

WHATCOM COUNTY

Planning & Development Services
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Mark Personius, AICP
Director

Memorandum

DATE: June 20, 2024
TO: County Council
FROM: Mark Personius, Director
Steve Roberge, Assistant Director
Cliff Strong, Senior Planner
RE: Planning Commission request for additional clarity re: Docket Item PLN2024-00007 (HII Uses within UGAs)

PDS and Council have discussed community concerns and land use issues in the High Impact Industrial district (HII) in the Bellingham Urban Growth Area (UGA) several times in the last few months. Given current workloads, funding constraints, and mandated 2025 Comprehensive Plan Update timelines and processes, PDS recommended a strategic two-phased approach to address community concerns.

The initial approach (Phase I) is to immediately revise the current HII regulations in WCC 20.68 to define more appropriate industrial uses and conditions within the HII zone in the Bellingham UGA (without CompPlan/Zoning Map amendments) that are more compatible with (and less impactful on) the existing adjacent residential uses in the immediate neighborhood. The Council docketed this first step in Docket item PLN2024-0007:

"Amend Whatcom County Code Chapter 20.68 and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area."

In a follow-up discussion about next steps at their May 21, 2024 meeting, the Council approved a motion 7-0 *"that the Council support re-examining the use of the HII zone in the UGA to include other zoning designations as possible."*

Since by statute we are only able to amend the Comprehensive Plan once a year, the second step (Phase II) would be to consider potentially rezoning some of the HII properties to more appropriate zones as part of the Comprehensive Plan Update, due to be adopted by December 31, 2025. This approach provides more time for more thorough review and engagement with the community, current property owners, businesses, and the City of Bellingham about the potential long-range needs and issues facing the community. Potentially re-designating properties to different zones may require amendments to the County's Comprehensive Plan/Zoning Map and may also require amendments to the Bellingham Urban Fringe Subarea Plan—a component of the County's Comprehensive Plan.

In addition, staff and electeds from the county and the cities are currently working on determining appropriate population and employment allocations (that drive in part the demand for industrial lands) for the next twenty (20) years as part of the Comprehensive Plan Update process. As a part of that conversation, concern has also been raised about whether the county has an adequate supply of industrial lands countywide. The county and cities will be conducting land capacity analyses for the UGAs and industrial zones as part of the CompPlan Update to help inform those conversations. The breadth and depth of issues that have to be addressed will require additional time to resolve.

PDS prioritized preparation of draft recommended amendments to WCC 20.68 identified in PLN2024-0007 and presented those to the Planning Commission for initial discussion on May 23, 2022. The Commission has held two fairly well-attended workshops on the matter (5/23 & 6/13) and were provided the three attached memos that lay out the issues and provide several options, including an option that addresses both more appropriate uses and performance standards (6/13 memo, item #4, Combined Solution).

The Planning Commission is currently working on the docket item (Phase I) and is seeking additional guidance and clarity from Council on a path forward on this issue, especially given the language of the motion *“that the Council support[s] re-examining the use of the HII zone in the UGA to include other zoning designations as possible.”* During their last meeting (6/13), the Commission requested staff to pose the following questions to Council:

1. Regarding the (Phase I) docket language, could the Council provide additional direction or clarity as to what solution you’re looking at? (For example, is the Combined Solution from the 6/13 memo the general approach the Council wishes to pursue?)
2. If the Council would like to preclude other incompatible uses from being established, couldn’t a moratorium be imposed until a longer-term solution (Phase II) be accomplished through the Comp Plan Update?

Attachments



Memorandum

DATE: May 14, 2024
TO: Planning Commission
THROUGH: Mark Personius, Director
Steve Roberge, Assistant Director
FROM: Cliff Strong, Senior Planner
RE: Review of uses allowed in the Heavy Impact Industrial District within Urban Growth Areas (PLN2024-00007)

Objective

At your May 23rd meeting, Planning and Development Services (PDS) would like the Commission's help in identifying additional industrial uses that would be incompatible and inappropriate in the HII district within the Bellingham UGA, given its location and surrounding uses.

Council Directive

Earlier this year the Council placed on the docket PLN2024-00007, which reads:

Amend Whatcom County Code Chapter 20.68 and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area.

Council added this to the docket in part due to concerns raised from surrounding residential neighbors when a permit application for a metal recycling facility was submitted¹, with the idea of reducing impacts from other inappropriate potential uses in the future. Options for doing this generally include modifying development conditions, prohibiting certain uses or types of uses, and/or requiring additional mitigation for potential impacts such as noise, dust, light, odors, glare, particulates, etc. The Council Planning and Development Committee will be discussing this docket item on May 21, after this memo goes out but prior to the Planning Commission meeting. Any resulting guidance will be brought to the Planning Commission on May 23rd.

