



SEPA Distribution List
SEP2019-00083
Date of Re-Issuance: July 28, 2020

Please review this determination. If you have further comments, questions or would like a copy of the SEPA checklist, phone the responsible official at (360) 778-5900. Please submit your response by the comment date noted on the attached notice of determination.

WA State Department of Archaeology and Historic Preservation via email -
Gretchen Kaehler, gretchen.kaehler@dahp.wa.gov

SEPA Unit, WA State Department of Ecology, Olympia via email -
sepaunit@ecy.wa.gov

WA State Department of Fish and Wildlife via email -
Joel Ingram, joel.ingram@dfw.wa.gov

WA State Department of Natural Resources via email -
Rochelle Goss, sepacenter@dnr.wa.gov
Brenda Werden, Brenda.werden@dnr.wa.gov

SEPA Unit, WA State Department of Transportation, Burlington via email -
Roland Storme, stormer@wsdot.wa.gov
Ray McEwan, mcewanr@wsdot.wa.gov

Randel Perry, US Army Corps of Engineers via email -
Randel.J.Perry@usace.army.mil

City of Blaine
Michael Jones, AICP via email - mjones@cityofblaine.com

City of Bellingham
Kurt Nabbeffeld via email - knabbefeld@cob.org
Brent Baldwin via email - bbaldwin@cob.org
Clare Fogelsong via email - cfogelsong@cob.org

City of Ferndale
Jori Burnett via email - joriburnett@cityofferndale.org

Lummi Nation Natural Resources
Merle Jefferson, Sr. via email - merlej@lummi-nsn.gov
Tamela Smart via email - tamelas@lummi-nsn.gov

Nooksack Indian Tribe

George Swanaset, JR via email - george.swanasetjr@nooksack-nsn.gov

Trevor Delgado via email - tdelgado@nooksack-nsn.gov

Suquamish Indian Tribe via email -

aleigh@suquamish.nsn.us

Swinomish Indian Tribal Community via email -

bcladoosby@swinomish.nsn.us

Tulalip Tribe via email -

tbrewer@tulaliptribes-nsn.gov

Whatcom County PUD No. 1 via email -

stevej@pudwhatcom.org

Birch Bay Water & Sewer District via email -

dan@bbwsd.com

Point Roberts via email – All Points Bulletin editor@allpointbulletin.com

Whatcom County Council via email - council@whatcomcounty.us

Foster Pepper

Richard Settle via email - Richard.settle@foster.com

Stoel Rives LLP

Patrick Mullaney via email- patrick.mullaney@stoel.com

Arnold & Porter

Peggy Otum via email – Peggy.Otum@arnoldporter.com

Petrogas West, LLC

Amanda Lund via email – LundA@LanePowell.com

Phillips 66

Tim Johnson via email – Tim.d.johnson@p66.com

WSPA

Holli Johnson via email - hjohnson@wspa.org

BP Cherry Point

Pam Brady via email - Pamela.Brady@bp.com

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

SEPA Determination of Nonsignificance (DNS)

File: SEP2019-00083

Project Description: A proposed non-project action to amend the County's development regulations, State Environmental Policy Act (SEPA) provisions, permit review procedures and Comprehensive Plan relating to fossil fuel facilities, renewable fuel facilities, transshipment fuel facilities and other similar land use activities. The proposal is intended to address the risks to public health, safety, and the environment associated with fossil fuel facilities. The proposal is also intended to address the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point Industrial District.

The scope of environmental review includes two proposals: Whatcom County Resolution #: 2019-037 which incorporates recommendations from the Cascadia Law Group's February 23, 2018 report to the Whatcom County Council and the Planning Commission's draft amendments. A copy of Whatcom County Resolution #: 2019-037 and the Planning Commission's draft recommendations can be found on the Whatcom County website at www.whatcomcounty.us/2914/Public-Notice.

Proponent: Whatcom County Council – Contact: Cathy B. Halka, AICP

Address and Parcel #: Cherry Point Urban Growth Area

Lead Agency: Whatcom County Planning & Development Services

Zoning: HII/LII **Comp Plan:** Major/Port Industrial UGA

Shoreline Jurisdiction: Cherry Point Management Area

The lead agency for this proposal has determined that with proper mitigation, no significant adverse environmental impacts are likely. Pursuant to RCW 43.21C.030(2)(c), an environmental impact statement (EIS) is not required. This decision was made following review of a completed SEPA environmental checklist and other information on file with the lead agency. This information is available to the public on request.

There is no comment period for this DNS.

Pursuant to WAC 197-11-340(2), the lead agency will not act on this proposal for 14 days from the date of issuance indicated below. Comments must be received by 4:00 p.m. on August 11, 2020 and should be sent to: Matt Aamot, maamot@whatcomcounty.us.

Responsible Official: Mark Personius, mpersoni@whatcomcounty.us

Title: Director

Telephone: 360-778-5900

Address: 5280 Northwest Drive
Bellingham, WA 98226

Date of Issuance: July 28, 2020

Signature: _____

A handwritten signature in black ink, appearing to be "M Personius", written over a horizontal line.

An aggrieved agency or person may appeal this determination to the Whatcom County Hearing Examiner. Application for appeal must be filed on a form provided by and submitted

to the Whatcom County Current Planning Division located at 5280 Northwest Drive, Bellingham, WA 98226, during the ten days following the comment period, concluding August 21, 2019.

You should be prepared to make a specific factual objection. Contact Whatcom County Current Planning Division for information about the procedures for SEPA appeals.

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

**SEPA Determination of Nonsignificance (DNS)
Legal Notice**

To be published one time only on: **July 28, 2020**

CHARGE TO: Whatcom County Planning & Development Services
5280 Northwest Drive
Bellingham, Washington 98226
Acct #451232

**WHATCOM COUNTY GIVES PUBLIC NOTICE THAT THE FOLLOWING SEPA
THRESHOLD DETERMINATION OF NON-SIGNIFICANCE (DNS) HAS BEEN
ISSUED TODAY SUBJECT TO THE 14 DAY COMMENT PERIOD
CONCLUDING ON, AUGUST 11, 2020.**

File: SEP2019-00083

Project Description: A proposed non-project action to amend the County's development regulations, State Environmental Policy Act (SEPA) provisions, permit review procedures and Comprehensive Plan relating to fossil fuel facilities, renewable fuel facilities, transshipment fuel facilities and other similar land use activities. The proposal is intended to address the risks to public health, safety, and the environment associated with fossil fuel facilities. The proposal is also intended to address the negative impacts on public safety, transportation, the economy, and environment from crude oil, coal, liquefied petroleum gases, and natural gas transshipments from the Cherry Point Industrial District.

