

NO. 66014-4-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

(Whatcom County Court Case No. 08-2-02663-5)

**Lyle and Sue Rader, husband and wife,**

Petitioners/Appellants,

vs.

**Whatcom County,**

Respondent.

**RADERS' APPEAL BRIEF**

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## **I – INTRODUCTION**

In early 2005, Lyle and Sue Rader (Rader) purchased a 250+ acre dairy farm in Whatcom County, Washington from Mar-G Real Estate, LLC (VandeHoef). CP 513. 4/18/07 RP 98. Rader were berry farmers. Before 2005, they had purchased other dairy pasture land in Whatcom County, and converted that land into berry fields. 4/18/07 RP 100. The Soil Conservation Service of the United States Government had assisted Rader in all those prior plantings. Id.

After purchasing the dairy farm, in 2005 Rader converted the southeast 10 acres from pasture into blueberries. Id., p. 101. Also, in 2005, they planted approximately 60 acres of pasture on the west with blueberries. Id., p. 99. For these plantings, Rader used the services of the Soil Conservation Service to plan and outline the ditches and drain tile. Id., p. 100. In the summer of 2005, Rader constructed a gravel road between the east and west berry fields, which road dissected a 20 acre parcel. Id., p. 103.

The 20 acre parcel had trees on it prior to 2005. However, most of the trees on the south 10 acres had been harvested before the farm was purchased by Rader. *Id.*, p. 99. The prior owners (VandeHoef) had cut the marketable timber on the 10 acres pursuant to a 2003 timber harvest permit. CP 214; CP 387; CP 608. When the prior owner's application to harvest timber on the 10 acres was reviewed by the State of Washington; the State concluded that property was not a wetland. CP 609. The property was zoned agricultural. 4/18/07 RP 106.

The 10 acres at issue in this appeal were used, in a dairy farm operation, from 1960 to 2004 for the pasturing of dairy cows. CP 966; CP 445; CP 530; CP 606.

Rader intended and expected to plant blueberries in that pasture without county approval. No county approval had been required for Rader's previous clearing and grading of the 120 acres of wetter pastures in Whatcom County. No county approval was necessary for the wetter acres on either side of the 10 acres. No county approval had been required for any berry farmer previously in Whatcom County.

While preparing the 10 acres for planting, Whatcom County, ordered the Rader to stop because Rader did not have a permit pursuant to Whatcom County's Critical Area Ordinance. CP 387. Rader appealed. CP 383. The Whatcom County Superior Court held that "no permit is required for Rader's to plant Blueberries on the disputed parcel." However, the Whatcom County Superior Court also held: "But all clearing and grading activities to prepare the parcel for the planting of blueberries is governed by the [Whatcom County] Critical Areas Ordinance and such clearing and grading shall not be done without first being subject to county action under the Critical Area Ordinance." CP 10; CP 12.

Whatcom County, as of September 2008, had no permit application process or form related to notifying Whatcom County of the intent to plant blueberry bushes or crops in critical areas. RP 35.

## **II – ASSIGNMENT OF ERROR**

Rader assigns error to the trial court's August 20, 2010 decision that "[A]ll clearing and grading activities to prepare the parcel for the planting of blueberries is governed by the [Whatcom County] Critical Areas Ordinance and such clearing and grading shall not be done without first being subject to county action under the Critical Area Ordinance."

## **III - ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

Does the Whatcom County Critical Areas Ordinance require a berry farmer in Whatcom County to obtain a permit, approval, or other county action before planting blueberries in a cow pasture?

## **IV – STATEMENT OF THE CASE**

On or about April 2006, Rader began normal farming activities to clear and prepare ten acres of agricultural land for the planting of blueberry bushes. 4/18/07 RP 99, 106

Further, the activities were conducted by Rader similar to the manner in which many other pastures were converted by Rader into blueberry farmland, around the same time. 4/18/07 RP 99-103.

Haggith was employed by the Washington State Dairy Federation to serve on the citizen's advisory committee working on the final version of the Whatcom County Critical Ordinance. As drafted and approved, Haggith understood that there were no permits required by Whatcom County for ongoing agricultural activities in critical areas. 4/18/07 RP 83-84.

Rader spent more than \$300,000.00 cleaning up environmental problems caused by the dairy operation, including two large manure lagoons, silage bunkers, and buildings. 4/18/07 RP 44. An earlier farm plan, approved for the VandeHoef dairy, allowed the VandeHoef's to use the 20 acres of wooded pasture as part of a waterway designed and constructed by a federal agency so that the "20 acres that's in question so it was – the idea was this was a wooded site that could serve as a filter area for this (dairy) discharge that was not very onerous." 06/11/08 RP 8.

In response to a public records request by Rader, Whatcom County could not produce a single application or permit to farm berries, row crops, or crops of any kind between January 1, 2005 and January 1, 2008. Appendix C, Dec. of Alexander.

When Rader purchased the dairy farm, the 10 acres at issue in this matter had drainage ditches on three sides. 04/18/07 RP 102. The land was fenced. *Id.* There were cow ear tags, animal bones, and drainage tile on the 10 acres. *Id.*, p. 103.

The 10 acres of wetlands, at issue in this appeal, were drier than the other 120 acres that Rader had planted into blueberries between 2003 and 2006, including the 60 adjacent acres.<sup>1</sup> 04/18/07 RP 110-111.

