



WHATCOM COUNTY PLANNING COMMISSION

5280 Northwest Drive
Bellingham WA 98226

AGENDA

Thursday August 8th, 2024

The Whatcom County Planning Commission will hold a **hybrid** meeting at 6:30 p.m., with the option to attend remotely or in person at 5280 Northwest Drive, Bellingham.

- Call to Order
- Roll Call
- Flag Salute
- Department Update
- Open Session for Public Comment
- Commissioner Comments
- Approval of Minutes of: June 13, 2024 and July 25, 2024
- Meeting Topics:
 - *Code Scrub- Public Hearing & Work Session*
 - *Heavy Impact Industrial (HII) in an Urban Growth Area PLN2024-00007- Work Session*
- Unfinished Business
- Adjournment

NOTE: For information on how to watch and participate in the meeting in real time, please visit the following web page: [Participate in Virtual Planning Commission Meeting](#)

Individuals who require special assistance to participate in the meetings are asked to contact "PDS_Planning_Commission@co.whatcom.wa.us" at least 96 hours in advance.

There are nine members on the Whatcom County Planning Commission. If you will be giving written information to the Commissioners, please give a copy to the Coordinator for our office files.

***For more information please contact Aileen Kogut-Aguon at (360)778-5935 or PDS_Planning_Commission@co.whatcom.wa.us
5280 Northwest Drive, Bellingham WA 98226***



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 13th, 2024**

Regular Meeting and Work Session

1

1 **Call to Order**

2 The meeting was called to order by Whatcom County Planning Commission Chair,
3 Kelvin Barton at 6:31p.m.

4 **Roll Call**

5 **Present:** Kelvin Barton, Atul Deshmane, Dominic Mocerri, Scott Van Dalen, Julie
6 Jefferson

7 **Absent:** Jim Hansen, Stephen Jackson, Frank James

8 **Staff Present:** Steve Roberge, Aileen Kogut-Aguon and Cliff Strong

9 **Department Update**

10 There is no department update.

11 **Open Session Public Comment**

12 Dave Widner, Robert Koch, MaryLou Whiteford, Chris Secrist, Lisa Adam, Brian Sarni,
13 Scott Jones, Nancy Bay, Jean-Luc Cornet, Scott Jones, Sarah Gardner, Sebastian
14 Durbin and Julie Wilson-McNerney provided public comments.

15 **Commissioner Comments**

16 Commissioner Jefferson asked a clarifying question on when the notices went out.
17 Steve Roberge, Assistant Planning Director PDS, responded that the notices to the
18 business owners were sent out Friday June 7th, 2024.

19 **Approval of Meeting Minutes**

20 **Timestamp: 7:03p**

21 **1 Commissioner Van Dalen moved** to approve the meeting minutes from May 9th
22 2024.

23 **Commissioner Mocerri seconded.**

24 **Roll Call Vote: Ayes - Scott Van Dalen, Dominic Mocerri, Kelvin Barton**

25 **Abstain - Atul Deshmane, Julie Jefferson**

26 **(Ayes-3; Nays-0; Abstain-2). The motion carried.**

27 **2 Commissioner Van Dalen moved** to approve the meeting minutes from May 23rd,
28 2024.

29 **Commissioner Mocerri seconded.**

30 **Roll Call Vote: Ayes - Scott Van Dalen, Dominic Mocerri, Kelvin Barton**

31 **Abstain - Atul Deshmane, Julie Jefferson (Ayes-3; Nays-0; Abstain-2). The**
32 **motion carried.**

33 **Heavy Impact Industrial Work Session**

34 **Timestamp: 7:08p**

35 Cliff Strong, PDS Senior Planner, reviewed the Council's request to:



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 13th, 2024**

Regular Meeting and Work Session

2

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

5 In addition, Mr. Strong reiterated the potential solutions and concerns the
6 Commissioners discussed at the prior meeting on May 23rd. These solutions
7 included: prohibiting additional certain uses in the area via §20.68.203, prohibiting
8 outdoor HII uses, allowing only light industrial uses in the heavy impact properties,
9 applying the light industrial performance standards to the area and recommending
10 Council impose a moratorium until the HII properties can be rezoned through the
11 Comprehensive Plan update.

12 Concerns included: impacting existing business, some of which might do some of
13 the things contemplated for exclusion; how creating stricter performance standards
14 might affect existing uses; how creating nonconforming uses might affect existing
15 uses; and notifying and hearing from the existing businesses in the area.

16 Mr. Strong pointed out the County attorney's response to the questions the
17 Commission posed regarding legal issues, and corrected an error in staff's analysis
18 of the differences between the LII and HII performance standards.

19 Lastly Mr. Strong reviewed staff's latest recommendation (#4 Combined Solution)
20 from the June 13th memo.

21 The Commissioners resumed discussion from the last session regarding the uses in HII
22 zone and how changes to the code might affect new and existing businesses.

23 Commissioner Mocerri suggested getting input from the City of Bellingham as these
24 code amendments will affect them as well.

25 Commissioner Chair Barton requested a more elaborate packet from staff with codes
26 for the HII for the Bellingham UGA to get a detailed picture of the zoning and the
27 possible amendments being brought to the Commission. Mr. Strong stated that these
28 have already been included in the memos provided.

29 The Commissioners would like more clear direction from County Council on this docket
30 item and if a moratorium is an option before moving forward with a public hearing.

31 Commissioner Mocerri reiterated the idea of Council imposing a moratorium until the
32 HII properties can be rezoned through the Comprehensive Plan update.

33 Commissioner Deshmane asked Council Member Mark Stremler if he would like to
34 speak on the discussion and provide some input.

35 Mark Stremler, Whatcom County Council member, though speaking for himself and not
36 the Council, stated that he would hate to be the one to tell existing businesses that
37 they would have to change or be limited in the future.

