

WHATCOM COUNTY

Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
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Mark Personius
Director

Memorandum

March 6, 2024

To: The Honorable Satpal Sidhu, Whatcom County Executive
The Honorable Whatcom County Council

From: Lucas Clark, Planner I

Through: Steve Roberge, Assistant Director

RE: Proposed Amendment to WCC 20.40.150 (Agriculture District) to allow Propane Distribution in Agriculture as a Conditional Use

Purpose

On October 10th, 2023, the County Council approved Resolution AB2023-668 to docket a code amendment to: Amend Whatcom County Code 20.40.150, Agriculture (AG) District, to allow propane reload, storage, and distribution facilities in the Agriculture Zone as a conditional use under certain circumstances. Proposed Code was subsequently recommended by the Agricultural Advisory Committee and Planning Commission. (Please see the Background Section below and attached Planning Commission information for more details.)

The proposal would allow as a conditional use distribution, reload, storage and sales of propane in the Agriculture District and as a permitted use in the Light Impact Industrial District, Heavy Impact Industrial District, Rural Industrial and Manufacturing District and add two new definitions to the Definitions sections of WCC.

As proposed in Exhibit A, the amendment would not allow the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use. Currently, WCC 20.40.162 only allows commercial operations “that directly provide agricultural goods or services to farmers.” The proposal would allow propane to be retailed and wholesaled to the general public.

WCC does not specifically provide for a propane sales, reload, storage, and distribution use in any zoning district. Two new definitions, Propane Retail and Distribution Facility and Propane Intracompany Transport, have been included as Exhibit E. In the past the use has been permitted in certain zones based on code authority to interpret the use as similar to others allowed in those zones. Allowing it as a defined use in AG could lead to an interpretation that would preclude it in other districts. To insure the use is not precluded in those zones, included in this proposal are amendments to Chapter 20.66 WCC Light Impact Industrial (LII) District, 20.68 WCC Heavy Impact Industrial (HII) District, and 20.68 WCC Rural

Industrial and Manufacturing (RIM) District to allow propane distribution facilities and remain consistent with past interpretations of allowed uses in those zones.

Background

Below is a brief timeline of events related to this code amendment proposal. Attached are written comments received from the public and Planning Commission reports.

On October 10th, 2023, the County Council approved Resolution AB2023-668, amending Resolution 2023-005 to docket a code amendment to:
"Amend Whatcom County Code 20.40.150, Agriculture (AG) District, to allow propane reload, storage, and distribution facilities in the Agriculture Zone as a conditional use under certain circumstances."

On December 13th, 2023, the Agricultural Committee deliberated the proposal. There was a discussion and hesitation to allow any new uses in Ag zoning and the possibility of other uses in the future. The main concern was any new allowed use and the conversion of any Ag land to a use that was non-Ag. It was stated that the proposed code confines the use of propane to minimal impacts, and the conditional use permitting process will further limit the proposed use. The Ag Committee forwarded it to the Planning Commission with three votes in favor of forwarding the proposal and two against it.

On January 25th, 2024, the Planning Commission and PDS received a letter from FutureWise with comments on the proposed zoning amendment.

On January 25th, 2024, the Planning Commission held a duly noticed public hearing to consider the proposed amendment. The Planning Commission moved for staff to do some additional work and come back at a later meeting. The motion passed.

On February 14th, 2024, representatives of the propane industry and a representative from RE Sources worked together to address the areas of concern that were raised during the public hearing.

On February 22nd, 2024 The Whatcom County Planning Commission recommended approval of the proposed Zoning Code amendments with no changes.

Planning & Development Services is requesting discussion at Council's Planning & Development Committee and introduction of an ordinance relating to these amendments on March 19. A public hearing and final Council action is anticipated on April 9.

Thank you for your review and consideration of this matter. We look forward to discussing it with you.

List of Exhibits:

Exhibit A: Proposed Amendments to WCC Chapter 20.40 AGRICULTURE (AG) DISTRICT

Exhibit B: Proposed Amendments to WCC Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

Exhibit C: Proposed Amendments to WCC Chapter 20.68 HEAVY IMPACT INDUSTRIAL (LII) DISTRICT

Exhibit D: Proposed Amendments to WCC Chapter 20.69 RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

Exhibit E: Proposed Amendments to WCC Chapter 20.97 DEFINITIONS

Exhibit F: Staff Report to Planning Commission January 25th, 2024

Exhibit G: Memo to Planning Commission for February 22nd, 2024

Exhibit H: Public Comments Received

Exhibit A: Proposed Amendments to WCC Chapter 20.40 AGRICULTURE (AG) DISTRICT

WCC Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.150 Conditional uses.