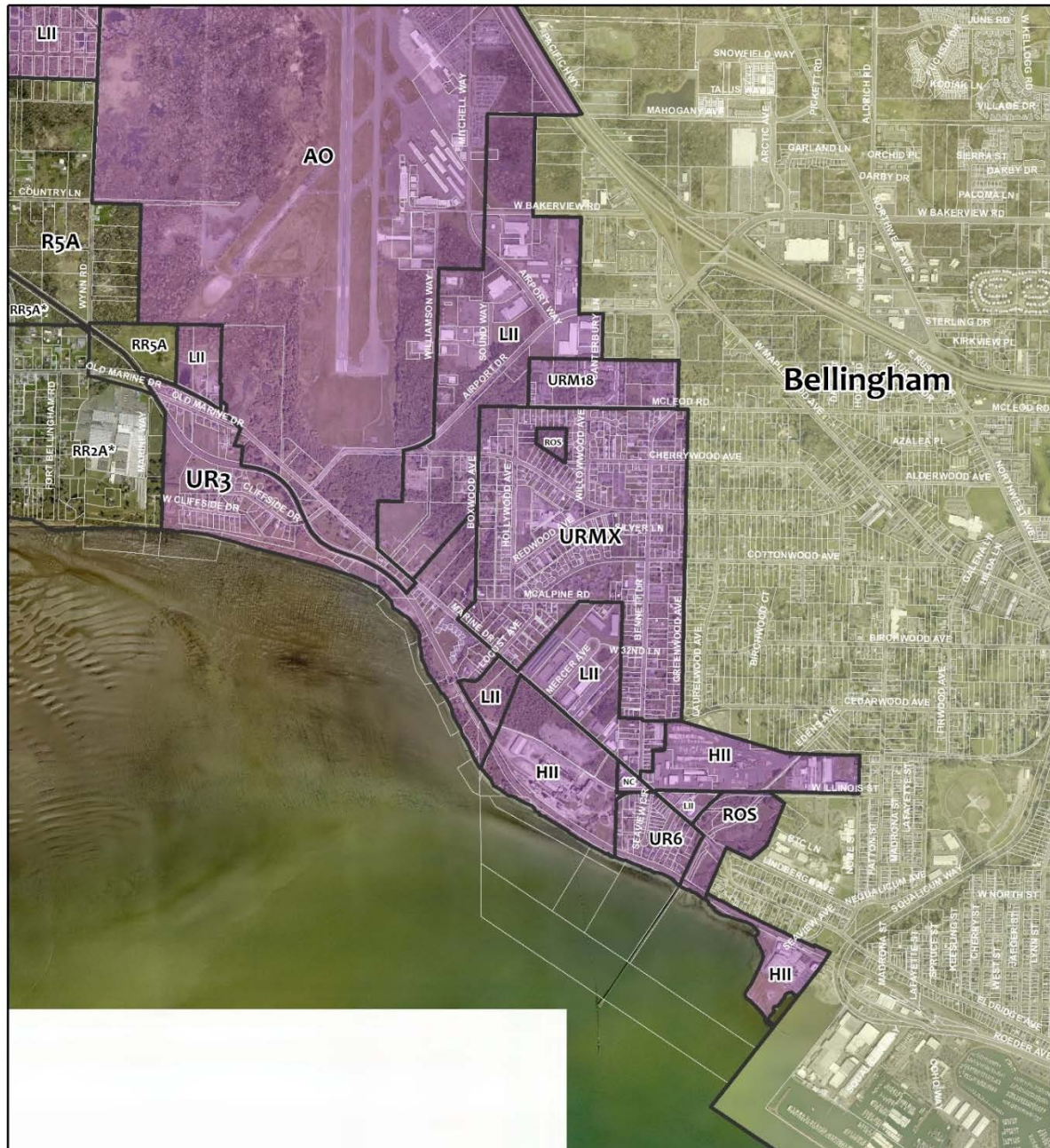
Affected Location

The only affected area is the Alderwood neighborhood, as it is within the Bellingham UGA and contains properties zoned Heavy Impact Industrial (HII). (There are no other areas in the county zoned HII within other city UGAs.)

The area is located adjacent to the northwest of Bellingham. It is comprised of a mix of light and heavy industrial (LII and (HII), residential (URMX, URM3, URM6, and URM18), commercial (NC), and recreation and open space (ROS) zoning and uses. It has been an industrial area since before zoning was first adopted, as it is near the port and is served by rail and the nearby shipping terminals. In the last few

¹ Though has since been withdrawn.

decades residential uses have developed around and in between the industrial properties at urban levels of density. (See Figure 1)



Bellingham UGA - Alderwood Neighborhood

- City of Bellingham
- City of Bellingham UGA
- Zoning Boundary

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May 2024



Figure 1: Alderwood Neighborhood Zoning Map

Uses Currently Allowed in the HII District

The Whatcom County code for both the HII and LII districts are very outdated, and list uses² in a very discreet way, meaning it only lists the types of uses that were thought of or existed in the 1970s and '80s when the code was written. But there are an infinite number of other types of uses that aren't listed because at the time they didn't exist in Whatcom County (e.g., auto manufacturing), because we didn't think to add them, or because they hadn't yet been invented (e.g., server farms).

Exhibit A (attached) is the portion of the HII code pertaining to what uses are allowed (or prohibited) in the HII district. Germane to the current task is §20.68.203, which lists uses that are otherwise permissible in the HII district as being prohibited when in the Bellingham UGA.

.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.

Request

PDS would like the Commission to review the uses currently allowed in the HII district and suggest, of those uses, which ones might be incompatible and inappropriate in the HII district within the Bellingham UGA. Those uses could then be added to §20.68.203, thus prohibiting them in the Alderwood neighborhood.

² Permitted, accessory, administrative, conditional, and prohibited uses.

Exhibit A: Existing HII Code

WCC Title 20, Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.010 Purpose.

The purpose of the Heavy Impact Industrial District is to implement the Heavy Impact Industrial land use designation of the Comprehensive Plan by supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses. Heavy industrial uses are primarily related to producing, distributing and changing the form of raw materials; whereby, product demand and industrial employment are predominately basic, that is, serving nonlocal markets. In addition, the purpose of this district is to encourage the siting of industrial uses which will optimize the limited resource of land available for heavy impact industry. A further purpose of this district is to minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof; as enabled through the district's performance and development standards, and the buffer and setback requirements.

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapters 16.08 WCC (SEPA), 20.80 WCC (Supplementary Requirements) and 22.05 WCC (Project Permit Procedures), and WCC Titles 21 (Land Division Regulations) and 23 (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

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

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

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

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

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

- (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill products.
- (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- (3) The manufacture and processing of rubber and plastic products.
- (4) Leather tanning and finishing.
- (5) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.
- (6) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.
- (7) Storage of asphalt in the Heavy Impact Industrial Zone.

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

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

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

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

.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities except as conditionally permitted under WCC 20.68.153 and 20.68.154 or prohibited under WCC 20.68.200.

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

.061 Heavy construction contractors.

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

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

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

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

.066 Type 2 cannabis production facilities, subject to WCC 20.80.690.

.067 Cannabis processing facilities, subject to WCC 20.80.690.

.068 Existing fossil fuel refineries, existing fossil fuel transshipment facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of August 8, 2021; provided, that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 and 20.68.154 to the county permitting authorities. Provided that a conditional use permit is not required by WCC 20.68.153 or 20.68.154, permitted uses include repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following:

- (1) Accessory and appurtenant buildings, structures, and processing equipment.
- (2) Office space.
- (3) Parking lots.
- (4) Radio communications facilities.
- (5) Security buildings, fire stations, and operation centers.
- (6) Storage buildings.
- (7) Routine maintenance and repair.
- (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.
- (9) Road projects and bridges.
- (10) Temporary trailers.
- (11) Heating and cooling systems.
- (12) Cable installation.
- (13) Information technology improvements.
- (14) Continuous emissions monitoring systems or analyzer shelters.
- (15) Wastewater and stormwater treatment facilities.
- (16) Replacement and upgrading of existing equipment.
- (17) Safety upgrades.
- (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial Zoning District.
- (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial Zoning District.
- (20) Renewable fuel production and shipment.
- (21) Transferring fossil fuels during emergency scenarios where contingencies require fossil fuels to be moved.
- (22) Necessary fossil fuels transfers during turn-arounds or maintenance periods.
- (23) Storage tanks; provided, that the county decision maker shall include in any approval of an application for storage tanks at an existing fossil fuel refinery, fossil fuel transshipment facility, renewable fuel refinery, or renewable fuel transshipment facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the

type of fuel to be stored and, if located within a fossil fuel refinery or renewable fuel refinery, whether the storage tank will or will not be used for transshipment.

