BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Applications of	)	
	)	**Nos: PL06-0607**
CLEAR VALLEY ENVIRONMENTAL FARM, LLC,	)	**BP06-0669**
	)	
For a Shoreline Substantial Development/ Conditional Use Permit and a Grading Permit for Proposed Wetland Restoration Activities on Approximately 396 Acres Of Land	)	**SUPPLEMENTARY FINDINGS AND CONCLUSIONS ON REMAND**

SUMMARY

Applicant: Clear Valley Environmental Farm, LLC
c/o Jerome Ryan
9 Teaberry Lane
Tiburon, CA 94920

Requests: (1) Shoreline Substantial Development/Conditional Use Permit
(2) Fill and Grade Permit

Location: East of the city limits of Mount Vernon and bordered generally by State Route (SR) 538 to the south, SR 9 and Babcock Road to the east and Swan Road to the north. The site comprises approximately 396 acres within portion of Secs 10, 11, 14, and 15, T34N, R4E, W.M. Nookachamps Creek and East Fork Nookachamps Creek flow through the property.

Land Use Designation: Agriculture-Natural Resource Land (Ag-NRL)

Brief Project Description: To perform wetland restoration activities and then to operate a wetland mitigation bank. A native seed and plant nursery is also proposed. The project would occur in three phases.

Decision: The Shoreline Substantial Development/Conditional Use Permit and the Fill and Grade Permit are approved, subject to conditions.

PROCEDURE ON REMAND

On January 23, 2009, the Hearing Examiner entered a decision on the subject applications and on associated appeals of the threshold determination under the State Environmental Policy Act (SEPA). On February 3, 2009, the Examiner denied the request of Friends of Skagit County (FOSC) for reconsideration.

The Examiner's decision was appealed to the Board of County Commissioners by both Skagitonians to Preserve Farmland and FOSC.

While the appeals were pending, Skagitonians to Preserve Farmland reached a settlement with the applicant and withdrew their appeal.

On July 21, 2009, the Board of County Commissioners adopted Resolution R20090317 which: (1) Dismissed the appeal of Skagitonians to Preserve Farmland because it had been withdrawn; (2) Dismissed the SEPA appeal of FOSC on the basis that a second administrative challenge to a SEPA determination is not permissible under State law; and (3) Remanded the permit decisions to the Hearing Examiner for

> "further fact finding and deliberation by the Hearing Examiner, consistent with this decision, on issues of flooding, drainage and sediment conveyance relevant to the project's consistency with Skagit County SMP Chapters 7.04, 7.08[1] and 7.16."

The Board expressed an intent that new testimony and evidence be limited by the Examiner to the specific issues identified. All matters and issues not expressly decided by the Board were reserved.

On September 25, 2009, the Hearing Examiner reconvened the hearings in this matter in response to the Resolution. Three days of hearings were conducted: September 25, 29 and 30, 2009. Because the SEPA appeals had been dismissed, the remand hearings used the normal format of pre-decision public hearings on permit applications. However, FOSC was allowed to cross-examine the applicant's witnesses and the applicant was allowed to cross-examine FOSC's experts. In addition to FOSC's presentation, additional citizen testimony was taken.

At the remand hearing Clear Valley Farms LLC (Clear Valley) was represented by Brent Carson, Attorney at Law. Skagit County appeared by Jill M. Olson, Deputy Prosecutor, and Betsy Stevenson, Senior Planner, FOSC was represented by Gerald Steel, Attorney at Law.

Clear Valley presented evidence through Jerome Ryan, partner in Clear Valley, and Dr. Jeff Parsons and Michael Spillane of Herrera Environmental Consultants. FOSC presented its president, Ellen Bynum, Dr. Christina Bandaragoda and Dr. Ross Barnes. Public testimony was given by Raymond Sundstrom, Peter Janicki, Diane Freethy (Skagit Citizens Alliance for Rural Preservation), Michael Sloan, Robert Helton, Larry Jensen, Carolyn Kelly, Susan Swetman, Larry Gadbois and Andrea Xaver.