(...)

.198 Propane Retail and Distribution Facilities, provided all of the following criteria are met:

- (1) The use shall not result in the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use.
- (2) The use shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area.
- (3) The facility's size, scale, and character shall be compatible with the agricultural/rural character of the surrounding area.
- (4) To the extent practicable, a facility shall only be permitted within existing buildings and on hard surfaces, although said buildings may be improved as permitted by applicable codes.
- (5) The use shall only be allowed to expand into pervious surfaces when said expansion will have minimal impact on the agricultural land base and any current agricultural use.
- (6) The proposal will not preclude the property's present or future agricultural uses or substantially detract from on-site agricultural production.
- (7) The proposal will not adversely impact or interfere with accepted farm practices on adjacent or nearby agricultural operations.
- (8) The proposal complies with all applicable local, state, and federal laws. Applicable County Code includes but is not limited to SEPA (WCC 16.08), Conditional Use Permit criteria (WCC 22.05.026), and Proof of Insurance (WCC22.05.125).
- (9) New or modified equipment and any vehicles loaded at the proposal site will be used only for the purposes of Propane Retail and Distribution Facilities for direct sale distribution to end users of propane or Intracompany Transport for direct sale distribution of propane to end users of propane.
- (10) Propane distribution facilities shall follow applicable recommendations of the U.S. Chemical Safety and Hazard Investigation Board (CSB).
- (11) Future modification or expansion of a proposal permitted under this section shall be conditioned that the permitted equipment shall only be used in the manner approved in the permit.

Exhibit B: Proposed Amendments to WCC Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

Chapter 20.66

LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

(...)

.097 Propane Retail and Distribution Facility.

Exhibit C: Proposed Amendments to WCC Chapter 20.68 HEAVY IMPACT INDUSTRIAL (LII) DISTRICT

Chapter 20.68

HEAVY IMPACT INDUSTRIAL (LII) DISTRICT

20.68.050 Permitted uses.

(...)

.110 Propane Retail and Distribution Facility.

Exhibit D: Proposed Amendments to WCC Chapter 20.69 RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

Chapter 20.69

RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted uses.

(...)

.056 Propane Retail and Distribution Facility.

Exhibit E: Proposed Amendments to WCC Chapter 20.97 DEFINITIONS

Chapter 20.97

DEFINITIONS

20.97.160 “P” definitions.

(...)

Propane Retail and Distribution Facility. “Propane Retail and Distribution Facility” means a complex that will receive, store and distribute propane directly to an end user.

Propane Intracompany Transport. “Propane Intracompany Transport” means the movement of propane from one Propane Retail and Distribution facility receiving point to another Propane Retail and Distribution facility within a company’s network of wholly-owned facilities.

Exhibit F: Staff Report to Planning Commission January 25th, 2024

Whatcom County Planning & Development Services Staff Report

Proposed Amendment to WCC 20.40.150 (Agriculture District) to allow Propane Distribution in Agriculture as a Conditional Use

I. File Information

File # PLN2023-00007

File Name: Propane sales, reload, storage, and distribution facility in Agriculture District (AG)

Applicant: Whatcom County Planning and Development Services (PDS)

Summary of Request: Proposed amendments to WCC 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District as a conditional use under certain circumstances. Included in this proposal are amendments to Chapter 20.66 Light Impact Industrial (LII) District, 20.68 Heavy Impact Industrial (HII) District, and 20.68 Rural Industrial and Manufacturing (RIM) District to allow propane distribution.

Location: Countywide

Recommendation: Planning and Development Services recommends that the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

II. Background

On August 1st, 2023, a pre-application meeting was held to consider several existing permitted services and several new services at 5996 Lawrence Road, Deming. The site is zoned AG and has been used for feed storage, transport, and loading under conditional use permits since the 1970's. During the preapplication process, it was proposed to continue the previous uses and add a propane distribution facility. It was determined that propane sales would not be permissible in the Agriculture district, pursuant to WCC 20.40.162(1)(c) that states sales of a commodity in the Agriculture district must be "... limited to directly serving agricultural operators..." and the proposal was to include retail and wholesale sales.

On October 10th, 2023, the County Council approved Resolution AB2023-668, amending Resolution 2023-005 to docket a code amendment to:

"Amend Whatcom County Code 20.40.150, Agriculture (AG) District, to allow propane reload, storage, and distribution facilities in the Agriculture Zone as a conditional use under certain circumstances."