(24) Other similar structures or activities.

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

.071 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities; provided, that the expansion is for renewable fuels only.

.081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.

.082 Marine port facilities, except as prohibited under WCC 20.68.200.

.085 Type I solid waste handling facilities.

.086 Type II solid waste handling facilities.

.108 Day care centers.

.109 Battery energy storage systems of any storage capacity.

.110 Self-service storage facilities.

20.68.100 Accessory uses.

.101 Employee recreation facilities and play areas.

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

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

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

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

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

.107 Repealed by Ord. 2023-078.

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

.109 Inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks.

20.68.130 Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities).

20.68.150 Conditional uses.

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

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

- (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.
- (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in

accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

.153 Expansion of existing fossil fuel refineries. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that meets any one of the following applicable thresholds:

- (1) Cumulatively increases the facility's total maximum atmospheric crude distillation capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- (2) Cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC; or
- (3) Increases the frequency of fossil fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by county, state or federal authorities (where applicable) as of August 8, 2021, or the effective date of a previously approved conditional use permit, whichever is more recent.

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

.154 Expansion of existing fossil fuel transshipment facilities. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC.

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

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

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

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

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

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

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

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

.158 Athletic fields.

.180 Major passenger intermodal terminals.

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

- (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;
- (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 1,500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
 - (ii) Inert landfills;
- (3) Inert landfills shall be located at least 500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

- (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;
- (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;
- (6) The facility or site has complied with the provisions of WCC 22.05.026 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;
- (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:
 - (a) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and
 - (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;
- (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);
- (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;
- (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;
- (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

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

20.68.200 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.

.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 refineries.

.205 New fossil fuel transshipment facilities.

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

.207 Coal-fired power plants.

.208 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV-Special forest practices, when located within an urban growth area.

.209 Slash burning, when located within an urban growth area.



Memorandum

DATE: June 3, 2024
TO: Planning Commission
FROM: Cliff Strong, Senior Planner
Steve Roberge, Assistant Director
RE: Review of uses allowed in the Heavy Impact Industrial District within Urban Growth Areas (PLN2024-00007)

Background

Earlier this year the Council placed on the docket PLN2024-00007, which reads:

Amend Whatcom County Code Chapter 20.68 and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area.

Council added this to the docket in part due to concerns raised from surrounding residential neighbors when a permit application for a metal recycling facility was submitted¹, with the idea of reducing impacts from other inappropriate potential uses in the future. Options for doing this include prohibiting certain types of uses in the Bellingham UGA, modifying development conditions, and/or applying stricter performance standards for potential impacts such as noise, dust, light, odors, glare, particulates, etc.

At your May 23rd meeting, PDS asked for the Commission's help in identifying additional industrial uses that would be incompatible and inappropriate in the HII district within the Bellingham UGA, given its location and surrounding uses. The Commission was provided the allowable uses sections of WCC Chapter 20.68 (Heavy Impact Industrial District).

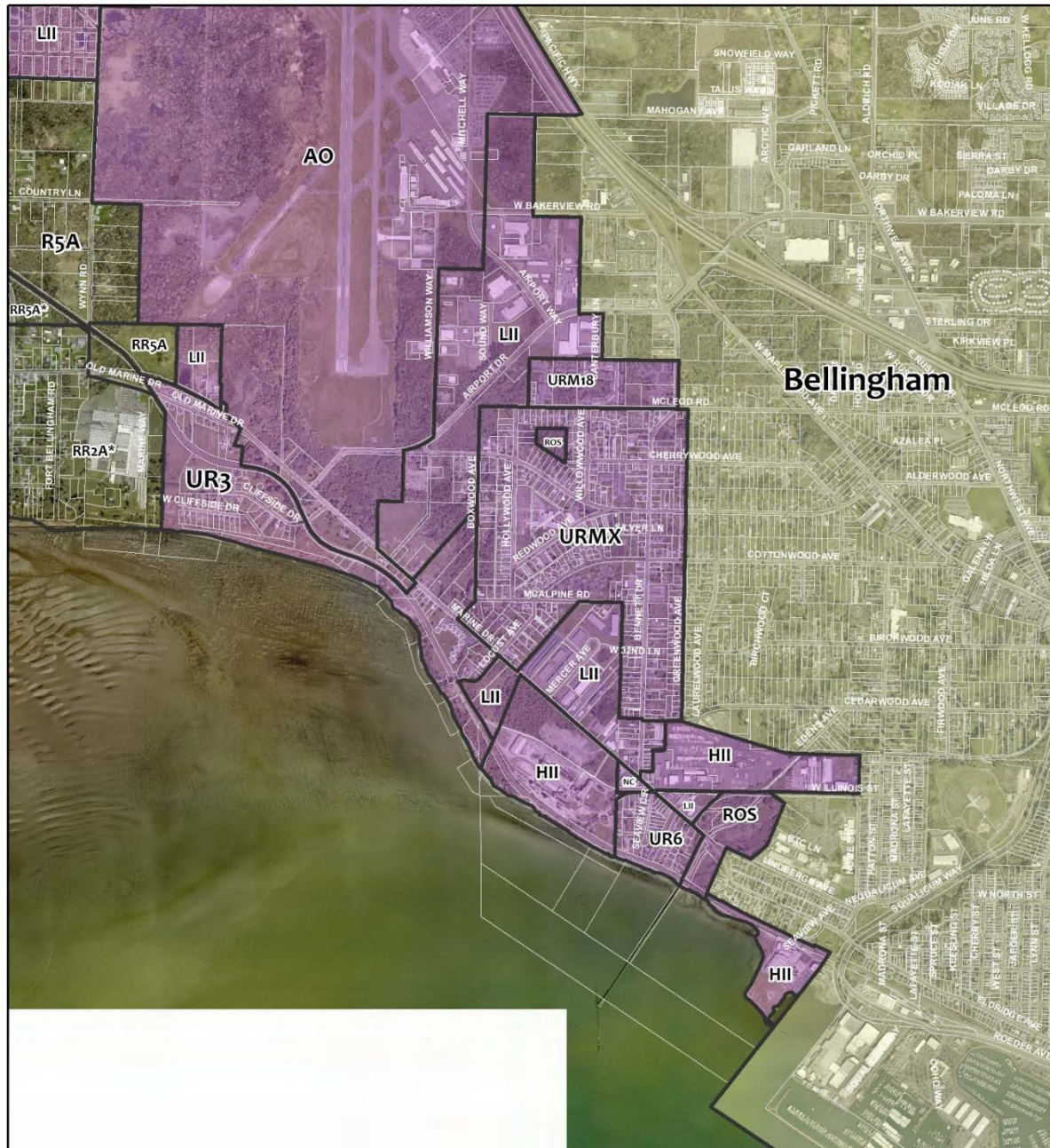
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decades residential uses have developed around and in between the industrial properties at urban levels of density. (See Figure 1)