[1] The Resolution earlier refers to SMP Chapter 7.06 (Landfills) rather than 7.08 (Mining). The Examiner believes that 7.06 was intended here and has proceeded on that assumption.

Fifty one additional exhibits were admitted on remand. The remand exhibit list is attached hereto as Attachment A.

DISCUSSION OF PRIOR DECISION

1. The Resolution remanding this matter to the Hearing Examiner specified that further fact finding and deliberation be "consistent with this decision." The Resolution contained several preliminary "whereas" paragraphs that provided an explanation of the Commissioners' concerns, as follows:

> (a) the Board has through its enactments expressed a consistent goal of protecting Skagit County's agricultural land base and the system of drainage infrastructure on which it depends., and, accordingly, significant modification of that system warrants the most careful consideration.
> (b) the Board is concerned that the record developed before the Hearing Examiner relies excessively on approximations, estimates and assumptions regarding the project's characteristics and resultant impacts related to drainage, flooding and sediment transport, which in turn informs the Hearings Examiner's finding and conclusions that the project comports with Skagit County's applicable SMP [Shoreline Master Program] set forth in SMP Chapter 7.04, 7.06 and 7.16.
> (c) The Board is concerned that the Hearing Examiner's decision ties SMP policy consistency to a preference for a return to pre-settler conditions, a benchmark that by definition predates ubiquitous agricultural use of the Skagit Valley's alluvial soils. *See e.g.*, Hearing Examiner Finding of Fact 14. The Board considers sustainable use of Skagit County's agricultural land for the purposes of agriculture to be the point of neutral equilibrium Any interpretation of Skagit County's various legislative enactments that are inconsistent with this view should be avoided.

2. The Examiner's Finding of Fact 14 stated that the preponderance of evidence supports the pre-settler wetland status of much of the project area and that clearing, grading and ditch construction activities subsequently occurred The point of Finding of Fact 14 was to establish the factual basis for determining that the project is a "wetland restoration project" under the prior version of SCC 14.16.400. The Examiner further concluded that even if some of the project area was not historically a wetland, new wetlands can be created in the area as a "wetland enhancement" project. Finding of fact 14 had nothing to do with SMP policy and was not intended to indicate "a preference for a return to pre-settler conditions."

3. The Skagit County Shoreline Master Program (SMP), for the most part adopted in 1976, does not explicitly deal with "wetland restoration/enhancement projects." The Examiner's prior decision was an attempt to determine whether such a use, not contemplated when the plan was written, can be approved under the SMP's terms. The question is whether the SMP permits converting agricultural land to a wetland.

4. "Wetland restoration/enhancement" is analogous to a return to natural conditions. As stated in Conclusion of Law 15, the SMP embodies strong policies favoring both the protection of agriculture and the protection of the shoreline environment (natural conditions). Yet, no express guidance is provided for an instance of conflict.

5. Agriculture is given special protection under the SMP through a prohibition on landfill and dredge spoil disposal on "prime agricultural land." SMP 7.04(1)(C), 7.06(1)(B). This gives rise to the implication that when farm land is not "prime agricultural land, "shoreline" development may occur there. What the prior decision attempted to convey - apparently none too clearly - is that when dealing with "non-prime" farm land, the analysis is simply a matter of whether the proposal, whatever it may be, is consistent with the applicable shoreline policies and regulations. No preference for a return to pre-settler conditions is implied in this approach.

6. The Examiner concluded that the mitigation bank site does not qualify as "prime agricultural land." Having reached this conclusion, he attempted to evaluate the project like any other shoreline project in terms of whether the proposal would have adverse impacts on shorelines values-- values such as the protection of natural systems, the preservation of open space and the prevention of environmental harm.