Blueberry bushes, managed and farmed appropriately, have a productive life of over 50 years. 04/18/07 RP 87. Further, as regards the potential environmental impact upon the wetland, blueberry farming would be much less disruptive or harmful than dairy farming or annual crop farming. *Id.*, 88-91.

Whatcom County began drafting and discussing the Critical Areas Ordinance (CAO) in 1992, after direction from the state for local governments to conform to the Growth Management Act

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<sup>1</sup> "There's no standing water and we had probably one of the wettest winters, as you all know, since November up till now or seasons that we've ever had, and there was no water that ran off of this. Everything that Mother Nature gave us went down into the soil, so there was absolutely no runoff at all." 04/18/07 RP 111.

(GMA). During 1992, the County Council held over 200 public meetings in which it discussed and listened to comments on the proposed CAO. In 2005, the final CAO was adopted with well over a decade of contemplation and concern for how the CAO would affect all land owners, including Whatcom County farmers. CP 761.

Numerous public hearings attempted to listen to and address concerns of farmers. Federal employee Gillies argued that "sometimes agriculture is a good buffer all by itself." CP 770. Council member Warner assured those in attendance that "people will not be prohibited from farming." CP 968. At the hearings it was stated that for farming activities "a permit is not required." CP 361. During the hearings it was affirmed to those present that "one of the goals of the Growth Management Act was to protect private property rights and agricultural land." CP 361.

## **V – ARGUMENT**

### **A. Standard of Review.**

Legal determinations of the trial court are reviewed de novo. *State v. Osman*, 168 Wn.2d 632, 639, 229 P.3d 729 (2010).

### **B. The Plain Language of the Whatcom County Code Allows Ongoing Agriculture Without County Approval.**

Ongoing agricultural activities in Whatcom County are allowed, without county approval, under Chapter 16.16 of the county code. WCC 16.16.290. Pursuant WCC 16.16.290, ongoing agriculture in wetlands may either (b) comply with the “standards” of Chapter 16.16 or (b) be individually “approved” by the county. The standards of WCC 16.16 were intended “to carry out the goals of the . . . State of Washington Growth Management Act (i.e., RCW 36.70A).” WCC 16.16.100. RCW 36.70A.070 provides that counties shall allow “agriculture in rural areas.” RCW 36.70A.070 (5)(b). The Whatcom County Critical Areas Ordinance effectuates the state mandate.

Ongoing agriculture does not require county approval. The statutory construction rule against surplusage demands that since

WCC 16.16.290 provides two types of allowable ongoing agriculture (those consistent “with the standards of this chapter” and those with Section 290 “approved conservation programs”), that Rader’s planting did not require county approval. The rule against surplusage “requires [courts] to avoid interpretation of a statute that would render [a code provision] superfluous.” *Veit v. Burlington Northern Santa Fe Corporation*, 2011 WL 666283, not yet published in Wn.2d (2011). “Ongoing agriculture activities shall be permitted within critical areas, and/or their buffers in accordance with the standards of this chapter **or** pursuant to an approved conservation program established by this section.” WCC 16.16.290 (Emphasis added.)

Rader was not required to seek county approval because planting blueberries in a cow pasture has no additional adverse effect on a wetland. The standards of Chapter 16.16 allow “[e]xisting ongoing agricultural activities” where there is “no adverse effects on wetland functions and values, all reasonable measures have been taken to avoid adverse effects on wetland functions and values, compensatory mitigation is provided for all

adverse impacts to wetlands that cannot be avoided, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose.” WCC 16.16.620.

Planting blueberries in a pasture is an ongoing agricultural activity. “Ongoing agriculture’ means those activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops and livestock, including but not limited to . . . changes between agricultural activities.” WCC Chapter 16.16, Article 8, Definitions. “An operation ceases to be ongoing when the area on which it was conducted has been converted to a non-agricultural use, or has lain idle for more than five consecutive years. . .” *Id.*

**C. The Statutory and Regulatory Scheme are Consistent with the Ordinance’s Plain Language Permitting Ongoing Agriculture.**

The remainder of Chapter 16.16 is consistent with the plain language of WCC 16.16.290. For example, Chapter 16.16 explicitly allows the removal of vegetation from a pasture. WCC 16.16.235. Chapter 16.16 contains an express list of activities that require

county notification. WCC 16.16.235. Clearing and grading on agricultural land is noticeably absent from that list:

**WCC 16.16.235 Activities Allowed with Notification**

The following activities as specified are authorized within critical areas [wet lands] and buffers provided that the applicant provides a written notification to the Technical Administrator: . . . select vegetation removal . . . except for lawn, pasture, ornamental vegetation, and similar introduced vegetation.”

Washington’s “well established canon of *expressio unius*” compels the conclusion that to include one thing implies the exclusion of the other. *Veit v. Burlington Noerthern Santa Fe Corporation*, 2011 WL 666283, not yet published in Wn.2d (2011).

Numerous state statutes require the Court conclude that Whatcom County’s Critical Areas Ordinance was not intended to allow Whatcom County to begin to control, through regulation, ongoing farming activities in critical areas. The Critical Areas Ordinance, as interpreted by the trial court, and as analyzed by the Hearing Examiner is in conflict with many Washington statutes, including:

1. The Farmland Preservation Act. RCW 79A.15.130.

2. Guidelines and Programs Regarding Agricultural Activities. RCW 90.58.065.
3. Definitions of Agricultural activities. RCW 7.48.310.
4. Farmers right to recover lawsuit costs. RCW 7.48.315.