Bellingham UGA - Alderwood Neighborhood

- City of Bellingham
- City of Bellingham UGA
- Zoning Boundary

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May 2024



Figure 1: Alderwood Neighborhood Zoning Map

Summary of the Planning Commission's 5/23 Discussion

The Commission heard and discussed concerns and potential solutions from staff, members of the public, residents of the Alderwood neighborhood, Save the Waterfront, and a City of Bellingham Councilmember and a County Councilmember (both representing themselves and not their respective councils).

Potential solutions included:

- prohibiting certain uses in the area via §20.68.203,
- applying performance standards,
- modifying the existing performance standards so that they're stricter, and
- recommending Council impose a moratorium until the HII properties could be rezoned through the CompPlan update.

Concerns included:

- impacting existing business, some of which might do some of the things contemplated for exclusion,
- how creating stricter performance standards might affect existing uses,
- how creating nonconforming uses might affect existing uses, and
- notifying and hearing from the existing businesses in the area.

The Commission asked for a legal opinion from the County attorney about these concerns and potential actions, and requested at least one, if not two, more workshops on the matter. They also asked that we notify area business owners about their next workshop.

Response from the County Attorney

RCW 36.70, the Planning Enabling Act, authorizes counties to create zoning maps and to administer and amend those maps consistent with the goals of the comprehensive plan, the growth management act, and other state law. This includes the power to amend zoning ordinances, rezone areas, and change the allowable uses within a zone. A lawful use of land that would be prohibited due to a change in the zoning law remains lawful as a "nonconforming use" per WCC 20.83.010 (see Exhibit A). Those landowners would be able to continue to use the land in the way they were using it provided they neither expand the use, nor discontinue the use for a period of 12 months or more. In this way, established, lawful uses of property are protected from later change in zoning laws or performance standards. Naturally, there is a concern that, when landowners learn that the county is considering prohibiting a particular type of use, a landowner might start engaging in that activity before legislative action is taken. To avoid increasing the sort of use that a county is considering prohibiting, counties can impose limited moratoria on the use until legislative action is taken. There is a requirement for public hearings for a moratorium and time limits imposed as indicated by RCW 36.70A.390. This allows the county to adopt new standards of land use without surprising a landowner by suddenly outlawing the established way they have been using their land.

Outreach to Area Businesses

Letters are being sent to the HII property owners and businesses in this area inviting them to attend the Commission's June 13 workshop and/or provide written comment.

Analysis of Potential Solutions

Four approaches have been identified to address this docket item, discussed below, with draft approaches and some effectiveness analysis provided.

1. Prohibiting (Additional) Specific in HII within UGAs via §20.68.203

Exhibit B (attached) is the portion of the HII code pertaining to what uses are allowed (or prohibited) in the HII district. Germane to the current task is §20.68.203, which lists uses that are otherwise permissible in the HII district as being prohibited when in the Bellingham UGA. However, in following Council's direction staff might suggest making this section apply to all UGAs, as follows:

.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.

One approach would be to add additional currently allowed HII uses to §20.68.203, which would effectively prohibit those uses within the Bellingham UGA (or with the amendments shown, within any city's UGA). To accomplish this, the Planning Commission would need to develop a list of those uses it deems inappropriate for this area given its current condition. To assist the Commission with developing such a list, staff has developed a succinct list of uses allowed in HII, better organized by categories and comparing them to the uses allowed in LII. (See Exhibit C.)

One of the concerns the Commission had with this approach, however, is that there may be some of these uses existing in the area that have not created impacts on the neighborhood because they're either small-scale or done indoors, or both.

2. Prohibiting Outdoor Uses in HII within UGAs via §20.68.203

A different approach, but one that addresses the Commission's above concern, would be to structure the code so that the revised list of prohibited uses can be done if indoors but prohibited if done outdoors. Such a solution might read:

20.68.200 Prohibited uses.

...

.203 In the Bellingham Urban Growth Area the following uses are prohibited:

- (a) petroleum refinery and the primary manufacturing of products thereof,
- (b) primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof;
- (c) and primary metal industries and metal recycling.

All other HII permitted uses are allowed but only if done completely indoors.

3. Allowing only LII Permitted Uses in HII within UGAs via §20.68.064

Another approach would be to only allow LII permitted uses as permitted uses, and LII conditional uses as conditional uses in the HII district if it's within a city's UGA. WCC 20.68.064 already addresses the permitted uses aspect of this approach (though staff would suggest amending it to apply to any city's UGA), but similar language would need to be added to WCC 20.68.150 to address the conditional uses aspect, as follows:

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapters 16.08 WCC (SEPA), 20.80 WCC (Supplementary Requirements) and 22.05 WCC (Project Permit Procedures), and WCC Titles 21 (Land Division Regulations) and 23 (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a

land use activity listed below.) [In the Bellingham UGA, only those uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.050, shall be permitted outright within the Heavy Impact Industrial District.](#)

...

20.68.150 Conditional uses.

[Within the Bellingham UGA, only those uses allowed in the Light Impact Industrial district as conditional uses, WCC 20.66.150, shall be allowed as conditional uses within the Heavy Impact Industrial district.](#) The following uses require a conditional use permit in the HII Zoning District:

...

4. Applying Performance Standards/Adopting Stricter Ones

Another suggestion was to apply the LII performance standards to the HII district. However, both districts already contain the same performance standards, so this is not a real solution. (See Exhibit D, attached)

If the Commission is so inclined, staff could research and develop stricter standards. However, in looking them over they already basically say “use best practices and state and federal standards” and “don’t create impacts beyond one’s property line,” which seems appropriate and adequate.

Exhibit A: Pertinent Nonconforming Use Rules

From WCC Chapter 20.83 (Nonconforming Uses and Parcels)

20.83.010 Continuation.

Except as otherwise provided in this chapter, the lawful use of any building, land or premises, existing on the effective date of adoption or amendment of this chapter, may be continued although such use does not conform to the provisions hereof. If such nonconforming use is discontinued for a period of 12 months or more, any future use of said building, land or premises shall be consistent with the provisions of this chapter.

