

WHATCOM COUNTY HEARING EXAMINER

RE: Site Specific Rezone	)	PLN2010-0020
Development Agreement	)	PLN2010-0023
	)	
	)	FINDINGS OF FACT,
<i>Barlean's Land Company, L.L.C.</i>	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDATION TO THE
	)	WHATCOM COUNTY COUNCIL

**SUMMARY OF APPLICATION AND RECOMMENDATION**

Application: Barlean's Land Company, L.L.C. seeks a Site Specific Rezone and approval of an associated Development Agreement in order to rezone 35-acres located in the Rural zoning district to Light Impact Industrial. The site is within the Rural Comprehensive Plan Designation.

Recommendation: The Whatcom County Hearing Examiner recommends that the Whatcom County Council grant approval to the requested Site Specific Rezone and approval of the modified Development Agreement attached hereto.

**FINDINGS OF FACT**

**INTRODUCTION**

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted and evidence presented at the public hearing.

**I.**

Applicant: Barlean's Land Company, L.L.C.

Property Address: 4836 Lake Terrell Road  
Ferndale, Washington 98248

Legal Description: Located within the SW<sup>1</sup>/<sub>4</sub> of the SW <sup>1</sup>/<sub>4</sub> of Sec34, T39N, R1E, W.M.

Assessor's Parcel Numbers: 390134 039104, 104100, 106035, 035037, and 045069

Zone: Rural (R5A)

Subarea: Cherry Point Ferndale

Comprehensive Plan: Rural

SEPA Review: A Determination of Non-significance was issued on November 2, 2010.

Fire District: No. 7

School District: Ferndale School District

Water Supply: Group "A" Water System

Sewage Disposal: On-site Septic System

Topography: The site is described as mostly flat.

Vegetation: Vegetation consists mostly of pasture grass areas.

Adjacent Land Uses: North: Residential  
East: Industrial/Refinery  
South: Residential/Lummi Nation Reservation  
West: Residential

Utility Easements: No utility easements are necessary.

Variances: None requested.

#### AUTHORIZING ORDINANCES AND POLICY

Whatcom County Comprehensive Land Use Plan  
Whatcom County Code Chapter 15, Building Code  
State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11  
Whatcom County Code Chapter 16.16, Critical Areas  
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance  
Whatcom County Code Title 24, Health Regulations  
Revised Code of Washington 36.70B.170 through .210 and Chapter 58.17

Legal Notices: Legal Notice of Application, August 11, 2010  
Certificate of Mailing of Notice of Application, August 11, 2010  
Certificate of Mailing of Notice of Public Hearing, November 19, 2010  
Certificate of Posting, Notice of Public Hearing, November 23, 2010  
Legal Notice of Public Hearing, November 25, 2010

Hearing Date: December 8, 2010

Parties of Record:

Barleans's Land Company 2 L.L.C.  
4836 Lake Terrell Road  
Ferndale, WA 98248

Jack Swanson  
Belcher Swanson Law Firm, P.L.L.C.  
900 Dupont Street  
Bellingham, WA 98225

Larry Stoner  
4751 Birch Bay-Lynden Road, No. 259  
Blaine, WA 98230

Doug Scoggins  
PO Box 2965  
Ferndale, WA 98248

Janice Lapsansky  
3585 Walltine Road  
Ferndale, WA 98248

Laurita Smith  
3590 Walltine Road  
Ferndale, WA 98248

Ernie Weed  
4936 Lake Terrell Road  
Ferndale, WA 98248

Heidi Kaempfer  
3662 Walltine Road  
Ferndale, WA 98248

Tyler Schroeder and Amy Keenan  
Planning and Development Services

Roger McCarthy  
Division of Engineering

Exhibits:

- 1 Land Use Application, with attachments
  - 1-1 Supplemental Information
  - 1-2 Fee Responsibility, Doug Scoggins, June 25, 2010
  - 1-3 Agent Authorization
  - 1-4 Hearing Examiner Checklist
  - 1-5 Property Owner Mailing labels
  - 1-6 County Assessor Info
  - 1-7 Chicago Title Tax Information with Statutory Warranty Deed
  - 1-8 Application Processing Track Form
  - 1-9 Property Owner Notice of Application, dated August 11, 2010
  - 1-10 Letter of Completeness, dated May 11, 2010
  - 1-11 Customer Receipts
- 2 Staff Report, dated November 29, 2010
- 3 Agency Comments
- 4 Letters of Concern: Laurita Smith, dated November 11, August 25, and December 3, 2010; Janice Lapsansky and family, dated August 23, 2010; Ernie Weed; Heidi Kaempfer, August 25 and August 20, 2010 via email
- 5 Development Agreement
- 6 Preliminary Traffic
- 7 Zoning and Vicinity Map
- 8 Site Plan, April 2010
- 9 Code Data Summary Sheet
- 10 DNS, dated November 2, 2010 with Checklist attached
- 11 Legal Notice of Application, dated August 11, 2010
- 12 Certificate of Mailing of Notice of Application, August 11, 2010
- 13 Certificate of Mailing of Notice of Public Hearing, November 19, 2010
- 14 Certificate of Posting, Notice of Public Hearing, November 23, 2010
- 15 Legal Notice of Public Hearing, November 25, 2010

- 16 Large Site Plan to scale, April 2010
- 17 Letter dated December 3, 2010 from Jack Swanson re: PLN2010-0020 and PLN2010-0023
- 18 White three-ring notebook of 31 buildings larger than 12,000-sq feet located in “Rural” and “AG” areas of Whatcom County

## **II.**

On November 10, 2010, the Whatcom County Hearing Examiner conducted a public hearing on a proposed Development Agreement, submitted by Barlean’s Land Company, L.L.C.

Such agreements are authorized pursuant to RCW 36.70B.170 through 30.70B.210.

## **III.**

The property in question is owned by Barlean’s Land Company, L.L.C. and consists of 40-acres located north of Slater Road and east of Lake Terrell Road. Both Slater Road and Lake Terrell Road are designated as Major Collectors.

The 40-acres owned by Barlean’s Land Company, L.L.C. is roughly a square parcel. It is bordered on the north by Walltine Road.

Slater Road and Lake Terrell Road serve as major roads, servicing the High Impact Industrial zoned area to the west of this site and north of Birch Bay. Much of the traffic accessing Intalco and the local refineries use Slater Road and Lake Terrell Road to access these industrial sites from both Bellingham and Ferndale. Residential traffic to Sandy Point Shores and Sandy Point Heights travels by the subject property and turns south at the corner of Lake Terrell and Slater roads.

There is little development to the south of the proponents’ property along the south side of Slater Road and little development west of Lake Terrell Road, across from the Applicant’s property. There is scattered rural residential development north of the site along Walltine Road. Property owners just to the north and northwest of the site along Walltine Road expressed opposition to and concern about the proposed Site Specific Rezone.

## **IV.**

The original site owned by Barlean was a 10-acre site in the southwest portion of the 40-acres. This 10-acres contains both the existing fish business [including retail sales] and the existing flaxseed oil processing business. The fish processing and sales business has been onsite since 1972. In 1993, Barlean applied for a Zoning Conditional Use Permit to allow the processing of flaxseed in order to produce flaxseed oil. At the time the 1993 Zoning Conditional Use Permit was granted, the

flaxseed oil processing use was a Conditional Use allowed in the Rural zone. Because of changes in land use regulations over the past 20-years, the processing of Agricultural products grown outside of Whatcom County can no longer be approved as a Zoning Conditional Use in the Rural zone. In order to expand the existing flaxseed oil business, the Applicant is seeking the proposed Site Specific Rezone.

Since 1993, the flaxseed oil business has grown steadily and has expanded through a number of Zoning Conditional Use Permits and Permit Revisions, resulting in a lack of space for any additional expansion of the business within the original 10-acre parcel. Expansion of the business beyond the original 10-acre site cannot be done unless this Site Specific Rezone is approved.

The existing business now has shifts running 24-hours a day and employs in the neighborhood of 100-people. The flaxseed oil market supports additional expansion of the business, leading to this proposal, which would allow, in the future, four 20,000-square foot buildings to be constructed on the 35-acres of LII that would be created by this rezone. Three of the proposed buildings are associated with the flaxseed oil business. The proposed buildings are for an additional seed storage building, an additional material warehouse building, and a future packing plant. The final building is a dry boat storage building proposed in conjunction with the commercial fisheries business.

