeting schedule does not accommodate a meeting within the above time frames, or if the county council makes
1134 written findings that a specified amount of additional time is needed to process a specific application or project
1135 type, per RCW 36.70B.080(1).

1136 (5) The county council’s final written decision may include conditions when the project is approved and shall state the
1137 findings of fact upon which the decision is based.

1138 (a) Performance bonds or other security, acceptable to the prosecuting attorney, may be required to ensure compliance
1139 with the conditions, modifications and restrictions.

1140 (b) Fossil or Renewable Fuel Refinery or Fossil or Renewable Fuel Transshipment Facilities: The applicant shall
1141 provide insurance or other financial assurance acceptable to the prosecuting attorney consistent with Section 22.05.125.

1142 (6) Any deliberation or decision of the county council shall be based solely upon consideration of the record established by
1143 the hearing examiner, the recommendations of the hearing examiner and the criteria set forth in county code-applicable state
1144 laws and regulations, county code, the county comprehensive plan if applicable, and the county shoreline management
1145 program, including but not limited to compliance with SEPA, WAC 197-11 (SEPA Rules) as adopted and modified in the
1146 county code, and the county’s adopted SEPA policies. (Ord. 2018-032 § 1 (Exh. A)).

1147 **Rationale for PDS Changes (shown in yellow): Other parts of the proposal require**
1148 **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.

1149 22.05.125 Proof of insurance for hazards created in the County

1150 At the time of Type I, II, III, or IV applications addressing production capacity or storage tank increases at fossil fuel
1151 refineries, fossil fuel transshipment facilities, renewable fuel refineries, or renewable fuel transshipment facilities (Facilities),
1152 the applicant shall provide proof of insurance or other financial security acceptable to the prosecuting attorney, which may
1153 include a parent company corporate guarantee to cover loss or damages to the County and to County residents from any fire,
1154 explosion, spill or other sudden incident from operations of the Facility or from transport of materials, goods, products or
1155 waste within the boundaries of Whatcom County. This requirement shall also be met for Type I changes in use from fossil
1156 fuel refineries or transshipment facilities to renewable fuel refineries or transshipment facilities. The required policies and
1157 any parent company corporate guarantee shall contain the following Coverage Terms:

1158 (1) Insureds: The Primary Named Insured shall include the Permitted Entity(ies). The County shall be included as additional
1159 Insured and shall be provided complete copies of applicable insurance policies and endorsements.

1160 (2) Insuring Agreements: Insurance shall pay on behalf of the Insured for loss from third-party bodily injury, property
1161 damage or environmental remediation and restoration expenses resulting from sudden pollution conditions commencing on or
1162 after the Permit effective date, either:

1163 (a) emanating from and beyond the boundaries of a Permitted Facility, or

1164 (b) arising from materials or waste during transportation to or from a Permitted Facility.

1165 (3) Policy Limits: Policy limits shall be no less than \$100 million for each Loss / total for all Losses determined by the
1166 County during the review of each individual permit application and shall be based on an assessment of the facility’s specific
1167 risk of loss or damages. The required limits may be revised periodically by the County based on factors including inflation
1168 adjustments and Permit- or Facility-specific risks.

1169 **Rationale for PDS Changes (shown in yellow): The proposed change above was**
1170 **recommended by the Whatcom County Prosecuting Attorney’s Office on**
1171 **September 9, 2019, based upon Cascadia Law Group’s recommendations (see**
1172 **“Discussion/Note” below).**

1173 *Discussion/Note: Minimum insurance amounts could be increased, but at levels above \$50*
1174 *million to \$100 million may not be available in the insurance market. We suggest taking*
1175 *out the \$100 million liability limit and substituting language that determines the liability*
1176 *limit as each permit is reviewed and made part of a development agreement. Other forms*
1177 *of financial assurance instruments could be allowed such as a letter of credit a parent*
1178 *company corporate guarantee or other financial assurance acceptable to the County*
1179 *Prosecutor as a substitute for commercial insurance. We have included code language to*
1180 *that effect in this draft. The County could also indicate that the amount of financial*
1181 *assurance is to be determined at the point of an approval decision for a facility expansion*
1182 *rather than specifying an amount here.*

1183 (4) Policy Deductibles: If the Policy has a deductible, the Insurer shall be liable for the payment of amounts within any
1184 deductible or self-insured retention amount applicable to the policy, with a right of reimbursement by the Insured for any
1185 such payment made by the Insurer. If the Policy has a self-insured retention (SIR) amount, the Primary Named Insured shall
1186 declare how it intends to provide a financial assurance to the County for such SIR amount, where acceptable forms of
1187 financial assurance are letters of credit and certificates of deposit.

1190 (5) Term and Cancellation Notice:

1191 (a) Insurance shall be carried for the lifetime of the Permitted Facility.

1192 (b) Cancellation of the insurance, whether by the Insurer, the Insured, or other entity having an insurable interest in
1193 and obtaining insurance on behalf of the owner or operator of the Permitted Facility, will be effective only upon
1194 written notice and only after the expiration of 60 days after a copy of such written notice is received by the County
1195 as evidenced by the return receipt.

1196 (6) Bankruptcy: Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

1197 (7) Choice of Law and Forum: The Policy shall not specify that the laws of a state other than the State of Washington apply
1198 in the event of any dispute regarding the validity or formation of the Policy or the meaning, interpretation or operation of any
1199 term, condition, definition or provision of the Policy. Policies may remain silent on choice of law and forum.

1200 (8) Insurance Company Financial Strength – Minimum Rating: The Insurer shall meet or exceed a Financial Strength Rating
1201 from A.M. Best of “A” (Excellent) with a minimum Financial Size Category of XIV and a “Stable” or stronger Outlook, or
1202 the equivalent from another major financial rating agency.

1203 (9) Definitions: For the purposes of this section, terms are defined as follows:

1204 (a) Permitted Facility: Permitted Facility means a location identified in the applicable County Permit, including any
1205 fixed conveyances and terminal distribution systems, as well as pump and compressor stations and related facilities.

1206 (b) Loss shall include:

1207 (i) monetary awards or settlements of compensatory damages; and

1208 (ii) where allowable by law, punitive, exemplary, or multiple damages; and

1209 (iii) civil fines, penalties, or assessments.

1210 (c) Pollution conditions shall include discharge, dispersal, release or escape, including by fire or explosion, of any solid,
1211 liquid, gaseous or thermal irritant or contaminant, including, but not limited to, petroleum hydrocarbons, smoke, vapors,
1212 soot, fumes, acids, alkalis, or other chemicals.

1213 (d) Sudden pollution conditions may be defined by reasonable time-limits for discovery and reporting to the insurer.

1214 (e) Transportation means movement by any vehicle or mode of transit including but not limited to automobile, truck, or
1215 watercraft, as well as and is inclusive of loading, temporary placement during transit prior to final delivery, or
1216 unloading, of materials goods, products or waste, either:

1217 (i) intended for delivery to a Permitted Facility, or

1218 (ii) being sent from a Permitted Facility.

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