



## **Wetland Mitigation Bank Settlement Agreement Fact Sheet**

### **Background:**

Nearly 3 years after Clear Valley, LLC, (Clear Valley) filed its first permit application for the construction of a wetland mitigation bank on 396-acres of farmland in the Nookachamps basin, Skagitians to Preserve Farmland (SPF) has reached a settlement agreement that calls for the mitigation of the loss of the farmland, the permanent protection of 220-acres of existing farmland and an amendment to Skagit County's zoning ordinance that will permanently prohibit wetland mitigation banks on farmland within Skagit County.

### **Chronological Timeline**

- On April 6, 2006 SPF submitted comments on a joint public notice published by the U.S. Army Corps of Engineers and the Washington State Department of Ecology regarding the proposed wetland mitigation bank to be placed on farmland within Skagit County and requested the Corps and DOE to review the proposed bank under the federal, state and local policies to protect farmland.
- On August 25, 2006, SPF submitted public comments on the proposed Grading Permit, suggesting the project did not comply with the county's policies under the Growth Management Act (GMA) to protect prime farmland and the agricultural industry within Skagit County.
- On December, 19, 2007, SPF submitted a request to Skagit County to prepare an Environmental Impact Statement (EIS) under the State Environmental Policy Act (SEPA) for the proposed wetland mitigation bank and to review the project under federal, state, and local policies to protect prime agricultural lands.
- On March 20, 2008, SPF submitted public comments on Skagit County's Mitigated Determination of Non-Significance (MDNS) under SEPA and public comments on Clear Valley's permit application for a Shoreline Substantial Development Conditional Use Permit.
- On April 3, 2008, SPF filed an appeal of Skagit County's SEPA Determination for the proposed wetland mitigation bank to be placed on 396-acres of farmland to the Skagit County Hearing Examiner. Skagit County Farm Bureau joined with SPF on the appeal.

- On January 23, 2009, after 9-days of hearings, 201 exhibits and 27 witnesses, spread over 10-months, the Skagit County Hearing Examiner ruled in favor of converting 396 acres of farmland into a private commercial wetland mitigation bank.
- On January 27, 2009, SPF filed a Notice of Appeal with the Skagit County Board of County Commissioners to appeal the hearing examiner's decision.
- On January 29, 2009, the Skagit County Chief Civil Prosecutor contacted SPF and Clear Valley to discuss the possibility of a negotiated settlement. SPF, Skagit County and Clear Valley began discussions about how to come to an agreement that best served Skagit County's agricultural community.
- On February 9, 2009, the Skagit County Board of Commissioners adopted a six-month moratorium on accepting applications for wetland banks on lands zoned for agriculture.
- On March 11, 2009, after 42-days of settlement negotiations, the SPF Board of Directors approved a settlement agreement between SPF and Clear Valley, LLC.

### **What are the principal terms of the agreement?**

This historic and precedent-setting agreement stipulates that SPF's appeal to the Board of County Commissioners (BOCC) will be stayed for a period of 60 days to allow time for the BOCC to consider and adopt a permanent ordinance that deletes private wetland mitigation banks as an allowed use on Ag-NRL (farmland) zoned lands. If the BOCC adopts the permanent ordinance deleting wetland mitigation banks as an allowed use on Ag-NRL zoned lands the following actions will take place:

1. Clear Valley will make payments to the Skagit County Farmland Legacy Program that will over time provide approximately \$1,450,200 to fund the purchase of development rights on agricultural lands to offset the conversion of farmland within Clear Valley's project site; and
2. Clear Valley will place agricultural conservation easements on the remaining 220-acres of farmland that they own; and
3. SPF will withdraw our Notice of Appeal to the BOCC.

If the BOCC does not adopt a permanent ordinance prohibiting wetland mitigation banking on Ag-NRL zoned lands, then the settlement agreement will become null and void and SPF will resume with an appeal hearing to the BOCC.

## **Why is SPF agreeing to withdraw its appeal?**

While the best short-term outcome would have been to halt the project, the long-term costs and impacts would have been too great. There was the likelihood that the farmland now owned by Clear Valley would be sold off as residential building lots if the wetland mitigation bank was not constructed. In addition, SPF and other agricultural groups would be forced to appeal and litigate each future wetland mitigation bank proposal.

