

## Anderson, Colete

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**From:** warren neth <warren@slowfoodswwa.com>  
**Sent:** Friday, April 10, 2015 3:02 PM  
**To:** Stewart, Jeanne; Madore, David; Mielke, Tom  
**Cc:** Orjiako, Oliver; Alvarez, Jose; Anderson, Colete; Euler, Gordon  
**Subject:** Follow-up - Purchase of Development Rights, Transfer of Development Rights or Agricultural Production Districts  
**Attachments:** DeedDevRights.doc



Greetings,

I wanted to follow-up on my comments at this weeks April 7th BOCCC Hearing.

Slow Food Southwest Washington would like to offer to put together a tour of a collection of Clark County's mid-sized farms and infrastructure to help you better understand the economic and social value of these mid-sized farms in Clark County's rural areas. If we can get commitment from at least two of the BOCCC members, I would be happy to put that together. We could also try to have some of the possible partners from the Ag land conservation and economic development sector join the tour.

As I said at the BOCCC hearing, I appreciate that you have gone forward with your considerations in ALT4, because of concerns you have heard from rural citizens. Over the last decade plus, rural citizens have worked on a number of reports that advocate for Purchase of Development Rights, Transfer of Development Rights or Agricultural Production Districts. I wanted to send you links to each of these reports to make them more easily accessible:

**Analysis of the Agricultural Economic Trends and Conditions in Clark County, Washington April 2007**  
[http://www.clark.wa.gov/planning/comp\\_plan/documents/final\\_ag\\_analysis\\_prelim\\_report.pdf](http://www.clark.wa.gov/planning/comp_plan/documents/final_ag_analysis_prelim_report.pdf)

**Clark County Agriculture Preservation Strategies Report March 2009**  
<http://www.clark.wa.gov/planning/RuralLands/documents/2009%20APAC%20AgPreservationStrategiesReport.pdf>

**Rural Lands Task Force Recommendations March 2010**  
[http://www.clark.wa.gov/planning/rurallands/documents/10-0310\\_RLTF-RecommendationsReport.pdf](http://www.clark.wa.gov/planning/rurallands/documents/10-0310_RLTF-RecommendationsReport.pdf)

**Promoting Agricultural Food Production in Clark County, NOV 2013**  
<http://www.clark.wa.gov/public-health/about/documents/FSCProposalDraft.pdf>

Considering the significant and continued advocacy for Purchase of Development Rights, Transfer of Development Rights or Agricultural Production Districts, I feel it prudent that the BOCCC make efforts to at least explore the option further.

I wanted to offer you this short video that tells the story of agricultural land conservation pretty concisely:  
<http://www.pbs.org/food/features/lexicon-of-sustainability-land-trust/>

That video provides a good short story of how the program works generally and how it effects a farm family. To help the county get through the fine details of developing a farmland conservation program, in Washington state, we have the Office of Farmland Preservation. Here is a link to their department: <http://ofp.scc.wa.gov>

In the short-term, the the USDA is offering \$332 Million to pay for easements or technical assistance in developing land conservation programs. Applications are due May 15th, it would be great to have the BOCCC's and community planning's support on submitting the proposal. Here are more details:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/programs/easements/acep/>

Many Counties in WA and across the country have developed these programs. Two nearby county's that would be willing to provide feedback and help with the details are Thurston County and Clackamas County. Here is a link to Thurston County:

<http://www.co.thurston.wa.us/planning/workingland/workingland-home.htm>

King County is a much larger program, but lots to learn from their model. I have attached the actual "DEED OF AND AGREEMENT RELATING TO DEVELOPMENT RIGHTS" that King County uses, in case that is helpful. Here is their website:

<http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx>

Thank you for the opportunity to share this information. I hope it provides some information for your inquiries into Purchase of Development Rights, Transfer of Development Rights or Agricultural Production Districts.

Please feel free to give me a call to discuss this more and talk about the opportunity to tour Clark County's mid-sized farm economy.

