



201004270104

Skagit County Auditor

4/27/2010 Page 1 of 15 3:07PM

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Brent Carson
GordonDerr, LLP
2025 First Avenue, Suite 500
Seattle, WA 98121

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

DOCUMENT TITLE(S) (or transactions contained therein): SETTLEMENT AGREEMENT
REFERENCE NUMBER(S) OF DOCUMENTS ASSIGNED OR RELEASED: n/a <input type="checkbox"/> Additional reference #s on page _____ of document(s)
GRANTOR(S) (Last name first, then first name and initials) Clear Valley Environmental Farm, LLC, a Washington limited liability company; Clear Valley Environmental Farm II, Inc. a Washington corporation; Friends of Skagit County, a Washington not for profit corporation <input type="checkbox"/> Additional names on page _____ of document
GRANTEE(S) (Last name first, then first name and initials) Clear Valley Environmental Farm, LLC, a Washington limited liability company; Clear Valley Environmental Farm II, Inc. a Washington corporation; Friends of Skagit County, a Washington not for profit corporation <input type="checkbox"/> Additional names on page _____ of document
LEGAL DESCRIPTION (abbreviated: i.e., lot, block, plat or section, township, range) See attached <u>Exhibit A</u> <i>PTN 10, 11, 14 & 15 34/4</i> <input checked="" type="checkbox"/> Additional legal is on Exhibit A of document
ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBERS P24443, P24490, P24494, P24496, P24531, P24532, P24533, P24535, P24692, P24694, P24695, P24696, P24697, P24731, P24743, P24801, P24805, P24806, P24890, P109225, P128590 <input type="checkbox"/> Assessor Tax # not yet assigned

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT is entered into on the last date set forth below by and between Clear Valley Environmental Farm, LLC, a Washington limited liability company, Clear Valley Environmental Farm II, Inc. a Washington corporation (together referred to hereinafter as "Clear Valley"), and Friends of Skagit County, a Washington not for profit corporation ("Friends"). Clear Valley and Friends are referred to herein as the "Parties."

Recitals

- A. Clear Valley warrants that it is the owner of (or for Assessor Parcel Number P24694 has an easement on) that real property (the "Property") inside the Mitigation Bank Boundary as mapped in Exhibit B attached hereto and made a part hereof. Clear Valley further warrants that the Property is within that property, the legal description of which is provided in Exhibit A attached hereto. Clear Valley also warrants that the Property is within that property having the Assessor Parcel Numbers shown on Exhibit D attached hereto and made a part hereof.
- B. Clear Valley asserts that on June 28, 2006, it filed applications with Skagit County for a Shoreline Substantial Development/Conditional Use Permit and for a Grading Permit for proposed wetland restoration and enhancement activities and establishment and operation of a wetland mitigation bank under Chapter 90.84 RCW and state pilot rules Chapter 173-700 WAC (the "Project") on the Property. Clear Valley asserts that in addition to various local, state and federal permits needed for the Project, the Project requires a Mitigation Banking Instrument ("MBI") that must be executed by Clear Valley and certified by various government agencies.
- C. On February 28, 2008, Skagit County issued a Mitigated Determination of Non-Significance ("MDNS") for the Project.
- D. On April 3, 2008, separate SEPA appeals of the MDNS were filed by Friends and jointly by Skagitonians to Preserve Farmlands ("SPF") and the Skagit County Farm Bureau, Inc.
- E. Hearings were held by the Skagit County Hearing Examiner on the MDNS appeals and on the issue of the Grading Permit and the Shoreline Substantial Development/Conditional Use Permit.
- F. On January 23, 2009, the Hearing Examiner issued his decision denying the MDNS appeals and granting the Grading Permit and the Shoreline Substantial Development/Conditional Use Permit (the "Hearing Examiner Initial Decision").
- G. The Hearing Examiner Initial Decision was appealed by Friends and by SPF to the Skagit County Board of County Commissioners ("BOCC"). Clear Valley reached a settlement with SPF and SPF dismissed its appeal.