On December 13th, 2023, the Agricultural Committee deliberated the proposal. There was a discussion and hesitation by some of allowing any new uses in Ag zoning and the possibility of other uses in the future. The main concern was any new allowed use and the conversion of any Ag land to a use that was non-Ag. It was stated that the proposed code confines the use of propane to minimal impacts, and the conditional use permitting process will further limit the proposed use. The Ag Committee forwarded it to the Planning Commission with three votes in favor of forwarding the proposal and two against it.

III. Code Amendment

The proposal is to conditionally allow sales, reload, storage and distribution of propane in the Agriculture District. Currently, WCC 20.40.162 only allows commercial operations "that directly provide agricultural goods or services to farmers." The proposal would allow propane to be retailed and wholesaled to the general public.

As proposed in Exhibit A, the amendment would minimize the conversion of productive agricultural land to non-agricultural, as the conditional proposal requires the use to be located in existing structures to the extent practical.

Allowing propane sales in AG-zoned parcels could increase propane distribution range. In the Ag zone, the proposal must meet the conditional use criteria in WCC 22.05.026 and the specific criteria in the proposed amendment.

Currently, WCC does not provide for propane sales, reload, storage, and distribution as a permitted or conditional use in any zoning district. Allowing it as a conditional use in AG could lead to an interpretation that would preclude it in other districts. Included in this proposal are amendments to Chapter 20.66 Light Impact Industrial (LII) District, 20.68 Heavy Impact Industrial (HII) District, and 20.68 Rural Industrial and Manufacturing (RIM) District to allow propane distribution facilities and remain consistent with past interpretations of allowed uses in those zones.

When the Council approved Resolution AB2023-668, they included a draft ordinance. The Council's draft ordinance is included in Exhibit B. The recommended draft code language is included in Exhibit A.

IV. Policy Evaluation

Comprehensive Plan Consistency

The proposed amendment is consistent with the Comprehensive Plan's Goals as follows:

Goal 8A: Conserve and enhance Whatcom County's agricultural land base for food and fiber production.

Policy 8A-5: Discourage conversion of productive agricultural land to incompatible non-agricultural uses.

Analysis: As proposed, the code would minimize the conversion of land with long-term commercial significance for agriculture. It would limit the permitting of propane sales, reload, storage, and distribution facilities in the Agriculture Zone to sites that have existing structures that could house such a use, of which there aren't many. This would limit the total number of parcels possible for conversion. It would focus development on parcels with existing infrastructure compatible with propane storage and sales.

Policy 8A-10: The Agricultural Advisory Committee shall advise the Whatcom County Executive and Council on agricultural issues and agricultural land use. Whatcom County shall support the Agricultural Advisory Committee with staff and other resources and shall recognize the AAC's input with regard to agricultural resource lands.

Policy 8C-2: Involve those who actually are engaged in agricultural activities, and give high regard to their opinions in the County's decision-making during the planning process. Use groups working effectively with the agricultural community to help preserve and/or create a sustainable economic agricultural base.

Analysis: The proposal was brought before the Agricultural Advisory Committee, which voted to forward to the Planning Commission with a recommendation of approval.

V. Proposed Findings of Fact and Reason for Action

It is recommended the Planning Commission recommends the following findings of fact and reasons to the County Council for action:

1. Council amended Resolution 2023-005 to docket an additional Comprehensive Plan/zoning amendment, "Amend Whatcom County Code 20.40.150, Agriculture (AG) District, to allow propane reload, storage, and distribution facilities in the Agriculture Zone as a conditional use under certain circumstances," as there was interest in modifying the regulations to allow commercial and retail propane sales in Ag.
2. There is not a specific propane distribution facility use identified within Whatcom County code. The county has interpreted code to allow propane distribution facilities in Light Impact Industrial (LII) District, 20.68 Heavy Impact Industrial (HII) District, and 20.68 Rural Industrial and Manufacturing (RIM) District through a similar use determination.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on 11/22/23. No comments were received.
4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on 12/4/23 for their 60-day review.
5. The Agricultural Committee reviewed the proposed amendment at a public meeting on December 13th, 2023, and recommended the Planning Commission forward the proposed amendment to the County Council with a recommendation of approval.

VI. Proposed Conclusion

1. The amendments are in the public interest.
2. The amendments will support Agriculture and Agriculture related activities.

VII. Recommendation

Planning and Development Services recommends that the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

VIII. Attachments

1. Exhibit A – Proposed Code Amendments
2. Exhibit B – Original Proposed Code Amendment from Resolution AB2023-668

EXHIBIT A

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.150 Conditional uses.

(...)