The standards of WCC Chapter 16.16 were intended "to carry out the goals of the . . . State of Washington Growth Management Act (i.e., RCW 36.70A)." WCC 16.16.100. RCW 36.70A allows ongoing agriculture.<sup>2</sup> Consequently, Chapter 16.16 explicitly "seeks to . . . 'protect Property rights while allowing for . . . agriculture.'" WCC 16.16.100.

No court has decided whether the GMA allows reasonable regulation of preexisting agricultural uses located in designated critical areas. One of the goals of the Act is to "[m]aintain and enhance ... agricultural ... [and] [e]ncourage the conservation of ... productive agricultural lands." *Clallam County v. Western Washington Growth Management Hearings Board*, 130 Wn.App. 127, 121 P.3d 764 (2005).

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<sup>2</sup> The staff summary of Public Testimony in support of RCW 36.70A.560 is found at CP 56.

It appears other counties have attempted to regulate farming activities in critical areas under their Critical Areas Ordinances in conflict with other clear legislative mandates. The legislature, after this enforcement action commenced, in attempting to avoid the similar results to other farmers, passed RCW 36.70A.560 which, in part reads:

For the period beginning May 1, 2007, and concluding July 1, 2011, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities. Nothing in this section: . . . (c) limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities

. . .

(2) Counties and cities subject to deferral requirements under subsection (1) of this section: (a) Should implement voluntary programs to enhance public resources and the viability of agriculture.

In enacting RCW 36.70A.560, the legislature made certain findings that are instructive:

[2007 c 353 § 2, eff. May 8, 2007.]

HISTORICAL AND STATUTORY NOTES

**Finding--Intent--2007 c 353:** "(1) The legislature finds that the goal of preserving Washington's agricultural lands is shared by citizens throughout the state. The legislature recognizes that efforts to achieve a balance between the productive use of these resource lands and associated

regulatory requirements have proven difficult, but that good faith efforts to seek solutions have yielded successes. The legislature believes that this willingness to find and pursue common ground **will enable Washingtonians to enjoy the benefits of a successful agricultural economy and a healthy environment, while also preventing the unnecessary conversion of valuable agricultural lands.** (Emphasis added.)

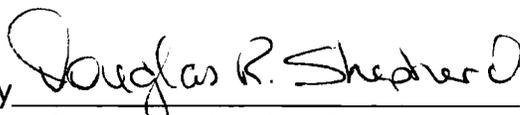
## VI – CONCLUSION

The plain language, the regulatory scheme, the statutory scheme, and the legislative history all support the conclusion that planting blueberries in a wet cow pasture does not require a permit or other county action in Whatcom County.

Rader asks this Court to reverse the trial court and hold that the Critical Areas Ordinance does not require county action or approval for clearing and grading a cow pasture in preparation for the planting of blueberry bushes.

Respectfully submitted this 2nd day of March 2011.

SHEPHERD ABBOTT ALEXANDER

By 

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# **APPENDIX "A"**

**WCC 16.16.100 Purpose and intent.**

A. The purposes of this chapter are to carry out the goals of the Whatcom County comprehensive plan and the State of Washington Growth Management Act (Chapter 36.70A RCW) and its implementing rules by designating and classifying critical areas, and by protecting the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical areas regulated under this chapter include geologically hazardous areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife habitat conservation areas. This chapter seeks to maintain harmonious relationships between human activity and the natural environment.

B. By regulating development and minimizing critical area alterations, this chapter seeks to:

1. Protect the public from harm due to landslides, earthquakes, erosion, volcanic events, flooding, and other natural hazards.
2. Minimize unnecessary maintenance of public facilities, and costs associated with property damage, emergency rescue relief operations, and environmental degradation.
3. Ensure there are no adverse impacts to the quality and quantity of water resources.
4. Alert appraisers, assessors, real estate agents, owners, potential buyers or lessees, and other members of the public to natural conditions that pose a hazard or otherwise limit development.
5. Protect wetlands, floodplains, critical aquifer recharge areas, and habitat conservation areas by applying the best available science to ensure no net loss of ecological functions and values.
6. Protect species listed as threatened or endangered and their habitats.
7. Protect unique, fragile and/or valuable elements of the environment, including ground and surface waters, wetlands, anadromous fish species, shellfish, and other fish and wildlife and their habitats.
8. Provide county officials with information to approve, condition, or deny project proposals.

9. Protect property rights, while allowing for economic development, including agriculture, and allowing for the development and maintenance of adequate and appropriate public services and essential public facilities.

10. Prevent adverse and cumulative environmental impacts to critical areas and mitigate unavoidable impacts.

11. Coordinate Whatcom County's critical areas protection activities and programs with those of other jurisdictions.

12. Coordinate environmental reviews and permitting of proposals with other departments and agencies to avoid duplication and delay.

13. Allow for reasonable use of property in accordance with the provisions of WCC 16.16.270.

14. Establish critical areas protection standards and procedures that are consistent with state and federal regulations pertaining to critical areas.

C. The goals, policies and purposes set forth in this chapter serve as a basis for exercise of the county's substantive authority under the State Environmental Policy Act (SEPA) and the county's SEPA rules.

D. The county's enactment or enforcement of this chapter shall not be construed for the benefit of any individual person or group of persons other than the general public.