The scope of environmental review includes two proposals: Whatcom County Resolution #: 2019-037 which incorporates recommendations from the Cascadia Law Group's February 23, 2018 report to the Whatcom County Council and the Planning Commission's draft amendments. A copy of Whatcom County Resolution #: 2019-037 and the Planning Commission's draft recommendations can be found on the Whatcom County website at www.whatcomcounty.us/2914/Public-Notice.

Proponent: Whatcom County Council- Contact: Cathy B. Halka, AICP

Address and Parcel #: Cherry Point Urban Growth Area

Lead Agency: Whatcom County Planning & Development Services

Zoning: HII/LII **Comp Plan:** Major/Port Industrial UGA
Shoreline Jurisdiction: Cherry Point Management Area

ANY PERSON OR AGENCY MAY APPEAL THE COUNTY'S COMPLIANCE WITH WAC 197-11 BY FILING AN APPEAL WITH THE WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES LOCATED AT 5280 NORTHWEST DRIVE, BELLINGHAM, WA 98226. APPEALS MUST BE MADE WITHIN 10 DAYS AFTER THE END OF THE COMMENT PERIOD.



REVISED
07/17/2020

SEP 2019 - 00083

SEPA Environmental Checklist

Purpose of Checklist:

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for Applicants:

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown. You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

Use of Checklist for Non-Project Proposals:

For non-project proposals (such as ordinances, regulations, plans and programs), complete the applicable parts of sections A and B plus the Supplemental Sheet for Non-project Actions (Part C). Please completely answer all questions that apply and note that the words "project", "applicant", and "property or site" should be read as "proposal", "proponent" and "affected geographic area", respectively. The lead agency may exclude (for non-projects) questions in Part B – Environmental Elements that do not contribute meaningfully to the analysis of the proposal.

A Background

- 1 Name of proposed project, if applicable:
Cherry Point UGA Comprehensive Plan and Zoning Code Amendments
- 2 Name of applicant: Whatcom County Council
Applicant phone number: 360-778-5010
Applicant address: 311 Grand Avenue, Suite 105
City, State, Zip or Postal Code: Bellingham, WA 98225
Applicant Email address: council@co.whatcom.wa.us
- 3 Contact name: Cathy B. Halka, AICP
Contact phone number: 360-778-5010
Contact address: 311 Grand Avenue, Suite 150
City, State, Zip or Postal Code: Bellingham, WA 98225
Contact Email address: chalka@co.whatcom.wa.us
- 4 Date checklist prepared: August 20, 2019 Updated July 17, 2020
- 5 Agency requesting checklist: Whatcom County
- 6 Proposed timing or schedule (including phasing, if applicable):
Recommendations by the Planning Commission to the County Council are expected in Summer 2020 and final County Council action is expected in Fall 2020.
- 7 Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? Yes No
If yes, explain:
- 8 List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal:
The environmental documents listed in the attached 'Cherry Point Amendments SEPA Checklist - Supporting Documents Incorporated by Reference' are relevant to this proposal and are hereby incorporated by reference.
- 9 Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? Yes No
If yes, explain.

- 10 List any government approvals or permits that will be needed for your proposal, if known.

The Whatcom County Council and Whatcom County Planning Commission, following an extensive public review process, are considering a range of alternative amendments to the Comprehensive Plan and County development regulations related to the Cherry Point Industrial area and other areas of the County. Recommendations by the Planning Commission to the County Council are expected in Summer 2020 and final County Council action is expected in Fall 2020. A summary of the range of proposed amendments is described in Section 11 below. Adoption of an ordinance by the Whatcom County Council is required for approval of the amendments.

- 11 Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

See additional information attached.

- 12 Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The proposed amendments cover all areas in Whatcom County, including the Heavy Impact Industrial and Light Impact Industrial Districts, with primary effect on the Cherry Point Industrial District. New SEPA provisions apply county-wide. Responses pertaining to questions pertaining the nature of the site will focus on the Cherry Point Industrial District.

B Environmental Elements

1 Earth

a. General description of the site:

- Flat
- Rolling
- Hilly
- Steep Slopes
- Mountainous
- Other

b. What is the steepest slope on the site (approximate percent slope)?

Vertical bluffs along the coastline, 3-8% slopes in other areas

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

There are various soil types throughout the Cherry Point UGA including silt loam, silt clay loam, loess and volcanic ash, and glaciomarine drift.

d. Are there surface indications or history of unstable soils in the immediate vicinity? Yes No

If so, describe.

There are naturally eroding bluffs along the coastal shore.

e. Describe the purpose, type, total area, approximate quantities and total affected area of any filling excavation or grading proposed.

N/A: non-project

Indicate source of fill.

N/A: non-project

Indicate where excavation material is going.

N/A: non-project

f. Could erosion occur as a result of clearing, construction, or use?

Yes No

If so, generally describe.

N/A: non-project

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

N/A: non-project

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:

N/A: non-project

2. Air

a. What types of emissions to the air would result from the proposal during construction, operation and maintenance when the project is completed (i.e., dust, automobile, odors, or industrial wood smoke)?

N/A: non-project

If any, generally describe and give approximate quantities if known.

N/A: non-project

b. Are there any off-site sources of emissions or odor that may affect your proposal? Yes No

If so, generally describe.

N/A: non-project

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

See additional information attached.

3. Water

a. Surface:

- (1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? Yes No

If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

The Cherry Point UGA abuts the Strait of Georgia to the west and to the east is Lake Terrell. Wetlands are scattered throughout the Cherry Point area.

- (2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? Yes No

If yes, please describe and attach available plans.

- (3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. N/A: non-project

Indicate the source of fill material.

N/A: non-project

- (4) Will the proposal require surface water withdrawals or diversions? Yes No

N/A: non-project

Give general description, purpose, and approximate quantities if known.

N/A: non-project

Does the proposal lie within a 100-year floodplain?

Yes No

If so, note location on the site plan.

(5) Does the proposal involve any discharges of waste materials to surface waters?

Yes No

If so, describe the type of waste and anticipated volume of discharge

N/A: non-project

b. Ground Water:

(1) Will ground water be withdrawn from a well for drinking water or other purposes? Yes No

If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give general description, purpose, and approximate quantities if known.