38 PDS will present to Council the suggestions given and request a clearer direction for
39 the Commission regarding the code amendments for the HII in the Bellingham UGA.



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
June 13th, 2024**

Regular Meeting and Work Session

3

1 **Adjournment**

2 **Timestamp: 7:53p**

3 The meeting was adjourned at 7:53 p.m.

4 Minutes prepared by Aileen Kogut-Aguon.

5 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

6

7 _____
Kelvin Barton, Chair

_____ Aileen Kogut-Aguon, Secretary

DRAFT



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 25, 2024**

Work Session

1

1 **Call to Order**

2 The meeting was called to order by Whatcom County Planning Commission Vice Chair,
3 Dominic Mocerri at 6:35 p.m.

4 **Roll Call**

5 **Present:** Atul Deshmane, Jim Hansen, Frank James, Suneeta Eisenburg, Dominic
6 Mocerri

7 **Staff Present:** Steve Roberge, Cliff Strong, Lucas Clark, Kelly Chamberlain, and Becky
8 Boxx

9 **Department Update**

10 Steve Roberge, Assistant Director of Planning and Development Services (PDS)
11 explained Whatcom County Council is sending HII in the UGA discussion back to the
12 Planning Commission with some more instruction; that subject will be on the agenda
13 for August 8th along with the Public Hearings for ~~code scrub, topics on the agenda~~
14 ~~tonight~~. Also coming to the Commission soon, State Bill 5290 which requires Planning
15 and Development to shorten its review timelines.

16 Planning Department Senior Planner Cliff Strong added that the Department of Ecology
17 has provided conditional approval on the Shoreline Management Program, so PDS is
18 hoping to take that to County Council in September; the Plan then goes back to
19 Ecology for final approval and Staff intends for the Comprehensive Plan amendments
20 to go into effect upon final approval from Ecology, then Code Amendments in January
21 or upon Ecology approval, whichever is later.

22 Commissioner Hansen asked Staff about the timeline on the Commissioners receiving
23 Comp Plan Chapters for review, Mr. R. Roberge responded they are likely to be available
24 in fall or winter.

25 **Open Session Public Comment**

26 There was no public comment.

27 **Commissioner Comments**

28 Commissioner Hansen reported the Forest Resiliency Task Force will be meeting the
29 second Wednesday of each month and is currently forming goals, processes, and
30 objectives.

31 Commissioner Deshmane asked Commissioner Hansen about his role in the Task Force
32 and what he needs from the Planning Commission; the Commissioners agreed that
33 Commissioner Hansen would feel like a more active representative with input and
34 feedback from the other Commissioners

35 **Approval of Meeting Minutes**

36 **Timestamp: 9:45**

37 **1 Commissioner Atul Deshmane moved to approve the meeting minutes from June**
38 **13.**



**RECORD OF PROCEEDINGS OF THE
WHATCOM COUNTY PLANNING COMMISSION
July 25, 2024**

Work Session

2

1 **Commissioner Dominic Mocerì seconded.**

2 **Roll Call Vote: Ayes- Deshmane, Mocerì**

3 **Nays-**

4 **Abstain- James, Hansen, Eisenburg (Ayes-2; Nays-0; Abstain-3). The motion**
5 **fails.**

6 **Code Scrub**

7 **Timestamp: 12:04**

8 Lucas Clark presented information on code scrub proposals for: Personal Wireless
9 Facilities related to FAA approval and setbacks, removing instances of the term
10 "significant" regarding tree removals, 0-foot setbacks for Single Family attached,
11 Cannabis in the Urban Growth Area, Remaining instances of the term "significant"
12 regarding tree removals, Zero foot setbacks for Single Family Residences, Cannabis in
13 the Urban Growth Area, and issuing permits during the seasonal Watershed closure.

14 **Code Scrub Work Session**

15 **Timestamp: 17:13**

16 Commissioner Hansen asked for clarification on which proposed amendments are
17 actual policy changes.

18 Mr. Clark confirmed only the Cannabis in LII is a policy change.

19 Commissioner Mocerì asked if the code scrub for watershed closure applies only to
20 work disturbing 500 ft of soil.

21 Mr. Strong confirmed the watershed protection is the purpose of the issuance
22 moratorium, however, the timelines related to State Bill 5290 will not allow Planning
23 and Development Staff to withhold permits during the seasonal closure. Only outdoor
24 construction is affected; outside work not affecting 500 sq. ft of soil, or interior
25 remodels, etc. do not fall into this category.

26 **Adjournment**

27 **Timestamp: 22:07**

28 The meeting was adjourned at 6:58 p.m.

29 Minutes prepared by Kelly Chamberlain.

30 WHATCOM COUNTY PLANNING COMMISSION ATTEST:

31 _____
32 Kelvin Barton, Chair

Aileen Kogut-Aguon, Secretary

Whatcom County Planning & Development Services Staff Report

Miscellaneous Code Amendments 2024

I. File Information

File # PLN2024-00002

File Name: Miscellaneous Code Amendments 2024

Applicants: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC Titles 20 (Zoning). This is an annual “code scrub,” wherein Planning and Development Services proposes amendments to clarify code, fix inconsistencies and grammar, and modify or add minor policies. This year’s six proposed code amendments include one proposed policy change to allow cannabis retail in the Light Impact Industrial District within Urban Growth Areas. Please refer to Exhibit A (attached) where the proposed amendments and explanations are provided.

Location: Countywide.

II. Code Amendments

The proposed code amendments are found in Exhibit A. Please refer to that attachment; explanations are provided therein.

III. Comprehensive Plan Evaluation

The proposed amendments are consistent with Comprehensive Plan’s Goal 2D to “Refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.” Staff finds no policies with which these amendments would be inconsistent.