The Applicant proposes that 5-acres, located in a triangular shape along the northeastern corner of the property, remain as Rural Five Acre zoning, which will allow future development of a single-family residential site. The purpose is to create additional Rural buffering for the property owners living to the north and northeast of the site. The closest existing residence to the proposed new building locations appears to be approximately 500-feet away from the building site.

The existing 10-acres has in excess of 50,000-square feet of buildings, plus large parking areas, roadways, areas for septic drain fields, and areas for previously approved buildings which have not yet been constructed. The proposed Site Specific Rezone would add 25-acres for additional expansion of the existing business.

## V.

The manufacturing processes that take place on this site produce very little noise and it appears that three of the four proposed buildings would mostly be used for storage. Both the Whatcom County Code and the Washington Administrative Code will require noise from the site to meet current noise standards applicable to properties bordering residential areas. It does not appear that excessive noise will be a major issue with the proposed expansion.

Concerns were raised about potential adverse impacts from traffic. Expansion of the business will result in an increase in the number of trucks bringing raw materials in and shipments of processed product out. The location of this property on the corner of Slater Road and Lake Terrell Road tie it immediately into major collector roads designed specifically for this purpose and which already serve the nearby Heavy Impact Industrial uses.

In addition to increased truck traffic, the proposed expansion, when fully built-out, should add approximately 20 new employees. The addition of 20 employees is about a 20% increase over the 100 employees already working onsite. Mr. Barlean's businesses have created a large number of jobs, benefiting the economy of Whatcom County. Additional jobs will bring additional, positive economic impacts with minor adverse off-site impacts.

## **VI.**

In order to protect the scattered rural residences located in the vicinity of this business, the Development Agreement would not allow access to the site from Walltine Road and would require significant landscaping. The expansion can be accomplished without major, additional adverse impacts to surrounding rural properties.

## **VII.**

The proposed Site Specific Rezone has been reviewed by Whatcom County Planning and Development Services, and specifically by the Technical Review Committee. The Technical Review Committee prepared a Staff Report, dated November 29, 2010, Exhibit 2, in the Hearing Examiner file. The Technical Review Committee addressed each of the criteria and requirements for the proposed Site Specific Rezone and recommended approval, subject to conditions.

The Findings of Fact set forth by the Technical Review Committee in the Staff Report are supported by the record as a whole, and are adopted by the Hearing Examiner as Findings of Fact herein. A copy of the Staff Report is attached hereto.

Staff addressed the citizen comments, concerns, and reasons for their opposition in the Staff Report. The Hearing Examiner concurs in Staff's conclusion that, subject to the Conditions of Approval, the proposed Site Specific Rezone and the associated business expansion would contain sufficient mitigation to minimize to an acceptable level the actual impacts on other property owners in the vicinity.

The potential adverse impacts from this proposal include noise from processing activities and from traffic, along with the aesthetic impacts, associated with a 35-acre site containing numerous large buildings.

Both the existing buildings and the proposed buildings are consistent with other large buildings found throughout the Rural and Agriculture zones of Whatcom County. The addition of four large pole buildings to this already heavily developed site will not significantly change the existing character of the immediate vicinity. Most of the aesthetic impacts can be minimized through the appropriate landscaping.

## **VIII.**

The Project Proponents have already created a low impact processing facility which provides

a very significant number of jobs and indirect economic benefits derived from the business. These businesses are low impact. They do not result in noxious or hazardous fumes or odors; do not appear to have adverse air quality impacts; and do not result in excessive noise.

The Hearing Examiner concludes that the proposed expansion will not add significant additional impacts when compared to those already resulting from the existing business.

## **IX.**

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following

### **CONCLUSIONS OF LAW**

#### **I.**

A Site Specific Rezone is in fact a request for a Development Permit. The development allowed, through the granting of this Site Specific Rezone, will be restricted and conditioned by existing regulations and by the Development Agreement.

The expanded Light Impact Industrial development, allowed by the Rezone and Development Agreement, will be restricted to allow only expansion of the existing fish and flaxseed oil businesses. No new uses will be allowed on the site. Site Specific Rezones and Development Permits are specifically authorized by State law. The additional development allowed by this proposal will be limited in size, scale, use, and intensity. The proposed intensification of the existing development on the subject properties is allowed both by the Growth Management Act and by Whatcom County regulations implementing the Growth Management Act.

#### **II.**

The requested Site Specific Rezone, which would result in designating the property as Light Impact Industrial, is consistent with and covered by the Rural Element of the *Whatcom County Comprehensive Plan*. The Rural Element of the *Comprehensive Plan* includes areas set aside for Light Impact Industrial uses. The Rural zone and the Rural Comprehensive Plan Designation envision a multi-use zone, which can include low impact manufacturing facilities.

#### **III.**

The Hearing Examiner concurs in the Staff conclusion that impacts from the proposed expansion will be adequately mitigated by existing Whatcom County regulations. The proposed development, when it takes place, will be subject to the requirements of the Whatcom County Building Code, the Critical Areas Ordinance, the requirements of the Light Impact Industrial zone, including the Development Regulations, which require landscaping, appropriate parking, limited building height, building setbacks, and lot coverage restrictions.

As generally proposed, the site plan indicates that the proposed future development can be accomplished in a manner consistent with all of the applicable regulations and without a significant additional adverse impact on neighboring property owners or on the character of the general vicinity.

**IV.**

The Hearing Examiner concurs with the Staff conclusion that the proposal, subject to conditions, is consistent with the requirements for Site Specific Rezones, Chapter WCC 20.90.060. The Hearing Examiner adopts Staff's written Findings and Conclusions, regarding consistency with the Criteria for a Site Specific Rezone, by this reference.

**V.**

In order to minimize, to the greatest extent possible, impacts from this proposed expansion on neighboring rural residential use, the Hearing Examiner has added or modified language in the Development Agreement proposed. These minor changes are designed to minimize both noise and aesthetic impacts on nearby Rural zoned parcels to the north along Walltine Road.

**VI.**

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following

**RECOMMENDATION**

The Whatcom County Hearing Examiner hereby recommends that the Whatcom County Council grant approval to this Site Specific Rezone Application, subject to the following conditions:

1. The proposed use and location of the proposed development onsite shall not be amended or changed in any significant way without further approval. The Applicant shall comply with the Conditions of the Development Agreement and with all other applicable local, State, and Federal regulations.

DATED this 16<sup>th</sup> day of December 2010.

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Michael Bobbink, Hearing Examiner

WHEN RECORDED RETURN TO:

JACK O. SWANSON  
BELCHER SWANSON LAW FIRM, P.L.L.C  
900 DUPONT STREET  
BELLINGHAM, WA 98225

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Document Title:	Development Agreement
Grantor/borrower:	Whatcom County
Grantee/beneficiary:	Barlean's Land Company, LLC Barlean's Land Company 2, LLC
Legal Description:	Ptn. SW ¼ SW ¼ of Sec. 34, Twp. 39 N., R. 1 E. of W.M.
Assessor's Tax Parcel No.:	390134 039104, 104100, 106035, 035037 and 045069

**DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (herein "Agreement") is between Whatcom County, a municipal corporation (herein "County") and BARLEAN'S LAND COMPANY, LLC, a Washington limited liability company, and BARLEAN'S LAND COMPANY 2, LLC a Washington limited liability company (herein "Barlean"). This Agreement is effective upon adoption of the ordinance approving this Agreement by the Whatcom County Council (herein "Effective Date").

RECITALS:

1. Since 1972, Barlean has operated a fish processing business, and, since 1993, a flaxseed processing operation (herein the “Project”). Pursuant to an application for site specific rezone (PLN2010-00020), Barlean has requested expansion of the Project on approximately 35 acres of real property (herein the “Property”), more particularly described on the attached Exhibit “A.”

2. The parties desire to enter into this Agreement to provide for the planning and development of the Property in accordance with the approvals of the County and in a comprehensive and predictable manner. More specifically, this Agreement relates to specific understandings with regard to the implementation of the approvals granted by the County in connection with the above-mentioned site specific rezone application.