.198 Propane retail, reload, storage, and distribution facilities, provided all of the following criteria are met:

- (1) The use shall not result in the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use.
- (2) The use shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area.
- (3) The facility's size, scale, and character shall be compatible with the agricultural/rural character of the surrounding area.
- (4) To the extent practicable, a facility shall only be permitted within existing buildings and on hard surfaces, although said buildings may be improved as permitted by applicable codes.
- (5) The use shall only be allowed to expand into pervious surfaces when said expansion will have minimal impact on the agricultural land base and any current agricultural use.
- (6) The proposal will not preclude the property's present or future agricultural uses or substantially detract from on-site agricultural production.
- (7) The proposal will not preclude the property's present and future agricultural uses or substantially detract from on-site agricultural production in the area.
- (8) The proposal will not adversely impact or interfere with accepted farm practices on adjacent or nearby agricultural operations.

Chapter 20.66 LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

(...)

.097 Propane distribution facilities.

Chapter 20.68
HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

(...)

.110 Propane distribution facilities.

Chapter 20.69
RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted uses.

(...)

.056 Propane distribution facilities.

EXHIBIT B

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.150 Conditional uses.

(...)

.198 Propane reload, storage, and distribution facilities, provided all of the following criteria are met: (1) The use shall not result in the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use.

- (2) The use shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area.
- (3) The facility's size, scale, and character shall be compatible with the agricultural/rural character of the surrounding area.
- (4) To the extent practicable, a facility shall only be permitted within existing buildings and on impervious surfaces, although said buildings may be improved as permitted by applicable codes.
- (5) The use shall only be allowed to expand into pervious surfaces when said expansion will have minimal impact on the agricultural land base and any current agricultural use.
- (6) The applicant shall provide proof that any new permanent structures and soil alterations are generally located on predominantly nonagricultural soils or on the least productive portion of the property.
- (7) The proposal will not preclude the property's present and future agricultural uses or substantially detract from on-site agricultural production in the area.
- (8) The proposal will not adversely impact or interfere with accepted farm practices on adjacent or nearby agricultural operations, given the type of agriculture in the area and its relative susceptibility to nuisance complaints due to accepted farm operations and management practices.

Exhibit G: Memo to Planning Commission for February 22nd, 2024

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



Mark Personius
Director

Memorandum

DATE: February 16, 2024
TO: Planning Commission
FROM: Lucas Clark, Planner I
THROUGH: Steve Roberge, Assistant Director
RE: Proposed Amendment to WCC 20.40.150 (Agriculture District) to allow Propane Distribution in Agriculture as a Conditional Use

Purpose

On January 25th, 2024, the Planning Commission held a duly noticed public hearing to consider the proposed amendment. The Planning Commission moved for staff to do some additional work and come back at a later meeting. The motion passed.

Representatives of the propane industry and a representative from RE Sources worked together to address the areas of concern that were raised during the public hearing. The revised code amendment has removed one redundant condition (previous condition 7, Exhibit B) and added four new conditions (Exhibit A, conditions 8-11) and two new definitions, Propane Retail and Distribution Facility and Propane Intracompany Transport. PDS reviewed the updated code, made minor amendments for clarification, and it is provided for your review as Exhibit A. (Exhibit B is the draft Code reviewed and discussed at the January 25, Planning Commission meeting and is provided for your reference.)

Findings of Fact

It is recommended the Planning Commission recommends the following findings of fact and reasons to the County Council for action:

1. Council amended Resolution 2023-005 to docket an additional Comprehensive Plan/zoning amendment, "Amend Whatcom County Code 20.40.150, Agriculture (AG) District, to allow propane reload, storage, and distribution facilities in the Agriculture Zone as a conditional use under certain circumstances," as there was interest in modifying the regulations to allow commercial and retail propane sales in Ag.
2. There is not a specific propane distribution facility use identified within Whatcom County code. The county has interpreted code to allow propane distribution facilities in Light Impact Industrial (LII) District, 20.68 Heavy Impact Industrial (HII) District, and 20.68 Rural Industrial and Manufacturing (RIM) District through a similar use determination.
3. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on 11/22/23. No comments were received.

4. Notice of the subject amendment was submitted to the Washington State Department of Commerce on 12/4/23 for their 60-day review.
5. The Agricultural Committee reviewed the proposed amendment at a public meeting on December 13th, 2023, and recommended the Planning Commission forward the proposed amendment to the County Council with a recommendation of approval.
6. On January 25th, 2024, the Planning Commission held a duly noticed public hearing to consider the proposed amendment. The Planning Commission moved for staff to do some additional work and come back at a later meeting. The motion passed.
7. On February 14, 2024, on February 14th, PDS met with representatives from VanderYacht Propane, Northwest Propane, and RE Sources.
8. The amendments are in the public interest.
9. The amendments are consistent with the Whatcom County Comprehensive Plan.