N/A: non-project

(2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals.....; agricultural; etc.). Describe the general size of the system, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

N/A: non-project

c. Water runoff (including stormwater):

(1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known).

N/A: non-project

Where will this water flow? N/A: non-project

Will this water flow into other waters? Yes No

If so, describe.

(2) Could waste materials enter ground or surface waters?

Yes No

If so, generally describe.

N/A: non-project

(3) Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site: Yes No

If so, describe.

N/A: non-project

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

N/A: non-project

4 Plants

a. Check types of vegetation found on the site:

- Deciduous tree: alder, maple, aspen, other
- Evergreen tree: fir, cedar, pine, other
- Shrubs
- Grass
- Pasture
- Crop or grain
- Orchards, vineyards or other permanent crops
- Wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- Water plants: water lily, eelgrass, milfoil, other
- Other types of vegetation

b. What kind and amount of vegetation will be removed or altered?

N/A: non-project

c. List threatened or endangered species known to be on or near the site.

Southern Resident Killer Whale and bocaccio rockfish, canary and yelloweye rockfish, Chinook salmon, marbled murrelet, and steelhead trout

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

N/A: non-project

e. List all noxious weeds and invasive species known to be on or near the site.

N/A: non-project

5. Animals

a. Check any birds and animals, which have been observed on or near the site or are known to be on or near the site:

Birds:

- | | |
|--|--|
| <input checked="" type="checkbox"/> Hawk, | <input checked="" type="checkbox"/> Heron, |
| <input checked="" type="checkbox"/> Eagle, | <input type="checkbox"/> Songbirds; |
| <input checked="" type="checkbox"/> Other: see below | |

Mammals:

- | | |
|--|----------------------------------|
| <input checked="" type="checkbox"/> Deer, | <input type="checkbox"/> Bear, |
| <input type="checkbox"/> Elk, | <input type="checkbox"/> Beaver; |
| <input checked="" type="checkbox"/> Other: | |

Fish:

- | | |
|--|--|
| <input type="checkbox"/> Bass, | <input checked="" type="checkbox"/> Salmon, |
| <input checked="" type="checkbox"/> Trout, | <input checked="" type="checkbox"/> Herring, |
| <input checked="" type="checkbox"/> Shellfish; | <input checked="" type="checkbox"/> Other: see below |

b. List any threatened or endangered species known to be on or near the site.

The Cherry Point Environmental Aquatic Reserve Management Plans (2010, 2017) identify endangered species including the Southern Resident Killer Whale and bocaccio rockfish. Canary and yelloweye rockfish are listed as threatened, as well as Chinook salmon, marbled murrelet, and steelhead trout.

- c. Is the site part of a migration route? Yes No

If so, explain.

The Cherry Point UGA is a migration point for the marbled murrelet, surf scoter, and other birds. It is also a migration route for killer whales.

- d. Proposed measures to preserve or enhance wildlife, if any:
See additional information attached.

- e. List any invasive species known to be on or near site.
The Cherry Point Environmental Aquatic Reserve Management Plans (2010, 2017) identify nonnative species such as the European Green Crab (*Carcinus maenas*) and brown algae (*Sargassum*)

6. Energy and Natural Resources

- a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
See additional information attached.

- b. Would your project affect the potential use of solar energy by adjacent properties? Yes No

If so, generally describe.

N/A: non-project

- c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
See additional information attached.

7. Environmental Health

- a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? Yes No

If so, describe.

See additional information attached.

- (1) Describe any known or possible contamination at the site from present or past uses.

Legacy sources of contamination from historic, unregulated industrial waste exist on uplands adjacent to the Cherry Point Aquatic Reserve (CPAR). Birch Bay Sewage treatment Plant discharges into the Reserve.

- (2) Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.

N/A: non-project

- (3) Describe any toxic or hazardous chemicals that might be stored, used, or produced during the projects development or construction, or at any time during the operating life of the project.

N/A: non-project

- (4) Describe special emergency services that might be required.

N/A: non-project

- (5) Proposed measure to reduce or control environmental health hazards, if any:

N/A: non-project

b. Noise

- (1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

N/A: non-project

- (2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

N/A: non-project

- (3) Proposed measures to reduce or control noise impacts, if any:

N/A: non-project

8 Land and Shoreline Use

a. What is the current use of the site and adjacent properties?

Heavy impact industrial and light impact industrial uses in the Major/Port Industrial UGA

Will the proposal affect current land uses on nearby or adjacent properties? Yes No

If so, describe.

One intention of the new code is to be consistent with the CPAR Management Plan and to protect marine resources that are currently threatened or endangered.

b. Has the project site been used as working farmlands or working forest lands? Yes No

If so, describe.

Current users maintain small areas of forests and farmlands.

How much agriculture or forest land of long-term commercial significance will be converted to other uses as a result of the proposal, if any?

N/A: non-project

If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to non-farm or non-forest use?

N/A: non-project

(1) Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling and harvesting? Yes No

If so, how:

c. Describe any structures on the site.

Major developments with many structures related to power generation, fuel refining, tank storage, and aluminum smelting, all with rail and port access (3 piers). In addition there are structures that serve as storage and distribution facilities for bulk shipments of LPG by railcar, tank truck, pipeline, and ship. DNR's CPAR restricts additional leases for piers and the new code is consistent with this.

- d. Will any structures be demolished? Yes No
If so, what?
- e. What is the current zoning classification of the site?
[Heavy Impact Industrial, Light Impact Industrial](#)
- f. What is the current comprehensive plan designation of the site?
[Major Port, Industrial UGA](#)
- g. If applicable, what is the current shoreline master program designation of the site?
[Cherry Point Management Area](#)
- h. Has any part of the site been classified as a critical area by the city or county? Yes No
- i. If so, specify.
[The area includes geological hazards, low/moderate aquifer susceptibility, deciduous forest, wetlands, and wildlife habitat conservation areas.](#)
- j. Approximately how many people would reside or work in the completed project?
[N/A: non-project](#)
- k. Approximately how many people would the completed project displace?
[N/A: non-project](#)
- l. Proposed measures to avoid or reduce displacement impacts, if any:
[N/A: non-project](#)
- m. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
[See additional information attached.](#)
- n. Proposed measures to ensure the proposal is compatible with nearby agricultural and forest lands of long-term commercial significance, if any?
[Conditional Use Permit and Major Project Permit processes require compatibility with nearby existing uses.](#)

9 Housing

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

High Number of Units 0
 Middle
 Low-income

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

High Number of Units 0
 Middle
 Low-income

- c. Proposed measures to reduce or control housing impacts, if any:

N/A: non-project

10 Aesthetics

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

There is no maximum height established in the heavy or light industrial zone, and current height regulations will not change with the new proposal.