Thank you,  
Warren Neth

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**DEED OF AND AGREEMENT RELATING TO  
DEVELOPMENT RIGHTS**

**THIS DEED AND AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 199\_\_, **BY  
AND BETWEEN**

hereinafter referred to as "Grantors," **AND KING COUNTY, a political subdivision of the State of Washington** hereinafter referred to as "Grantee."

**WHEREAS:**

The Grantors are the present owners of the lands described in Exhibit A which is attached hereto and incorporated herein by reference (the "Land").

The Grantors recognize that the Land is Farmland or Open Space Land as defined in King County Ordinance No. 4341, and they desire to cooperate with the Grantee in preserving land devoted to agricultural and open space uses.

The Grantors are willing to grant and convey to the Grantee the Development Rights in the Land as such rights are defined in King County Ordinance No. 4341 (said rights being the interest in and the right to use and subdivide land for any and all residential, commercial, and industrial purposes and activities which are not incident to agricultural and open space uses), on the terms and conditions and for the purposes hereinafter set forth. The Grantee is willing to purchase the Development Rights in the Land and accept this instrument of conveyance.

The Grantee has determined that the acquisition by the Grantee of Development Rights in Farmland and Open space Land will benefit the public through the preservation of property devoted to agricultural and open space uses.

The grant and conveyance of Development Rights by the Grantors to the Grantee will preserve the Land for activities consistent with agricultural and open space uses in perpetuity in accordance with the specific terms and conditions hereinafter set forth.

**NOW THEREFORE WITNESSETH,** that the Grantors, for and in consideration of \_\_\_\_\_ **DOLLARS** lawful money of the United States of America, paid to the Grantors by the Grantee, the receipt whereof is hereby acknowledged, and the Grantors being therewith fully satisfied, do by these presents grant, bargain, sell, transfer and convey unto the Grantee forever all Development Rights in respect to the Land, hereby perpetually binding the Land to the restrictions limiting permitted activities to agricultural and open space uses as specifically delineated in the covenants, terms, and conditions contained herein, and do also grant such interests, rights and easements, make such covenants, and subject the land to such servitudes as are necessary to bind the Land in perpetuity to such restrictions.

The Grantors and Grantee hereby agree that the Land shall be bound by and permanently subject to the following restrictive covenants, terms, and conditions. None of these covenants, terms, and conditions shall be construed as allowing a use that is not otherwise permitted by applicable state and local laws, codes, standards, and ordinances.

**RESTRICTIONS ON USE OF THE LAND**

- I. **Uses Restricted to Agricultural and Open Space Uses; Agricultural and Open Space Uses Defined.** Use of the Land is permanently restricted to solely agricultural and open space uses.
  - A. "Agricultural uses," as used herein, means:

restriction, or covenant contained herein.

**No Alteration or Amendment.** The terms, conditions, restrictions, and covenants contained herein shall not be altered or amended unless such alteration or amendment shall be made with the written consent of the Grantee, or its successors or assigns, and any such alteration or amendment shall be consistent with the purposes of King County Ordinance No. 4341, as heretofore or hereafter amended.

**Restrictions Binding on Successors.** The Grantors and Grantee agree that the terms, conditions, restrictions, and covenants contained herein shall be binding upon the Grantors, their agents, personal representatives, heirs, assigns, and all other successors in interest to the Land and possessors of the Land, and shall be permanent terms, conditions, restrictions, covenants, servitudes, and easements running with and perpetually binding the Land.

**Transfer of Rights by Grantee.** The Grantee agrees that the Development Rights to the Land shall not be sold, given, divested, transferred, or otherwise reconveyed in whole or in part in any manner except as provided in King County Ordinance No. 4341, as heretofore or hereafter amended. The Grantors, their personal representatives, heirs, successors, or assigns, shall be given the right of first refusal to purchase the Development Rights in the Land provided such disposition and reconveyance be lawfully approved.

**Condemnation.** If the Land is subject to any condemnation action, and if a mutually acceptable agreement as to the compensation to be provided to the Grantee is not reached between Grantee and Grantors within a reasonable period of time, the Grantors will request that the Grantee be made a party to such action in order that it be fully compensated for the loss of, or devaluation in, the Development Rights hereby conveyed.