In filing an appeal of the Hearing Examiner's Decision, SPF was focused primarily on the broader policy implications of farmland preservation over the long-term. The focus on long-term policy guided the SPF Board in its deliberations and negotiations on the settlement agreement: *What would be in the best interest of Skagit Valley agriculture 10, 50 and 100 years from now?* SPF could have continued to pursue stopping the current project from being built, but would have failed to address the long-term issue and impact of placing commercial wetland mitigation banks on farmland.

The Board of Directors has been working tirelessly at the local and state level over the past three years to address the issues surrounding wetland mitigation banking on farmland. This settlement agreement achieves a long-term strategic outcome for Skagit County's agricultural community by eliminating wetland mitigation banks as an allowable use on Ag-NRL zoned lands, and through the mitigation payments to Skagit County's Farmland Legacy Program will enable additional farmland to be protected from conversion to non-agricultural uses. It should be noted that prior to the signing of the Settlement Agreement the BOCC signed into law a 6-month moratorium for wetland mitigation banks on farmland, demonstrating their commitment to the protection of Skagit Valley's critical mass of agricultural lands.

Additionally, 220 acres of farmland owned by Clear Valley but not part of the wetland mitigation bank will be permanently protected by the placement of agricultural conservation easements, adding to the more than 6,000 acres of farmland already protected in Skagit County.

**Does this agreement prevent other habitat enhancement and restoration projects from taking place on farmland?**

No. Only the specific practice of commercial wetland mitigation banking is being prohibited on farmland within Skagit County. SPF and the farm community recognize the value and importance of working with conservation groups to make sure the Skagit Watershed remains a vibrant and healthy ecosystem for fish and wildlife today and tomorrow as it did 100 years ago. As one local farmer, Curtis Johnson, puts it, “every day is Earth Day for farmers.”

**Does this mean SPF will give up its advocacy at the local and state level for protection of farmland from wetland mitigation banking?**

No. SPF will only withdraw our objection from issuing permits for the Clear Valley project. We have retained all our rights to continue to review the project for environmental impacts and to have our concerns addressed. The settlement agreement does not require us to stop our work at the local and state levels to advocate for policies and rules that protect farmland in Skagit Valley as well as around the state.

Our message is clear: Farmland in the Skagit Valley will be protected. Any conversion efforts will be fought and/or mitigated to ensure that we have a critical mass to continue farming for the benefit of future generations.

Moving forward, SPF pledges to continue working for the successful adoption of a county and statewide “no-net loss” policy for agricultural lands. The erosion of farmland must end if we want to preserve for future generations a productive agri-ecosystem that grows delicious, safe, secure food and provides critical habitat from more intensive urban use. The agricultural heritage and quality of life that we enjoy today in the Skagit Valley are a testimony to the hard work of many and SPF is committed to preserving both.

**Has there ever been an agreement such as this for wetland bank mitigation on farmland, in Washington state or elsewhere?**

Wetland banking is a fairly new undertaking in Washington state. To our knowledge there has not been a settlement for wetland bank mitigation on farmland in Washington.

**Is SPF benefitting financially from the settlement agreement?**

No. SPF did not receive any funds from the settlement. SPF purposely negotiated to have the settlement directed to Skagit County’s Farmland Legacy Program, a public land trust, which has protected over 6,000 acres of farmland since it was created in 1996.

**What did SPF pay for the appeal? How were the costs covered?**

The SPF Board of Directors unanimously agreed to appeal the Skagit County Hearing Examiner's ruling favoring conversion of 396 acres of farmland to a wetland mitigation bank based on the organization's mission to protect and preserve Skagit Valley farmland. The costs for the appeal are projected to be \$70,000 and are covered by SPF's Land Protection funds. A percentage of support was provided by the Skagit County Farm Bureau and from some SPF members and supporters.

**Is anyone else a party to the settlement agreement?**

Friends of Skagit County (FOSC) was asked to be a part of the settlement discussions and agreement and as of March 13, 2009 has declined.