- b. What views in the immediate vicinity would be altered or obstructed?

N/A: non-project

- c. Proposed measures to reduce or control aesthetic impacts, if any:

N/A: non-project

11 Light and Glare

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

N/A: non-project

- b. Could light or glare from the finished project be a safety hazard or interfere with views?

N/A: non-project

- c. What existing off-site sources of light or glare may affect your proposal?

N/A: non-project

- d. Proposed measures to reduce or control light and glare impacts, if any:

N/A: non-project

12 Recreation

- a. What designated and informal recreational opportunities are in the immediate vicinity?

To the north is Birch Bay State Park, Pt. Whitehorn Marine Reserve, Terrell Creek Heron Rookery. To the east is Lake Terrell State Game Refuge and Hovander Park. To the west is the Strait of Georgia

- b. Would the proposed project displace any existing recreational uses? If so, describe.

N/A: non-project

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

N/A: non-project

13 Historic and Cultural Preservation

- a. Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state or local preservation registers located on or near the site? Yes No
If so, specifically describe.

- b. Are there any landmarks, features, or other evidence of Indian, historic use or occupation, this may include human burials or old cemeteries?

Yes No

Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Yes No

Please list any professional studies conducted at the site to identify such resources.

The Cherry Point UGA is near Lummi Reservation and tribal lands. There are treaty fishing rights in the waters off Cherry Point, and the Corps of Eng. reported on the impacts of more piers, vessels- see Docs Incorporated by Ref, #4. This proposal is a non-project action and future archaeological review and study will occur for future project actions at the time of application.

- c. Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples: Include consultation with tribes and the Department of Archeology and Historic Preservation, archaeological surveys, historic maps, GIS data, etc.

N/A: non-project

- d. Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.

The new regulations would prohibit new piers in the district to minimize impacts and establish consistency with DNR CPAR regulations.

14 Transportation

- a. Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plan, if any.

The Cherry Point UGA is on the coast, accessed from the east via Mountain View Road, Slater Road, and Grandview Road. Additional access is from Blaine Road, Kickerville Road, and Lake Terrell Road.

- b. Is site or geographic area currently served by public transit?

Yes No

If not, what is the approximate distance to the nearest transit stop?

Approximately 4 miles to the Whatcom Transit Authority bus stop on Mountain View Road for Route 27.

- c. How many parking spaces would the completed project have? How many would the project eliminate?

N/A: non-project

- d. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle or state transportation facilities, not including driveways? Yes No

If so, generally describe (indicate whether public or private).

- e. Will the project use (or occur in the immediate vicinity of)
- Water,
 - Rail, or
 - Air transportation?
- If so, generally describe.

The Cherry Point UGA has rail and water access.

- f. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and non-passenger vehicles). What data or transportation models were used to make these estimates?

N/A: non-project

- g. Proposed measures to reduce or control transportation impacts, if any:
- See additional information attached.

15 Public Services

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)?
- Yes No
- If so, generally describe.

- b. Proposed measures to reduce or control direct impacts on public services, if any.

The conditional use permit provisions and additional SEPA policies are intended to provide for project proposals and mitigation to address public facilities adequacy.

16 Utilities

- a. Check utilities currently available at the site:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Electricity, | <input checked="" type="checkbox"/> Natural gas, |
| <input checked="" type="checkbox"/> Water, | <input checked="" type="checkbox"/> Refuse service, |
| <input checked="" type="checkbox"/> Telephone, | <input checked="" type="checkbox"/> Sanitary sewer, |
| <input checked="" type="checkbox"/> Septic system, | <input type="checkbox"/> Other |

- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

N/A: non-project

Signature

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 
Cathy B. Halka, AICP

Date Submitted: August 29, 2019 **Resubmitted July 17, 2020**

FOR OFFICE USE ONLY

Reviewed by Whatcom County Planning & Development Services Staff



Staff Signature

07/21/2020

Date

C Supplemental Sheet for Non-project Actions

(It is not necessary to use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment. When answering these questions, be aware of the extent the proposal or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

- 1 How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?

[See additional information attached.](#)

Proposed measures to avoid or reduce such increases are:

[Reporting of emissions and mitigation above the baseline established at the time of permit is required. Local carbon offsets would be required or a fee in lieu of mitigation would be required which the County would use to provide local greenhouse gas mitigation projects.](#)

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

[See additional information attached.](#)

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

[In SEPA rules, analysis and mitigation of impacts to priority habitats and species and high biodiversity areas is required. Critical area and shoreline regulations would also apply.](#)

3. How would the proposal be likely to deplete energy or natural resources?

[See additional information attached.](#)

Proposed measures to protect or conserve energy and natural resources are:

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

Both proposals would prohibit new "fossil fuel" refineries and transshipment facilities, and new docks/piers and require conditional use/major project permits for expansions of existing "fossil fuel" facilities, thereby limiting impacts on environmentally sensitive areas and creating consistency with DNR's CPAR Management Plan.

Proposed measures to protect such resources or to avoid or reduce impacts are:

In addition to the measures stated above, applicants would be required to demonstrate consistency with federal and state laws and permit requirements, such as consistency with the CPAR Management Plan, federal review of consistency with treaty rights, etc. before any site modifications or construction could occur.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

Both proposals would affect land and shoreline use by prohibiting new "fossil fuel" refineries and transshipment facilities, requiring conditional use/major project permits for expansions of existing "fossil fuel" facilities, and prohibiting new docks/piers. It would not allow or encourage uses incompatible with existing plans.

Proposed measures to avoid or reduce shoreline and land use impacts are:

See above.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposal would not increase such demands.

Proposed measures to reduce or respond to such demand(s) are:

The intent of the new regulations is to more completely assess projects to ensure they meet the compatibility criteria of the conditional use and major projects permit provisions including providing mitigation for transportation/public service impacts. In addition, insurance/financial assurance provisions offer protection from any disruption to public services as a result of a hazard created by facility operation or transport of materials.

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.

Applicants would be required to demonstrate consistency with federal and state laws and permit requirements aimed at protection of the environment.

ADDITIONAL INFORMATION, INCORPORATED BY REFERENCE

(See Page 3 of 20 - SEPA Environmental Checklist)

A. Background

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. *There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page.* (Lead agencies may modify this form to include additional specific information on project description.)