Recommendation

Planning and Development Services recommends that the Planning Commission forward the proposed amendments to the County Council with a recommendation of approval.

Attachments

1. Exhibit A – New Proposed Code Amendments.
2. Exhibit B – January 25th, 2024 Proposed Code Amendments.

EXHIBIT A

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.150 Conditional uses.

(...)

.198 Propane Retail and Distribution Facilities, provided all of the following criteria are met:

- (1) The use shall not result in the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use.
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- (5) The use shall only be allowed to expand into pervious surfaces when said expansion will have minimal impact on the agricultural land base and any current agricultural use.
- (6) The proposal will not preclude the property's present or future agricultural uses or substantially detract from on-site agricultural production.
- (7) The proposal will not adversely impact or interfere with accepted farm practices on adjacent or nearby agricultural operations.
- (8) The proposal complies with all applicable local, state, and federal laws. Applicable County Code includes but is not limited to SEPA (WCC 16.08), Conditional Use Permit criteria (WCC 22.05.026), and Proof of Insurance (WCC22.05.125).
- (9) New or modified equipment and any vehicles loaded at the proposal site will be used only for the purposes of Propane Retail and Distribution Facilities for direct sale distribution to end users of propane or Intracompany Transport for direct sale distribution of propane to end users of propane.
- (10) Propane distribution facilities shall follow applicable recommendations of the U.S. Chemical Safety and Hazard Investigation Board (CSB).
- (11) Future modification or expansion of a proposal permitted under this section shall be conditioned that the permitted equipment shall only be used in the manner approved in the permit.

Chapter 20.66
LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

(...)

.097 Propane Retail and Distribution Facility.

Chapter 20.68
HEAVY IMPACT INDUSTRIAL (HII) DISTRICT

20.68.050 Permitted uses.

(...)

.110 Propane Retail and Distribution Facility.

Chapter 20.69
RURAL INDUSTRIAL AND MANUFACTURING (RIM) DISTRICT

20.69.050 Permitted uses.

(...)

.056 Propane Retail and Distribution Facility.

Chapter 20.69
Definitions

20.97.160 “P” definitions.

Propane Retail and Distribution Facility. “Propane Retail and Distribution Facility” means a complex that will receive, store and distribute propane directly to an end user.

Propane Intracompany Transport. “Propane Intracompany Transport” means the movement of propane from one Propane Retail and Distribution facility receiving point to another Propane Retail and Distribution facility within a company’s network of wholly-owned facilities.

EXHIBIT B

Chapter 20.40 AGRICULTURE (AG) DISTRICT

20.40.150 Conditional uses.

(...)

.198 Propane retail, reload, storage, and distribution facilities, provided all of the following criteria are met:

- (1) The use shall not result in the conversion of Agricultural Lands of Long-Term Commercial Significance or land in active agricultural use.
- (2) The use shall be located, designed, and operated so as not to interfere with the overall agricultural character of the area.
- (3) The facility's size, scale, and character shall be compatible with the agricultural/rural character of the surrounding area.
- (4) To the extent practicable, a facility shall only be permitted within existing buildings and on hard surfaces, although said buildings may be improved as permitted by applicable codes.
- (5) The use shall only be allowed to expand into pervious surfaces when said expansion will have minimal impact on the agricultural land base and any current agricultural use.
- (6) The proposal will not preclude the property's present or future agricultural uses or substantially detract from on-site agricultural production.
- (7) The proposal will not preclude the property's present and future agricultural uses or substantially detract from on-site agricultural production in the area.
- (8) The proposal will not adversely impact or interfere with accepted farm practices on adjacent or nearby agricultural operations.

Exhibit H: Public Comments Received



1201 3rd Ave #2200, Seattle, WA 98101
(206) 343-0681
futurewise.org

January 25, 2024

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, WA 98226

Dear Planning Commissioners:

Subject: Comments on the proposed amendments to Whatcom County Code (WCC) 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District and propane distribution in the WCC 20.68 Rural Industrial and Manufacturing (RIM) District

**Sent via email to: LClark@co.whatcom.wa.us;
PDS_Planning_commission@co.whatcom.wa.us**

Thank you for the opportunity to comment on the on the proposed amendments to WCC 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District and propane distribution in the WCC 20.68 Rural Industrial and Manufacturing (RIM) District. We strongly urge the Planning Commission to recommend denial of the Agriculture District amendments to protect working farms and comply with the Growth Management Act. The Rural Industrial and Manufacturing (RIM) District amendments need to incorporate the requirements in RCW 36.70A.070(5)(d)(i) to comply with the Growth Management Act.