IV. Proposed Findings of Fact and Reasons for Action

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on June 6th, 2024. No comments have been received to date.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on June 4th, 2024, for their 60-day review. No comments were received to date.
4. The Planning Commission held a duly noticed work session on the proposed amendments on July 25th, 2024
5. The Planning Commission held a duly noticed public hearing on the proposed amendments on August 8th, 2024.
6. The County Council held a duly noticed public hearing on the proposed amendments on _____, 2024.

7. The amendments are consistent with Comprehensive Plan Policy Goal 2D to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.” There are no policies with which these amendments would be inconsistent.
8. In reference to Exhibit A, Amendment No. 1: This amendment would require applicants for Personal Wireless Facilities whose structure might penetrate FAR Part 77 to submit Federal Aviation Administration (FAA) approval tower heights prior to applying for Whatcom County permits and submit that approval with their application.
9. In reference to Exhibit A, Amendment No. 2: This amendment adds an additional 30-foot setback from single-family residential uses to Personal Wireless Facilities to allow for additional height increases when colocation is proposed.
10. In reference to Exhibit A, Amendment No. 3: This amendment removes two leftover uses of the term “significant” trees, as the County has switched from regulating the removal of “significant trees” to regulating the retention of “tree canopy” in our watershed protection districts.
11. In reference to Exhibit A, Amendment No. 4: This amendment clarifies that 0-foot setbacks are allowed for Single-Family Attached uses where Single-Family attached is allowed.
12. In reference to Exhibit A, Amendment No. 5: This amendment allows cannabis retail in the Light Impact Industrial District within UGAs per Council direction (docket item PLN2024-00006).
13. In reference to Exhibit A, Amendment No. 6: Because of the upcoming stricter permitting timelines of HB 5290, this amendment allows Planning and Development Services to issue permits for land disturbing activities in our watershed protection overlay districts during seasonal closures, though conditions such work not to occur during the seasonal closure.

V. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

VI. Recommendation

Planning and Development Services recommends that the Planning Commission recommend the proposed amendments and Findings of Fact to the County Council.

Attachments

1. Exhibit A – Proposed Code Amendments

Exhibit A: 2024 Miscellaneous Code Amendments

(Editor's note: Ellipses (...) indicate that sections of the code not being amended are not shown.)

1) Requiring FAA Approval of Wireless Tower Heights Prior to Applying for Whatcom County Permits.

The County is under strict federal permit processing timelines for wireless facilities. However, an issue has arisen wherein when we ask an applicant whose structure might penetrate FAR Part 77 for FAA approval of their proposed height, the FAA doesn't always respond in a timely manner, forcing PDS to issue a permit prior to receiving its approval. Therefore, PDS proposes to amend WCC 20.13.140 and 20.80.675 to require the applicant to undergo FAA review prior to submittal, and submit that approval in writing at time of application.

Title 20 ZONING

Chapter 20.13 Personal Wireless Facilities

20.13.140 Federal requirements.

All wireless communications support structures must meet or exceed applicable current standards and regulations of the FAA, the FCC, and any other agency of the federal government with the authority to regulate wireless communication support structures and antennas. Any tower construction or modification that penetrates FAR Part 77 requires a FAA approval/determination to be submitted with the application for any Whatcom County permit. If such standards and regulations are changed, owners of the freestanding or attached wireless communication support structure, antennas, and electronic equipment governed by this chapter shall bring such facility into compliance with such revised standards and regulations if required by the federal agency. Failure to bring such facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the facility at the owner's expense.

Chapter 20.80 Supplementary Requirements

20.80.675 Height limitations surrounding airports.

- (1) No structure shall exceed the height of the imaginary surfaces defined in Federal Aviation Regulations (FAR) Part 77 around airports that have mapped such imaginary surfaces (airports that have mapped Part 77 imaginary surfaces are shown in Appendix H of the Whatcom County Comprehensive Plan). This restriction shall not apply to single-family residences and accessory structures that have a building height of 30 feet or less.
- (2) Applicants for permits within the area covered by the FAR Part 77 imaginary surfaces map shall, upon application, submit correspondence from both the Federal Aviation Administration and an official representative of the airport providing their concurrence that the proposed development meets subsection (1) of this section and will not create a hazard to air navigation.
- (3) The hearing examiner shall have the authority to grant a variance from the height limits of subsection (1) of this section upon finding that the below criteria are satisfied. Pursuant to WCC 20.13, personal wireless eligible facilities are exempt from having to obtain a variance.

- (a) The variance application shall be accompanied by letters from both the Federal Aviation Administration and an official representative of the airport evaluating the effects of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. If neither agency responds to a written request by the applicant to evaluate the proposal within 45 days, the variance application may be submitted without the evaluation(s) required.
- (b) The variance criteria of WCC [22.05.024](#) shall not apply. Such variances may be granted if the hearing examiner finds that:
 - i. The strict application of the height limit will result in unnecessary hardship; and
 - ii. The height proposed will not be contrary to the public interest and will not create a hazard to air navigation.
- (c) No variance shall be granted that authorizes a use that is not allowed by the underlying zoning.

2) Adding an additional 30-foot setback to allow for how federal guidelines measure tower height. Under Federal regulations, and pursuant to WCC 20.13, additional equipment may be placed on a wireless tower with limited County review. Such equipment can add an additional 30 feet to the height of the tower, potentially violating approved setbacks, and/or placing it in striking distance of a house were it to fall. PDS would like to remedy this, and ensure that all such future towers minimize impact risk, by adding another 30 feet to the setback requirements.

Title 20 ZONING

Chapter 20.13 Personal Wireless Facilities

20.13.090 Design and development standards for small and macro wireless facilities.

.091 Design and Development Standards.

(...)