The Planning Commission and County Council have been considering a range of possible options to protect county residents and the environment from the impacts of refineries and other fossil fuel facilities in the Cherry Point Heavy Industrial District and other areas of the County. The alternatives have included options from a report to the Council prepared by Cascadia Law Group dated February 23, 2018 (attached by reference to this checklist), draft amendments considered by the County Council between June and August, 2019 forwarded to the Planning Commission by the County Council under Resolution 2019-037, comments received from the public, amendments to the County Council draft considered by the Planning Commission, and recommendations from Whatcom County Planning and Development Services.

1. Major elements of the proposals forwarded by the County Council to the Planning Commission under Resolution 2019-037 included the following:

- **Comprehensive Plan amendments** that add language acknowledging that existing refineries provide significant employment and have produced and shipped fossil fuels for decades; adds language “to act conservatively on land use matters at Cherry Point to prevent further harm to habitat important to Cherry Point Herring stocks and Southern Resident Killer Whales”; adds new language directing the use of adopted SEPA policies to limit the negative impacts on public safety, transportation, the economy and environment from new fossil fuel facilities; amends policy 2CC-17 to provide that existing facilities may have limited expansions consistent with policies 2CC-3 and 2CC-11; adds a new policy 2CC-18 to treat renewable fuel facilities in a similar fashion to fossil fuel facilities; and amends policy 2WW-4 to add language regarding marine terminals at Cherry Point to provide consistency with the State Department of Natural Resource’s Cherry Point Aquatic Reserve Management Plan.
- **Land use code amendments** contained in draft under Resolution 2019-037 include the following major provisions: explicitly retains outright permitted use status for existing refineries at WCC Section 20.68.050; explicitly retains permitted use status for non-capacity increasing maintenance and safety purposes and limited accessory uses such as but not limited to office expansions and environmental improvements at WCC 20.68.802; requires a conditional use permit for capacity expansions of

existing refineries and fossil fuel transshipment facilities at WCC Sections 20.68.150 and 20.68.800; establishes criteria for conditional use permits for expansions of existing refineries and fossil fuel transshipment facilities including those at WCC 20.84.220; requires documentation of the anticipate sources, types and volumes of substances to be transferred in bulk at the facility, requires mitigation of transportation impacts consistent with WCC Chapters 20.78 and 16.24; requires mitigation of impacts to services including fire and emergency response capabilities and water supply and fire flow; demonstrated consistency with applicable state and federal requirements prior to site preparation or construction; greenhouse gas mitigation for permitted expansions if required by WCC 20.68.801 (only if there is a gap in mitigation under state, federal or regional regulations and processes); a demonstration that the proposal will retain living wage jobs or contribute to the Whatcom County economy; prohibits new fossil fuel refineries and transshipment facilities and associated piers, docks and wharves and coal-fired power plants in the Cherry Point Heavy Industrial District at WCC 20.68.204 through 206; at WCC 20.68.801, requires analysis of greenhouse gas emissions above baseline emissions for refinery or fuel transshipment facilities using state of the art models; local mitigation of greenhouse gas emissions is required only where mitigation has not been required under other regulatory mechanisms at the state, federal or regional level WCC 20.68.801(3)(C); provide that non-capacity maintenance, safety and environmental improvements to existing refineries and transshipment facilities are specifically identified as outright permitted uses at WCC 20.68.802 with examples not limited to accessory buildings, office space, parking lots, communications facilities, security buildings, storage buildings and other similar structures or activities; requires greenhouse gas mitigation for accessory improvements if required under the provisions of WCC 20.68.801; establishes a new “change of use” provision at WCC 20.74.110 to ensure that zoning and building code and transportation concurrency requirements are met; establishes a new provision at WCC 20.74.115 requiring a conditional use permit be obtained for conversion of renewable fuels facilities within the boundaries of an existing legal fossil fuel refinery and prohibits other changes of use of renewable fuel refineries and transshipment facilities to fossil fuel facilities; establishes new Major Project Permit provisions at WCC 20.88.100 requiring facilities to obtain all necessary federal and state authorizations for projects prior to issuance of site preparation or construction permits authorized under Major Project Permit procedures; establishes definitions for certain terms at WCC Chapter 20.97; at WCC 22.05.120, establishes new provisions specifying that performance bonds and other security to ensure compliance with the conditions, modifications and restrictions may be required in forms acceptable to the County Prosecuting Attorney; establishes at WCC 22.05.120 that decisions of the County Council on Type IV applications be based on the record established by the hearing examiner and be consistent with the County Code and other applicable regulations; and establishes an insurance requirement for all refinery and fuel transshipment facility expansions at WCC 22.05.125.

- **New State Environmental Policy Act provisions and procedures** are established in WCC Chapter 16.08 which include the following: at WCC 16.08.090, establishes a new “Worksheet for Fossil and Renewable Fuel Facilities” be provided to evaluate air and climate impacts of fossil and renewable fuel facility applications to supplement the required SEPA Checklist pursuant to WAC 197-11-906(1)(c); at WCC 16.08.160E, adds provisions allowing the county to defer to other state, federal and regional agencies for SEPA mitigation unless there is an unanticipated gap making such mitigation inadequate; at WCC 16.08.160F1, establishes new air quality and climate SEPA policies recognizing the impacts of climate change and air pollution and requiring analysis of greenhouse gas emissions and providing authority for mitigation of projects pursuant to the provisions contained in SEPA; at WCC 16.08.160F2, establishes new SEPA policies related to plants and animals and stating the County’s policy to minimize or prevent loss of fish and wildlife habitat that have substantial ecological, educational and economic value and recognizing the importance of consistency with federal and state laws regarding water quality, endangered species act requirements and tribal treaty rights.