E. Nothing in this chapter is intended to preclude or discourage beneficial actions that protect, restore, and/or maintain critical areas or minimize risks associated with critical areas.

F. Consistent with Whatcom County's high standard of staff conduct, county staff observe all applicable federal and Washington laws regarding entry onto privately owned property. (Ord. 2005-068 § 1).

### **WCC 16.16.235 Activities allowed with notification.**

The following activities as specified are authorized within critical areas and buffers; provided, that the applicant provides a written notification to the technical administrator (see Appendix B of this chapter). The notification will provide specific information describing the activity and the mitigation to be implemented to document that the activity will not result in increased risk to public health, safety and welfare, that adverse impacts to critical areas are minimized, and that disturbed areas are restored as soon as possible following the activity. Notification shall be submitted to the technical administrator at least 10 full business days prior to initiating work. Unless otherwise specified, notification shall be valid for one year per activity; provided, that there is no change in the scope of the project including, but not limited to, the location and/or extent of the activity allowed under the notification process. Upon receipt of the notification, the county may provide guidance on best management practices for tree and vegetation protection, construction management, erosion and sedimentation control, water quality protection, and use of chemical applications to be used in the execution of the following activities:

A. Emergency construction or activity necessary for the immediate preservation of the public health, safety and welfare as determined by the technical administrator; provided, that:

1. An emergency is an unanticipated and imminent threat to public health, safety or the environment that requires immediate action within a time period too short to allow full compliance with this chapter.
2. Emergency construction does not include development of new permanent protective structures where none previously existed. Where the technical administrator determines that new protective structures are the appropriate means to address an emergency situation, the project proponent shall either obtain any permits that would have been required absent an emergency, pursuant to Chapter 90.58 RCW, Chapter 173-27 WAC or this chapter, or remove the structure upon abatement of the emergency situation.
3. Within the jurisdiction of the Whatcom County Shoreline Management Program (WCC Title 23), all emergency construction shall be consistent with the policies and procedural requirements of WCC Title 23 and this chapter.

4. The applicant shall make a reasonable attempt to contact the technical administrator prior to activity; provided, that when prior notice is not feasible, notification of the action shall be submitted to the technical administrator as soon as the emergency is addressed and no later than 14 days following such action.

B. Maintenance, operation and/or repair of existing infrastructure improvements, including dikes and drainage ditches, rights-of-way, trails, roads, fences, and utilities; provided, that the activity does not further alter, impact, or encroach upon critical areas or buffers or further affect their functions. The maintenance activity shall not result in increased risk to life or property. Maintenance shall be allowed pursuant to the provisions set forth in this chapter; provided, that:

1. The applicant shall submit to the technical administrator a written description of the maintenance activity with all of the following general information:
  - a. Type, timing, frequency and sequence of maintenance activity to be conducted;
  - b. Type of equipment to be used (hand or mechanical);
  - c. Manner in which the equipment will be used; and
  - d. Best management practices to be used.
2. The applicant's written description shall be valid for up to five years; provided, that there is no significant change in the type or extent of maintenance activity.

C. Select vegetation removal or pruning in a manner that minimizes unnecessary disturbance and prevents adverse effects on soil stability, fish or wildlife habitat, water quality, or water quantity; provided, that no vegetation shall be removed from a wetland, habitat conservation area, coastal or riverine erosion hazard area, or landslide hazard area or their buffers, except for lawn, pasture, ornamental vegetation, and similar introduced vegetation, except that: Cut vegetation shall be left within the critical area or buffer where practicable unless removal is warranted due to the presence of an established disease infestation or other hazard, or because of access or maintenance needs if the area is a utility or access right-of-way.

D. Installation of navigation aids and boundary markers in accordance with applicable state and federal laws.

E. Installation of mooring buoys in accordance with the Department of Fish and Wildlife design guidelines and the Whatcom County Shoreline Management Program (WCC Title 23).

F. Routine site investigation work in wetlands, landslide hazard areas, and riverine and coastal erosion hazard areas. This includes geotechnical soil borings, ground water monitoring wells, percolation tests, and similar or related activities necessary for land use application submittals. Land survey and shallow soil test pits dug in conjunction with wetland delineation studies do not require notification.

G. Clearing, pruning, and revegetation of buffer areas, except landslide hazard areas and buffers and riverine and coastal erosion hazard areas and buffers, for view purposes, provided:

1. This allowed activity shall not be conducted more than once every 10 years for any individual residential property.
2. A window or view opening is limited to the minimum necessary for view purposes and shall not exceed 15 percent of buffer length, unless the applicant can demonstrate to the technical administrator's satisfaction that a larger dimension is warranted because of slope or other site considerations. Trees greater than 12 inches in diameter at breast height shall be preserved, but may be shaped, windowed/thinned or pruned.
3. Clearing shall not take place where increased risks or adverse impacts, including cumulative impacts, to critical area functions and values are likely to occur.
4. Low-growing native vegetation shall be retained and/or planted in the view corridor to provide habitat, stabilize the area, and achieve dense growth.
5. This provision does not apply to open space set aside in a subdivision or other approval to which specific conditions are attached that prohibit clearing of vegetation without a written approval or permit.

View areas established under this section shall be considered lawfully established and may be maintained as provided for in subsection B of this section.

H. Fish, wildlife, and/or wetland restoration or enhancement activities not required as project mitigation; provided, that the project is approved by the U.S. Fish and Wildlife Service, the Washington State Department of Ecology, Washington State Department Fish and Wildlife, or other appropriate local, state, federal, or tribal jurisdiction.