7. Because shoreline restoration is among the stated aims of the underlying statute (the Shoreline Management Act), a "restoration/enhancement" project can appropriately be seen as having a "beneficial public purpose." The general disfavor in the SMP for dredging in wetlands therefore does not apply in this case. See SMP 7.04(2)(B).

8. The SMP provisions on shoreline stabilization and flood protection (SMP 7.16) are directed toward bank stabilization and flood protection projects to protect against high water or significant erosion damages. The streamway modifications proposed here have a different aim - the restoration of wetland conditions. The modifications have been professionally designed to prevent restriction of flows, damage to off-site uses, and harm to fish and wildlife.

9. In sum, after examining the relevant policies and regulations, the Examiner was persuaded that the proposed mitigation bank, appropriately conditioned, would be consistent with the requirements of the SMP. In reaching this conclusion, he was convinced that the mitigation bank would not have adverse impacts on drainage, flooding and sediment transport.

10. The Board of County Commissioners determined that the record before the Examiner "relies excessively on approximations, estimates and assumptions regarding the project's characteristics and resultant impacts" related to drainage, flooding and sediment transport. The remand hearing took in additional evidence on potential impacts in these areas, resulting in the following:

SUPPLEMENTARY FINDINGS

1. The factual matters set forth in the foregoing sections of this decision are adopted as findings.

2. The Examiner renews and ratifies his prior findings.

3. The project under review is officially known as the Skagit Environmental Bank (SEB).

4. The HEC-RAS model used by the applicant is a commonly used and well established numerical hydraulic model developed by the United States Army Corps of Engineers (Corps). It is the primary means used by federal, state and local agencies to establish flood elevations and impacts associated with stream modifications. Here the assessment of potential flooding impacts using this model involved calibrations based on observations made on the specific streams involved. Review of the output was performed by other government agencies with expertise. After the initial modeling effort, the results indicated that the project would not cause flooding or drainage impacts on surrounding properties. In response to the remand, additional modeling was performed.

5. The project site is located in a generally flat basin. The East Fork of Nookachamps Creek rises steeply upstream from the site boundary toward the SR 9 Bridge. There is a significant difference in elevation between the project site and the Turner Creek/Beaver Lake plateau. The engineered log jams (ELJs) on the project site are around 10 feet lower than the Turner Creek/Beaver Lake area. The applicant gathered additional topographic information for the remand hearing in order to make this point.

6. Also in preparing additional analysis for the remand hearing, new stream bed survey work was done, resulting in a field-verified East Fork profile between the main stem of Nookachamps Creek and Turner Creek.

7. The Verdoes wetland restoration site is on the East Fork upstream of the project site but below the SR9 Bridge. Using the updated stream bed information and including log jams at the Verdoes site, computer runs showed no significant difference in the water elevations during low flows and floods at the east boundary of the project and at the bridge than were found in the original analysis.

8. In the original analysis, the applicant showed that any increased water elevations in the East Fork resulting from the project will extend a maximum of 3,372 feet upstream of ELJ#2. This increase will occur only in low flows and will be so small that it will be confined entirely within the incised stream channel. In backwater flooding conditions, the floodwater will overwhelm the site and no effect of the ELJ's on water surface elevations will be detectable. Using the updated information produced no essential change in this prediction.

9. From ELJ#2 to the SR 9 Bridge is over 6,000 feet. From ELJ#2 to the confluence of the East Fork with Turner Creek is 7,500 feet. Thus, no increase in water surface in the Turner Creek/Beaver Lake basin under any flow scenario is likely as a result of the mitigation bank.

10. Over the past three years, seven log jams have been installed at the Verdoes site. Like the project ELJ's, these jams impede flows. A comparison of cross sections at the SR 9 Bridge presented at the remand hearing shows no aggradation over the three year period. This reinforces the conclusion that the project ELJs, a considerable distance downstream of the Verdoes jams, will not produce aggradation that extends upstream to the bridge.