**No Affirmative Obligations; Indemnification.** Grantee, in purchasing the Development Rights and related interests described herein, assumes no affirmative obligations whatsoever for the management, supervision or control of the Land or of any activities occurring on the Land. Grantors shall indemnify Grantee and hold Grantee harmless from all damages, costs (including, but not limited to, attorneys' fees and other costs of defense incurred by Grantee), and other expenses of every kind arising from or incident to any claim or action for damages, injury, or loss suffered or alleged to have been suffered on or with respect to the Land. This provision shall be binding upon the Grantors for so long as they hold fee title to the Land, and shall bind their successors in interest to the fee title to the Land.

**Grantee's Right to Enter onto the Land.** After giving reasonable notice to the possessors of the Land, the Grantee or its authorized representative shall have the right to enter from time to time onto the Land and into structures located thereon for the sole purposes of inspection and enforcements of the terms, conditions, restrictions and covenants hereby imposed.

**Severability.** If any section or provision of this instrument shall be held by any court of competent jurisdiction to be unenforceable, this instrument shall be construed as though such section or provision had not been included in it, and the remainder of this instrument shall be enforced as the expression of the parties' intentions. If any section or provision of this instrument is found to be subject to two constructions, one of which would render such section or provision invalid, and one of which would render such section or provision valid, then the latter construction shall prevail. If any section or provision of this instrument is determined to be ambiguous or unclear, it shall be interpreted in accordance with the policies and provisions expressed in King County Ordinance No. 4341.

**IN WITNESS WHEREOF,** the parties have hereunto set their hand and seals the day and year first above written.

GRANTEE

GRANTORS

KING COUNTY

\_\_\_\_\_



- (1) The growing, raising, and production of horticultural and agricultural crops, including, but not limited to, vegetables, berries, other fruits, cereal grains, herbs, hay, and silage, and the processing and the marketing for off-premises consumption of such crops grown, raised, or produced on the Land;
- (2) All forms of animal husbandry, including the processing and marketing for off-premises consumption of the animals raised on the Land or the products of the same;
- (3) The lying fallow or disuse of the Land.

Agricultural uses do not include the construction, habitation, or other use of a dwelling unit, except to the extent such use is specially reserved in this instrument.

B. "Open space uses," as used herein, means:

- (1) Agricultural uses as defined above;
- (2) Non-agricultural uses that conserve and enhance natural, scenic, or designated historic resources and that do not permanently compact, remove, sterilize, pollute, or otherwise impair the use of the soil on the Land for the raising of horticultural or agricultural crops.

Neither open space nor agricultural uses include the following: The construction, habitation, or other use of a dwelling unit, except to the extent such use is specifically reserved in this instrument; construction or expansion of buildings or structures for non-agricultural uses; the construction or use of golf courses, parking lots unassociated with agricultural uses, athletic fields, campgrounds, or vehicle raceways or animal raceways other than those principally used for the exercise of animals grown, raised, or produced on the Land. Open space uses may include trails for non-motorized use by the public that are maintained and owned by or for the benefit of a government agency or are maintained and owned by a non-profit conservation agency.

II. **Reservation of Dwelling Unit(s).** The Grantors reserve the right to the use of \_\_\_\_single-family units(s) on the Land for the sole purpose of accommodating the Grantors and their successors in interest to the Land, the farm operator, or the families of such persons, or for accommodating agricultural employees of the owner or operator and their families. No more than \_\_\_\_dwelling units(s) in total will be permitted regardless of whether the Land is subdivided by the Grantors or by any successor in interest of the Grantors, If the land is subdivided, the number of dwelling units allocated to each subdivided parcel out of the total number of dwelling units specified above shall be indicated in the deed to each such parcel and on the face of any plat or other instrument creating the subdivision or conveying an interest in the Land, however, failure to indicate the number of such dwelling units thereon shall not invalidate or otherwise affect the restriction of the total number of dwelling units on the Land. The dwelling unit(s) shall be (a) permanent or mobile structure(s) designed and used for single-family residential occupancy.