I. Household herbicides, pesticides, and fertilizers may be used in critical area buffers, but not in critical areas, when applied at times and rates specified on the label in accordance with Washington State Department of Agriculture and other applicable regulations.

J. Routine maintenance of drainage channels on agricultural lands; provided, that all of the following are met:

1. The maintenance is necessary to support ongoing agricultural operations;
2. The maintenance activity does not expand the dimensions of the drainage channel beyond the original, lawfully established dimensions;
3. The agricultural activities are conducted pursuant to an approved farm conservation plan prepared pursuant to WCC 16.16.290;
4. The farm operator obtains a hydraulic project approval (HPA), if required from the Washington State Department of Fish and Wildlife (WDFW), prior to the maintenance activity; and
5. The farm operator provides a copy of the HPA to the technical administrator as part of the written notification. No other written notification is needed.

K. Alteration or removal of beaver-built structures two years old or less; provided, that:

1. There is no adverse impact to wetland or river or stream functions.
2. The property owner obtains an HPA from WDFW prior to the maintenance activity.
3. The property owner provides a copy of the HPA to the technical administrator as part of the written notification. (Ord. 2005-068 § 1).

**WCC 16.16.290 Conservation program on agriculture lands (CPAL).**

Ongoing agriculture activities shall be permitted within critical areas and/or their buffers in accordance with the standards of this chapter or pursuant to an approved conservation program established by this section. This program shall be subject to continued monitoring and adaptive management to ensure that it meets the purpose and intent of this chapter:

A. Agricultural activities that qualify for coverage under this section include:

1. Low-impact farm or livestock operations where critical areas are protected against the potential negative impacts of agricultural activities through the implementation of an approved standard farm conservation plan prepared in accordance with Appendix A, Section 1, of this chapter; or
2. Moderate or high-impact farm or livestock operations where critical areas are protected against the potential negative impacts of agricultural activities through the implementation of an approved custom farm conservation plan prepared in accordance with Appendix A, Section 2, of this chapter.

B. The following additional requirements shall apply:

1. A farm conservation plan shall not authorize filling, draining, grading or clearing activities within critical areas or buffers, except on existing agricultural land where such activities are an essential part of the ongoing agricultural use and do not expand the boundaries of the existing agricultural use; provided, that impacts are mitigated in accordance with an approved farm conservation plan.
2. The farm conservation plan shall not authorize construction of structures. New structures shall be constructed in compliance with the applicable provisions of this chapter and the landowner shall ensure that all of the following are met:
  - a. Siting of structures shall not result in surface or ground water contamination.
  - b. Dust, odor and noise concerns attendant to use of the improvement shall be mitigated.

c. Impermeable surfaces such as building roofs, roads, and yards shall not change the flow, volume and/or direction of runoff, or cause erosion or downstream flooding.

C. Farm conservation plans shall be subject to county review, approval, monitoring, adaptive management, and enforcement in accordance with the following:

1. The technical administrator shall review and approve the farm conservation plan. The following entities may provide technical assistance and recommendations regarding a farm conservation plan:

a. The Whatcom conservation district; or

b. A watershed improvement district for a farm or ranch that is within its boundaries; or

c. A qualified planning advisor as defined by this chapter.

2. The technical administrator and/or the farm operator shall monitor plan implementation and compliance. The monitoring may include periodic site inspections, self-assessment by the farm operator, or other appropriate actions. Prior to carrying out a site inspection, the technical administrator shall provide reasonable notice to the owner or manager of the property as to the purpose or need for the entry.

3. Where the planning advisor has reason to believe that there is an imminent threat to public health or significant pollution with major consequences occurring as a result of the agricultural operations, a planning advisor will advise the agricultural operator of his or her concerns in writing. While the planning advisor may provide suggestions for resolving the issue, the responsibility for compliance and resolution of issues rests solely with the farm operator. If compliance issues are not resolved, the planning advisor may report such situations to the technical administrator for subsequent action and enforcement in accordance with WCC 16.16.285.

4. Agricultural operations shall cease to be in compliance with this section when the technical administrator determines that any of the following has occurred:

a. A farm or ranch operator fails to properly and fully implement and maintain their farm conservation plan.

b. When implementation of the farm conservation plan fails to protect critical areas. If so, a new or revised conservation plan shall be required to protect the values and functions of critical areas at the benchmark condition.

c. When substantial changes in the agricultural activities of the farm or livestock operation have occurred that render the current farm conservation plan ineffective. In such cases a new or revised conservation plan will be required to meet the purpose and intent of this section.

d. When a new or revised farm conservation plan is required pursuant to either subsection (C)(4)(b) or (c) of this section, the technical administrator has so advised the owner in writing, and a reasonable amount of time has passed without significant progress being made to develop said plan.

Refusal or inability to provide a new plan within a reasonable period of time shall be sufficient grounds to revoke the approved conservation plan and require compliance with the standard provisions of this chapter.

e. When an owner or manager denies the technical administrator reasonable access to the property for technical assistance, monitoring, or compliance purposes, then the technical administrator shall document such refusal of access and notify the owner of his/her findings. The owner shall be given an opportunity to respond in writing to the findings of the technical administrator, propose a prompt alternative access schedule, and to state any other issues that need to be addressed.