11. At the remand hearing the applicant took particular note of the so-called "constriction." Approximately 70 feet upstream of the SR 9 Bridge, the East Fork flows from the Turner Creek/Beaver Lake plateau toward the project site through a narrow notch confined by riprap on either side and with high and steep banks. Through this notch must pass the entire flow of any flood. A Skagit backwater event squeezes through a channel around 40 feet wide. This constriction produces high outflow stream velocities that flush out sediment. Even if project-induced aggradation proceeded upstream beyond the bridge, the high velocity water through the constriction would eliminate such aggradation as a possibility in the Turner Creek/ Beaver Lake area.

12. The applicant presented evidence of results of ELJ installation at two other comparable locations in western Washington -- Chico Creek and Adair Creek. The Chico Creek site is in a geomorphic setting similar to the East Fork. The ELJs installed there are similar to those planned for the Clear Valley project. Chico Creek also has a culvert upstream of the ELJs which functions similarly to the constriction on the East Fork of the Nookachamps.

13. A survey to determine the effect of the ELJs on Chico Creek's stream bed was conducted after the ELJs were in place. Aggradation occurred only immediately upstream of the ELJs -- within a few hundred feet.

14. The Adair Creek project was constructed in 2003 and used log weir structures similar in size to the proposed ELJs at the Clear Valley site. At Adair Creek there is aggradation behind the channel spanning logs forming a step pool pattern similar to what is anticipated at the Clear Valley project. The aggradation is restricted to the height of the logs and is of short length.

15. The applicant's analysis predicts that aggradation at the SEB will occur only within a few hundred feet of the ELJs. The Chico Creek and Adair Creek examples provide support for the prediction of limited aggradation at the SEB made by the applicant.

16. At the remand hearing, the possibility of avulsion of road dikes on the property was readdressed. The concern about this had been that avulsion could cause the stream to re-route itself rendering the ELJs useless and causing the mitigation bank to fail. The applicant said that comparing the constriction with the broad flat flood plain at ELJ#2 provides an explanation for the very low velocities of water on the project site during Skagit backwater conditions. Because the backwaters must pass through the narrow opening above the SR 9 Bridge, flow velocities in the floodplain area are greatly slowed.

17. The new modeling conducted for the remand hearing yielded an estimate of post-project velocity in the site areas of concern for avulsion that only slightly exceeds the velocity there under existing conditions. The applicant contends, and the Examiner agrees, that the extremely slow velocity of flood waters over the project site makes avulsions there highly unlikely. There is no geomorphic evidence of any avulsions on the project site.

18. The new hydraulic modeling focused on flows in the East Fork in order to approximate drainage from the Turner Creek/Beaver Lake area from a large Skagit backwater event. The applicant's consultants presented the results of a HEC RAS model run assuming significantly greater aggradation than they believe will in fact occur. Under this aggraded scenario, there were no flood impacts off the site.

19. FOSC has maintained that the new vegetation when it grows up on the site will retard the outflow of flood waters from the Turner Creek/Beaver Lake plateau extending the period of flooding there. The model accounts for this kind of effect through use of an "n-value" that approximates increased roughness. The applicant had argued that using a higher "n-value" would not change the impacts because flows on the site were already very slow. However, for the remand hearing, HEC-RAS was re-run using an "n-value" of 0.2 for the entire SEB site outside of the stream channel banks. This is a value generally encountered only in dense, mature forests.

20. The additional modeling runs also incorporated the effects of grading under the current grading plan, a factor left out of the original work because the grading plan was not then complete. The grading plan includes the presence of access roads.

21. The results of the new modeling (with the uppermost Verdoes jams included in the existing conditions and the final grading plan and larger "n-values" included in the proposed conditions) showed somewhat lower flood elevations off site under the post-project conditions. Even with the higher "n-value," the outflow of flood waters was not shown to be slowed by the presence of the project.