- H. On July 21, 2009, the BOCC adopted Resolution R20090317 which dismissed the appeal of SPF because it had been withdrawn; dismissed the SEPA appeal of Friends on the basis that a second administrative challenge to a SEPA determination is not permissible under State law; and remanded the permit decisions to the Hearing Examiner for further fact finding and deliberation on the issues of flooding, drainage and sediment conveyance relevant to the project's consistency with Skagit County SMP Chapters 7.04, 7.08, and 7.16.
- I. On November 16, 2009, after holding additional days of hearing on remand, the Hearing Examiner, issued his Supplementary Findings and Conclusions on Remand, which approved the Grading Permit (land use approval) and the Shoreline Substantial Development/Conditional Use Permit subject to the conditions set forth in the Hearing Examiner Initial Decision and two additional conditions (the "Hearing Examiner Remand Decision").
- J. Friends appealed the Hearing Examiner Remand Decision to the BOCC. Following a motion by Clear Valley, Commissioner Wesen recused himself from participating in the appeal. Following a motion by Friends, Commissioners Dillon and Dahlstedt recused themselves from participating in the appeal and stated that the decision of the Hearing Examiner stands as a final administrative decision (the "Commissioners' Decision").
- K. On February 19, 2010, Friends submitted written comments to the Washington Department of Ecology ("Ecology") regarding the Shoreline Conditional Use Permit for Clear Valley and on February 19, 2010 Ecology approved the Shoreline Conditional Use Permit for Clear Valley (the "Ecology Approval") subject to compliance with the conditions required by Skagit County and one additional condition by Ecology.
- L. Friends filed a Petition and Complaint ("Friends' Lawsuit") in Skagit County Superior Court under the Land Use Petition Act and Uniform Declaratory Judgment Act (No. 10-2-00132-1), challenging the Commissioners' Decision and the Hearing Examiner decisions. The Court Administrator announced that all Skagit County Superior Court judges recused themselves.
- M. On March 12, 2010, upon motion by Clear Valley, Whatcom County Superior Court Judge Charles R. Snyder dismissed Friends Lawsuit with prejudice (the "Court Decision").
- N. On March 12, 2010 Friends filed an appeal with the State Shorelines Hearings Board (SHB 10-006) challenging Skagit County's granting of the Shoreline Substantial Development/Conditional Use Permit and the Ecology Approval (the "Shoreline Appeal")



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- Q. Clear Valley and Friends each believe that it would prevail in the Shoreline Appeal, in any appeals filed by Friends challenging the Court Decision and in any subsequent appeals and litigation, but at the same time recognize the desirability that existing disputes between Clear Valley and Friends be terminated without further expense or delay.

NOW THEREFORE, IN CONSIDERATION of the mutual promises, covenants and agreements contained herein, Clear Valley and Friends agree as follows with the intent that each be legally bound:

Agreement

1. Payments to Friends

- a. Clear Valley will make two payments to Friends in the following amounts and at the following specified times:

- 1) Thirty Thousand Dollars (\$30,000) using a bank cashier's check payable to Friends of Skagit County at the time that Friends' delivers to Clear Valley Friends' signed and dated Petitioner's Voluntary Withdrawal and Request for Dismissal ("Request for Dismissal") as set forth in Paragraph 2 below.
- 2) Two Hundred Thousand Dollars (\$200,000) ("Second Payment") before Skagit County Grading Permit Issuance, defined as Clear Valley paying all necessary fees owing to Skagit County and Clear Valley physically receiving from Skagit County an approved Grading Permit enabling Clear Valley to begin construction of the Project ("Grading Permit Issuance"). This payment shall be by wire transfer to Friends' bank account. Friends shall provide written instructions to Clear Valley specifying all necessary information to make the wire transfer.