The American Farmland Trust has the following recommendations for Agricultural zoning to protect working farms:

Zoning also typically establishes the types of uses (commercial, residential, agricultural, etc.) that are allowable within each zone. Non-agricultural uses of land in agricultural zones can lead to conflicts between farmers and other residents over the sounds, smells, and appearance of normal agricultural activities. However, it is important that farmers be allowed to operate businesses associated with farm production, such as farm stands and processing facilities.

Whatcom County Planning Commission

Re: Comments on the proposed amendments to WCC 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District

January 25, 2024

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In general, a short list of allowable uses restricted to farming, farm-related businesses and other compatible uses is desirable.¹

Expanding the allowed uses to include allow propane sales, reload, storage, and distribution facilities in the Agriculture District will fail to protect agricultural land from conversion to nonagricultural uses.

The Growth Management Act also does not allow these uses in Agriculture Districts. In the *Soccer Fields* decision the Washington Supreme Court held that “[i]n order to constitute an innovative zoning technique [authorized by RCW 36.70A.177] consistent with the overall meaning of the Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.”² Outdoor recreational facilities failed this test and cannot be allowed on agricultural lands because they will remove “designated agricultural land from its availability for agricultural production.”³

In the *Lewis County* decision, the State Supreme Court built on the *Soccer Fields* decision and again upheld a Board decision that the “County’s ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement.”⁴ In addition to residential subdivisions, the illegal uses were public facilities; public and semipublic buildings, structures, and uses; and schools, shops, and airports.⁵

In the *Kittitas County* decision, the state Supreme Court again upheld a Board decision finding that a variety of conditional uses allowed on agricultural lands of long-term commercial significance, which includes the Agriculture (AG) District, violated the Growth Management Act. The conditional uses violated the GMA

¹ Dennis Canty, Alex Martinsons, and Anshika Kumar, *Losing Ground: Farmland Protection in the Puget Sound Region* p. 9 (American Farmland Trust, Seattle WA: Jan. 2012) last accessed on Jan. 25, 2024, at: <https://farmlandinfo.org/publications/losing-ground-farmland-protection-in-the-puget-sound-region/#:~:text=The%2oreport%2odocuments%2othe%2oloss,and%2ounderfunded%2oland%2oprotection%2oprograms>. And enclosed with this letter.

² *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 560, 14 P.3d 133, 142 (2000).

³ *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

⁴ *Lewis Cnty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

⁵ *Lewis Cnty.*, 157 Wn.2d at 507, 526 – 27; 139 P.3d at 1105, 1114 – 15.

Whatcom County Planning Commission

Re: Comments on the proposed amendments to WCC 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District

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because “the County has no protections in place to protect agricultural land from harmful conditional uses.”⁶ The conditional uses that violated the Growth Management Act included “kennels, day care centers, community clubhouses, governmental uses essential to residential neighborhoods, and schools with no limiting criteria or standards.”⁷

Propane sales, reload, storage, and distribution facilities are nonfarm uses. Allowing them as conditional uses in the Agriculture District violates the Growth Management Act. The uses will also pave over farmland.

As we have seen, allowing propane sales, reload, storage, and distribution facilities in Agriculture District is inconsistent with the planning literature on how to protect farmland and violates the Growth Management Act. Futurewise urges the Planning Commission to recommend denial of this zoning amendment.

The Rural Industrial and Manufacturing (RIM) District is a type of limited area of more intense rural development (LAMIRD). As such, propane distribution is only allowed if it meets the following requirements:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments.

(A) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

⁶ *Kittitas Cnty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193, 1206 (2011).

⁷ *Kittitas County Conservation v. Kittitas County*, EWGMHB Case No. 07-1-0015, Final Decision Order (March 21, 2008), at 21, 2008 WL 1766717, at *13.

Whatcom County Planning Commission

Re: Comments on the proposed amendments to WCC 20.40.150, Agriculture (AG) District, to allow propane sales, reload, storage, and distribution facilities in the Agriculture District

January 25, 2024

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(C) Any development or redevelopment in terms of building size, scale, use, or intensity may be permitted subject to confirmation from all existing providers of public facilities and public services of sufficient capacity of existing public facilities and public services to serve any new or additional demand from the new development or redevelopment. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5) and is consistent with the local character. Any commercial development or redevelopment within a mixed-use area must be principally designed to serve the existing and projected rural population and must meet the following requirements:

(I) Any included retail or food service space must not exceed the footprint of previously occupied space or 5,000 square feet, whichever is greater, for the same or similar use; and

(II) Any included retail or food service space must not exceed 2,500 square feet for a new use;

These requirements need to be incorporated into the amendment unless they are already clearly required by the Rural Industrial and Manufacturing (RIM) District and would apply to propane distribution.