...

20.83.020 Expansion of nonconforming use.

- (1) Nonconforming uses may be extended throughout any building partially occupied by such use at the time of passage of the ordinance codified in this section, except for nonconforming adult businesses, which shall not be extended to other parts of the building.
- (2) The expansion of a nonconforming use by addition or enlargement shall require a conditional use permit, except for:
 - (a) Nonconforming adult businesses, which shall not be expanded; and
 - (b) Personal wireless service facilities regulated under WCC 20.13.070(1) through (3).

The expansion must be on the parcel as it existed at the time the use became nonconforming and the use shall not expand on adjacent parcel(s). The expansion shall be approved if it is consistent with the applicable zoning regulations except the use restrictions and complies with WCC 22.05.026(3)(b) to (3)(i).

...

20.83.030 Zone district change – Continuation.

When a zone district is changed, existing nonconforming uses may be continued consistent with the provisions of WCC 20.83.010, 20.83.020, and 20.83.150.

20.83.040 Change to another nonconforming use.

The change of a nonconforming use to another type of a nonconforming use shall be conditionally permitted, except that a nonconforming use shall not be changed to an adult business. The change of nonconforming use shall be approved if it is consistent with the applicable zoning regulations, except the use restrictions, and complies with WCC 22.05.026(3)(b) to (i), providing such change does not require the provision of water and sewer utility services at a level greater than that currently available to the subject property, and that the new nonconforming use does not result in greater impacts upon surrounding properties than did the original nonconforming use.

Exhibit B: Existing Heavy Impact Industrial Allowed & Prohibited Uses

From WCC Chapter 20.68 (Heavy Impact Industrial District)

20.68.010 Purpose.

The purpose of the Heavy Impact Industrial District is to implement the Heavy Impact Industrial land use designation of the Comprehensive Plan by supplying a reasonable amount of land, commensurate with demand, for the location and grouping of heavy impact industrial uses. Heavy industrial uses are primarily related to producing, distributing and changing the form of raw materials; whereby, product demand and industrial employment are predominately basic, that is, serving nonlocal markets. In addition, the purpose of this district is to encourage the siting of industrial uses which will optimize the limited resource of land available for heavy impact industry. A further purpose of this district is to minimize the scope of impacts generated within the HII District and to provide protection for nonindustrial districts situated outside thereof; as enabled through the district's performance and development standards, and the buffer and setback requirements.

20.68.050 Permitted uses.

Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapters 16.08 WCC (SEPA), 20.80 WCC (Supplementary Requirements) and 22.05 WCC (Project Permit Procedures), and WCC Titles 21 (Land Division Regulations) and 23 (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

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

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

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

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

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

- (1) The manufacture and process of paper including pulp, paper and paperboard mills; and building paper and board mill products.
- (2) The manufacture and processing of chemicals and allied products including industrial inorganic and organic chemicals; synthetic resins, rubber, fibers and plastic materials; soap, detergents and cleaning preparations; paint, linseed oil, shellac, lacquer and allied products; chemicals from gum and wood; and agricultural chemicals.
- (3) The manufacture and processing of rubber and plastic products.
- (4) Leather tanning and finishing.
- (5) The manufacture and processing of cement and glass; and concrete, gypsum, plaster, abrasive, asbestos and nonmetallic mineral products.
- (6) Primary metal industries including blast furnaces and steel works; mills for primary smelting, secondary smelting, refining, reducing, finishing, rolling, drawing, extruding, and casting of ferrous and nonferrous metals; and the manufacture of miscellaneous metal products.
- (7) Storage of asphalt in the Heavy Impact Industrial Zone.

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

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

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

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

.059 Bulk commodity storage facilities, and truck, rail, vessel and transshipment terminals and facilities except as conditionally permitted under WCC 20.68.153 and 20.68.154 or prohibited under WCC 20.68.200.

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

.061 Heavy construction contractors.

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

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

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

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

.066 Type 2 cannabis production facilities, subject to WCC 20.80.690.

.067 Cannabis processing facilities, subject to WCC 20.80.690.

.068 Existing fossil fuel refineries, existing fossil fuel transshipment facilities, renewable fuel refineries, renewable fuel transshipment facilities, piers and docks legally established as of August 8, 2021; provided, that when a permit is sought for a project proposed within or attached to a facility of such classification, the applicant must disclose any capacity changes defined under WCC 20.68.153 and 20.68.154 to the county permitting authorities. Provided that a conditional use permit is not required by WCC 20.68.153 or 20.68.154, permitted uses include repairs, improvements, maintenance, modifications, remodeling or other changes including but not limited to the following:

- (1) Accessory and appurtenant buildings, structures, and processing equipment.
- (2) Office space.
- (3) Parking lots.
- (4) Radio communications facilities.
- (5) Security buildings, fire stations, and operation centers.
- (6) Storage buildings.
- (7) Routine maintenance and repair.
- (8) Environmental improvements and other projects on the subject site that are required or provided to allow compliance with federal, state, regional, or local regulations, including modifications of fossil fuel facilities for purposes of co-processing biomass with petroleum.
- (9) Road projects and bridges.
- (10) Temporary trailers.
- (11) Heating and cooling systems.
- (12) Cable installation.
- (13) Information technology improvements.
- (14) Continuous emissions monitoring systems or analyzer shelters.
- (15) Wastewater and stormwater treatment facilities.
- (16) Replacement and upgrading of existing equipment.
- (17) Safety upgrades.
- (18) Pipelines carrying petroleum or petroleum products solely within the Heavy Impact Industrial Zoning District.
- (19) Pipelines carrying natural gas solely within the Heavy Impact Industrial Zoning District.
- (20) Renewable fuel production and shipment.
- (21) Transferring fossil fuels during emergency scenarios where contingencies require fossil fuels to be moved.
- (22) Necessary fossil fuels transfers during turn-arounds or maintenance periods.
- (23) Storage tanks; provided, that the county decision maker shall include in any approval of an application for storage tanks at an existing fossil fuel refinery, fossil fuel transshipment facility, renewable fuel refinery, or renewable fuel transshipment facility a condition that the storage tank shall only be used in the manner described in the application and approved in the permit. The application and permit shall describe the intended use of the storage tank, including the

type of fuel to be stored and, if located within a fossil fuel refinery or renewable fuel refinery, whether the storage tank will or will not be used for transshipment.