2. Dismissal of Friends Shoreline Appeal

Within two (2) business days after full execution of this Settlement Agreement in duplicate by Clear Valley and Friends as verified by each Party faxing the Settlement Agreement it executed to the attorney for each Party, the Parties and/or their attorneys will meet at the offices of GordonDerr LLP to exchange the Clear Valley payment set forth in Paragraph 1.a.1) above for Friends' executed Request for Dismissal as set forth in Exhibit C attached hereto ("Exchange"). At this Exchange, each Party will deliver an original of the Settlement Agreement that it executed to the other Party or its attorney. Within two (2) business days of this Exchange, Clear Valley shall file with the Shorelines Hearing Board and serve the Request for Dismissal. Friends agrees to timely execute other documents, if any,



necessary for dismissal of Shorelines Appeal No. 10-006. Friends further agrees not to seek to rescind the Request for Dismissal.

3. Finality of Friends' Lawsuit

Friends agrees not to seek reconsideration of the Court Decision and not to seek any judicial appeal of the Court Decision.

4. Non-Opposition

Friends agrees on behalf of itself and its successors, and assigns, not to further appeal any existing or future governmental approvals sought by Clear Valley for certification of the MBI, construction of the Project (as disclosed in the record for the Hearing Examiner Initial Decision and Hearing Examiner Remand Decision) on the Property and award of credits to Clear Valley by the MBRT ("Government Approvals").

5. Release

Clear Valley releases and forever discharges Friends and its employees, officers, directors and members, from any and all claims, demands, obligations, actions, causes of action, damages, costs, attorneys' fees, expenses and compensation of any nature whatsoever, whether based on tort, contract, civil rights law, or other theory of recovery, including any claims which relate to any delay in the processing of Government Approvals for the Project, arising from any actions taken or statements made by Friends or its employees, officers, directors, members or agents, prior to the execution of this Settlement Agreement, concerning the Project, including the filing of any administrative or judicial appeals.

6. Settlement Agreement to be Recorded.

Within (7) seven calendar days after the Shorelines Hearings Board dismisses Shorelines Appeal No. 10-006, Clear Valley shall record this Settlement Agreement using the cover sheet provided in Exhibit D hereto and made a part hereof.

7. General Provisions

- a. Entire Agreement. This Settlement Agreement and the attached exhibits contain the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified or amended in any way except in a writing signed by duly authorized representatives of the respective Parties or their successors in interest or assigns.



- b. Enforcement. It is agreed that the remedy at law for any breach of the agreements contained herein would be inadequate and in the event of a breach of this Settlement Agreement, the aggrieved Party shall be entitled to injunctive relief and specific performance as well as damages for any such breach. Prior to any legal action being filed and any damages being accrued, a Party claiming a breach must give notice to the other Party and give that Party (15) days to cure the breach (such as by withdrawing an appeal or making a payment due). If the breach is not cured within 15 days of notice, a legal action may be filed and the prevailing Party in such an action shall be entitled to recover its actual costs and attorney's fees, including those incurred in any appeal from the judgment of a lower court.
- c. Notice. Any notice or other communication of any sort required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if personally delivered or three days after being mailed by certified mail as follows:

To Friends (notice to go to both):

Gene Derig, President
Friends of Skagit County
P.O. Box 2632
Mt. Vernon, WA 98273

Mr. Gerald Steel
Attorney at Law
7303 Young Road NW
Olympia, WA 98502

Friends can change contact information at any time by providing notice as provided in this subsection.

To Clear Valley (notice to go to both):

Mr. Jerome Ryan
Clear Valley Environmental Farm, LLC
P. O. Box 1199
Occidental, CA 95465

Mr. Brent Carson
GordonDerr LLP
2025 First Ave., Suite 500
Seattle, WA 98121

Clear Valley can change contact information at any time by providing notice as provided in this subsection.



