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February 18, 2010

Bob Fritzen, Shoreline Specialist
WA State Department of Ecology
1440 - 10th Street, Suite 102
Bellingham, WA 98225

Dear Mr. Fritzen:

Board of Directors

Gene Derig, President
Anacortes

June Kite, Vice – President
Mount Vernon

Marilyn Derig, Secretary
Anacortes

Tim Minter, Treasurer
LaConner

Friends of Skagit County provides the enclosed information for review by DOE regarding the requested Shoreline Conditional Use Permit and the Shoreline Substantial Development permit for the proposed wetland mitigation bank project by Clear Valley Environmental Farm, LLC, Clear Valley Environmental Farm II, LLC and/or Jerome Ryan that you received from Skagit County Planning and Development Services on February 2, 2010. Friends appealed the SEPA determination regarding all of the Clear Valley permits, including the County's grading permit, to the Hearing Examiner (HE) in 2008 and to the Skagit Board of County Commissioners (BOCC) in 2009. The BOCC remanded to the HE for further review, but, to date, has not held a final hearing or issued a substantive BOCC final decision on the project. The HE decision and permits were forwarded to you for review after all BOCC members recused themselves and decided not to hear the case as required by the "rule of necessity". Friends has asked the Skagit Superior Court for summary judgment on issues of whether the BOCC must hear the case with a Court hearing scheduled in early March. Copies of Friends' Second Amendments to Its PL09-0077 Notice of Appeal to the BOCC (Appendix A1 to 8 hereto - without attachments) and Friends' Land Use Petition and Complaint for Declaratory Judgment to the Skagit Superior Court (Appendix A9 to 19 hereto - without attachments) are enclosed for your information.

Friends considers the Skagit County Hearing Examiner Shorelines decisions to be in error because the Examiner erroneously found the subject site is not "prime agricultural lands". The Shoreline Management Master Program (SMMP) dredging (Appendix A20 to 22 hereto), landfill (Appendix A23 to 25 hereto) and excavation (Appendix A26 to 36 hereto) policies require protection of "prime agricultural lands". The SMMP does not itself define "prime agricultural lands." It defines "agricultural lands" as those lands mapped by the Soil Conservation Service as soil classes I, II, II, and IV (Appendix A37 to 39 hereto) and the 1989 Soil Survey of Skagit County Area, Washington prepared by the Soil Conservation Service lists 77 soils in classes I to IV. A total of 165 soils are listed in the Soil Survey. Clearly, "Prime agricultural lands" are a subset of these "agricultural lands".

Staff

Ellen Bynum, Director

Gerald Steel, P.E., Counsel

People dedicated to preserving Skagit County's rural character by protecting the natural environment; supporting sustainable, resource-based economies; and promoting livable urban communities for present and future generations.

In 1995, the Legislature adopted RCW 36.70A.480(1) (Appendix A40 hereto) which made the SMMP goals and policies a chapter of the GMA Comprehensive Plan. Skagit County adopted these goals and policies into Chapter 16 Shoreline Management Master Program Element (Appendix A41 to 42 hereto) of its GMA Comprehensive Plan in 2000. RCW 36.70A.070 Comprehensive plans – Mandatory elements (Appendix A43 hereto) requires the GMA Comprehensive Plan to be internally consistent. Therefore, after year 2000, the term "prime agricultural lands" as used in the GMA Comprehensive Plan had to have the same meaning as the term "prime agricultural lands" has in the SMMP.

In the version of the GMA Comprehensive Plan in effect when the Clear Valley shorelines permits vested, the term “prime agricultural lands” appeared in the three SMMP policies identified above and it also appeared in the Agricultural Resource Policies which state:

Prime agricultural lands shall be protected and preserved as a nonrenewable agricultural production resource to benefit present and future generations.

CP Policy 5A-3.1 (Appendix A44 to 54 hereto). In the Natural Resource Conservation Element (Chapter 5 of the 2000 CP), the only agricultural lands identified for protection are the “prime agricultural lands” mentioned in CP Policy 5A-3.1. In the Land Use Element (Chapter 4 of the 2000 CP), the agricultural lands protected are designated “Agricultural Natural Resource Lands” (“Ag-NRL”) (Appendix A55 to 61. It follows that the protected Ag-NRL are considered “prime agricultural lands” in Skagit County.