(12) Setbacks Applicable. The following setback standards shall apply to personal wireless service facilities:

(...)

- (c) Freestanding wireless communication support structures located in a residential related district as described in WCC [20.13.085](#) shall be set back from any property line by a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater, [plus 30 feet](#).
- (d) Freestanding wireless communication support structures located in other than residential related districts shall be set back from any property line abutting or adjacent to a residential related district a distance equal to the height of the wireless communications support structure or the setback of the underlying use district, whichever is greater, [plus 30 feet](#).
- (e) Regardless of the district, freestanding wireless communication support structures shall be set back from dwellings not on the same legal lot a distance equal to the height of the freestanding wireless communication support structure or the setback of the underlying use district, whichever is greater, [plus 30 feet](#).

(...)

3) Cleaning up a few leftover references to “significant” trees.

In 2018 Council approved amendments to the Watershed Protection Districts that, in part, switched the County from regulating the removal of “significant trees” to regulating the retention of “tree canopy.” However, PDS has found a few leftover uses of the term “significant” trees and we now propose to remove them.

Title 20 ZONING

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.440 Tree retention associated with development activity.

(...)

- (3) Minimum Tree Canopy Retention. Development subject to the requirements of this section may only remove up to a certain percentage (as shown in Table 20.51.440(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy area, as defined by the dripline of the ~~significant~~ tree(s) on their property. In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.51.440(4).

(...)

Chapter 20.71 Water Resource Protection Overlay District

20.71.356 Tree retention associated with development activity.

(...)

- (3) Minimum Tree Canopy Retention. Development subject to the requirements of this section may only remove up to a certain percentage (as shown in Table 20.71.356(3)) or 5,000 square feet, whichever is greater, and as measured cumulatively from January 1, 2017, of the existing tree canopy areas, as defined by the dripline of the ~~significant~~ tree(s) on their property. In the event that tree canopy areas in excess of the applicable threshold must be removed to facilitate reasonable use of the site, or to eliminate hazard trees, new on-site plantings of native species shall be required to attain the removed tree canopy coverage, calculated according to projected growth at 20 years maturity consistent with Table 20.71.356(4).

(...)

4) Clarifying that 0-foot setbacks are allowed for Single-Family Attached uses where this use is allowed.

Single-Family Attached uses are allowed in Urban Residential (UR), Urban Residential Medium Density (URM) and Urban Residential – Mixed (UR-MX) districts. Single-Family Attached are defined in WCC 20.97.190 as “a group of two or more single-family dwelling units, each on a separate lot of record, which are joined to one another by a common party wall, but having separate outside entrances, and for the purposes of this code include townhouses.” However, WCC 20.80.210 (Minimum Setbacks) does not specifically state that there is a 0-foot interior side-yard setback allowed for this use. PDS would like to add a note allowing the 0-foot interior side-yard setback.

Title 20 ZONING

Chapter 20.80 Supplementary Requirements

20.80.210 minimum setbacks.

(...)

Zoning District	Setback (in feet) from:						
	Right-of-Way Classification					Other	
	I-5, State Highways, Urban Principal, and Urban Minor Arterials	Urban Collector Arterials and Rural Major Collectors	Minor Collectors	Local Access Streets	Minor Access Streets	Side Yard	Rear Yard
Residential Setbacks							
Rural Residential (RR)	45	35	25	25	20	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some RR setbacks may differ pursuant to WCC 20.80.210(5)(a)(iv) and 20.80.251(2) .							
Rural Residential-Island (RR-I)	–	–	25	25	20	5	5
Note: Depending on circumstances, some RR-I setbacks may differ pursuant to WCC 20.80.251(4) .							
Point Roberts Transitional Zone (TZ)	45	35	25	25	20	5	5
Urban Residential Mixed Use (UR-MX)	45	35	25	10	10	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5

Urban Residential Medium (URM)	45	35	25	25	20	5	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some URM setbacks may differ pursuant to WCC 20.80.251(3) . Note: Single-Family attached in UR, URM, and UR-MX may have a 0-foot interior side yard setback.							
Urban Residential (UR)	45	35	25	25	20	5 ¹	5
– If in a WRPO ¹ or LWWO ²	30	30	20	20	20	5	5
Note: Depending on circumstances, some UR setbacks may differ pursuant to WCC 20.80.251(1).							

5) POLICY CHANGE: Allowing Cannabis Retail in the Light Impact Industrial District within UGAs.

Cannabis retail facilities are currently allowed in four commercial districts in unincorporated Whatcom County, though the areas are limited and most already have established retail cannabis stores. The state legislature recently revised the Washington State Cannabis Social Equity Program to authorize the Liquor and Cannabis Board (LCB) to issue additional cannabis retail sales licenses to applicants who meet the social equity requirements of the program under WAC 314-55-570.

In 2024 the Council placed on the docket item PLN2024-00006, directing staff to *“Evaluate the allowance of cannabis retail facilities in the Light Impact Industrial (LII) zone within a city’s designated urban growth area (UGA) and review and revise the Whatcom County Zoning Code, as applicable.”*

In response, PDS proposes to amend WCC 20.66.050 by adding “cannabis retail facilities” as a permitted use in the LII district when in a UGA.

TITLE 20 ZONING

Chapter 20.66 Light Impact Industrial (LII) District

20.66.050 Permitted uses

(...)

.089 Cannabis retail facilities, when located in a city’s Urban Growth Area and located on the same parcel as a legally established cannabis producer or processor.

(...)

6) Clarifying the rules for issuing permits during watershed closure.

To help ensure that land disturbing activities would not occur outside of the seasonal work windows in our watershed protection districts, the code forbids Planning and Development Services from issuing permits during the seasonal closures. However, because of the stricter permitting timelines of HB 5290 (to be implemented by 1/1/25 through a different set of code amendments), PDS can no longer hold off

on issuing permits, as the below sections state. Therefore, PDS suggests amending these sections as shown.