(24) Other similar structures or activities.

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

.071 Expansion of existing legal renewable fuel refineries or renewable fuel transshipment facilities; provided, that the expansion is for renewable fuels only.

.081 Freight railroad switching yards and terminals, except as prohibited under WCC 20.68.200.

.082 Marine port facilities, except as prohibited under WCC 20.68.200.

.085 Type I solid waste handling facilities.

.086 Type II solid waste handling facilities.

.108 Day care centers.

.109 Battery energy storage systems of any storage capacity.

.110 Self-service storage facilities.

20.68.100 Accessory uses.

.101 Employee recreation facilities and play areas.

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

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

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

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

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

.107 Repealed by Ord. 2023-078.

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

.109 Inter-refinery shipments of refined products and intermediate materials such as unfinished oils and blendstocks.

20.68.130 Administrative approval uses.

.131 Commercial mushroom substrate production limited to the Cherry Point Industrial Area and pursuant to the requirements as contained in WCC 20.15.020(2) (commercial mushroom substrate production facilities).

20.68.150 Conditional uses.

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

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

- (1) Outside of the Bellingham Urban Growth Area, approval shall be supported by a finding by the hearing examiner that allowing the use will not limit the supply of land available to meet the demand for future heavy industrial uses.
- (2) Filing of a deed restriction acknowledging that heavy industrial uses are the preferred uses in the zone and agreeing not to protest proposed heavy industrial uses allowed in the zone in

accordance with Chapter 20.68 WCC, and to refrain from legal action against any heavy industrial use in compliance with the regulations of WCC Title 20 and any conditions of approval which might have been proposed.

.153 Expansion of existing fossil fuel refineries. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that meets any one of the following applicable thresholds:

- (1) Cumulatively increases the facility's total maximum atmospheric crude distillation capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer; or
- (2) Cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day based upon an evaluation of physical equipment limitations conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC; or
- (3) Increases the frequency of fossil fuel unit train shipments by rail unloaded or loaded at an existing facility in excess of limits, if any, established by county, state or federal authorities (where applicable) as of August 8, 2021, or the effective date of a previously approved conditional use permit, whichever is more recent.

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

.154 Expansion of existing fossil fuel transshipment facilities. For purposes of this section, an expansion is any development (including otherwise permitted or accessory uses), vested after August 8, 2021, that cumulatively increases the facility's total maximum transshipment capacity for fossil fuels by more than 10,000 barrels (or 420,000 gallons) per day, based upon an evaluation conducted by a licensed professional engineer in accordance with the definition of "maximum transshipment capacity" found in Chapter 20.97 WCC.

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

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

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

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

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

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

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

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

.158 Athletic fields.

.180 Major passenger intermodal terminals.

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

- (1) The facility or site will not be located within the 100-year floodplain or the Lake Whatcom watershed. The facility or site will not be located within any area identified in an adopted critical areas ordinance unless outside of the floodplain and at least three feet in elevation higher than the floodway elevation;
- (2) Solid waste handling facilities shall be located at least 1,500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly-owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 1,500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;
 - (ii) Inert landfills;
- (3) Inert landfills shall be located at least 500 feet from the following:
 - (a) All zoning district boundaries, except Commercial Forestry and Industrial Zones;
 - (b) Public parks, public recreation areas, or publicly owned wildlife areas;
 - (c) Archaeological and historical sites that are registered with the State Office of Archaeology and Historic Preservation;
 - (d) Shorelines that are within the jurisdiction of the Shoreline Management Program;
 - (e) Rivers, streams or creeks that contain documented threatened or endangered fish species;
 - (f) This 500-foot buffer does not apply to:
 - (i) Structures used for offices, storage areas for equipment, and weigh scales. These facilities shall be set back from the property line 100 feet or the standard zoning district setback, whichever is greater;

- (4) The facility or site will not result in filling or excavation, location of structures or buildings, driveways or machinery use except for vegetation maintenance within 100 feet of any property line and except for driveways within 150 feet of any county or state road right-of-way;
- (5) The facility or site will have vehicular approaches designed to minimize conflict between automobile and truck traffic, will maintain the carrying capacity of county roads, and will be located on a road classified as all weather, except where use is shown to be intermittent and easily delayed until emergency conditions have passed;
- (6) The facility or site has complied with the provisions of WCC 22.05.026 and all other ordinances and laws regulating solid waste facilities and sites, such as but not limited to WCC Title 24, the Whatcom County SEPA Ordinance, as well as state and federal regulations concerning solid waste facilities and sites;
- (7) All landfills have a final closure plan meeting the requirements of WCC Title 24 and of Chapter 173-350 WAC, and the closure plan includes:
 - (a) Reclamation in two- to 10-acre increments, as appropriately responsive to the size and intensity of the particular activity, with seeding to be accomplished annually but no later than September 30th; and
 - (b) Permanent vegetative cover that will maintain in healthy growing condition with the level of maintenance that is covered through the financial assurance for post-closure activities;
- (8) The buffer areas and visual screening shall include a minimum of 50 feet wide of landscaping meeting the requirements of WCC 20.80.300 (Landscaping);
- (9) Solid waste facilities or sites shall be located outside the 10-year time of travel boundary of a public water system's delineated wellhead protection area;
- (10) Solid waste facilities or sites that handle putrescible waste will be located at least 10,000 feet from airports serving turbine-powered aircraft and at least 5,000 feet from airports serving piston-powered aircraft. These buffers shall be measured from the boundary of the Airport Operations Zone or, if the airport is not within an Airport Operations Zone, from the boundary of the airport property;
- (11) In addition, the Whatcom County hearing examiner may impose conditions of approval which may be necessary to protect the value and enjoyment of existing adjacent uses.

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

20.68.200 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.

.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 refineries.

.205 New fossil fuel transshipment facilities.

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

.207 Coal-fired power plants.

.208 Aerial application of chemicals, including but not limited to pesticides and insecticides, previously regulated by the DNR as Class I, II, III or IV-Special forest practices, when located within an urban growth area.

.209 Slash burning, when located within an urban growth area.