III. **Further Restriction on Use of the Land.** Potential uses of the Land are limited in that the Grantors, their heirs, successors, and assigns shall only be entitled to use, lease, maintain, or improve the Land for agricultural and open space uses, and they shall comply with the following terms, conditions, restrictions, and covenants, which are permanently binding on the Land:

- A. No subdivision of the Land that reduces any parcel to less than 20 acres shall be permitted. EXCEPT THAT the Grantors, their heirs, successors, and assigns may elect to subdivide the Land resulting in the creation of a parcel or parcels less than 20 acres in size where each of the following requirements are met: (1) a reserved homesite is attached to each parcel of the Land, after the subdivision; and (2) the reserved homesites on the subdivided parcels would not increase the density of housing on the Land, which means the total acreage prior to the subdivision, to more than one reserved homesite per 35 acres. All restrictions imposed by this instrument shall survive any subdivision.
- B. No more than 5 percent of the Land, or of any parcel thereof resulting from a subdivision of the Land, shall be covered by structures and/or nontillable surfaces. "Structures" shall include but

are not limited to residences, barns, machine sheds, permanent greenhouses, associated structures, retail and processing facilities, surfaced parking areas, surfaced driveways, surfaced roadways, and surfaced pads. Temporary shelter for soil-dependent cultivation of horticultural or viticultural crops is not considered a structure. "Non-tillable surfaces" shall include but are not limited to asphalt, concrete, gravel, and any other cover material not normally associated with cultivation of the soil.

- C. No mining, drilling, or extracting of oil, gas, gravel, or minerals on or under the Land shall be permitted that causes disruption of the surface of the Land to any extent inconsistent with agricultural uses, and no part of the surface of the Land shall be used for storage or processing of gas, oil, or minerals taken from the Land, other than storage for the private use of the occupants of the Land.
  - D. No subsurface activities, including excavation for underground utilities, pipelines, or other underground installations, shall be permitted that cause permanent disruption of the surface of the Land. Temporarily disrupted soil surfaces shall be restored in a manner consistent with agricultural uses, including restoration of the original soil horizon sequence within a reasonable period of time after such installation.
  - E. No dumping or storage of non-agricultural solid or liquid waste, or of trash, rubbish, or noxious materials shall be permitted.
  - F. No activities that violate sound agricultural soil and water conservation management practices shall be permitted.
  - G. No signs shall be erected on the Land except for the following purposes:
    - (1) to state the name of the property and the name and address of the occupant;
    - (2) to advertise any use or activity consistent with the agricultural or open space uses as herein defined; or
    - (3) to advertise the property for sale or rent.
- IV. **Restriction on Use of the Land to Satisfy Open Space Requirements for Development or Use of Other Real Property.** Except as is otherwise provided below, in the event that an application is made at any time to a federal, state, or local governmental authority for permission to make use of any other real property including, but not limited to, real property that is contiguous to any of the Land hereby restricted, which proposed use is conditioned by such government authority on the existence of a specified quantity of open space or other restrictions on development, the Land shall not be used to contribute toward the satisfaction of any such open space requirement. This restriction shall not apply if the proposed use of the other real property is an agricultural or open space use, as defined herein.

#### **ADDITIONAL COVENANTS AND AGREEMENTS**

The Grantors and Grantee further agree as follows:

**Covenant Against Encumbrances.** The Grantors covenant that they have not done or executed, or allowed to be done or executed, any act, deed, or thing whatsoever whereby the Development Rights hereby conveyed, or any part thereof, now or at any time hereafter, will or may be charged or encumbered in any manner or way whatsoever.

**Remedies.** If the Grantors, their heirs, successors, assigns, agents, or employees violate or allow the violation of any of the terms, conditions, restrictions, and covenants set forth herein, then the Grantee will be entitled to all remedies available at law or in equity, including, but not limited to, injunctive relief, rescission of contract, or damages, including attorneys' fees and court costs reasonably incurred by the Grantee in prosecuting such action(s). No waiver or waivers by the Grantee, or by its successors or assigns, of any breach of a term, condition, restriction, or covenant or of any other term, condition,