TITLE 20 ZONING

Chapter 20.51 Lake Whatcom Watershed Overlay District

20.51.410 Seasonal clearing activity limitations.

(...)

(3) To ensure compliance with subsection (2) of this section, ~~all permits the director shall not issue development permits requiring authorizing~~ more than 500 square feet of land disturbance located within the Lake Whatcom watershed ~~shall be conditioned on such work not being authorized~~ from September 15th through May 31st.

(...)

Chapter 20.80 Supplementary Requirements

20.80.735 Water resource special management areas.

(...)

(2) Within water resource special management areas, clearing activity must conform to the following conditions:

(...)

(d) Seasonal Clearing Activity Limitations. In the Lake Samish and Lake Padden watersheds, clearing activity, as defined in Chapter 20.97 WCC, or forest practices regulated by Whatcom County that will result in land disturbance exceeding 500 square feet, shall be prohibited from October 1st through May 31st; provided, that:

(...)

(ii) To ensure compliance with this section, ~~all permits the director shall not issue development permits requiring authorizing~~ more than 500 square feet of land disturbance located within the Lake Samish or Lake Padden watersheds ~~shall be conditioned on such work not being authorized~~ from September 15th through May 31st.

Whatcom County
Planning & Development Services
Staff Report

Review of Uses Allowed in the Heavy Impact Industrial District within Urban Growth Areas

I. File Information

File # PLN2024-00007

File Name: Review of uses allowed in the Heavy Impact Industrial District within Urban Growth Areas

Applicant: Whatcom County Planning and Development Services (PDS) on behalf of the County Council

Summary of Request: Amend Whatcom County Code Chapter 20.68 (Heavy Impact Industrial) 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.

Location: Alderwood neighborhood, northwest of Bellingham and south of the airport

Recommendation(s): Planning and Development Services recommends that the Planning Commission review the exhibits, in particular the “excluded list” (Exhibit B), compare them to the draft amendments (Exhibit A), and—after receiving public testimony—determine which uses they would recommend to Council be prohibited in the Bellingham UGA.

II. Background

Council Directive

In 2024 Council placed on the docket:

PLN2024-00007 – Heavy Impact Industrial Zones within city UGA

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 response to concerns from surrounding residential neighbors when a permit application for a metal recycling facility was submitted,¹ with the goal of reducing impacts from other similar potential uses in the future.

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 5/21/24 Council meeting another 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 a second phase in planning for this area, which is intended to occur through the Comprehensive Plan Update and would include a more thorough review of zones, uses, compatibility, outreach, coordination with the City and Port of Bellingham, etc. The Planning Commission’s current task is addressing the docketed item above with deeper and broader discussions to follow with the second phase.

¹ Though has since been withdrawn.

Council Clarification

Upon the Planning Commission's request for clarification from Council as to what they were looking for through their docket item, the Council's Committee of the Whole, at their 4/23/24 meeting, provided a list of uses the Commission should review and consider prohibiting within the Bellingham UGA. Specifically, a motion was approved "that Planning and Development Services Department use this included and excluded list as a starting point for working with the Planning Commission on advancing a Phase 1 code changes discussion." These lists are attached as Exhibits B and C.

Councilmember Donovan, who originally developed these lists, conferred with existing businesses and the Port of Bellingham (who owns some of the HII properties) to ensure that the excluded list does not significantly affect any existing businesses.

Affected Location(s)

There is only one location that this directive would affect, that being 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 any other city UGAs.)

The area is located adjacent to the northwest portion 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 (see figures, below). 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. However, in the last few decades residential uses have intensely developed around and in between the industrial properties.