Exhibit C: Succinct List of Allowed Uses in HII v. LII

Legend

Permit Types: P = Permitted; AU = Accessory Use; AAU = Administrative Approval Use; CU = Conditional Use; Proh = Prohibited
 Superscripts: B = In the Bellingham UGA; CP = In the Cherry Point Industrial UGA; XCP = Except in the Cherry Point Industrial UGA; UGA = In any UGA

Use	HII					LII				
	P	AU	AAU	CU	Proh	P	AU	AAU	CU	Proh
Manufacturing, fabricating, processing, and/or repair of:										
• Food and food stuffs										
○ including meat & fish	X									
○ excluding meat & fish						X				
• Textiles, mills, and carpet manufacturing										
○ Any type	X									
○ Miscellaneous textile goods and fabrication of apparel						X				
• Paper and paper products					X ^B					
○ Paper	X									
○ Paper products	X					X				
○ Printing & Publishing						X				
• Rubber and plastic products					X ^B					
○ Any type	X									X ^B
○ From finished rubber only and manufacture of miscellaneous plastic products from purchased resins only						X				
• Lumber and wood products										
○ Any type	X									
○ lumber, millwork, mobile homes, travel trailers, campers, miscellaneous wood products and other buildings, roofing and construction materials						X				
• Leather										
○ tanning and finishing	X									
○ leather products						X				
• Chemicals and allied products	X				X ^B					X ^B
• Metals										
○ Primary metal industries	X				X ^B					X ^B
○ Metal products	X					X				
• Nonmetallic mineral products					X ^{B 2}					
○ Any type	X									
○ Glass products						X				
○ Ceramics						X				
○ Stone cutting and monuments						X				
○ Hydraulic cement, concrete gypsum and plaster products; and abrasive asbestos and miscellaneous nonmetallic mineral products									X	
○ Asbestos										X ^B
○ Sands									X	
• Machinery										
○ Any type	X					X				
○ smelters and re-melting mills, and the manufacturing of turbines, oil machinery, mining										X

² Applies to the manufacturing and processing of asbestos only

Use	HII					LII				
	P	AU	AAU	CU	Proh	P	AU	AAU	CU	Proh
machinery, industrial process ovens, paper, and textile or rolling mill machinery										
o Office, computing and accounting machines						X				
• Equipment and Other Goods										
o Electrical equipment						X				
o Instruments, photographic goods, optical goods, watches and clocks, and including engineering, scientific, surgical, medical, dental and ophthalmic products						X				
o Jewelry, silverware, plated ware, musical instruments and parts, toys, sporting and athletic goods; pens, pencils and other office and artistic supplies; novelties, buttons and notions; and miscellaneous manufacture						X				
o Transportation equipment	X									
• Furniture and fixtures						X				
• Drugs, pharmaceuticals, perfumes, and cosmetics						X				
• Boats						X				
Storage, Shipping, and Transportation Facilities										
• Self-service storage facilities	X					X				
• Wholesale trade or storage of durable and nondurable goods						X				
• Warehousing and storage						X				
• Parcel delivery service, freight forwarding, and packaging and crating						X				
• Bottling plants						X				
• Heavy construction contractors	X									
• Construction contractors' business offices and storage and equipment yards						X				
• Building material yards						X				
• Asphalt storage	X									
• Bulk commodity storage facilities	X									
• Freight railroad switching yards and terminals	X					X				
• Marine port facilities	X									
• Transshipment terminals and facilities (except for fossil fuels)	X									
• Major passenger intermodal terminals				X					X	
• Piers, docks, or wharves					X ^{CP}					
• Rail, truck, and freight terminals,						X				
• Inspection weighing services						X				
Fuel Refineries and Transshipment Terminals & Facilities										
• Renewable fuel refineries and transshipment terminals & facilities	X									
• Fossil fuel refineries and transshipment terminals & facilities legally established as of 8/8/21	X				X ^B					
o Limited expansion of fossil fuel refineries and transshipment terminals & facilities legally established as of 8/8/21				X						
• Fossil fuel refineries or transshipment facilities vested after August 8, 2021.					X					X

Use	HII					LII				
	P	AU	AAU	CU	Proh	P	AU	AAU	CU	Proh
Energy Production and Energy Storage Facilities										
• Electric vehicle charging stations and battery exchange facilities		X					X			
• Thermal power plants with a generating capacity of less than 250,000 kW (except coal)	X									
• Coal-fired power plants					X					
• Battery Energy Storage Systems	X					X				
• Wind energy systems	X									
• Ground-Based Solar Energy Facilities ³										
• Hydrogen energy systems ²										
• Geothermal energy systems ²										
Public and Semi-Public Uses										
• Public and community facilities	X					X				
• Other similar public or semi-public uses, excluding state education facilities and correction facilities	X									
• Churches						X				
• Secure community transition facilities for sex offenders						X ^{XCP}				
• State education facilities									X ^{XCP}	
• Correctional facilities									X ^{XCP}	
Park & Recreation Facilities										
• Public park and recreation facilities identified in an adopted County Comprehensive Plan or park plan	X					X				
• Public park and recreation facilities not identified in an adopted County Comprehensive Plan or park plan				X					X	
• Trails, trailheads, restroom facilities, and associated parking areas for no more than 30 vehicles	X					X				
• Trails, trailheads, restroom facilities, and associated parking areas for more than 30 vehicles				X					X	
• Athletic fields				X					X	
• Employee recreation facilities and play areas		X					X			
• Golf courses and related commercial recreation facilities									X	
Waste Treatment, Storage, & Handling Facilities										
• Type I Solid Waste Handling Facilities	X					X ^{CP}			X ^{XCP}	
• Type II Solid Waste Handling Facilities	X					X ^{CP}			X ^{XCP}	
• Type III Solid Waste Handling Facilities				X					X	
• Hazardous Waste Treatment and Storage Facilities										
o As a primary use				X						
o As an accessory use		X					X			
Commercial Uses										
• Retail sales of merchandise manufactured, assembled, or stored on the site							X			
• Restaurants, cafes, and cafeterias		X								
• Eating establishments, convenience grocery stores, cafes and gas stations operating primarily for the convenience of employees, clients, and customers of the district (with conditions)						X				

³ Not yet an established use, though anticipated to be within the next few years.

Review of uses allowed in the HII District within UGAs (PLN2024-00007)

Use	HII					LII				
	P	AU	AAU	CU	Proh	P	AU	AAU	CU	Proh
• Day care centers	X					X				
• Kennels						X				
• Type 2 cannabis production facilities	X					X				
• Cannabis processing facilities	X					X				
• Commercial mushroom substrate production			X							
• Adult businesses					X			X ^{UGA}		
• Repair, service, and accessory sales for motor vehicles, boats, and farm implements									X	
• Mental health, substance abuse, outpatient mental health, and outpatient substance abuse treatment facilities									X	
Offices										
• Business firm headquarters and professional offices						X				
• Communications including telephone exchanges, and radio and television stations, excluding broadcast towers						X				
• Electronic communications structures and telecommunication towers									X	
Miscellaneous Uses										
• Temporary construction buildings		X					X			
• Electric utility facilities; substations; generating plants of less than 50-megawatt (MW) net plant capability; gas works; sewage disposal facilities; solid waste landfills, and incinerators		X								
• Other accessory uses and buildings, including security services		X					X			
• One one-story detached accessory storage building							X			
• Mitigation Banks				X					X	
• Aerial application of chemicals					X					X
• Slash burning					X					X
• Testing and experimentation in connection with a principally permitted use							X			

Exhibit D: Existing Heavy Impact Industrial Performance Standards

From WCC Chapter 20.68 (Heavy Impact Industrial District)

Note: The Light Impact Industrial performance standards are exactly the same as for the Heavy Impact Industrial district.