2. **Major Elements of Planning Commission Draft:**

- **Recommendations from the Planning Commission regarding proposed Comprehensive Plan Amendments** include amended language in Policy 2CC-17 that reflect the Planning Commission’s desire that greenhouse gas analysis and mitigation requirements reside in the SEPA process rather than in the land use code and to amend the policy to “Allow existing operations or maintenance of existing fossil-fuel related facilities operating as of 2020”; addition of a new Comprehensive Plan Policy 2CC-18 that states that the intent of the County is to allow the on-going operation, maintenance and repair of existing facilities, modifications designed to comply with adoption and implementation of new product standards and fuel standards, operational safety and site safety improvements environmental improvements, and regulatory compliance projects; and replacement of Policy 2CC-18 from the County Council draft to reflect the intention of the Planning Commission that renewable fuel refineries and transshipment facilities be outright permitted uses rather than conditional uses.
- **Planning Commission Recommendations for Modifications to land use code provisions proposed by the County Council in Resolution 2019-037 include:** recommend removing language at WCC 20.66.204 referring to existing refineries as none exist in the Light Impact Industrial Zone; remove language at WCC 20.66.054(3) and replace with expanded permitted use provisions at WCC 20.68.068 to reflect public comments to make it clearer what types of accessory uses, maintenance, environmental improvements, safety improvements and other uses may be modified without requiring conditional use approval; recommend adding renewable fuel refineries and renewable fuel transshipment facilities to the permitted use list at WCC 20.68.070; recommend adding language at WCC 20.68.071 providing that expansions of existing renewable fuel refineries and renewable fuel transshipment

facilities should be treated as permitted uses not requiring conditional use permit approval; recommend modifications at WCC 20.68.153 to conditional use permit requirements for expansion of existing fossil fuel refineries and transshipment facilities to set a threshold for requiring a conditional use permit only for cumulative expansions increasing distillation capacity or transshipment capacity by 10,000 barrels (or 420,000 gallons) per day or increases fossil fuel tank storage capacity by more than 200,000 barrels (or 8,400,000 gallons) for the transshipment of fossil fuels outside of Whatcom County without value added processing; recommendation at WCC 20.68.153 that the baseline for determining the cumulative increases triggering a conditional use permit requirement be reset if a conditional use permit has been obtained; recommend removal of language in the conditional use permit criteria contained at WCC 20.68.153(3) that the “sources” of raw materials be identified; recommend that the conditional use permit criteria at WCC 20.68.153(7) be removed as the Commission considered the criteria at 20.68.153(9) as adequate to address federal and state permitting requirements; recommend removing the criteria at WCC 20.68.153(11) to demonstrate retention or creation of living wage jobs; recommend removing provisions at WCC 20.68.159 requiring a conditional use permit for new renewable fuel refineries or transshipment facilities; recommend at WCC 20.68.204 that language regarding “primary manufacturing of products thereof” be removed as fossil fuel refineries are a defined term at WCC 20.97.160.4 and the language is deemed unnecessary; recommend that the zoning code revisions at WCC 20.68.800 regarding quantification and mitigation of greenhouse gases be removed and that greenhouse gas review and mitigation be conducted as part of the SEPA analysis for projects instead; recommend removing the provisions at WCC 20.68.802 as those provisions have been recommended to be contained in the permitted use section of the Heavy Impact Industrial Zoning District for consistency with other sections of the Code and to reflect public comments; recommend adding language at WCC 20.74.055 to reflect that prohibited uses in the Cherry Point Industrial District should be consistent with both the provisions of the Light Industrial District and the Heavy Industrial District; recommend removal of “change of use” provisions at WCC 20.74.110 from the County Council draft; recommend modifications to language proposed at WCC 20.88.210 and 215 to refer “major project permit” rather than “master plan” to reflect that the provisions of those sections should apply to the entire permit rather than to just the master plan; recommend removal of the definition of “Facility Emissions” from WCC 20.97.124.1 as the Planning Commission has recommended the greenhouse gas provisions be moved to the SEPA requirements and the term would no longer be used in the Zoning Code; recommend expanding the proposed definition of “Fossil Fuels” at WCC 20.97.160.2 to include “crude oil” to be clearer and consistent with other sections of the amendments; recommend adding “or Renewable” to WCC 20.97.160.3 to be consistent with the title of the section; recommends that the definition of “Fossil Fuel Refinery Capacity” at WCC 20.97.160.4 be removed as unnecessary; recommends deleting the definition of “Living Wage” from the definitions at WCC 20.97.202 to be consistent with their recommendation that living

wage job retention and creation be removed from conditional use criteria; recommend adding a new definition of “Maximum Atmospheric Crude Distillation Capacity” at WCC 20.97.230 to be consistent with the Commission’s recommendation at WCC 20.68.153; recommends that the definition of “Renewable diesel” be modified to exclude the date of the applicable federal regulation in recognition of the fact that federal regulations may be revised over time; at WCC 20.97.425.1, recommend that the definition of “Small Fossil or Renewable Fuel Storage and Distribution Facilities” include “buildings” in addition to equipment; and recommend that WCC 22.05.125 be simplified to merely require permit applicants provide proof of insurance naming Whatcom County as an additional insured

- **Planning Commission Recommendations for Modifications to State Environmental Policy Act provisions** include the following: changes to the language in the SEPA environmental checklist requirements at WCC 16.08.090 to reflect the process for development of the required supplemental SEPA worksheet for evaluating greenhouse gas emissions for fossil and renewable fuel facilities to include a commitment that the SEPA Responsible Official will consult with the Planning Commission when preparing or updating the worksheet; amendments to the language at WCC 16.08.160E to more closely align with language in the state SEPA Rules regarding consultation with and deferral to other agencies’ SEPA mitigation decisions; language changes at WCC 16.08.160F to reflect that the Washington Department of Ecology has jurisdiction over PSD permits and to change “criteria pollutants” to just “air pollutants”; changes to the language in WCC 16.08.160F(1)(b) to reflect the Planning Commission’s desire to place requirements for greenhouse gas analysis in the SEPA provisions and remove them from land use code requirements;

(See Page 5 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

2 Air.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

One intent of the code revisions is to ensure that greenhouse gas and air emissions have been mitigated through state, federal or regional greenhouse gas mitigation regulations of other agencies such as the Department of Ecology or the Northwest Clean Air Agency or by Whatcom County. These federal, state, and regional agencies currently have jurisdiction to regulate air emissions through permitting programs and other authorities granted under the Washington Clean Air Act at RCW 70.94. The County Council draft of the regulations includes both SEPA policies and Zoning Code provisions to backstop the authorities of state, federal and regional air regulations but provides for deference to those agencies where they have provided comprehensive mitigation. The Planning Commission draft recommendations are to take the greenhouse gas quantification and mitigation provisions from the Council draft out of the Zoning Code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated

and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

Some commenters have suggested that the effect of the new regulations on existing refineries would create greenhouse gas emissions through “leakage”. That is, they speculate that if the regulations prevent the current refineries and associated transshipment facilities from meeting demand for fuels that the fuels would be produced elsewhere by refineries that are not as modern or efficient as the existing Cherry Point refineries. This is highly speculative and is not the intent of the County with the proposed regulations. The proposed regulations explicitly recognize the existing refineries as outright permitted uses and provide for expansions to occur through a conditional use permit review and approval process. In addition, both the County Council draft and Planning Commission recommendations include provisions allowing outright permitted use status for safety, routine maintenance and other accessory improvements to continue. The Planning Commission recommendation includes a threshold for expansions of both existing refinery and transshipment facilities while the County Council draft merely requires a discretionary approval with mitigation prior to facility expansions beyond safety, routine maintenance and other accessory improvements. The creation of “leakage” emissions is not a probable consequence of the proposed action and is a remote and speculative consequence given that existing refineries continue as outright permitted uses, are allowed to do maintenance and safety and accessory improvements and may expand in the future either under the threshold proposed by the Planning Commission or if they meet proposed conditional use approval criteria.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