Figure 1. Aerial of the Alderwood Neighborhood

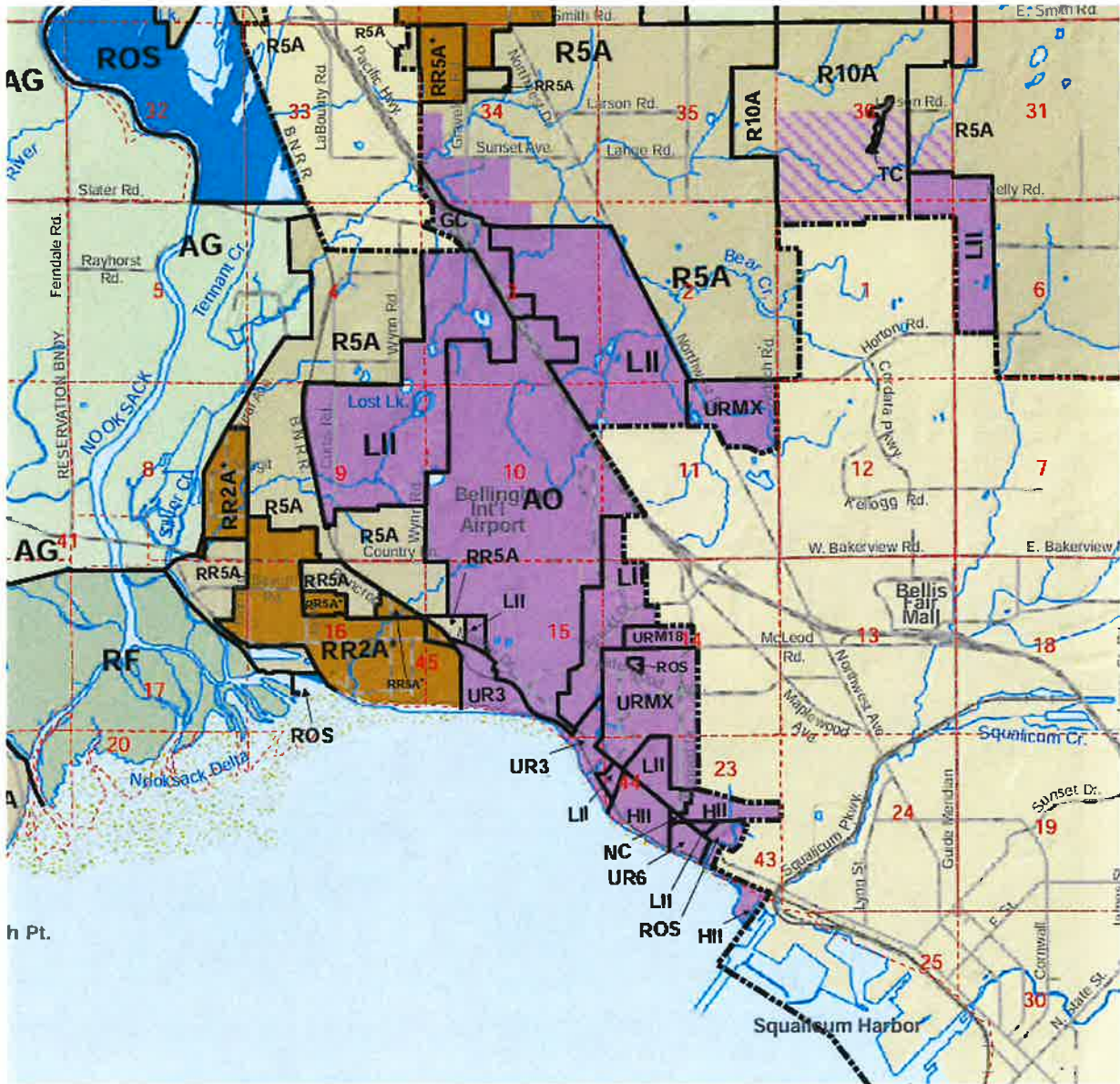
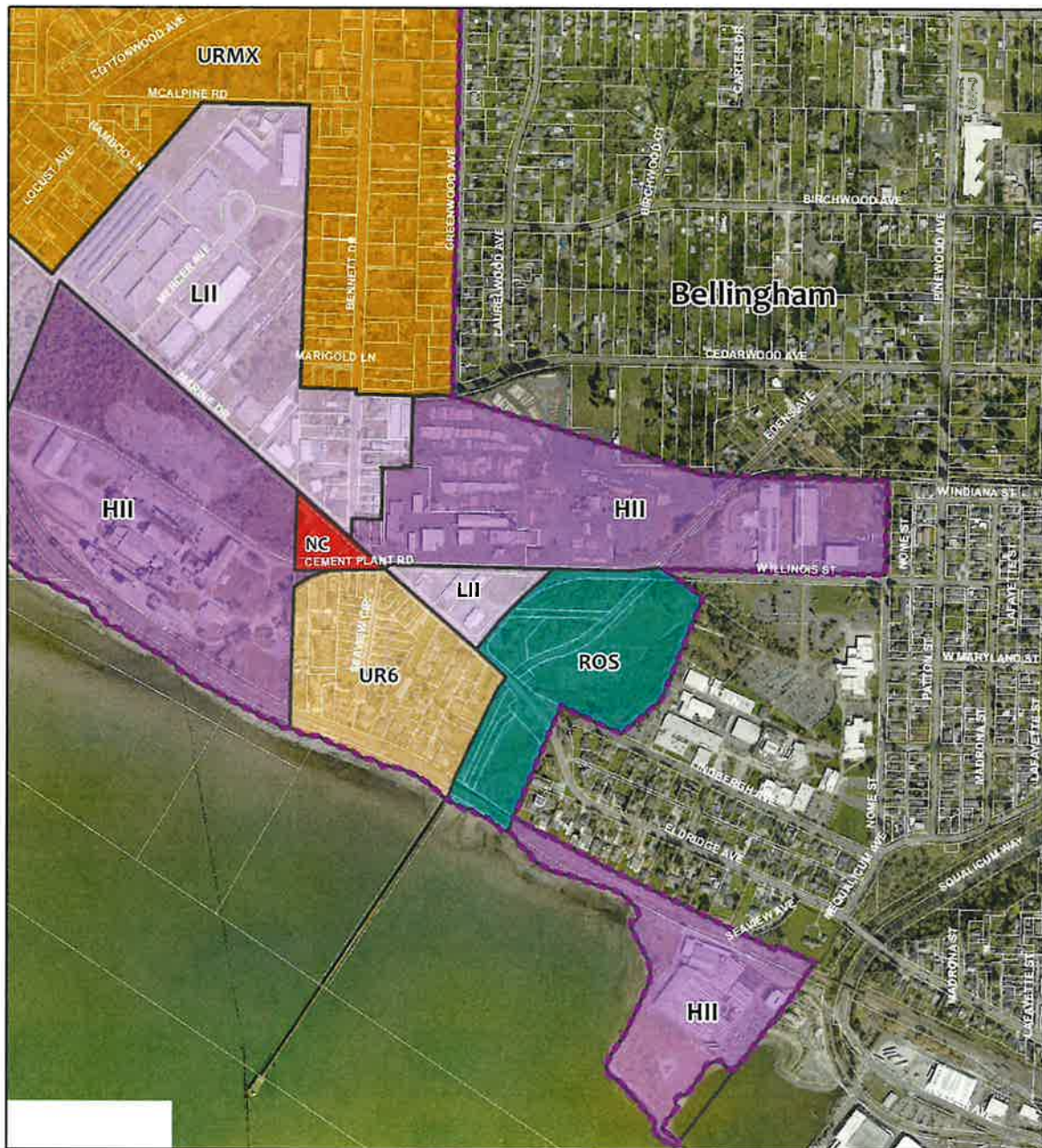


