



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 Ag Committee December 13th, 2023

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

Exhibit H: Public Comments Received

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

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 Ag Committee December 13th, 2023

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: 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.

Location: Countywide

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

II. Background

According to Whatcom County Code (WCC) 2.34.030 Purpose: *“The agricultural advisory committee provides review and recommendations to the Whatcom County council on issues that affect agriculture. The AAC also provides a forum for farmers and others interested in enhancing and promoting the longterm.*

viability of Whatcom County agriculture.” Furthermore, it states in 2.34.030.D, *“Assist, upon request of the director of planning and development services, that department by providing review and comment on comprehensive planning and zoning related issues in or adjacent to the agricultural district or the agricultural protection overlay district, or other lands of agricultural significance.”* PDS requests the Ag committee provide comment and review on the proposed zoning amendment.

On August 1st, 2023, a pre-application meeting was held to consider several existing 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 pre-application process, it was proposed to continue the previous uses and add a propane distribution facility. PDS staff determined that propane sales would not be permissible in the Agriculture district, as staff interprets WCC 20.40.162(1)(c) to mean that any 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.”

III. Code Amendment

The proposal is to conditionally allow sales, reload, storage and distribution to the Ag 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 the propane distribution range. In Ag zone proposal would need to meet the Conditional use criteria in WCC 22.05.026 and the specific criteria in the proposed amendment.

Currently, no specific code in the WCC allows the permitted or conditionally permitted propane sales, reload, storage, and distribution in any district. Allowing it conditionally in AG could lead to an interpretation precluding 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 so as not to create any non-compliant parcels.

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 nonagricultural 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.*

V. Proposed Findings of Fact and Reason for Action

It is recommended the Ag Committee recommend the following findings of fact and reasons to the Planning Commission 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. Propane is a supporting element in Agricultural production.
3. 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.
4. The amendment would minimize the conversion of productive agricultural land to incompatible non-agricultural uses.
5. A determination of non-significance (DNS) was issued under the State Environmental Policy Act (SEPA) on 11/22/23. No comments were received.

Notice of the subject amendment was submitted to the Washington State Department of Commerce on 12/4/23 for their 60-day review.

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 Agricultural Advisory Committee forward the proposed amendments to the Planning Commission/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.
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- (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 H: Public Comments:

Exhibit F: 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.
- (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.

Chapter 20.66
LIGHT IMPACT INDUSTRIAL (LII) DISTRICT

20.66.050 Permitted uses.

(...)

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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.