3. This Agreement is authorized pursuant to the provisions of RCW 36.70B.170 through 210.

4. Upon approval of the requested site specific rezone, the provisions of this Agreement are consistent with applicable development regulations adopted pursuant to Chapter 36.70A RCW.

5. The Whatcom County Hearing Examiner held a public hearing on December 8, 2010 to consider this Agreement and recommended approval on December 15, 2010.

6. The Whatcom County Council held a closed record hearing on \_\_\_\_\_ to consider this Agreement and recommended approval on \_\_\_\_\_, 2010.

7. Compliance with the provisions of the State Environmental Policy Act (SEPA) have been achieved.

NOW, THEREFORE, the parties covenant and agree, as follows:

1. Site Specific Rezone. The Property is hereby rezoned to Light Impact Industrial (LII) as provided in WCC Chapter 20.66. This rezone is subject to the provisions and limitations found in this Agreement.

2. Site Plan. The site plan for the Project, generally as set forth on page 3 of Exhibit No. 16 in the Hearing Examiner file, is approved, subject to modifications to building location, maneuvering spaces, loading and unloading docks, parking, and landscaping approved by Whatcom County Planning and Development Services, where modifications decrease the overall impact of the project on offsite properties. To the extent possible roads, parking areas, and loading and unloading docks should be located inside of the new structures to minimize aesthetic impacts and noise on the properties to the north and east. The landscaping plan should include the required 25-foot buffer, but also should include groups of trees and vegetation around the outside of the new 20,000-square foot buildings authorized by this Agreement, designed to break up the portions of the new building facades exposed to the north, west, and east. The new buildings authorized by this Agreement should be located as far from the northern and eastern boundary of the site as is practicable while still using the buildings as buffers for internal roads and parking areas.

In addition to the 25-foot landscape buffer required around property lines by existing regulation, a Landscaping Plan should be submitted and designed to reduce the adverse aesthetic impacts to the properties to the north, west, and east.

All landscaping within the required 25-foot landscape buffer shall be planted in the Spring of 2011. This will allow the buffers to provide the aesthetic benefits as soon as possible. For the same reason, these buffers, and other required landscaping, should include fast growing, native trees and vegetation. All other landscaping identified in the Landscape Plan, now being required, which can be planted now without interfering with future construction and development allowed pursuant to this Agreement, shall also be planted in the Spring of 2011.

Additionally, modifications to building location, maneuvering spaces, parking, and landscaping may be approved by the Building Official, where such modifications are reasonably required and do not materially increase the overall impact of the project.

3. Use Limitations. The Light Impact Industrial (LII) district established by this Agreement and the site specific rezone which this Agreement accompanies is hereby limited, as follows:

a. Permitted Uses. Only the expansion of the existing uses already onsite as authorized, including “primary processing of fish products” as allowed per CUP93-00036, CUP97-00002, CUP2000-00042 and CUP2007-00026. All other Permitted Uses are prohibited.

b. Accessory Uses. Accessory uses authorized by WCC 20.66.100 are allowed, except for those uses allowed by WCC 20.67.106.

c. Conditional Uses. All conditional uses allowed in the district are prohibited.

4. Term. The term of this agreement is thirty (30) years from the effective date.

5. Reservation of Authority. The County hereby reserves the authority to impose regulations in effect at the time of application for a Building Permit so long as they do not materially interfere with the reasonable expansion of existing uses envisioned by this Agreement, provided, however, in all cases new regulations can be applied when necessary to mitigate a serious threat to public health and safety, pursuant to RCW 36.70B.170(4).

6. CUPs Reserved. Those uses, activities, processes, buildings and improvements authorized by the conditional use permits CUP93-00036, CUP97-00002, CUP2000-00042 and CUP2007-00026 are hereby preserved and survive the implementation of this Agreement and the zoning which it modifies.

7. Execution of Additional Documents. The parties agree to execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this Agreement.

8. Binding Effect. After recording with the Whatcom County Auditor, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, and personal representatives.

9. Notices. All notices or demands to be given by each party to the other pursuant to this Agreement shall be in writing and either personally delivered or deposited in the United States mail, postage prepaid, and addressed as follows:

Whatcom County

David and Barbara Barlean

5280 Northwest Drive  
Bellingham, WA 98226

4936 Lake Terrell Road  
Ferndale, WA 98248

Copy to:

Jack O. Swanson  
Belcher Swanson Law Firm, P.L.L.C.  
900 DuPont Street  
Bellingham, WA 98225

10. Entire Agreement. This Agreement may be the result of extended negotiations and series of proposals and counter proposals. Each party may be represented by legal counsel. Each party agrees that this Agreement constitutes the entire agreement between the parties with respect to subject matter hereof. This Agreement may be amended and modified by a subsequent written agreement and is not the subject of oral modifications.

11. Severability. If any provision of this Agreement shall be deemed to be null and void or unenforceable by the action of a court of law, such provision shall be severable and not effect the balance of this Agreement, which shall remain in full force and effect.

12. Applicable Law. This Agreement shall be construed, interpreted and enforced pursuant to the laws of the State of Washington and the parties agree that the

Superior Court of Whatcom County shall be the appropriate venue of any suit or proceeding brought with respect to this Agreement.

DATED this \_\_\_\_\_ day of December, 2010.

WHATCOM COUNTY

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Approved as to form:

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Office of the Whatcom County Prosecuting Attorney

Attest:

\_\_\_\_\_

Finance Director

BARLEAN'S LAND COMPANY, LLC

By: \_\_\_\_\_

BARLEAN'S LAND COMPANY 2, LLC

By: \_\_\_\_\_

STATE OF WASHINGTON )

)ss.

COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the \_\_\_\_\_ of Whatcom County Planning and Development Services to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of June, 2010.

\_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

Notary Public in and for the State of

Washington, residing at \_\_\_\_\_.

My Commission Expires \_\_\_\_\_.

STATE OF WASHINGTON )

)ss.

COUNTY OF WHATCOM )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument, and acknowledged it as the Finance Director of Whatcom County to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this \_\_\_\_\_ day of June, 2010.

\_\_\_\_\_  
PRINTED NAME: \_\_\_\_\_

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission Expires \_\_\_\_\_.

STATE OF WASHINGTON )

)ss.

COUNTY OF WHATCOM )

On this \_\_\_\_ day of June, 2010, before me personally appeared \_\_\_\_\_, to me known to be a Member of BARLEAN'S LAND COMPANY, LLC, a Washington limited liability company, the company that executed the within and foregoing instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year first above written.

\_\_\_\_\_  
PRINTED NAME:\_\_\_\_\_

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission Expires \_\_\_\_\_.

STATE OF WASHINGTON )

)ss.

COUNTY OF WHATCOM )

On this \_\_\_\_ day of June, 2010, before me personally appeared \_\_\_\_\_,  
to me known to be a Member of BARLEAN'S LAND COMPANY 2, LLC, a Washington limited  
liability company, the company that executed the within and foregoing instrument to be the free  
and voluntary act and deed of said company for the uses and purposes therein mentioned, and on  
oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year  
first above written.

\_\_\_\_\_  
PRINTED NAME:\_\_\_\_\_

Notary Public in and for the State of  
Washington, residing at \_\_\_\_\_.

My Commission Expires \_\_\_\_\_.

## **Exhibit "C"**

### **A. Whatcom County Planning and Development Services - Planning**

1. Maximum building allowable floor area shall not exceed 12,000 square feet.
2. The maximum building height shall not exceed 35 feet.
3. The maximum building coverage shall not exceed 35 percent of the lot size.
4. At least 15 percent of the site shall be kept free of buildings, structures, stored materials, hard surfacing, parking areas and other impervious surfaces.
5. Setbacks from all properties zoned Rural and the county road shall be no less than 50 feet. Landscaping per WCC 20.80.300 shall be included within the setback area.
6. Roof mounted mechanical equipment must be screened so as not to be visible by surrounding uses or roads.

7. A 25 feet landscape buffer shall be planted along all property lines adjacent to Rural zoning designation and the county road, except in areas where existing development and engineering concerns preclude a planted buffer.
  