Refusal or inability to comply with an approved farm conservation plan within a reasonable period of time shall be sufficient grounds to revoke said plan and require compliance with the standard provisions of this chapter.

5. Conservation plans prepared pursuant to this section will not be open to public inspection unless required by law; provided, that the county will collect summary information related to the general location of a farming enterprise, the nature of the farming activity, and the specific best management practices to be implemented during the conservation plan review process. The summary information shall be provided by the farm operator or his/her designee and shall be used to document the basis for the county's approval of the plan. Plans shall also be subject to disclosure if required by a court of competent jurisdiction. Upon request, the county may provide a sample conservation plan, exclusive of site- or property-specific information, to give general guidance on the development of a conservation plan. (Ord. 2005-068 § 1).

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**WCC 16.16.620 Wetlands – General standards.**

The following activities may be permitted in wetlands and/or wetland buffers as specified when all reasonable measures have been taken to avoid adverse effects on wetland functions and values, compensatory mitigation is provided for all adverse impacts to wetlands that cannot be avoided, and the amount and degree of alteration are limited to the minimum needed to accomplish the project purpose:

A. Developments that meet the reasonable use or variance standards as set forth in WCC 16.16.270.

B. Surface water discharge into Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no other alternatives for discharge are feasible and the discharge is designed to minimize physical, hydrologic and ecological impacts to the wetland.

C. Utility lines in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible conveyance alternative is available shall be designed and constructed to minimize physical, hydrologic and ecological impacts to the wetland, and meet all of the following:

1. The utility line is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation.
2. Clearing, grading, and excavation activities are limited to the minimum necessary to install the utility line and the area is restored following utility installation.
3. Buried utility lines shall be constructed in a manner that prevents adverse impacts to subsurface drainage. This may include the use of trench plugs or other devices as needed to maintain hydrology.

D. Public roads, bridges, and trails in Category II, III, and IV wetlands and their buffers and/or Category I wetland buffers when no feasible alternative alignment is available and the road, bridge or trail is designed and constructed to minimize physical, hydrologic and ecological impacts to the wetland, including placement on elevated structures as an alternative to fill, where feasible.

E. Access to private development sites may be permitted to cross Category II, III, or IV wetlands or their buffers, provided there are no feasible alternative alignments and measures are taken to maintain preconstruction hydrologic connectivity across the access road. Alternative access shall be pursued to the maximum extent feasible, including through the provisions of Chapter 8.24 RCW. Exceptions or deviations from technical standards for width or other dimensions, and specific construction standards to minimize impacts may be specified, including placement on elevated structures as an alternative to fill, if feasible.

F. Construction of a structure that is associated with an agricultural use; or the reconstruction, remodeling, or maintenance of such structures in

wetland buffers, subject to all of the following specific criteria:

1. The structure is located within an existing lot of record and is an existing agricultural use.
2. There is no other feasible location with less impact to critical areas.
3. Clearing and grading activity and impervious surfaces are limited to the minimum necessary to accommodate the proposed structure and, where possible, surfaces shall be made of pervious materials.

G. Domestic wells serving single-family developments and necessary appurtenances, including a pump and appropriately sized pump house, but not including a storage tank, in wetland buffers when all of the following conditions are met:

1. There is no viable alternative to the well site outside of the buffer and the well is located as far back from the wetland edge as is feasible; and
2. The well is more than 75 feet deep.

H. Storm water management facilities, limited to detention/retention/treatment ponds, media filtration facilities, and lagoons or infiltration basins, within the outer 50 percent of a Category II, III or IV wetland buffer; provided, that:

1. Construction of the storm water facility does not displace or impact a forested buffer;

2. The width of the buffer between the storm water facility and the wetland edge is not less than the low intensity land use buffer standards in WCC 16.16.630;

3. There is no other feasible location for the storm water facility and the facility is located, constructed, and maintained in a manner that minimizes adverse effects on the buffer and adjacent critical areas;

4. The storm water facility is designed to mimic and resemble natural wetlands and meets applicable county or state storm water management standards and the discharge water meets state water quality standards; and

5. Low impact development approaches have been considered and implemented to the maximum extent feasible.

I. Storm water conveyance or discharge facilities such as dispersion trenches, level spreaders, and outfalls may be permitted within a Category II, III, or IV wetland buffer on a case-by-case basis when the technical administrator determines that all of the following are met:

1. Due to topographic or other physical constraints, there are no feasible locations for these facilities in the outer buffer area or outside the buffer.

2. The discharge is located as far from the wetland edge as possible and in a manner that minimizes disturbance of soils and vegetation.

3. The discharge outlet is designed to prevent erosion and promote infiltration.

J. Passive recreation facilities that are part of a nonmotorized trail system or environmental education program including walkways, wildlife viewing structures, and trails in wetland buffers; provided, that all of the following criteria are met:

1. Trails shall not exceed 10 feet in width and shall be made of pervious material where feasible.

2. The trail or facility is located in the outer 50 percent of the buffer area.

3. The trail is constructed and maintained in a manner that minimizes disturbance of the buffer and associated critical areas.

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K. Existing ongoing agricultural activities subject to the following:

1. The activities are conducted in accordance with all applicable provisions of this chapter and WCC Title 17; or
2. The agricultural activity is in compliance with the Conservation Program on Agricultural Lands (CPAL) as described in WCC 16.16.290, and Appendix A of this chapter.