20.68.700 Performance standards.

20.68.701 Pollution control and nuisance abatement.

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

20.68.702 Heat, light and glare.

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

20.68.703 Ground vibration.

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

20.68.704 Odors.

(1) Except as specified in subsection (2) of this section, no odor, dust, dirt, or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

(2) For cannabis production or processing facilities, odor shall be regulated pursuant to WCC 20.80.690(3)(g).

20.68.705 Noise.

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC.

20.68.706 Toxic gases and fumes.

Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control Authority standards.

20.68.707 Liquid pollutants.

There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

20.68.708 Appearance.

New facilities developed in the Bellingham Urban Growth Area shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and such uses shall not change the essential character of the same area.



Memorandum

DATE: June 13, 2024
TO: Planning Commission
FROM: Cliff Strong, Senior Planner
Steve Roberge, Assistant Director
RE: Review of uses allowed in the Heavy Impact Industrial District within Urban Growth Areas (PLN2024-00007)

This memo augments the 6/3/24 staff memo and addresses four items: 1) overall process, including Council request and direction; 2) update on Planning Commission's request for outreach to property owners and businesses; 3) corrects an error from the earlier analysis; and, 4) provides a potential solution that combines several aspects of those discussed.

1) Council Request and Direction

The Docket contains item PLN2024-00007:

Amend Whatcom County Code Chapter 20.68 and other relevant sections of Title 20 to define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area.

Pursuant to Council direction, this item is intended to be the first phase in assuring future uses are compatible and consistent with each other and the vision for the community. At the 5/21 Council meeting a motion was approved 7-0 "that the Council support re-examining the use of the HII zone in the UGA to include other zoning designations as possible." This motion institutes the second phase, which is intended to occur through the Comprehensive Plan Update and would include a fuller review of zones, uses, compatibility, outreach, Bellingham coordination, etc. The Planning Commission's current task is addressing the docketed item above with deeper and broader discussions to follow with the second phase.

2) Property and Business Owner Outreach

Invitation letters and the 6/3/24 memo for this meeting have been sent to businesses and owners of record of property zoned HII in the Bellingham UGA.

3) Correction of Error

There is an error in the 6/3/24 staff memo under number 4 of the analysis of potential solutions, "Applying Performance Standards/Adopting Stricter Ones." It states that "both districts already contain the same performance standards, so this is not a real solution." However, one performance standard does differ between the HII and LII districts, that being for toxic gases and fumes. We appreciate this being pointed out by members of the public before the meeting.

In the LII district, the standard is:

20.66.706 Toxic gases and fumes.

There shall be no emission of toxic gases or fumes.

However, in the HII district, the standard is:

20.68.706 Toxic gases and fumes.

Any release of toxic gases or fumes must be in compliance with Washington State and Northwest Air Pollution Control Authority standards.

All other performance standards are the same.

The Planning Commission may find it meaningful to adopt the LII performance standards into the HII code for new, or nonconforming uses changed pursuant to WCC 20.86 (Change to another nonconforming use), to apply within the Bellingham UGA. Below is an example of how that could be done.

4) Potential Combined Solution

Based on the Commission's discussion and public input, the following potential solution, changing provisions in both the allowed uses and performance standards, is offered.

20.68.050 Permitted uses.

Except as modified by WCC 20.68.210, the following uses are permitted in the Heavy Impact Industrial district. Unless otherwise provided herein, permitted and accessory uses shall be administered pursuant to the applicable provisions of Chapters 16.08 WCC (SEPA), 20.80 WCC (Supplementary Requirements) and 22.05 WCC (Project Permit Procedures), and WCC Titles 21 (Land Division Regulations) and 23 (Shoreline Management Program). The purpose of the SIC numbers listed within this chapter is to adopt by reference other activities similar in nature to the use identified herein. (Policies of the subarea Comprehensive Plan may preclude certain permitted uses to occur in particular subareas. Please refer to the policies of the applicable subarea plan to determine the appropriateness of a land use activity listed below.)

...

~~20.64 Uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.100, shall be permitted outright within the Heavy Impact Industrial District in the Bellingham UGA.~~

20.68.150 Conditional uses.

Except as modified by WCC 20.68.210, the following uses are conditionally permitted in the Heavy Impact Industrial district. ~~The following uses require a conditional use permit in the HII Zoning District:~~

...

20.68.200 Prohibited uses

...

~~20.03 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.~~

20.68.210 Use Allowances and Conditions Specific to the Bellingham Urban Growth Area.

This section modifies the uses allowed for HII zoned properties in the Bellingham Urban Growth Area. The following uses are permitted or prohibited, as indicated. All accessory and administrative uses remain the same as provided in WCC 20.68.100 and 20.68.130.

~~.064~~**212** Only Uses allowed in the Light Impact Industrial ~~district~~ Zone as permitted uses, WCC 20.66.100, shall be permitted ~~outright~~uses within the Heavy Impact Industrial ~~D~~istrict in the Bellingham UGA.

.214 Only conditional uses allowed in the Light Impact Industrial district as conditional uses, WCC 20.66.150, shall be allowed as conditional uses in the Heavy Impact Industrial district in the Bellingham UGA.

~~.203~~**216** In the Bellingham Urban Growth Area ~~t~~The following uses are prohibited in the Bellingham UGA: petroleum refinery and the primary manufacturing of products thereof, primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos and products derived thereof; treatment and storage facilities for hazardous wastes; type III solid waste handling facilities; and primary metal industries and metal recycling.

20.68.700 Performance standards.

In all Heavy Impact Industrial districts, the following performance standards shall apply: ~~except that within the Bellingham UGA, new uses (including permitted, accessory, administrative, and conditional uses) or nonconforming uses changed to another nonconforming use pursuant to WCC 20.83.40 shall be subject to the performance standards of the Light Impact Industrial district, WCC 20.66.700 – 20.66.708.~~

...