8. All landscaping shall be consistent with WCC 20.80.300 and shall include at a minimum:
  - a. Plant materials that have minimal irrigation needs, and are native or have a demonstrated suitability for Whatcom County are required. Twenty-five-foot planted buffers shall, at a minimum, consist of two offset rows of predominantly coniferous trees at an average spacing of 15 feet triangulated on center or an equivalent effect. Some deciduous trees shall be included and shrubs may be interspersed to provide interlocking root structures to reduce windthrow. Existing natural buffers are encouraged but may need additional width or be augmented with additional landscaping or fencing to provide the required sight barrier.
  
  - b. A minimum five-foot wide landscape strip shall be provided around the perimeter of all parking areas. Natural or planted buffers may be considered to meet this requirement. Tree spacing will be as required parallel to rights-of-way. Whenever a

nonresidential parking lot containing more than 10 parking spaces is located in or adjacent to a residential zone, it shall also be screened on any side facing residential uses or zones where there is no intervening street. This screen shall consist of a fence, wall or acceptable planting screen at least four feet in height. The visual impact of parking areas shall be minimized by separating the area into modules that contain no more than 12 vehicles in a row. Each module shall be separated from other areas by a five-foot wide planting strip containing trees, shrubbery, or other ground cover in such substantial density as to break up long sight lines and overviews of parked cars. Adjacent uses on separate parcels may combine their parking lots to enhance circulation without the necessity for intervening landscaping except for maintaining the module pattern.

9. All landscaping and required irrigation shall be installed within one year of the effective date of the rezone. The county may accept for a period of up to one year a performance bond or other monetary security as approved by the prosecuting attorney in lieu of immediate installation for 125 percent of the labor and materials cost to install the approved landscaping and required irrigation. A landscaping maintenance bond or other approved monetary security for 10 percent of the labor and materials cost to install the approved landscaping shall be submitted prior to occupancy or release of any

landscaping performance security held by the county. The maintenance security shall be released in five years after completion of the landscaping if the landscaping has been maintained in a healthy, growing condition, and if any dead or dying plants have been replaced.

10. Prior to the issuance of the first building permit after the effective date of the rezone the applicant must install adequate parking for the existing development. Parking for future buildings will be determined through the building permit process. One space shall be created for every employee (on the largest shift for which the building is designed) and one space for each motor vehicle maintained on the premises (if any). One space is also necessary for every 250 square feet of retail space. Parking shall be installed in accordance with federal and state regulations for ADA accessibility. In the event there is a conflict between the state and the federal regulation(s), the state regulation(s) shall apply.
  
11. A loading space shall have minimum dimensions of not less than 14 feet in width, 60 feet in length, exclusive of driveways, aisles, and other circulation areas, and a height of clearance of not less than 15 feet. One off-street loading space shall be provided and maintained on the same lot for every separate occupancy requiring delivery of goods and having a gross floor area of at least 5,000 square feet in

the case of manufacturing, warehouse or terminal buildings, and 10,000 square feet for commercial, hotel, institutional and public buildings. One loading space shall be provided for each additional 10,000 square feet for retail and restaurant buildings; and one for each additional 30,000 square feet for manufacturing, warehouse and service uses. Required off-street loading spaces are not to be included as off-street parking space in computation of required off-street parking space. All off-street loading spaces shall be located totally outside of any street or alley right-of-way.

12. All required yards, parking areas, storage areas, operation yards and other open uses on the site which are adjacent to a public right-of-way shall be maintained in a neat and orderly manner at all times.
13. All processes which produce physical off-site impacts of a detrimental nature shall be sufficiently enclosed to mitigate the impact.
14. Each activity is required to continuously employ the best pollution and nuisance abatement technology when reasonable and practicable available; provided that where federal, state, or regional laws or regulations provide for the level of technology to be employed the appropriate standards shall apply.

15. Heat, light, glare, including exterior lighting, shall be so constructed, screened, or uses as to not unreasonable infringe upon the use and enjoyment of property beyond the boundaries of the district.
16. No ground vibration other than that cause by highway vehicles, trains or construction activity shall be permitted which is discernable, without instruments, at or beyond the property line for the use concerned.
17. No odor, dust, dirt or smoke shall be emitted that is detectable at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonable infringe upon the use and enjoyment of property beyond the boundaries of the district.
18. No use shall exceed the maximum environmental noise level established by Chapter 173-60 WAC.
19. There shall be no emissions of toxic gases or fumes.
20. There shall be no off-site release to soil or surface drainage ways of water born or liquid pollutants.

## **B. Whatcom County Health Department**

The Whatcom County Health Department (WCHD) has reviewed the site specific rezone referenced above and has proposed the following for development agreement conditions:

1. Sewage/Industrial Waste Water: Any expansion or addition to any building will require the WCHD review and approval. All waste water will need to be accounted for and disposed of in an approved manner. Approved permits for wastewater include but are not limited to the following:
  - On Site Sewage Permits
  - NPDES Permits from the Washington State Department of Ecology
  - A waiver from NPDES permitting from the Washington State Department of Ecology
  
2. Water: The present facility is served by the Barleans Group 'A' public water system. This system utilizes an exempt well that is allowed to withdraw 5,000 gallons per day. Any expansion of the businesses on site will require an approved water availability form from WCHD. The applicant will also be required to provide documentation that the facility will not exceed the allowable water withdrawal.

3. Food Service: Any expansion of the retail fish operation will require approval from WCHD. Contact Luis Flores at 676-6724 for more information.
4. Department of Agriculture: Any expansion of the wholesale fish or flax seed operation requires written approval from the Washington State Department of Agriculture.
5. Solid Waste: All future development and expansion must comply with WAC 173-350- *Solid Waste Rules*.

### **C. Whatcom County Public Works Engineering**

#### Conditions of Rezone Approval

1. No vehicle access to Walltine Road, a local access road, from rezoned property.
2. Sight distance at the existing and proposed access points to be verified prior to subsequent building permit issuance, by a professional land surveyor or professional civil engineer. Sight distance requirements to meet current Development Standards.
3. The current Whatcom County Development Standards to apply at time of future building permit applications, to include but not limited to the following:

- a. Traffic generation and impact.
- b. Stormwater quality and quantity.
- c. Access management.

**WHATCOM COUNTY**  
Planning & Development Services  
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Bellingham, WA 98226-9097  
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**J.E. "Sam" Ryan**  
Director

## WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

November 29, 2010

The application of <b>Doug Scoggins</b> for a Site Specific Rezone and Development Agreement (Barlean's Land Company)		PLN2010-00020 and PLN2010-00023 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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### **I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Summary: The project is a site specific rezone and development agreement request to rezone 35 acres from the Rural zone to Light Impact Industrial in the Rural Comprehensive Plan Designation.

Recommendation: The Technical Review Committee recommends approval of the requested subdivision, subject to the attached conditions.

### **II. PRELIMINARY INFORMATION**

#### **A. BACKGROUND INFORMATION**

Applicant: Doug Scoggins  
PO Box 2965  
Ferndale, WA 98248

Agent/  
Representative: Larry Stoner  
4751 Birch Bay-Lynden Road #259  
Blaine, WA 98230

Owner: Barlean's Land Company 2 LLC  
4836 Lake Terrell Road  
Ferndale, WA 98248

Site  
Location/Address: 4836 Lake Terrell Road

Legal Description: The southwest quarter of the southwest quarter of Section 34, Township 39 North, Range 1 East Willamette Meridian.

Assessor's Parcel  
Numbers: 390134 039104, 104100, 106035, 035037 and 045069

<u>Zoning:</u>	Rural R(5)
<u>Comprehensive Plan:</u>	Rural
<u>Subarea:</u>	Cherry Point - Ferndale
<u>Total Acreage:</u>	Approximately 35 acres
<u>Roads:</u>	Private Road
<u>Water Supply:</u>	Group 'A' water system
<u>Sewage Disposal:</u>	On site septic systems
<u>Fire Protection:</u>	Whatcom County Fire District No. 7
<u>Law Enforcement:</u>	Whatcom County Sheriff's Office
<u>Public Schools:</u>	Ferndale School District
<u>Topography:</u>	The site is described as mostly flat
<u>Vegetation:</u>	Vegetation consists mostly of pasture grass areas
<u>Adjacent Land Uses:</u>	North: Residential East: Industrial/Refinery South: Residential/Lummi Indian Reservation West: Residential
<u>Utilities Easements:</u>	No utility easements are necessary.
<u>Variances:</u>	No variances requested
<u>SEPA Review:</u>	Determination of Non-significance issued November 2, 2010.

