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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.



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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.

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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.

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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