L. Single-family developments may be permitted to encroach into wetland buffers subject to the technical administrator's approval; provided, that all of the criteria in WCC 16.16.270(A) are met.

M. On-site sewage disposal systems (OSS) may be permitted in wetland buffers when accessory to an approved residential structure, for which it is not feasible to connect to a public sanitary sewer system and when operated and maintained in accordance with WCC 24.05.170; provided, that adverse effects on water quality are avoided. (Ord. 2005-068 § 1).

# **APPENDIX "B"**

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**RCW 7.48.310**

**Agricultural activities and forest practices — Definitions.**

For the purposes of RCW 7.48.305 only:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

***RCW 7.48.315***

**Agricultural activities and forest practices — Recovering lawsuit costs  
— Farmers.**

(1) A farmer who prevails in any action, claim, or counterclaim alleging that agricultural activity on a farm constitutes a nuisance may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(2) A farmer who prevails in any action, claim, or counterclaim (a) based on an allegation that agricultural activity on a farm is in violation of specified laws, rules, or ordinances, (b) where such activity is not found to be in violation of the specified laws, rules, or ordinances, and (c) actual damages are realized by the farm as a result of the action, claim, or counterclaim, may recover the full costs and expenses determined by a court to have been reasonably incurred by the farmer as a result of the action, claim, or counterclaim.

(3) The costs and expenses that may be recovered according to subsection (1) or (2) of this section include actual damages and reasonable attorneys' fees and costs. For the purposes of this subsection, "actual damages" include lost revenue and the replacement value of crops or livestock damaged or unable to be harvested or sold as a result of the action, claim, or counterclaim.

(4) In addition to any sums recovered according to subsection (1) or (2) of this section, a farmer may recover exemplary damages if a court finds that the action, claim, or counterclaim was initiated maliciously and without probable cause.

(5) A farmer may not recover the costs and expenses authorized in this section from a state or local agency that investigates or pursues an enforcement action pursuant to an allegation as specified in subsection (2) of this section.

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**RCW 36.70A.060**

**Natural resource lands and critical areas — Development regulations.**

(1)(a) Except as provided in \*RCW 36.70A.1701, each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals.

(b) Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development activities on, or within five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

**RCW 36.70A.560**

**Viability of agricultural lands — Deferral requirements — Definition.  
(Expires December 1, 2012.)**

(1) For the period beginning May 1, 2007, and concluding July 1, 2011, counties and cities may not amend or adopt critical area ordinances under RCW 36.70A.060(2) as they specifically apply to agricultural activities. Nothing in this section:

(a) Nullifies critical area ordinances adopted by a county or city prior to May 1, 2007, to comply with RCW 36.70A.060(2);

(b) Limits or otherwise modifies the obligations of a county or city to comply with the requirements of this chapter pertaining to critical areas not associated with agricultural activities; or

(c) Limits the ability of a county or city to adopt or employ voluntary measures or programs to protect or enhance critical areas associated with agricultural activities.

(2) Counties and cities subject to deferral requirements under subsection (1) of this section:

(a) Should implement voluntary programs to enhance public resources and the viability of agriculture. Voluntary programs implemented under this subsection (2)(a) must include measures to evaluate the successes of these programs; and

(b) Must review and, if necessary, revise critical area ordinances as they specifically apply to agricultural activities to comply with the requirements of this chapter by December 1, 2012.

(3) For purposes of this section and RCW 36.70A.5601, "agricultural activities" means agricultural uses and practices currently existing or legally allowed on rural land or agricultural land designated under RCW 36.70A.170 including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, when the replacement facility is no closer to a critical area than the original facility; and maintaining agricultural lands under production or cultivation.

***RCW 79A.15.130***

**Farmlands preservation account — Use of funds.**

(1) The farmlands preservation account is established in the state treasury. The board will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city, county, nonprofit nature conservancy organization or association, or the conservation commission acquires a property through this program in fee simple, the city, county, nonprofit nature conservancy organization or association, or the conservation commission shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city, county, nonprofit nature conservancy organization or association, or the conservation commission shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

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(3) Cities, counties, nonprofit nature conservancy organizations or associations, and the conservation commission may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The board may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county, city, nonprofit nature conservancy organization or association, or the conservation commission does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a city, county, nonprofit nature conservancy organization or association, or the conservation commission to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The board may not approve a local project where the local agency's or nonprofit nature conservancy organization's or association's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's or nonprofit nature conservancy organization's or association's share.

(9) In determining the acquisition priorities, the board must consider, at a minimum, the following criteria:

(a) Community support for the project;

(b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;

(c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;

(d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(e) Benefits to salmonids;

(f) Benefits to other fish and wildlife habitat;

(g) Integration with recovery efforts for endangered, threatened, or sensitive species;

(h) The viability of the site for continued agricultural production, including, but not limited to:

(i) Soil types;

(ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;

(iii) Suitability for producing different types or varieties of crops;

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(iv) Farm-to-market access;

(v) Water availability; and

(i) Other community values provided by the property when used as agricultural land, including, but not limited to:

(i) Viewshed;

(ii) Aquifer recharge;

(iii) Occasional or periodic collector for storm water runoff;

(iv) Agricultural sector job creation;

(v) Migratory bird habitat and forage area; and

(vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the board will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

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(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the board and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

***RCW 90.58.065***

**Application of guidelines and master programs to agricultural activities.**

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW 90.58.080 shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the \*current exception to the definition of substantial development in RCW 90.58.030(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section.