5. Animals

d. Proposed measures to preserve or enhance wildlife, if any:

The revised code and SEPA proposals contain provisions to be consistent with the Washington State Department of Natural Resources’ Cherry Point Aquatic Reserve Management Plan. The State Department of Natural Resources has also, by Order of the State Lands Commissioner, prohibited issuance of aquatic land leases for any new docks or piers outside of the footprint of existing structures. The new plan and code provisions therefore provide that new docks and piers in the Cherry Point Heavy Industrial District are prohibited uses. The revisions also require that state and federal regulatory requirements be met prior to issuance of site clearing or construction permit issuance. This is to ensure that project applicants demonstrate that they have received federal and state authorizations for consistency with federal and state permitting requirements. These include evaluations by those agencies regarding Endangered Species Act for listed species in the vicinity of Cherry Point, consistency with enforceable treaty fishing rights, the Magnuson Amendment regarding transport of fossil fuel shipments in Puget Sound and other regulatory requirements. Additional SEPA policies and code provisions regarding

protection of habitat and species should ensure environmental protection of animals is addressed for future land use activities authorized once the amendments are adopted.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

6. Energy and Natural Resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

While this is a non-project action, the new provisions are directed, at least in part, at the existing and future of fuel production and transshipment from the Cherry Point Heavy Industrial Area. The revisions are intended to allow the existing fossil fuel refining and transshipment facilities to continue as outright permitted uses and to allow expansions of those facilities to occur through obtaining conditional use permit review and SEPA review. There are also a number of provisions allowing safety, maintenance and accessory uses to continue for existing facilities as outright permitted uses. The County Council and Planning Commission have considered a range of alternative approaches to the new regulations including the alternatives discussed in the attached report from Cascadia Law Group and have considered a range of comments on alternative treatments under the land use code received in public comments.

The County Council draft allows existing refinery and transshipment operations to continue as outright permitted uses but require conditional use permit review and approval for expansions beyond pre-existing production levels. The Planning Commission draft recommends an alternative under which the existing facilities would remain outright permitted uses and development would be allowed under a threshold for increases in maximum atmospheric distillation capacity of fossil fuels by more than 10,000 barrels per day (or 420,000 gallons per day). A new provision is also recommended by the Planning Commission to allow increases in tank capacity of by less than 200,000 barrels (8,400,000 gallons) without value added processing to be permitted outright where the County Council draft would require conditional use permit approval for all tank capacity expansions. Coal fired power plants are also now proposed to be a prohibited use as are additional piers and docks to be consistent with recent decisions of the Washington Department of Natural Resources to prohibit additional aquatic land leases in the Cherry Point Aquatic Reserve.

The County Council draft proposes that new renewable fuel refineries and transshipment facilities obtain a conditional use permit while the Planning Commission recommends that such facilities be outright permitted uses at Cherry Point. While both would allow new renewable fuel facilities to be established, the County Council draft would require discretionary review of new facilities under the County's conditional use permit processes. Under the existing Zoning Code, a Major Project Permit is required for either a permitted use or conditional use, if the criteria of WCC 20.88.120 are met (neither alternative would change this). Both alternatives

would continue to receive reviews under SEPA as specific project proposals come before the county for permit review.

Under the most stringent of the alternatives, there are no probable significant adverse effects on energy supplies as the existing refineries are allowed to continue as outright permitted uses and may continue to expand with a discretionary review under the county's conditional use permit process. Renewable fuel facilities would be allowed as outright permitted uses under the Planning Commission recommendation but would also be allowed through the conditional use permit process under the County Council's draft proposal. Quantification and mitigation of greenhouse gas impacts from specific energy production projects may be required under SEPA review under either the Planning Commission or County Council drafts when mitigation is not accomplished under federal, state or regional reviews by entities such as the Washington Department of Ecology or the Northwest Clean Air Agency. The County Council draft would require quantification and mitigation of greenhouse gases under the zoning code provisions as well as SEPA provisions.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

6. Energy and Natural Resources

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

New zoning code provisions in the Council proposal require mitigation of greenhouse gas impacts from facilities that could be allowed through the conditional use/major project permit processes. The Planning Commission draft recommends removing the greenhouse gas quantification and mitigation provisions from the zoning code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

(See Page 10 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

7. Environmental Health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe:

A principal intention of the County Council's proposed revisions is to protect human and environmental health by quantifying and evaluating the impacts of expansions of existing fossil fuel refining and transshipment facilities and prohibiting the establishment of entirely new fossil fuel refining and transshipment facilities. New fossil fuel refining and transshipment facilities create the potential for air and climate pollution, risks of fire, explosion and hazardous substance releases and the County Council has determined under its police power that the County has taken its fair share of the risks of such facilities. The Council proposal allows the existing facilities to expand with appropriate conditional use review and environmental mitigation. The lifecycle greenhouse gas emissions of these facilities and the products shipped to, processed and shipped out of the facilities are a significant component of the State of Washington and Whatcom County's greenhouse gas emissions. Emissions from transportation produce between 40 and 50 percent of the total greenhouse gas emissions in the state's inventory and the existing facilities are two of the four largest refineries in the state. The land use code and SEPA provisions in the proposal require the quantification and mitigation of the impacts of facility expansions but allow the facilities to continue as outright permitted uses and expand under a discretionary review process under the County Council option. The County Council has expressed its intention in the whereas clauses of Resolution 2019-037 that existing facilities be allowed to continue and prosper but that expansions of those facilities be required to demonstrate that the impacts have been quantified and addressed by state, federal or regional regulations. And if that can't be demonstrated, that the impacts be mitigated through the gap filling provisions of SEPA and the land use code. It is anticipated that for most facility expansions the existing federal state and regional regulations will be adequate. The County Council has also expressed through the Resolution that the county has accepted its fair share of fossil fuel refineries and fossil fuel transshipment facilities and that no completely new facilities be permitted at Cherry Point. In addition, the Council has proposed that no new coal fired power plants be established at Cherry Point. The County Council is exercising its police powers to protect human and environmental health by limiting the impacts on the County to those from existing facilities and to make sure that expansions of the existing facilities and permitting processes for establishment of new renewable fuel facilities demonstrate compatibility and mitigation of impacts through the discretionary processes available under SEPA and the conditional use permit review process. As discussed above, the Planning Commission recommendations would establish thresholds for expansion of existing fossil fuel refining facilities under which no conditional use permit would be required.