## **B. AUTHORIZING ORDINANCES:**

1. Revised Code of Washington Chapter 58.17
2. Whatcom County Comprehensive Land Use Plan.
3. Whatcom County Code Chapter 12.08, Development Standards
4. Whatcom County Code Chapter 15, Building Code
5. State Environmental Policy Act (SEPA). Washington Administrative Code Chapter 197-11, Whatcom County Environmental Policy Administration Chapter 16.08
6. Whatcom County Code Chapter 16.16, Critical Areas
7. Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
8. Whatcom County Code Title 21, Subdivision Regulations
9. Whatcom County Code Title 24, Health Regulations

## **III. SITE DESCRIPTION**

The subject property is an approximately 35-acre site, and is located at 4836 Lake Terrell Road, on the northeast portion of the intersection of Lake Terrell Road and Slater Road.

The site is bordered on the north by Walltine Road. The majority of the site is vegetated with grasses. Approximately ten acres of the site (in the southwestern corner) is developed with a single family residence and several buildings to support the existing fish and agricultural processing facility. The site is currently zoned Rural R(5). Property surrounding the site is zoned R(5) and is mostly forested parcels, agricultural fields and single family residences developed on large lots.

## **IV. PROJECT PROPOSAL**

The applicant's are proposing to rezone the 35 acres from R(5) to Light Impact Industrial (LII). Access to the site is currently provided with a private road off Lake Terrell Road and Slater Road. Public water will be provided by an on-site Group 'A' Water System to service the water needs of all 35 acres. All uses onsite will have on-site septic systems.

Assessor's parcel number 390134 039104, 104100, 106035, 035037, 045069 are each considered parcels of record as identified by EXE 2010-00081. These parcel numbers are likely to change as a result of a completed boundary line adjustment (EXE2010-00081).

The BLA created one rectangular parcel approximately five acre in size in the northeast corner of the subject area and two approximately ten acre parcels. The five acre parcel is not included in the rezone request and will remain a five acre parcel.

## **V. PUBLIC NOTICE AND COMMENT**

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on August 11, 2010. Notice was also mailed to property owners within 1000 feet of the site.

Public Input: During the public comment period for the Notice of Application, the County received several comments. A summary of the comments and a response follows:

- Concerns regarding the rural nature of the area.

Whatcom County PDS acknowledges the concerns of the rural nature of the area. Through the processing of this Site Specific Rezone, Whatcom County PDS and the applicant agreed upon processing a development agreement, pursuant to RCW 36.70b.170, to ensure the rural character of the area. The Development Agreement ensures that the site specific rezone to Light Impact Industrial is limited in size, scale, use and intensity.

Whatcom County is currently working on updating the Comprehensive Plan and Official Zoning Code to implement changes relating to rural land use planning, including the inclusion of Limited Areas of More Intense Rural Development (LAMIRD). As conditioned through the development agreement, Whatcom County PDS is of the opinion that this proposal will be consistent with RCW 36.70A.070(5)(d)(iii);

*(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(15). Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;*

The development agreement will require the proposal to be limited in building size, building coverage, open space, setbacks, uses, buffers, etc. to ensure the rural character of the area.

- Concerns over the applicant requesting access on Walltine Road.

The applicant has not requested access to Walltine and through review of the project the applicant has agreed to a condition prohibiting vehicular access to Walltine Road from the rezoned property.

- Impacts to groundwater.

The applicants have received approval from the Whatcom County State Department of Ecology for a Group 'A' water well. The approval allows for withdrawal of up to 5,000 gallons per day. No additional well or water service is being proposed.

- Noise, light and odor pollution

Potential noise, light and odor impacts on the surrounding area are proposed to be mitigated by increased setbacks and a landscape buffering area. The facility must also meet all applicable local, state and federal regulations.

Notice of SEPA Threshold Determination: The Notice of Decision for the Determination of Non-Significance (DNS) for this project was issued on November 2, 2010. The notice was also sent to state and local agencies, and Parties of Record for the project. The County received two comments.

Lummi Nation Tribal Historic Preservation Office (LNTHPO)

Based on review, an archaeological assessment is not recommended at this time. While the presence of cultural resources is not anticipated, please insert the following inadvertent discovery language:

Should archaeological materials (e.g. shell midden, faunal remains, stone tools) or human remains be observed during project activities, all work in the immediate vicinity shall stop, and the area shall be secured. The State Office of Archaeology and Historic Preservation (360-586-3065) and the Lummi Nation Tribal Historic Preservation Office (360-384-2298) shall be contacted immediately in order to help assess the situation and determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resource is required.

*This condition will be added to all building permits on the subject property.*

Laurita Smith

Ms. Smith wrote a letter stating her disappointment in issuing the determination of non-significance and reiterated that the zoning should remain Rural.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site and the notice was included in a one-time newspaper publication.

## **VI. STATE ENVIRONMENTAL POLICY ACT (SEPA)**

The State Environmental Policy Act (SEPA) requires applicants to disclose potential impacts to the environment as a result of their project. The Environmental Checklist submitted by the applicant adequately discloses anticipated environmental impacts as a result of this project. Whatcom County codes and regulations adequately mitigate for these anticipated environmental impacts. Therefore, a Determination of Non-Significance (DNS) is the appropriate threshold determination for this project. The DNS was issued on November 2, 2010 and no appeals were filed.

## **VII. FINDINGS OF FACT and CONSISTENCY WITH REGULATIONS**

### **A. Building Code (WCC Title 15)**

WCC Title 15 adopts and amends the applicable building and fire codes. The Building Official is authorized to promulgate such rules, policies and/or procedures as deemed necessary for the efficient operation of the permit process as administered by the department of building safety, designated in IBC Section 103.1, and hereby referred to as the building services division of the Whatcom County planning and development services department.

The Whatcom County Building Official submitted lengthy comment regarding what would be required at the time of building permit. Those conditions will apply when the applicant applies for a permit.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 15.*

### **B. Critical Areas (Title 16)**

WCC Chapter 16.16 of the Whatcom County Code contains standards, guidelines, criteria and requirements intended to identify, analyze, preserve and mitigate potential impacts to the County's critical areas and to enhance and restore degraded resources such as wetlands, riparian stream corridors or habitat, where possible.

No critical areas reports were submitted for the proposed rezone. A review of our critical areas information and the applicant's site plan indicate the site may include wetlands.

- A wetland reconnaissance was requested on September 7, 2010 and the applicants submitted a reconnaissance prepared by Ed Miller with Ronald T. Jepson and Associates date stamped September 10, 2010. The reconnaissance indicates two potential wetland areas (Wetland A and Wetland B) on the property. The wetlands were preliminarily rated as being Category IV wetlands with low habitat functions resulting in a regulated buffer of 50' for Wetland A

and an 80' buffer for Wetland B.

- Per WCC16.16.260, avoidance of critical area impacts is required as the first step in mitigation sequencing. All proposed development on the site is required to conform to the requirements in WCC16.16. At the time of building permit application, full wetland delineation will be required to identify the exact location of Wetland A and Wetland B.

The Critical Areas technical administrator has determined there will be no wetland or habitat area impacts as a result of the proposed rezone.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Chapter 16.16.*

## **C. Light Impact Industrial Zone Requirements (WCC Chapter 20.66)**

### **20.66.050 and .100 Permitted and Accessory Uses**

The applicants are requesting a rezone from the Rural zone to the LII zone on 35 acres. The current use on the site includes fish and flax seed processing to produce fish oil and retail sales of fish and flax seed oil and associated products. There is also a retail component of the facility which sells fish and shellfish. These uses are not allowed per the Rural zone. The existing business has continued to operate since the 1970's with several conditional use permits (CUP) (CUP93-00036, CUP97-00002, CUP2000-00042 and CUP2007-00026). The CUP's have been obtained to expand the fish and flax seed oil processing on the original ten acre parcel located in the southwest portion of the proposed rezone. The primary reason for the proposed rezone is to allow expansion of the flax seed oil processing facilities. Under WCC 20.60 Permitted Uses the following use is outright permitted:

WCC 20.66.051: The manufacturing and processing of food of a nature that meets the purpose and performance standards of this district excluding primary processing of meat and fish products.