Figure 2. Portion of the Whatcom County Zoning Map for the Alderwood Neighborhood



Legend

Title 20 Zoning

- UR6 Urban Res. 6/Ac.)
- URMX (Urban Res. Mixed)
- NC (Neighborhood Comm.)
- ROS (Rec./Open Space)
- HII (Heavy Impact Industrial)
- LII (Light Impact Industrial)
- Urban Growth Area

USE OF WHATCOM COUNTY'S GIS DATA IMPLIES THE USER'S AGREEMENT WITH THE FOLLOWING STATEMENT:

Whatcom County does not warrant any warranty of merchantability or warranty of fitness of this map for any particular purpose, other express or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data displayed on this map. Any use of this map assumes all responsibility for any errors, and further agrees to hold Whatcom County harmless from any and all claims, damages, loss, or liability arising from any use of this map.

0 100 200 400 600 800 Feet

June 2024



Figure 3. Zoomed in Map of the Alderwood Neighborhood showing zoning districts

III. Code Amendments

WCC Title 20 regulates uses, and the permits they require, by categories: permitted, accessory, administrative, conditional, and (sometimes) prohibited uses. While historically the Alderwood neighborhood was predominantly an industrial area, there are uses allowed in the HII district that may not be appropriate for this area today. Council has tasked the Planning Commission with identifying those uses that might fit this category. The existing portion of the HII code showing the entire list of permitted, accessory, administrative, conditional, and prohibited uses is provided in Exhibit D.

Using the lists provided by Council (Exhibits B and C), Planning and Development Services has developed draft code amendments consistent with Council's direction and input (Exhibit A). As a reminder, the docket charge is to, "define appropriate industrial uses and conditions for industrial uses in Heavy Impact Industrial (HII) Districts within a city's designated urban growth area." PDS recommends that the Planning Commission review the lists, in particular the "excluded list" (Exhibit B), compare them to the draft amendments, and—after receiving public testimony—determine which uses they would recommend to Council be prohibited in the Bellingham UGA.

We should also note that sprinkled throughout the existing code (in WCC 20.68.050, 20.68.150, and 20.68.200) are several exceptions to the use allowances that apply specifically within the Bellingham UGA. To make it easier to find these exceptions the draft amendments move them all to one new section 20.68.210, entitled "Use Allowances Specific to the Bellingham Urban Growth Area." To the list of prohibited uses, for discussion, we have added Council's excluded list of uses.

A change is also proposed to WCC 20.68.152 (Conditional Uses), to provide additional clarity. The language is somewhat unclear as to which portions apply where, though the intent was for all of it to apply outside of the Bellingham UGA.

IV. Comprehensive Plan Evaluation

Whatcom County Comprehensive Plan

Though there are some CompPlan goals or policies that speak to joint planning in the Bellingham UGA, none specifically address the Alderwood neighborhood or HII designations. Staff finds no policies with which these amendments would be inconsistent. Thus, the proposed amendments are consistent with the Comprehensive Plan.

Urban Fringe Subarea Plan

The Urban Fringe Subarea Plan is a sub-plan of the Whatcom County Comprehensive Plan and contains policies specific to those areas in Urban Growth Areas. The following policies are applicable to the topic at hand:

Policy 1.13 Minimize land use conflicts in the Urban Growth Area through the use of appropriate buffering mechanisms, design standards, and locational criteria. Promote compatibility between land uses, especially among residential, commercial, industrial and Airport Operations designations.

Policy 4.2 The rationale of the Heavy Impact Industrial zoning designation in the Urban Fringe Subarea is to acknowledge existing heavy industrial uses situated in proximity to Bennett Drive, Marine Drive, and Roeder Avenue; to endorse a diverse economic base; and to attain compatibility between industrial activities and adjoining residential land uses.

Policy 4.8 When practical, Whatcom County encourages industrial operations to take place within enclosed structures with the intent of minimizing potential light, glare, odors and noise impacts to adjoining residential uses.

- Policy 4.9 Because the HII areas adjoin existing and planned residential areas situated in Whatcom County and the City of Bellingham, it is necessary to move toward obtaining mutual compatibility with these residential areas. To obtain mutual compatibility, it is the policy of Whatcom County to permit those existing uses and future uses which will minimize hazards, pollution, nuisances and odors to surrounding residential areas. The following uses will not be permitted in the Heavy Impact Industrial zoning district in the Urban Fringe Subarea: manufacturing and processing of asbestos and products derived therefrom; petroleum refining and the primary manufacture of products derived directly therefrom; primary manufacturing of rubber, plastics, chemicals, paper, and primary metal industries.
- Policy 4.10 With the intent of fostering and promoting compatibility with surrounding residential land uses both in the county and the City of Bellingham, it is the policy of Whatcom County to require industrial users to provide a buffer which is situated on industrial land and adjoins the residential areas. The buffer may alternately be provided off-site by written agreement in the form of a deed restriction on the off-site parcel that runs with the land and that is filed with the County Auditor. The off-site buffer agreement will be written so that it may be revised or rescinded in the event that land uses or zoning designations are changed in such a way that the buffer is no longer necessary.

However, none of these conflict with what is being proposed and therefore the proposed amendments are consistent with the Urban Fringe Subarea Plan.