22. Responding to suggestions of FOSC, the applicant's consultants on remand applied a version of HEC RAS that would calculate sediment transport as a means of predicting aggradation. This module was unavailable when the applicants were preparing for the first hearing. The results obtained were entirely inconsistent with existing conditions and therefore the module was determined to be inappropriate for estimating sediment transport in the East Fork.

23. The consultant's explanation for the failure of the new sediment transport module is that it does not have the ability to incorporate a downstream sediment source and could not simulate the unsteady conditions when the Skagit River forces flows upstream.

24. The applicant's consultants noted that any model must be run under existing conditions to confirm that it accurately predicts the baseline situation. This was done with the hydraulics part of HEC-RAS before it was applied to the site. That HEC-RAS hydraulics model

was then used because, unlike the new sediment transport module, it was found to accurately simulate the existing conditions.

25. FOSC's first expert criticized the use of the HEC-RAS hydraulics model as inappropriate for use in this flood plain situation, and urged that there has been inadequate study to support approval of the mitigation bank. Particular criticism was aimed at the "n-values" used, the model's inability to account for multi-dimensional flood flows, and the lack of study of possible dam (road dike) failure, FOSC's other expert, in effect, reargued his previously-presented ideas about aggradation using the new data supplied by the applicant, and renewed his position on avulsion, asserting inadequate analysis of this possibility,

26. The public testimony and letters submitted focused on concerns expressed in the earlier hearing: effects on flooding in Turner Creek/Beaver Creek area, loss of agricultural soils, the record of failure of mitigation banks, potential impacts on groundwater levels, operation of the SEB over the long haul and enforcement of conditions.

27. Viewing the entire record, the Examiner was not convinced by FOSC's witnesses or by the other public testimony that the applicant's experts failed to analyze drainage, flooding and sediment transport adequately or that their conclusions on these subjects are wrong. The additional information the appellant provided on these matters was persuasive.

28. In remanding this matter, the Board of County Commissioners expressed concern that the Examiner relied "excessively on approximations, estimates and assumptions regarding the project's characteristics and resultant impacts related to drainage, flooding and sediment transport." Because the project has not yet been built, evaluation of its likely impacts must, of necessity, be based on informed predictions.

29. Clear Valley assembled a voluminous amount of real-world data to make its predictions. The applicant applied various factually-based flow scenarios to an array of known facts about the landscape and reached conclusions through the use of accepted modeling techniques. They developed survey data on stream bed elevations, reviewed existing information on project soils, looked at well logs to evaluate ground water conditions. The resulting set of predictions about drainage, flooding and sediment transport reflects the application of professional expertise to a known universe of facts.

30. One of the principal objects of the project design was to restore and enhance the wetlands without adverse off-site impacts. The design has been reviewed by the numerous agencies that make up the Mitigation Bank Review Team (MBRT) -- including the Corps and the Washington State Department of Ecology (Ecology) -- and none have expressed concerns about such effects from drainage, flooding and sediment transport related to the project.

31. After all is said, the difference the ELJs will make in the landscape is really quite modest. Their impact on water flows is likely to be confined to the project. The other physical changes brought by the project through grading and the planting of vegetation are not likely to have negative consequences to others in the vicinity. The Examiner determines that the

preponderance of all the evidence supports a finding that the project is unlikely to have any adverse off-site impacts.

32. The fulfillment of the "no adverse off-site impacts" finding, of course, depends on the ongoing operation and maintenance of the mitigation bank over time. Concerns were expressed about what might happen if ground water influences and sediment levels turn out to be different from what is predicted.