Although a portion of the existing business is fish processing, the applicant does agree to limit the fish processing portion of the business to the southwestern 10 acres of the proposed rezone area. Confining the fish processing to the existing site would comply with the existing CUP allowing the fish processing. As conditioned, no additional fish processing will occur outside of the original CUP approved area. Limited retail sales will continue to occur under WCC 20.66.105 which allows retail sales as an accessory use:

**WCC 20.66.105** Retail sales of merchandise manufactured, assembled or stored on the site and consistent with the definition of accessory uses as defined in Chapter 20.97 WCC (Definitions).

**WCC 20.97.005 Accessory use.** "Accessory use" means a use customarily incidental to a permitted use; provided that such use shall be located on the same lot as the permitted use except where specifically permitted elsewhere in zoning district regulations.

The existing retail sales will be allowed to continue in the existing southwestern portion of the site as accessory to the primary permitted use (through a CUP) of fish processing. The retail facility must meet all development standards including but not limited to Planning, Engineering, and the Health Department.

**WCC 20.66.250 Minimum lot size.**

The minimum lot size shall be consistent with the area required to meet the building setback, lot coverage, buffer and development standards of the district.

*The proposed rezone site meets all of the requirements for minimum lot size.*

**WCC 20.66.251 Large commercial retail.**

Retail establishments with a floor area less than 35,000 square feet are allowed in the Light Impact Industrial (LII) Zone. Retail establishments within the Light Impact Industrial Zone of a short-term planning area of an urban growth area are allowed up to 65,000 square feet; provided, that:

(1) The floor area of adjacent stores shall be aggregated in cases where the stores (a) are engaged in selling of similar or related merchandise and operate under common ownership or management; (b) share check stands, a warehouse, or a distribution facility; or (c) otherwise operate as an associated, integrated or cooperative business enterprise.

(2) Two thousand square feet of interior loft floor area for purposes of storage or mechanical equipment is exempt from the 65,000 square feet maximum floor area.

(3) Retail establishments with a floor area exceeding 35,000 square feet require connection to public sanitary sewer and water services at urban levels of service.

*The proposed rezone site is not located within a short term planning area of urban growth area and therefore large commercial retail facilities are not allowed.*

**WCC 20.66.255 Minimum lot frontage**

For the purpose of dividing property, minimum lot frontage shall be sufficient to provide adequate access and utility development, and meet applicable building setback, buffer, and development standards of the district. In no case shall the frontage be less than 30 feet.

*The applicants are not proposing to divide property.*

**WCC 20.66.350 Building setbacks**

Building setbacks shall be administered pursuant to WCC 20.80.200, 20.80.254 and 20.66.550.

*There are several existing buildings on site and the proposed rezone will not impact existing buildings or setbacks. Several new buildings are planned in the future expansion of the facility. Those buildings will be reviewed for conformance with WCC 20.66.350 and the development agreement at the time of building permit review.*

**WCC 20.66.400 Height limitations**

No maximum height is established; however, when building height exceeds 35 feet, the setback requirements of WCC 20.80.200 shall be increased by one foot for each foot of building height in excess of 35 feet, as applicable to all setbacks. Height of structures shall also conform to, where applicable, the general requirements of WCC 20.80.675.

*There are several existing buildings on site and the proposed rezone will not impact existing heights or buildings setbacks. Several new buildings are planned in the future expansion of the facility. Through the development agreement it has been agreed upon that the buildings will be no greater than 35 feet in height. The proposed buildings will be reviewed for conformance with WCC 20.66.400 and the development agreement at the time of building permit review.*

**WCC 20.66.450 Lot coverage**

The maximum building coverage shall not exceed 60 percent of the lot size.

*The current lot coverage of the site is under the 60 percent allowed by WCC 20.66.450. When new buildings are proposed lot coverage will be reviewed, but in no case shall exceed the 35 percent agreed upon in the development agreement.*

**WCC 20.66.550 Buffer area**

.551 When a parcel situated within this district adjoins an Urban Residential, Urban Residential Medium Density, Urban Residential-Mixed, Rural or Residential Rural District, or county or state roads designated as or proposed for improvements to principal arterial status, setbacks shall be increased to 50 feet. A minimum of 25 feet shall be landscaped consistent with the requirements of WCC 20.80.345.

.552 If any part of said buffer area is separated from, or sold to any contiguous or adjacent owner, lessee or user, the parcel so separated or sold shall be used only as a buffer area in accordance with the above requirements.

.553 Required buffers may be provided off-site by written agreement in the form of a deed restriction on the off-site parcel that runs with the land and shall be filed with the county auditor. The off-site buffer agreement shall be

written so that it may be revised or rescinded in the event that land use or zoning designations are changed in such a way that the buffer becomes no longer necessary.

*The proposed rezone is adjacent to the Rural District and county roads designated as Rural Major Collectors. As agreed to in the development agreement setbacks will be 50 feet with a 25 foot landscaped buffer.*

**WCC 20.66.600 Sign regulations**

Sign regulations shall be administered pursuant to WCC 20.80.400.

*All signs will be reviewed to meet the requirements of WCC 20.66.600.*

**WCC 20.66.651 Landscaping**

Refer to WCC 20.80.300 for landscaping requirements.

*Landscaping will be required per WCC 20.66.651 and the development agreement. Landscaping is currently provided adjacent to the existing permitted buildings. Additional landscaping will be reviewed at the time of building permit review.*

**WCC 20.66.652 Off-street parking and loading**

Off-street parking and loading provisions shall be administered pursuant to WCC 20.80.500. In addition, loading areas must be located in such a manner that no loading, unloading and/or maneuvering of trucks associated therewith takes place on public rights-of-way.

*The site currently has approximately 100 employees and 45 existing parking spots. Parking requirements are as follows:*

- *Retail stores: 1 for each 250 square feet of floor area.*
- *Offices: 1 for each 200 square feet of floor area.*
- *Manufacturing uses: 1 for every employee (on the largest shift for which the building is designed) and 1 for each motor vehicle maintained on the premises.*

*Depending upon the specific use of the on-site buildings it is likely additional parking will be required. Prior to the issuance of the first building permit after the effective date of the rezone the applicant must install adequate parking for the existing development. Parking for additional development will be reviewed at the time of building permit submittal. Parking shall be installed in accordance with federal and state regulations for ADA accessibility. In the event there is a conflict between the state and the federal regulation(s), the state regulation(s) shall apply.*

**WCC 20.66.653 Drainage**

All development activity within Whatcom County shall be subject to the stormwater management provisions of the Whatcom County Development Standards unless specifically exempted.

No project permit shall be issued prior to meeting submittal requirements relating to stormwater management in the appropriate chapters of the Whatcom County Development Standards.

*All development will be reviewed at the time of building permit submittal.*

**WCC 20.66.654 Driveways**

Consistent with WCC 20.80.640, driveway plans shall be reviewed by the county engineer or State Department of Highways.

*The site is served by existing access on Lake Terrell Road and Slater Road. Additional review of driveway requirements will be reviewed at the time of building permit submittal.*

**WCC 20.66.655 Access**

Access shall conform to the provisions of WCC 20.80.565 and 20.80.660.

*The site is served by existing access on Lake Terrell Road and Slater Road. The access requirements will be reviewed to be consistent with WCC 20.66.655 and the development agreement at the time of building permit submittal.*

**WCC 20.66.656 Maintenance**

The owner, lessee or user shall be responsible for maintaining an orderly appearance of all properties and shall be responsible for assuring the care and maintenance of any natural growth where appropriate. All required yards, parking areas, storage areas, operation yards and other open uses on the site which are adjacent to a public right-of-way shall be maintained in a neat and orderly manner appropriate for the district at all times.