- d. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of this Settlement Agreement shall be in Skagit County Superior Court.
- e. Headings. The headings and subheadings contained in this instrument are solely for the convenience of the Parties and are not to be used in construing this Agreement.
- f. Authority. The persons executing this Settlement Agreement on behalf of the respective Parties hereby represent and warrant that they are authorized to enter into this Settlement Agreement on the terms and conditions herein stated.
- g. Cooperation. Each of the Parties shall execute from time to time all documents that may be necessary to carry out the terms of this Agreement or to affect its purpose.
- h. Counterparts. This Settlement Agreement may be executed in counterparts, all of which shall be deemed an original as if signed by all Parties.
- i. Binding Effect. This Settlement Agreement shall be binding upon the respective successors and assigns of the Parties hereto (which include any new owners of the Property or portions of the Property) and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns. Clear Valley warrants that there will be no changes in the ownership of the Property until three (3) days after the Settlement Agreement is recorded. On the day of the Second Payment, Clear Valley shall email geraldsteel@yahoo.com and friends@fidalgo.net with the date of this Second Payment and within three (3) days after the Second Payment Clear Valley shall give notice to Friends of the date of the Second Payment. The Parties shall give notice of any successors or assigns.
- j. Estoppel Certificate. Friends will, to the best of its ability, within ten (10) business days after actual receipt by one of the persons identified in Paragraph 7.c. above, have one of the persons identified in Paragraph 7.c. above execute, acknowledge and deliver to Clear Valley a statement in writing certifying that this Settlement Agreement is unmodified and in full effect (or, if there have been modifications, the Settlement Agreement is in full effect as modified, and setting forth such modifications), stating to the best knowledge of Friends that either no default exists hereunder or specifying each such default of which Friends may have knowledge; it being intended that any such statement by Friends may be relied upon by any prospective purchaser or mortgagee of the Project.
- k. Mutually Drafted. This Settlement Agreement has been reviewed by counsel for each Party and shall not be construed as drafted by any one Party.




1. Expiration. This Settlement Agreement shall expire automatically and not bind Parties regarding any future actions taken more than (10) ten years after Grading Permit Issuance. Clear Valley may record a notice of Grading Permit Issuance.

m. Ownership Certification. Clear Valley warrants that it is the sole owner of the Property (except for Assessor Parcel Number P24694) at the time of signing of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective on the last date set forth below.

FRIENDS OF SKAGIT COUNTY
A Washington Not for Profit Corporation

By: 
Gene Derig, President
Dated: 4/7/10

CLEAR VALLEY ENVIRONMENTAL FARM, LLC
A Washington limited liability company

By: Sustainable Environments, LLC
A Washington limited liability company
Its: Managing Member

By: _____
Printed Name: _____
Its: Member
Date: _____

CLEAR VALLEY ENVIRONMENTAL FARM II, INC.
A Washington corporation

By: _____
Printed Name: _____
Its: _____
Dated: _____

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective on the last date set forth below.

FRIENDS OF SKAGIT COUNTY
A Washington Not for Profit Corporation

By: _____
Gene Derig, President

Dated: _____

CLEAR VALLEY ENVIRONMENTAL FARM, LLC
A Washington limited liability company

By: Sustainable Environments, LLC
A Washington limited liability company
Its: Managing Member

By: _____
Printed Name: Sarona Ryan
Its: Member
Date: 4/7/10

CLEAR VALLEY ENVIRONMENTAL FARM II, INC.
A Washington corporation

By: _____
Printed Name: Sarona Ryan
Its: President
Dated: 4/7/10



EXHIBIT A

LEGAL DESCRIPTION

Those portions of Sections 10, 11, 14 and 15 of Township 34 North, Range 4 East, W.M. conveyed to Clear Valley Environmental Farm, LLC and Clear Valley Environmental Farm II, Inc., by deeds recorded as Skagit County Auditor's File Numbers 200604270154 and 200705110097;