33. The filling of drainage ditches and construction of the ELJs as grade control structures is intended to recharge groundwater in the immediate area of the project. Although disputed, the record supports the applicant's position that no effects on the regional groundwater table off-site should be experienced. To provide greater assurance on this point, the applicant has committed to a long-term monitoring effort to verify the absence of groundwater impacts off-site. Under the groundwater condition, if data shows a statistically significant increase in groundwater level for any adjacent wells over any two consecutive years, and if the increase is likely caused by the project, a list of mitigation measures will be presented and the County shall require that all necessary mitigation measures be implemented to restore groundwater levels.

34. Similarly, the record supports the applicant's position that there will be no build up of the stream bed off-site that will produce adverse impacts. To provide greater assurance on this point, the applicant has committed to long-term monitoring of sediment levels at the project's east boundary and the SR 9 Bridge. Under the sediment condition, if monitoring shows a six inch or greater average sediment increase along monitored cross sections and the increase is project-caused, a list of mitigation measures must be submitted and the County shall require all necessary mitigation measures, such as lowering the elevations of the engineered log jams.

35. The establishment, use, operation and maintenance of the SEB will be governed by a Mitigation Banking Instrument (MBI). The MBI is an agreement among the project sponsor, the Corps, Ecology and Skagit County. Its purpose is to specify responsibilities of each party and it includes site-specific conditions, standards and procedural requirements applicable to the bank.

36. The MBI has detailed operational and monitoring conditions. A Long-Term Management and Maintenance Plan must be approved by the Corps and Ecology. An endowment fund must be established to pay for the long-term maintenance and management of the bank. Through the MBI, the Corps and Ecology have committed to the oversight of all provisions of approval over the long haul.

37. In addition, the County, of course, will have an ongoing policing responsibility through its obligation to enforce the conditions of its permit approvals.

38. After many days of hearings, the Examiner has been convinced that the SEB is well-designed and likely to succeed in creating a viable wetland bank. The phasing of the project is intended to insure this result, by providing checks and opportunities for adjustment at important development points. It is unlikely that the project, during construction or after it is established, will impose any significant adverse impacts on the environment surrounding it. Moreover, the measures taken through the MBI and the County permit conditioning process to assure long-term

compliance of the project with the prediction of no harm are about as thorough as can be devised. It is, of course, possible that the project sponsors will not perform as promised or that the watchdogs of the project will fall down on the job. But, on this record, there is every reason for optimism about the durable success of this proposal.

39. Any conclusion herein which may be deemed a finding is hereby adopted as such.

SUPPLEMENTARY CONCLUSIONS

1. The Examiner renews and ratifies his prior conclusions.

2. In the remand order, all matters not expressly decided by the Board of County Commissioners were reserved. In this regard the following prior Hearing Examiner determinations are highlighted:

a. As a matter of zoning law, the proposal was permitted outright in the AG-NRL zone at the time the application vested in 2006.

b. The exemption of RCW 90.58.147 for projects "designed to improve fish and wildlife habitat or fish passage" does not apply.

c. The County was correct in declining to treat the proposal as an "unclassified use."

d. The mitigation bank site is not "prime agricultural land," and therefore, the prohibitions against landfills and dredge spoil disposal on "prime agricultural land" do not apply.

e. The prohibitions against dredging in wetlands do not apply because the project is for "beneficially public purposes."

f. Under the facts, the proposal is not for "mining" as that term is used in the SMP.

g. The project, as conditioned, is consistent with the requirements for Shoreline Substantial Development Permit issuance.

h. The project, as conditioned, is consistent with the requirements for Shoreline Conditional Use Permit issuance.

After considering the additional testimony and exhibits, the Examiner concludes that the above conclusions were and are correct.

3. The applicant successfully carried its burden of proof to show that the project will be consistent with the appropriate SMP policies and regulations.

4. The Conditions in the initial decision should be continued in force. In addition, the two conditions set forth below should be added.

5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The conditions set forth in the initial decision on this matter, issued January 23, 2009 are incorporated herein and remain in effect.

2. The following are added as Conditions of Approval 12 and 13. These conditions should also be made a part of the Mitigation Banking Instrument.