*The owner will be responsible for maintaining an orderly appearance of the properties per WCC 20.66.656 and the development agreement.*

**WCC 20.66.657 Enclosure.**

All manufacturing or fabrication processes which produce physical off-site impacts of a detrimental nature shall be sufficiently enclosed to mitigate the impact.

*The majority of the facility is located within the existing buildings. If there are any processes which are generating off-site impacts they shall be enclosed per WCC 20.66.657 and the development agreement.*

#### **WCC 20.66.700 Performance standards.**

##### **WCC 20.66.701 Pollution control and nuisance abatement.**

Each industry is required to continuously employ the best pollution control and nuisance abatement technology when reasonable and practicably available for each particular industry; provided, that where federal, state, or regional laws or regulations provide for the level of technology to be employed, the appropriate standards shall apply.

##### **WCC 20.66.702 Heat, light and glare.**

All operations and facilities producing heat, light or glare, including exterior lighting, shall be so constructed, screened or used as to not unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

##### **WCC 20.66.703 Ground vibration.**

No ground vibration other than that caused by highway vehicles, trains or construction activity shall be permitted which is discernible, without instruments, at or beyond the property line for the use concerned.

##### **WCC 20.66.704 Odors.**

No odor, dust, dirt, or smoke shall be emitted that is detectable, at or beyond the property line, for the use concerned, in such a concentration or of such duration as to cause a public nuisance, or threaten health or safety, or to unreasonably infringe upon the use and enjoyment of property beyond the boundaries of the district.

##### **WCC 20.66.705 Noise.**

No use in this district shall exceed the maximum environmental noise level established by Chapter 173-60 WAC.

##### **WCC 20.66.706 Toxic gases and fumes.**

There shall be no emission of toxic gases or fumes.

##### **WCC 20.66.707 Liquid pollutants.**

There shall be no off-site release to soil or surface drainage ways of water borne or liquid pollutants.

##### **WCC 20.66.708 Appearance.**

New facilities developed in the Bellingham Urban Fringe Subarea shall be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the

general vicinity, and such uses shall not change the essential character of the same area.

*The facility shall be compliant with all federal, state and regional laws and regulations. In addition, several conditions have been added to the development agreement to address the requirements of WCC 20.66.700.*

#### **D. Transportation Concurrency (WCC Chapter 20.78)**

WCC Chapter 20.78 gives authority to ensure adequate transportation facilities are available or provided concurrent with development.

The proposed rezone is not a development action under WCC 20.78 and thus not reviewed for Transportation Concurrency .

*Transportation Concurrency will be reviewed at the time of a development permit application.*

#### **E. Concurrency (WCC Section 20.80.212)**

WCC Section 20.80.212 states that no subdivision, commercial development or conditional uses shall be approved without a written finding that:

1. All providers of water, sewage disposal, schools, and fire protection serving the development have issued a letter that adequate capacity exists or arrangements have been made to provide adequate services for the development.
2. No county facilities will be reduced below applicable levels of service as a result of the development.

*The applicants will be required to prove the facility meets concurrency at the time of building permit for commercial development.*

#### **F. Site Specific Rezone Provisions (Chapter WCC 20.90.060)**

**WCC 20.90.063** Site-Specific Rezones. Site-specific rezones are processed as "development applications" as prescribed by Chapter 2.33 WCC, Permit Review Procedures, and are reviewed by the hearing examiner in accordance with WCC 20.92.205. The final decisions regarding a site-specific rezone is made by the county council. All site-specific rezones are processed within the timelines as required by Chapter 2.33 WCC except for projects that are exempted by WCC 2.33.020(B) through (D).

1. Site-specific rezones are initiated by making application on forms provided by the department of planning and development services. Site-specific rezone applications must satisfy the following criteria to be accepted for review:

- a. Does not require a Comprehensive Plan amendment;

*As conditioned through the development agreement the proposed rezone is consistent with the Rural comprehensive plan designation.*

- b. Requires a discretionary development permit or building permit;

*To fully realize the proposed expansion of the fish and flax seed processing facility which is envisioned as a result of the proposed rezone several building permits will be necessary.*

- c. Includes concurrent submittal of the discretionary development permit or, if a discretionary development permit is not required, a narrative statement shall be included with the conceptual site plan which provides a detailed description of the project proposal and includes a project completion date.

*No discretionary development is necessary for this proposed rezone. A narrative statement and a conceptual site plan have been proposed with a detailed description of the proposal. A development agreement has also been proposed which details additional conditions and time frames.*

- d. Includes evidence that all property owners included within the proposed rezone boundary concur with the rezone and project proposal as submitted for county review.

*All 35 acres within the proposed rezone area are owned by one owner the Barlean's Land Company 2, LLC. Doug Scoggins, acting as power of attorney for Barlean's Land Company 2, LLC, is the applicant for the proposed rezone.*

- e. Includes a completed environmental checklist.

*The applicant has submitted a completed environmental checklist date stamped July 21, 2010.*

- f. Includes payment of all permit and zoning related fees.

*The applicant has paid all fees associated with the proposed site specific rezone, the development agreement and the SEPA checklist.*

- g. If required as a conditional approval, includes evidence that transfer of development rights can be transferred pursuant to the procedures and requirements in Chapter 20.89 WCC, Density Transfer Procedure, and WCC 20.90.064.

*No transfer of development rights are required for the proposed rezone.*

2. Approval of site-specific rezone proposals must be supported by written findings and conclusions showing specifically that all of the following conditions exist:
  - a. That the proposed amendment to the zoning map is consistent with the Comprehensive Plan;

*The current Comprehensive Plan Land Use Map includes the following zoning designations within the Rural Comprehensive Plan designation: Rural (2, 5, and 10), Neighborhood Commercial (NC), Small Town Commercial (STC), Rural Residential Island (RRI), Rural Forestry (RF), Rural Open Space (ROS) Rural Residential 1 (RR1), General Commercial (GC), and LII. The proposal to rezone the property to LII is consistent with the current Comprehensive Plan Land Use Map.*

*The following Comprehensive Plan Policies support the proposed rezone:*

GOAL 2FF: Provide employment opportunities in the rural parts of Whatcom County.

Policy 2FF-1: Support small businesses, cottage industries, home occupations, resource based and other appropriate light industry in the rural areas of Whatcom County.

GOAL 7A: Promote a healthy economy which provides ample opportunity for family wage jobs for diverse segments of the community is essential to the quality of life in the area.

Policy 7A-1: Together with the cities, provide an ample, developable land supply for commercial and industrial uses to provide opportunity for new and expanding firms wishing to locate or remain in Whatcom County.

Policy 7A-2: Foster a diverse, private-sector job base, which will provide family-wage jobs at the state median income level or greater, and facilitate the retention and expansion of existing businesses.

GOAL 7F: Encourage development that creates local re-investment funds and provides jobs in the local community.

Policy 7F-1: Support existing local businesses as the major contributors of job creation and regeneration and afford them every opportunity to continue their success in the community.

Policy 7F-2: Encourage investments whose products and services can be marketed beyond the borders of Whatcom County, both domestically and internationally.

- b. That the proposed amendment to the zoning bears a substantial relationship to public health, safety, morals, general welfare or community needs, and will not adversely affect the surrounding neighborhood as a whole;

*The proposed rezone, as mitigated for in the development agreement, will allow expansion of an existing resource processing facility. Through review of this proposal, staff has determined that adequate utilities and roads will be available to service the proposal and public health and safety will not be adversely affected. Staff has included conditions within the development agreement to include increased buffering and landscaping so as to mitigate the size and intensity of the proposed use on the neighborhood.*

- c. That there are changed conditions since the previous zoning became effective to warrant the proposed amendment to the zoning map;

*The resource processing facility has been located on the 10 acre parcel in the southeastern portion of the rezone (APN 390134 035037) since the 1970's. Several CUP's and revisions have been applied for and granted by the Whatcom County Hearing Examiner on this parcel. The applicants have determined they need additional acreage to increase production of flax seed oil to meet market demand.*

*The original CUP for processing flax seed oil was completed in 1993 which allowed flax seed processing as a cottage industry for agricultural processing. Subsequent to that CUP the code has changed. Agricultural processing is only allowed in the Rural zone with a CUP if the "facility processes at least 50 percent agricultural goods produced in Whatcom County and which originate from permitted uses (WCC 20.36.136)." Although the flax seed processing is agricultural processing the flax seed does not originate from Whatcom County and therefore the applicant can not expand the flax seed processing off the original ten acre site.*

- d. That the proposed amendment is consistent and compatible with the current uses and zoning of the surrounding land. Proposed uses shall:
- i. Be serviced adequately by necessary public facilities such as highways, streets, public and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services;
  - ii. Not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community; or

*It has been determined the project does not create excessive additional requirements at public cost. Roads and utilities already exist on site and*

*any upgrades necessary through the development process will be the responsibility of the applicant. The proposal has the potential to add to the economic welfare of the community through the possible creation of jobs.*

- iii. If located within a nonindustrial urban growth area, the site shall:
  - (a) Be serviced by full urban services or be capable of receiving urban services in time to serve the development;
  - (b) Shall be done in a manner which will not preclude development at urban levels of density when the area is annexed into the city; and
  - (C) Must be five acres or more in size.