EXCEPTING therefrom "Parcel 3 After BLA" and "Parcel 4 After BLA" as set forth both on a Survey recorded as Auditor's File No. 200706190095 and on a boundary line adjustment deed recorded as Auditor's File No. 200706190096;

EXCEPTING FURTHER therefrom that portion of the Northwest $\frac{1}{4}$ of Section 14, Township 34 North, Range 4 East, W.M., described as follows:

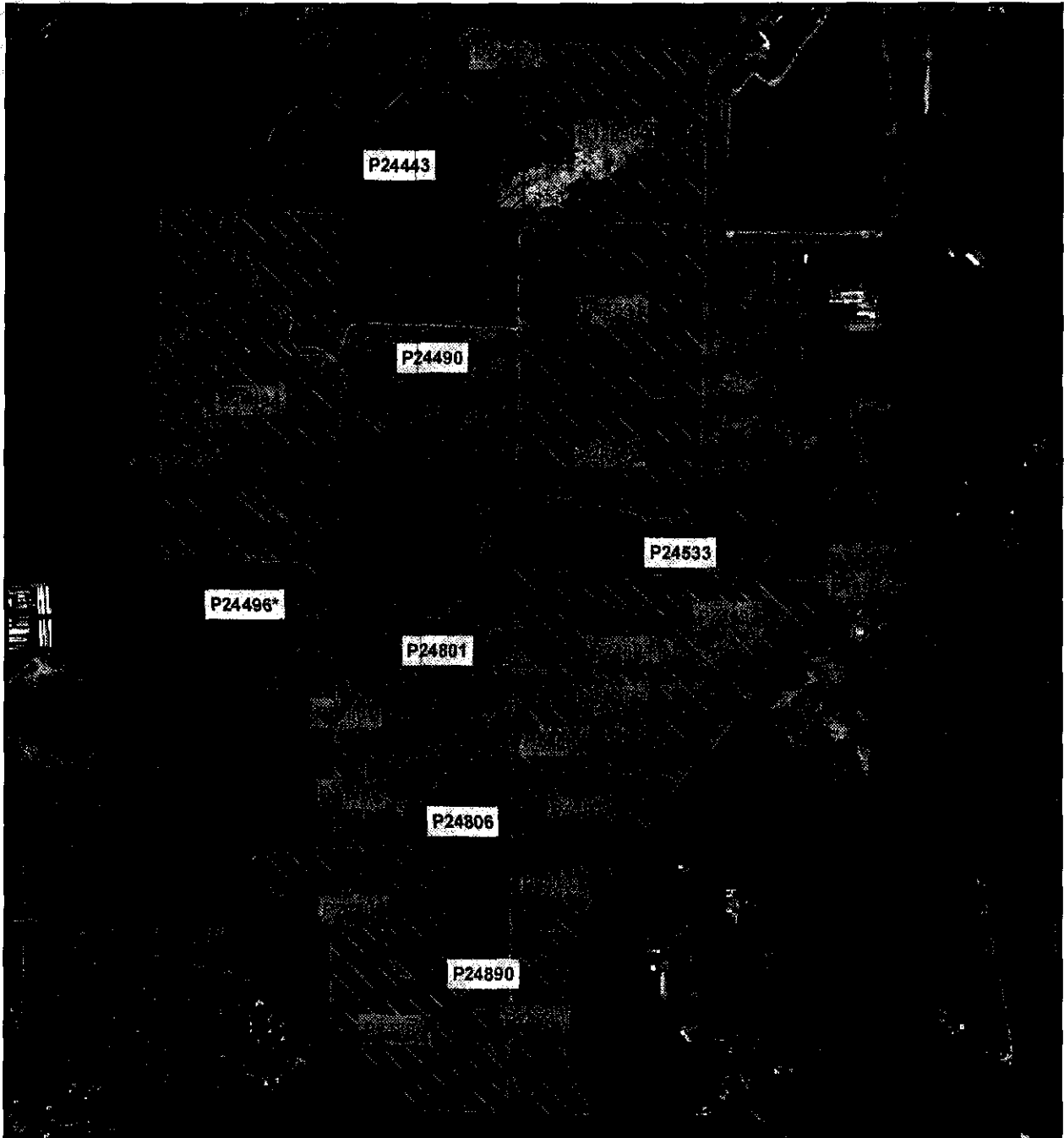
Beginning at the intersection of the East line of the Northern Pacific Railway right of way with the South line of the said Northwest $\frac{1}{4}$;
Thence East 606 feet, more or less, to the West line of Big Lake Road;
Thence Northerly along said West line of road to intersection with the East line of the Northern Pacific Railway right of way;
Thence Southwesterly along the East line of the Northern Pacific Railway right of way to the point of beginning;