Thank you for considering our comments. If you require additional information, please contact me at email tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, WSBA No. 22367
Director of Planning & Law

Enclosure



Whatcom County Planning Commission

Re: 5996 Lawrence Road Everson, Wa.

To whom it may concern,

I am the real estate broker that represented the buyers in the purchase of 5996 Lawrence Road in Everson. This property is just under 7 acres with old, dilapidated feed buildings and storage bins located on the property. There are about 2 acres that could be used for pastureland or harvesting of crops. When the property was first listed my fellow Windermere brokers were excited to present this parcel to their potential buyers due to the fact there is a rail spur connected to the property. When it was discovered the property was zoned agriculture the air went out of the balloon. Vacant AG land has a value between \$15,000 and \$30,000 per acre depending on water rights etc. This would put the value around the \$210,000 range. The only legitimate usage for this parcel due to the AG zoning would be another feed mill but even then, a new feed mill company would need to tear down the existing structures and replace them with new buildings and storage bins. The property is located away from any town therefore any AG-related business such as an implement dealer, lawn and garden store or a fruit and vegetable store would not want to be this isolated. Also, they would not want to pay the asking price of \$1,000,000.

Once again, the value of the property is due to the railway spur therefore this property should have never been zoned agriculture in my opinion.

Best regards,


Duane VanderYacht/Broker

Windermere Real Estate/Whatcom, Inc.

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January 25, 2024

Whatcom County Planning Commission
5280 Northwest Drive
Bellingham, WA 98226

Dear Planning Commissioners:

Subject: Rebuttal Comments to Future-wise opposing the proposed amendments to Whatcom County Code (WCC) 20.40.150

VanderYacht Propane and Northwest Propane are two fourth generation Whatcom County propane companies that have been involved in this County for generations and are working together to create a facility, which is not a “retail propane facility” as implied by Future-wise when they use non-specific descriptions, to safeguard supply in Whatcom County for the benefit of the Ag Community as a whole. Agriculture is as important to us, as community members and business owners, as it is to any County department, farm owner or agricultural activist group. As owners who have been raised in Whatcom County, raised families, whose families are now raising future generations of Whatcom Countians, we researched and documented many of the connections propane and agricultural maintain. While the farming industry would survive without propane it would be a significant hardship to make that transition. In what is known as the Soccer Fields decision, the Washington Supreme Court held that “[i]n order to constitute an innovative zoning technique [authorized by RCW 36.70A.177] consistent with the overall meaning of the Act, a development regulation must satisfy the Act’s mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry.” King County v. Central Puget Sound Growth Management Hearings Bd., 142 Wash.2d 543, 560, 14 P.3d 133, 142 (2000). Propane significantly enhances the agricultural industry and allows all types of agricultural industries to prosper and maintain their status in the community. Combined with the restrictions of existing structures and impervious surfaces, the definitions of Future wise, in their own letter opposing the amendment, justify the intent of this text amendment. It is necessary to note that the facts in all of the cases cited in Future-wise’s letter are significantly distinguishable from our proposal, because in those cases, there were no protections built in to protect agricultural lands, and the uses proposed (such as athletic playing fields) would necessarily take up large swaths of agricultural lands. Future-wise provided no on-point caselaw consistent with the facts of our proposal that would make our proposal “illegal” as Future-wise claims, and for them to make such a claim is profoundly disingenuous and a misrepresentation of what is being proposed. It ignores the fact that we have built in significant protections of agricultural lands to ensure that what happened in those cases cannot and will not happen as a result of our proposed use.

While I respect and support the efforts of Future wise, it seems to me that this letter is more of a form type letter broadly opposing any and everything using summary statements and generalities to aim it towards this proposal, rather than researching the connection between propane and agriculture and

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detailing specific activities proposed and how they might conflict with the intent of the zoning and preservation of farmland. Had Future-wise spent time doing research, the connection and partnership between propane and agriculture would have been apparent and they would have needed to be more creative to find some reasoning, or fine point, that probably would be removed from the intent of The American Farmland Trust, Whatcom County, and this Country. Specifically, implying that this amendment would be expanding the allowed uses beyond what we are actually proposing ignores the work that we, and all the local parties involved, have done to ensure that the permitting and conditional use guidelines are targeted to control what type of propane use would be allowed and that productive ag land is strenuously protected. Their focus on large parcels diverts the attention from the limited number of properties that would meet the criteria set forth in our proposed zoning text amendment.