The Clear Valley site is all designated Ag-NRL and therefore should have been found by the Examiner to be “prime agricultural lands.” Note that the Ag-NRL are generally specified as having one or more of only twenty-three “prime farmland soils.” Appendix A58 to 59 hereto. Because the Examiner erred in not finding that the Ag-NRL soils on the project site are prime agricultural lands, the Examiner did not apply the shorelines policies identified above that generally seek to keep landfills, dredging spoils, and excavation from adversely impacting prime agricultural lands.

Appendix A-w hereto is a map from the record before the County that shows in added yellow highlighting the areas of the project site where landfills are proposed on these prime agricultural lands. All of these areas are below the ordinary high water mark which is at 37 feet. The Examiner erred in granting the conditional use permit because he ignored landfill Policy 7.06(1)(B)(1)(a) clearly states that “Landfills should not locate in prime agricultural land.” Policy 7.06(1)(B)(1)(b) is violated because landfills are proposed in marshes. Policy 7.06(1)(B)(1)(e) is violated because landfills are proposed below the ordinary high water mark. Policy 7.06(1)(A)(8) provides that “Landfills, if allowed on shorelines, should not significantly damage, diminish, or adversely affect: prime agricultural land.” These policies are collected in Appendix A23 to 25 hereto. For all of these reasons, the Clear Valley landfills should not be given a shorelines conditional use permit because a criteria that must be met is “That the proposed use will be consistent with the policies of this Master Program.” Policy 11.03(1)(a) (Appendix A62 to 64 hereto). The landfill is not consistent with the identified policies of the master program.

The Clear Valley project proposes massive sand extraction (700,000 to 1,200,000 cubic yards of material) with the material to be placed on lands that have been sold for construction. The project proposes to fill all drainage ditches and wetlands and to create “high flow back channels” by excavations below the 37 foot ordinary high water mark. The enclosed site map shows topographic lines and areas marked in yellow that Clear Valley proposes to fill. Appendix A65 hereto. The proposed project will fill all agricultural drainage ditches, existing wetlands, build access roads and create a series of mounds of fill in prime agricultural land which has been identified for protection under the SMMP.

Importantly, virtually all of the areas on the site that are not highlighted in yellow on the map in Appendix A-w hereto are areas of excavation of these prime agricultural lands. By excavating the majority of the prime agricultural lands, Clear Valley intends to permanently destroy the viability of the project site for traditional agricultural. We request that Ecology appeal the substantial development permit because of the excessive excavation. SMMP Policy 7.08(1)(A)(2) provides that:

Mineral extraction activities along shorelines that would disrupt or permanently alter or remove prime agricultural lands and associated activities should be prohibited.

Appendix A26 hereto. In the instant case, the Clear Valley project would permanently alter prime agricultural lands by converting these lands to wetlands for the purpose of selling credits so that other urban wetlands can be destroyed. This is clearly inconsistent with the intent of the SMMP to protect prime agricultural lands.

Friends of Skagit County requests that you deny the Conditional Use permit requested by Clear Valley because the project violates the policies that protect prime agricultural lands under the SMMP. Further, we ask that DOE consider an appeal of the Substantial Development Permit as the scale of the project and activities do not protect prime agricultural lands and violate permitted activities allowed in rural area shorelines.

Thank you for your time in advance. Should you have questions or need additional information, do not hesitate to contact me.

Yours sincerely,

Ms. Ellen Bynum
Director

cc: Gerald Steel, P.E., Counsel; FOOSC Board
Enclosures

APPENDIX INDEX

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A20	Excerpts from Skagit SMMP dredging policies Chapter 7.04
A23	Excerpts from Skagit SMMP landfill policies Chapter 7.06
A26	Skagit SMMP mining policies Chapter 7.08
A37	Excerpts from Skagit SMMP Definitions Chapter 3
A40	RCW 36.70A.480 – Shorelines of the State
A41	Excerpts from Chapter 16 Shoreline Management Master Program Element of Skagit County Comprehensive Plan 2000
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A44	Excerpt from Skagit Comprehensive Plan, Natural Resource Conservation Element – Chapter 5
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A62	Excerpt from Skagit SMMP conditional uses Chapter 11.03
A65	Exhibit F-18 from FOOSC appeal, Map – Skagit Environmental Bank with yellow notations of proposed fill areas.