AND EXCEPTING FURTHER therefrom

That portion of the Northwest Quarter of Section 14, Township 34 North, Range 4 East, WM described in the Public Records of the County of Skagit, State of Washington, as Assessor's Parcel Number P24694.



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Legend





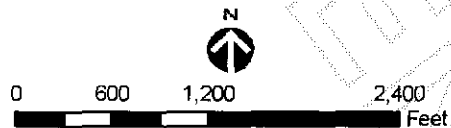
-  Mitigation bank boundary
-  Parcel completely within mitigation bank
-  Parcel partially within mitigation bank
-  Parcel

Exhibit B

*As of 2006 P24496 is assigned in the County GIS system but appears to be unassigned on the Assessor's map.

**Skagit Environmental Bank
Property Boundaries**



HERRERA



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EXHIBIT C

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BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

FRIENDS OF SKAGIT COUNTY,)
)
) Petitioner,)
)
) v.)
)
) CLEAR VALLEY ENVIRONMENTAL FARM,)
) LLC; SKAGIT COUNTY; and ECOLOGY,)
)
) Respondents.)

SHB No. 10-006
PETITIONER'S VOLUNTARY
WITHDRAWAL AND REQUEST
FOR DISMISSAL

Pursuant to WAC 461-08-485(2), petitioner Friends of Skagit County voluntarily
withdraws and requests dismissal of its appeal in this matter with prejudice and without
costs to any party. A proposed order of dismissal is attached hereto as Attachment 1.

Dated this ___ day of April, 2010.

Respectfully submitted,

By _____
Gerald Steel, WSBA #31084
Attorney for Petitioner
Friends of Skagit County



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ATTACHMENT 1

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

FRIENDS OF SKAGIT COUNTY,)
)
) Petitioner,)
)
) v.)
)
) CLEAR VALLEY ENVIRONMENTAL FARM,)
) LLC; SKAGIT COUNTY; and ECOLOGY,)
)
) Respondents.)

SHB No. 10-006
 ORDER OF DISMISSAL
 [PROPOSED]

The Petitioner Friends of Skagit County has requested voluntary dismissal of its appeal with prejudice and without costs to any party under WAC 461-08-485(2), which allows a petitioner to withdraw its appeal and obtain dismissal of the case. Accordingly, the Board enters the following:

ORDER

The appeal in this case is hereby DISMISSED with prejudice and without costs to any party.

Dated this _____ day of _____, 2010.



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SHORELINES HEARINGS BOARD

ANDREA McNAMARA DOYLE, Chair

WILLIAM H. LYNCH, Member

KATHLEEN D. MIX, Member

SIMON M. KIHIA, Member

MARY ALYCE-BURLEIGH, Member

TIM FARRELL, Member

PHYLLIS K. MACLEOD
Administrative Appeals Judge

Presented by:

By: _____
Gerald Steel, WSBA #31084
Attorney for Petitioner Friends of Skagit County



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EXHIBIT D

After recording, return to:
Brent Carson
GordonDerr, LLP
2025 First Avenue, Suite 500
Seattle, WA 98121

WASHINGTON STATE RECORDER'S Cover Sheet (RCW 65.04)

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