They also did not mention the ability of this type of operation to bring in renewable propane, further showing Whatcom County as a leader in promoting green agricultural support in the State of Washington and beyond.

To summarize, the ability to offload and store propane is done in many agricultural zoned facilities for applications including frost prevention, crop drying, and facility and/or water heating. Chicken farms in Mossyrock and throughout the state, orchards in Eastern and Western Washington, and crop processing facilities all over the country to name a few, all have large storage tanks, and storage tank farms, that trucks and, in certain locations, railcars are offloaded into. In many applications propane is then distributed throughout area farm(s) and processing plants, including for residential needs. A farming community is more than just a barn, orchard, or factory—it is also the surrounding community that supports farming in many ways. This text amendment only expands, ever so slightly, what is already being done all over Washinton State by allowing a smaller Ag District parcel, with already designated impervious surface (we are not paving farmland), to independently, with regulated propane employees using accepted safety measures and practices and accompanied by stringent protections for land in active agriculture, offload and distribute propane to the surrounding Ag community.

Thank you for considering our rebuttal to Future-wise's letter of opposition. If you would like me to further elaborate on any of the points noted above, please feel free to reach out to me at byacht@hotmail.com or come by our office any time.

Sincerely,

Bryan VanderYacht
Owner, CEO
VanderYacht Propane, Inc

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Planning and Development
Services Department
5280 Northwest Dr
Bellingham WA 98226
360-778-5900

To Whom It May Concern,

This letter and the attached signatures show support for the proposed text amendment to Whatcom County Code 20.40.150 (Agriculture 2 District) to allow propane distribution in agriculture zoning as an approved conditional use.

As farmers in Whatcom County, we find no reason to voice opposition to this proposed amendment. We do not feel that there are any pertinent risks associated with allowing a propane distribution company, such as VanderYacht and Northwest Propane, to operate on agriculturally-zoned property. This is especially true because the property is not currently being used or is not likely to be used for crops due to location, size, and other reasons. This amendment will create many direct benefits for farmers, some of which include minimizing truck traffic on roads, lowering propane fuel cost, and increasing propane security for those who rely on propane consumption in our community. Thank you for your time and we hope you consider our stance in your decision.

Regards,

Whatcom County Farmer(s)

	Name (First, Last)	Address	Signature	Affiliation (Farmer, Neighbor, Resident)
1.)	Jeff DeJong	1159 Abbott Rd		Englemill Farms LLC
2.)	Mark DeJong	715 Hannegan Rd		Englemill Farms LLC
3.)	Jon DeJong	1309 Abbott Rd		Englemill Farms LLC
4.)	Roeluy Vande Hoef	2121 Stickney Tr Rd		Vande Hoef Dairy
5.)	Jake Van Buren	1679 Timen		Van Buren and Sons
6.)	Marc Bosscher	5481 Jones Rd		Green Meadows Dairy
7.)	Jack P.	4519 Jones Rd		Pro Turf Growers
8.)	Leroy Playerman	239 Beard Rd		Bel Lya Farms LLC
9.)	Dan Noteboom	7800 Noon Rd		Noteboom Farms LLC
10.)	Don B. Noteboom	1721 Van Dyke Rd		DB Dairy LLC
11.)	Andy Enfield	1064 Birch Bay Lynden W		Enfield Farms
12.)	MATT MABERRY	697 Loomis Trail Rd		Curt Maberry Farm
13.)	Mike Apol	2207 Loomis Trail Rd		Curt Maberry Farm
14.)	Jon Maberry	8680 Weidkamp Rd		Maberry Parking LLC
15.)	Adam Enfield	1064 Birch Bay Lynden W		Enfield farms Inc.
16.)	Ed Pomeroy	7904 Vista Drive		Pomeroy Farm LLC
17.)	Greg Ebe	8270 Sunrise Rd Custer, WA		Ebe Farms, LLC
18.)	Larry Stap	9728 Double Ditch Rd Lynden, WA 98264		Twin Brook Creamery
19.)	Steve VanderHaak	690 Visser Rd Lynden WA		VanderHaak Dairy
20.)	Brad Rader	1270 E. Sadger Lynden, WA		Rader Farms
21.)	Pete Dykstra	7433 Nooksack Rd		Hopewell Farm
22.)	Mark Tolsma	9410 Assink		Twinbrook creamery
23.)	Mike Moorley	9558 Benson Rd		Edalen Dairy
24.)	Ted Feddema	9127 D.P. R.D.		dairy farmer
25.)	Frank DeWine	252 Loomis Trail Rd		Bany Grower