*The site is not located within a nonindustrial urban growth area.*

- 3. The proposed project is provisionally approved, and will revert to the original zoning designation if project completion is not in compliance with schedules as included with the discretionary development permit, or if no discretionary development permit is needed, within a reasonable time to be set by the hearing examiner. Bonds may be required as a condition of approval if deemed appropriate by the hearing examiner.

*The use has already been established at the site. Further development of the site will be consistent with the development agreement.*

- 4. Notwithstanding other language to the contrary, irregular boundaries that would result from a site-specific rezone proposal would not preclude the adoption of an otherwise satisfactory site-specific rezone.

*The proposed rezone would result in a slightly irregular boundary. However, the irregular boundary is a result of a boundary line adjustment proposed by the applicant to act as a buffer between the proposed rezone and the surrounding property owners.*

- 5. Site-specific rezones may be processed as concomitant rezones and may be processed concurrent with other land use approvals.

*This rezone is not proposed as a concomitant rezone.*

- 6. Concomitant rezone shall not be used for a rezone to agriculture, commercial forestry, and rural forestry zoning districts. It may, however, be used for any situation where extraordinary potential adverse impacts from a proposed rezone may be mitigated by the agreement. The concomitant rezone process may be employed for rezones in sensitive geographic areas such as critical

transportation corridors. Concomitant rezones shall generally be used when normal review and approval procedures are not adequate to resolve the specific issues involved in the rezone proposal.

*This is not proposed to be a concomitant rezone. The rezone is not to an agriculture, commercial forestry, or rural forestry zone district.*

7. The concomitant rezone agreement may include mitigation measures such as access control, landscaping, screening, buffering, improvements to public services including drainage, sewer, water and roads, lot coverage restrictions and phasing of development.

*The applicants are not proposing a concomitant agreement, but are proposing a development agreement which is attached to this staff report. The development agreement details additional conditions regarding development standards to mitigate for the potential impacts associated with the proposed rezone.*

8. A conceptual site plan shall be required. The conceptual site plan shall be drawn at not less than one inch to 100 feet (unless mutually agreed to be the proponent and administrative official) and shall also include, but not be limited to:
  - a. General location of the structures.
  - b. Location and number of access points.
  - c. Approximate gross floor area of structures.
  - d. Name of the proposal.
  - e. Identification of areas requiring special treatment due to their sensitive nature.
  - f. North directional arrow.
  - g. Names and locations of all public streets or roads boarding the site.
  - h. General legal description(s) for the site.

*A conceptual site plan was submitted with the application. The site plan shows the location and size of the proposed structures, the number of access points and all other items required. A wetland reconnaissance map was submitted separately and includes potential wetland areas.*

#### **WCC 20.92.850 Public hearing process for development agreements under the Growth Management Act.**

1. The Whatcom County hearing examiner is designated to conduct the open record public hearing for development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.
2. The Whatcom County hearing examiner shall conduct an open record public hearing and prepare a record thereof, and make recommendation to the county

council for approval or disapproval of development agreements as defined in the Growth Management Act, Chapter 36.70B RCW.

*The Whatcom County Hearing Examiner shall hold an open record public hearing for the development agreement and shall make a recommendation to the Whatcom County Council.*

#### Chapter 36.70B.170 Revised Code of Washington

1. A local government may enter into a development agreement with a person having ownership or control of real property within its jurisdiction. A city may enter into a development agreement for real property outside its boundaries as part of a proposed annexation or a service agreement. A development agreement must set forth the development standards and other provisions that shall apply to and govern and vest the development, use, and mitigation of the development of the real property for the duration specified in the agreement. A development agreement shall be consistent with applicable development regulations adopted by a local government planning under chapter 36.70A RCW.
2. RCW 36.70B.170 through 36.70B.190 and section 501, chapter 347, Laws of 1995 do not affect the validity of a contract rezone, concomitant agreement, annexation agreement, or other agreement in existence on July 23, 1995, or adopted under separate authority, that includes some or all of the development standards provided in subsection (3) of this section.
3. For the purposes of this section, "development standards" includes, but is not limited to:
  - a. Project elements such as permitted uses, residential densities, and nonresidential densities and intensities or building sizes;
  - b. The amount and payment of impact fees imposed or agreed to in accordance with any applicable provisions of state law, any reimbursement provisions, other financial contributions by the property owner, inspection fees, or dedications;
  - c. Mitigation measures, development conditions, and other requirements under chapter 43.21C RCW
  - d. Design standards such as maximum heights, setbacks, drainage and water quality requirements, landscaping, and other development features;
  - e. Affordable housing;
  - f. Parks and open space preservation;
  - g. Phasing;
  - h. Review procedures and standards for implementing decisions;
  - i. A build-out or vesting period for applicable standards; and
  - j. Any other appropriate development requirement or procedure.
4. The execution of a development agreement is a proper exercise of county and city police power and contract authority. A development agreement may obligate a party to fund or provide services, infrastructure, or other facilities. A

development agreement shall reserve authority to impose new or different regulations to the extent required by a serious threat to public health and safety.

*Whatcom County is proposing to enter into a development agreement with Barlean's Land Company, LLC and Barlean's Land Company 2, LLC a corporation owning real property within Whatcom County.*

## **G. Health Code (Title 24)**

The purpose of Title 24 is to provide minimum standards to safeguard public health and welfare by regulating and controlling the activities considered in this title and any related work.

The Whatcom County Health Department submitted a memo dated August 31, 2010 with the following comments.

The Whatcom County Health Department (WCHD) has reviewed the above submittal, and recommends preliminary approval with the following comments:

### **Water:**

The present facility is served by the Barleans Group 'A' public water system. This system utilizes an exempt well that is allowed to withdraw 5,000 gallons per day. Any expansion of the businesses on site will require an approved water availability form from WCHD. The applicant will also be required to provide documentation that the facility will not exceed the allowable water withdrawal.

### **Sewage/ Industrial Waste Water:**

Any expansion or addition to any building will require the WCHD review and approval. All waste water will need to be accounted for and disposed of in an approved manner. Approved permits for wastewater include but are not limited to the following:

- On Site Sewage Permits
- NPDES Permits from the Washington State Department of Ecology
- A waiver from NPDES permitting from the Washington State Department of Ecology

### **Food Service:**

Any expansion of the retail fish operation will require approval from WCHD. Contact Luis Flores at 676-6724 for more information.

### **Department of Agriculture:**

Any expansion of the wholesale fish or flax seed operation requires written approval from the Washington State Department of Agriculture.

**Solid Waste:**

All future development and expansion must comply with WAC 173-350- *Solid Waste Rules*.

*The Technical Review Committee has determined that, as conditioned, the project meets the requirements of WCC Title 24.*

**VIII. RECOMMENDATION**

The Technical Review Committee has determined that subject to the following proposed conditions, the proposed rezone would comply with applicable Whatcom County and Washington State regulations.

As stated above the Technical Review Committee recommends approval of the site specific rezone application, subject to the following conditions:

**IX. CONDITIONS OF APPROVAL**

**A. Planning Division**

1. The use and location on the site shall not be amended or changed in any way without further approval of the Whatcom County Hearing Examiner.
2. The applicant must comply with all conditions of the development agreement.

Report prepared for the Technical Review Committee by:

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