(See Page 13 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

8. Land and Shoreline Use

I. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:

New code provisions will require conditional use/major project permits for expansions of refinery capacity and storage. Permit review will address compatibility and impacts, and consistency with plans. In contrast to the Council proposal, the Planning Commission proposal allows for the expansion of existing renewable fuel refineries and renewable fuel transshipment facilities and new renewable fuel refineries and renewable fuel transshipment facilities as permitted uses not requiring conditional use permit approval, except that new piers, docks, or wharves are prohibited in the Cherry Point Industrial District (see proposed WCC 20.68.070).

(See Page 17 of 20 - SEPA Environmental Checklist)

B. Environmental Elements

14. Transportation

g. Proposed measures to reduce or control transportation impacts, if any:

The proposed code amendments require consideration of transportation impacts and mitigation when individual projects are proposed. SEPA review and mitigation of specific project transportation impacts may be required and financial assurance (e.g. insurance) would be required under the new land use code provisions. The new provisions will also limit potential impacts from marine transportation on Cherry Point herring stocks, endangered salmon species and the Southern Resident Orca by prohibiting additional docks and piers to be consistent with the State Department of Natural Resources Cherry Point Aquatic Reserve Management Plan and recent decisions to prohibit further aquatic lands leases for such facilities.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise.

The Council's proposed zoning code amendments require reporting of emissions and mitigation above the baseline established at the time of permit. Local carbon offsets would be required or a fee in lieu of mitigation would be required which the County would use to provide local greenhouse gas mitigation projects. The County Council draft of the regulations includes both

SEPA policies and zoning code provisions to backstop the authorities of state, federal and regional air regulations but provides for deference to those agencies where they have provided comprehensive mitigation. The Planning Commission draft recommends removing the greenhouse gas quantification and mitigation provisions from the zoning code and rely on the SEPA review provisions. Both express the intent that the County should defer to other agencies with expertise where emissions have been effectively regulated and mitigated. However, the new provisions both provide mitigation authority for the County should there be a significant gap in the regulation and mitigation at the other levels of government.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposed amendments would prohibit new fossil fuel refineries, new docks and piers and coal fired power plants within the Cherry Point Heavy Industrial Zone. This would eliminate the potential impacts on plants, animals, fish and marine life from such facilities. The amendments may also require the quantification and mitigation of air, climate and other impacts under SEPA and establish new substantive policies and procedures for ensuring impacts have been quantified for expansions of existing facilities. The proposal also includes language requiring a review of consistency with federal, state and regional permitting requirements to ensure that environmental impacts have been addressed under those processes. Additional SEPA policies are added to ensure that gaps in mitigation are filled if County officials determine that is necessary during individual project permitting reviews.

(See Page 19 of 20 - SEPA Environmental Checklist)

C. Supplemental Sheet for Non-Project Actions

3. How would the proposal be likely to deplete energy or natural resources?

The proposed amendments would allow existing refineries to continue in operation and therefore there would be some continuing depletion of crude oil resources worldwide. Because the proposed amendments would allow both existing refineries to continue in operation and to expand under conditional use or Major Project Permit discretionary reviews it is not expected there would be any reduction in the ability to meet regional fuel production demands.

REFERENCE DOCUMENTS, INCORPORATED BY REFERENCE

Cherry Point Amendments SEPA Checklist – Supporting Documents Incorporated by Reference

1. Commissioner’s Order Dated 1/3/2017 Regarding Cherry Point Aquatic Reserve -
https://www.dnr.wa.gov/publications/aqr_resv_cp_cplorder_201701.pdf?cn6va
2. Cherry Point Aquatic Reserve Map -
https://www.dnr.wa.gov/sites/default/files/publications/aqr_resv_cp_ownership_map_20161205.pdf?cn6va
3. DNR’s Cherry Point Environmental Aquatic Reserve Management Plan -
https://www.dnr.wa.gov/publications/aqr_resv_cp_mgmtplan_amend_201702.pdf?cn6va
4. U.S. Army Corps of Engineers Memorandum For Record dated May 9, 2016 finding more than a de minimis impact on treaty fishing rights for Gateway Pacific Terminal -
<http://www.nws.usace.army.mil/Portals/27/docs/regulatory/NewsUpdates/160509MFRUADeMinimisDetermination.pdf>
5. Northwest Sea Farms v. U.S. Army Corps of Engineers, 931 F. Supp 1515 (W.D. Wash. 1996), holding that more than a de minimis impact on treaty fishing rights precludes issuance of a Corps permit.
https://scholar.google.com/scholar_case?case=14211548503198922436&q=Northwest+Seafarms+v.+U.S.+Army+Corps+of+Engineers&hl=en&as_sdt=6,48&as_vis=1
6. 2015 Ecology Vessel Traffic Risk Assessment;
<https://fortress.wa.gov/ecy/publications/documents/1708009.pdf>
7. February 12, 2018 Cascadia Law Group Report to the County Council:
<http://www.co.whatcom.wa.us/DocumentCenter/View/32762/ab2018-076?bidId=>
8. County Council Draft Amendments Referred to the County Planning Commission under Resolution 2019-037:
<http://documents.whatcomcounty.us/weblink8/0/doc/4451795/Page1.aspx?searchid=d1af0c6d-d6bf-42fa-be07-fcc87960b08d>
9. Planning Commission’s Final Recommendations for Amendments to County Council Dated July 10, 2020:
 - Exhibit A: <https://www.whatcomcounty.us/DocumentCenter/View/48821/12a-Exhibit-A-Comp-Plan-Amendments---July-10-2020>
 - Exhibits B – D: <https://www.whatcomcounty.us/DocumentCenter/View/48822/12b-Exhibits-B---D-Code--Amendments---July-10-2020>