# **APPENDIX "C"**



1 Edward S. Alexander, declares under penalty of perjury, under the laws of  
2 the State of Washington, that the following is true and correct:

3 01. I am one of the attorneys for defendants in this matter.  
4 02. On October 8, 2008, I submitted a public records request to Whatcom  
5 County for:

6 (a) All records of applications for permits, under WCC 16.16.205, to farm  
7 berries or row crops, since January 1, 2005; and

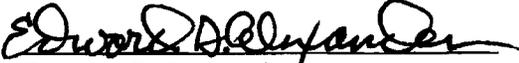
8 (b) All permits, under WCC 16.16.205, to farm berries, row crops and  
9 dairy, since January 1, 2005.

10 03. A true and correct copy of the request is attached hereto as Exhibit 1.

11 04. I reviewed the 1000+ pages of documents produced by Whatcom  
12 County in response to the request.

13 05. Whatcom County produced no applications or permits to farm berries  
14 or row crops, in critical areas or otherwise, between January 1, 2005, and  
15 January 1, 2008.

16  
17 DATED THIS 16th day of August, 2010, at Bellingham, WA.

18  
19   
20 Edward S. Alexander

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30

# Exhibit 1



### Whatcom County

Public Records Officer • 311 Grand Avenue, Suite 108 • Bellingham, WA 98225  
Phone (360) 676-7694 • Fax (360) 715-7466 • web site: [www.co.whatcom.wa.us](http://www.co.whatcom.wa.us)

## REQUEST FOR DISCLOSURE OF PUBLIC RECORDS

### INSTRUCTIONS:

- Requestor completes Section B and returns to the Public Records Officer at address listed above.
- Public Records Officer completes Section A and routes to appropriate department.
- Public Records Officer or designee completes Section C and D.

SECTION A: FOR COUNTY USE ONLY	
Date	10/08/08
Request Number	2008-221
Department	PDS
Request Received By:	D. SMITH

This completed form is an open public document and may be released to any requestor.

### Section B - Requestor/Records Request Information

Requestor Name: EDWARD ALEXANDER, ESQ.	Phone Number: 360-733-3773	Email Address: edwardalexander@sac.lawfirm.com	
Address: 1616 CORNWALL AVENUE, SUITE 100	City: BELLINGHAM	State: WA	Zip: 98225

I wish to  inspect  receive a copy of the following specific record(s):

(1) All records of applications for permits, under WCC 16.16.205, to farm berries, row crops and dairy, since January 1, 2005.

(2) All permits, under WCC 16.16.205, to farm berries, row crops and dairy, since January 1, 2005.

Request made:

in person  
 by phone  
 by fax  
 by mail  
 by email

Attach request if applicable

If record(s) concern individual(s) other than requestor, please state name(s):	If this request is for a list of individuals, is the list to be used for commercial purposes? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No N/A
--	--

Signature of Requestor <i>Edward D. Alexander</i>	Date of Request 10/6/08
--	----------------------------

### Section C - Whatcom County Response

ALLOW ACCESS Charge is \$.15 for each black and white photocopy.

WE DO NOT HAVE THE RECORD(S) *95 @ .15 = \$14.25*

DENY ACCESS The records you have requested are legally exempt from public disclosure by the following authority:  
*11/20/08*  
*Jennifer - will pass msg to Mr. Alexander*

### Section D - Requestor Notification

Person contacted: Edward Alexander	Date: 11/20/08	Time: 10:00
<input type="checkbox"/> by mail <input type="checkbox"/> in person	<input checked="" type="checkbox"/> by phone <input type="checkbox"/> by email	I made the County's final response as stated. Signature: <i>Kunda Nelson</i>

Exhibit 1

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

Lyle and Sue Rader, Husband and  
Wife,

Petitioners/Appellants,

vs.

Whatcom County,

Respondent/Respondent.

**Case No. 66014-4-I**

**Whatcom County  
Superior Court  
Case No. 08-2-02663-5**

**Certificate of Service**

FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2011 MAR -3 PM 10:23

**CERTIFICATE OF SERVICE**  
Page 1 of 2.

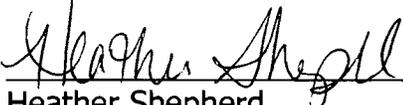
**SHEPHERD ♦ ABBOTT ♦ ALEXANDER**

ATTORNEYS AT LAW  
1616 CORNWALL AVENUE, SUITE 100  
BELLINGHAM, WASHINGTON 98225  
TELEPHONE: (360) 733-3773 ♦ FAX: (360) 647-9060  
[www.saalawoffice.com](http://www.saalawoffice.com)

I, Heather Shepherd, certify that on March 2, 2011, I caused to be served copies of the following documents: **Appellant's Brief**; and this **Certificate of Service** in the above matter, on the following persons, at the following addresses, in the manner described:

Royce Buckingham, Esq.	<input checked="" type="checkbox"/> U.S. Mail
Whatcom County Prosecutor's Office	<input type="checkbox"/> Express Mail
311 Grand Avenue, 2 <sup>nd</sup> Floor	<input type="checkbox"/> Fax
Bellingham, WA 98225	<input type="checkbox"/> E-Mail
	<input type="checkbox"/> Messenger Service
	<input type="checkbox"/> Hand Delivery

DATED this 2 day of March 2011.

  
Heather Shepherd