V. Proposed Findings of Fact and Reasons for Action

It is recommended the Planning Commission adopt the following findings of fact and reasons for action:

1. Whatcom County Planning and Development Services has submitted an application to make various amendments to the Whatcom County Code (WCC) to make corrections, updates, and clarifications.
2. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on [REDACTED], 2024. No comments have been received to date.
3. Notice of the subject amendment was submitted to the Washington State Department of Commerce on [REDACTED], 2024, for their 60-day review. No comments were received.
4. The Planning Commission held a duly noticed public hearing on the proposed amendments on [REDACTED], 2024.
5. The County Council held a duly noticed public hearing on the proposed amendments on [REDACTED], 2024.
6. The amendments are consistent with Comprehensive Plan Policy Goal 2D to “refine the regulatory system to ensure accomplishment of desired land use goals in a fair and equitable manner.” There are no policies with which these amendments would be inconsistent.
7. More findings specific to the final action will be added after the Planning Commission’s 8/8/24 workshop.

VI. Proposed Conclusions

1. The amendments are in the public interest.
2. The amendments are consistent with the Whatcom County Comprehensive Plan.

Exhibit B: Council's "Excluded" List

Re: AB 2024-427: Additional direction to Planning Commission for uses to be excluded in the HII UGA

(Editor's Note: The intent of this list is to provide direction to the Planning Commission as to which uses might not be compatible with the residential uses in the Alderwood neighborhood. Strikeouts shown are Council's.)

- Battery energy storage systems (BESS)
- Treatment and storage facilities for hazardous wastes
- Metal recycling and any new outdoor manufacturing or processing of metal products in relation to the metal production and processing uses allowed in WCC 20.68.054(6)
- Packinghouses and slaughterhouses
- Packinghouses and slaughterhouses
- Holding pens associated with packinghouses and slaughterhouses
- Primary metal industries including blast furnaces and steel works; mills for primary smelting
- The manufacture 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.
- Storage of asphalt
- Bulk commodity storage facilities, and ~~rail~~, truck, vessel and transshipment terminals and facilities
- Stationary thermal power plants
- Floating thermal power plants
- Cannabis processing facilities
- Type 2 (outdoor) cannabis production facilities
- New renewable fuel refineries or renewable fuel transshipment facilities
- Treatment and storage facilities for hazardous wastes
- Type I solid waste handling facilities.
- Type II solid waste handling facilities.
- Type III solid waste handling facilities
- The manufacture and process of paper including ~~pulp~~, paper and paperboard mills; and building paper and board mill products
- The manufacture and processing of rubber and plastic products.

VII. Recommendation

Planning and Development Services recommends that the Planning Commission review the exhibits, in particular the “excluded list” (Exhibit B), compare them to the draft amendments (Exhibit A), and—after receiving public testimony—determine which uses they would recommend to Council be prohibited in the Bellingham UGA.

VIII. Exhibits

- A) Proposed Code Amendments
- B) Council’s “Excluded” List
- C) Council’s “Included” List
- D) Existing Heavy Impact Industrial Code

Exhibit C: Council's "Included" List

Remaining HII permitted uses in HII UGA

(Editor's Note: This intent of this list is to show what uses would still be allowed on HII properties within the Bellingham UGA if those uses in Exhibit B are excluded. Strikeouts shown are Council's.)

20.68.050 Permitted Uses

(...)

.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:

- (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.~~

.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.~~

.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.

.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.

.108 Day care centers.

.110 Self-service storage facilities.

.111 Propane retail and distribution facility.

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.

(...)

Exhibit D: 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.

Exhibit A: Proposed Amendments to WCC Chapter 20.68 Heavy Impact Industrial District

WCC TITLE 20

Chapter 20.68 HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

(...)

~~.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.~~

Commented [CES1]: Moved to 20.68.210.

(...)

20.68.150 Conditional uses.

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

.152 ~~Outside of the Bellingham Urban Growth Area, U~~uses allowed in the Light Impact Industrial Zone as permitted uses, WCC 20.66.~~1050~~, ~~are allowed as condition uses~~, subject to the following:

Commented [CES2]: Citation corrected.

- (1) ~~Outside of the Bellingham Urban Growth Area, a~~Approval shall be supported by a finding by the ~~h~~Hearing ~~e~~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.

(...)

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.

.207 Coal-fired power plants.

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

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

Commented [CES3]: Moved to 20.68.210

.204 New fossil fuel refineries or transshipment facilities.

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

.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.

20.68.210 Use Allowances Specific to the Bellingham Urban Growth Area.

This section modifies the permitted (WCC 20.68.050) and prohibited uses (WCC 20.68.200) for HII zoned properties in the Bellingham Urban Growth Area, within which the following uses are permitted or prohibited, as indicated. All other accessory (WCC 20.68.100), administrative (WCC 20.68.130), and conditional uses (WCC 20.68.150) remain the same.

. 212 Except as prohibited by WCC 20.68.216, uses allowed in the Light Impact Industrial district as permitted uses (WCC 20.68.050) shall be permitted uses within the Heavy Impact Industrial District.

Commented [CES4]: Citation corrected

Commented [CES5]: Moved from 20.68.064.

.216 The following uses are prohibited:

- (a) Fossil or renewable fuel refineries or transshipment facilities, and the primary manufacturing of products thereof;
- (b) Primary manufacturing and processing of rubber, plastics, chemicals, paper, asbestos, and products derived thereof;
- (c) Primary metal industries including blast furnaces and steel works and mills for primary smelting;
- (d) Metal recycling or any outdoor manufacturing or processing of metal products described in WCC 20.68.054(6);
- (e) The manufacture 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.
- (f) Packinghouses and slaughterhouses and associated holding pens;
- (g) Asphalt storage
- (h) Bulk commodity storage facilities, and truck, vessel and transshipment terminals and facilities
- (i) Hazardous waste treatment and storage facilities;
- (j) Type I, II, or III solid waste handling facilities;
- (k) Thermal power plants
- (l) Battery energy storage systems (BESS)
- (m) Type 2 cannabis production facilities;
- (n) Cannabis processing facilities.

Commented [CES6]: This list provided by Council for consideration by the P/C (though edited for brevity).