"12. A total of five groundwater monitoring wells shall be maintained north and east of the wetland mitigation site at or near existing monitoring well numbers 35, 36, 37, 38 and 39 as shown in Sheet R-1 (Exhibit CV-10). These wells are adjacent to the Project site (the "Adjacent Wells"). An additional groundwater monitoring well shall be maintained at a location between the Project site and the Skagit River at a comparable elevation to the Adjacent Wells but more than two miles from the Project site to be used as a "control" location (the "Control Well"). Each of the wells shall be monitored each year for groundwater once per month during the months of April through October (the "Growing Season"). Groundwater monitoring data shall be reported annually to the Skagit County Department of Planning and Development Services before the end of the calendar year. The annual monitoring report shall include a same month comparison (i.e., comparing monitoring levels for each April in each monitoring year) and a year-to-year comparison (i.e., comparing the mean groundwater levels in each monitoring year's Growing Season). The annual monitoring report shall note any monitoring data taken within 72 hours after a significant rainfall event (cumulative rainfall totaling more than 1' in the period) or taken within 72 hours of the Skagit River being at flood stage at Mount Vernon ("Excluded Monitoring Data").

In the event that the monitoring data shows a statistically significant increase in groundwater levels for any of the Adjacent Wells over any two consecutive years (in the same month comparison or the year-to-year comparison), not considering Excluded Monitoring Data, the annual report shall include an assessment of the likely causes of this increase, taking into account changes in groundwater level at the Control Well and, if the increase is likely caused by the Project, a list of proposed mitigation measures. After receiving the annual report, the County shall make a determination whether the increase is caused by the Project and, if it is, require all necessary mitigation measures be implemented to restore groundwater levels.

Groundwater monitoring of the Adjacent Wells began in 2006 to establish baseline conditions. Monitoring shall continue in perpetuity unless, 30 years after installation of the Engineered Log Jams on the Project site, no statistically significant increase in groundwater levels is found.

This condition shall be recorded in an agreement between the County and the Owner and binding on its successors and assigns. This condition shall also be incorporated into the Mitigation Banking Instrument."

"13. The Sediment Monitoring Plan (Exhibit SC-1) shall be amended to include sediment monitoring on the East Fork of Nookachamps Creek at two locations -- one at the eastern Project site boundary and one at the SR 9 Bridge (the "Stream Sediment Monitoring Locations"). Sediment monitoring shall consist of surveying the cross section of the creek bed at the same locations and comparing these results with baseline conditions. In order to account for natural longitudinal bed form movement, monitoring at the eastern Project site boundary shall consist of cross section surveys at three consistent locations within 100 feet of the Project site boundary and one average cross section shall be established from these three surveys. Because longitudinal bed form movement is less likely to occur at the SR 9 Bridge location, only one cross section is needed there. Monitoring and reporting frequency shall occur as provided in SC-1.

In the event that sediment monitoring shows, at either Stream Sediment Monitoring Location, a six inch (6") or greater average sediment increase along the cross section, as compared with baseline conditions, Clear Valley shall assess the causes of this increase and, if the increase is caused by the Project, provide a list of proposed mitigation measures. The County shall make a determination whether the sediment increase is caused by the Project and, if it is, shall require all necessary mitigation measures be implemented, such as lowering the elevations of the engineered log jams."

DECISION

The Grading Permit (land use approval) and the request for a Shoreline Substantial Development/Conditional Use Permit are approved, subject to the conditions set forth above and in the decision in this matter dated January 23, 2009.

DONE this 16th day of November, 2009.

Wick Dufford

Wick Dufford, Hearing Examiner

RECONSIDERATION/APPEAL

Grading Permit

As provided in SCC 14.06.180, a request for reconsideration of the applicability of the provisions of Title 14 SCC to the grading permit may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

Shoreline

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) day after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

Department of Ecology Review

If approval of a Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.