



Mud fight on the Skagit

Which is more threatened: wetlands or farmlands? And bear in mind that Skagit Valley farmland is perhaps the finest dirt in the world.

By Bob Simmons

June 04, 2009.

Washington state law directs local governments to preserve wetlands and farmlands. These twin directives have run splat up against each other in a soggy little creek drainage east of Mt. Vernon, in the Skagit Valley.

Caught in the middle are investors who bought 800 acres of valley land including the former Clear Valley dairy farm on Nookachamps Creek, with a plan to make half of it into a "wetlands mitigation bank." That's an enterprise, new to Puget Sound, that makes money from state and federal laws aimed at reducing the net loss of wetlands. Mitigation bankers sell compensatory credits to developers and to government agencies that claim they need to destroy wetlands to make a place for buildings and highways.

In theory, developers make up for the wetlands they're destroying by paying into the wetland banks. Both the Washington Department of Ecology and the US Army Corps of Engineers have blessed the concept. Those agencies are simultaneously cheerleaders and regulators of the mitigation banks.

A few weeks ago, Skagit County commissioners placed a temporary moratorium on the creation of any more mitigation banks on farmland. They're expected to make it permanent in July. That would seem to provide an exclusive Skagit Valley franchise to Clear Valley and a neighboring mitigation bank, already approved. However, a local non-profit land use organization, Friends of Skagit County, has filed appeals that temporarily block the county from approving the Clear Valley bank's required permits. Repeated appeals could tie up the project, and the investors' money, for months or years.

If such a mud fight was ever going to happen — farmland protection fighting wetland restoration — the Skagit would be the place. There are few soils on the planet as highly prized for farming as the silt loam the Skagit River has carried onto its flood plain for thousands of years. The Skagit delta is said to be among the top one percent of the world's classiest dirt.

Skagit farmers and their allies have led a decades-long political, legal, and emotional fight to keep housing and industrial development away from the best of the valley soils. Nevertheless, the county has continued to lose farmland. Friends of Skagit says its own survey identified 3,000 acres converted last year to some use other than farming. Some of it's gone to commercial and residential building, but more to highways and to wildlife habitat projects developed by state agencies. (Strangely enough, Skagit County's planning department seems never to have inventoried the county's acreage of usable farmland, nor kept track of how much is vanishing.)

Another farm advocacy group, Skagitonians to Preserve Farmland, filed their own appeal against the Clear Valley project earlier this spring, but dropped it following a deal with the investors. Clear Valley agrees to put almost \$1.5 million into Skagit County's Farmland Legacy program to buy development rights to preserve valley farmland. (SPF gets none of the contribution). The bankers also agree to preserve some 225 acres of their 800-acre purchase in a conservation easement. In return, SPF withdraws its appeal, but only on the condition that Skagit County permanently prohibits any more wetland mitigation banks on farmland.

That looks like a win for those who demand no further loss of farmland, but it doesn't satisfy Friends of Skagit. Executive Director Ellen Bynum says her members will fight the Clear Valley wetlands bank so long

as they can afford appeals to state and regional boards and to Superior Court. Friends of Skagit claims about 300 supporting members, muscle enough to take the Army Corps of Engineers by surprise.

"We were shocked at the opposition in the Skagit Valley," says Gail Terzi, the Corps' senior wetlands scientist in Seattle. "We never expected this. We can't understand why the ag community has taken such an uncompromising stand. Would they rather see the [Clear Valley] farm sold off as building lots?"

Of course not, Bynum says. "Gail's a good person; I've got a lot of respect for her. But her agency doesn't get it. This is not just anywhere in the U.S. This is the Skagit. People here know this is the best farmland in the world, there's only 83,000 acres of it left, and we're losing it at an alarming rate. We aren't going to let another 400 be taken out of farming without challenging the concept every way we can."

Beyond Clear Valley's 400 acres, Bynum insists, there's a secondary effect that moved Friends of Skagit to take on a fight which more prominent land use and environment organizations have stayed out of. "Every one of these mitigation banks makes it easier for developers to build, whether it's a highway or a shopping center," Bynum told Crosscut. "And in the Skagit Valley, where do you think they're going to build except on farmland?"

Terzi seems exasperated by this argument. "Not one of these banks is going to lead to more development," she said. "Wetlands banking is a way to make up for some of the damage that poorly regulated development has done for so many years, under the old way of doing things."

The old way of doing things is the pattern that still prevails in much of Washington. Too many developers and city administrators consider wetland regulations to be nothing but a pain in the anatomy of the local landscape. Wetlands continue to be drained and filled, and the replacement wetlands are often make-believe. Developers are told to mitigate by building other wetlands, but the locations they choose may have no connection to the wetlands being destroyed. Statewide studies done by the Department of Ecology say fewer than half such created wetlands work the way they're supposed to. A separate study found that only 3 percent of the mitigations in King County provide the benefits of the natural wetland that's been destroyed.

Benefits? Think flood control, water supply, fish and wildlife. Every natural wetland, from a high mountain bog to a scummy lowland pond, serves as a flood control device and water filter. These places and the plants that evolved there can reduce runoff at the rate of about a million gallons per year. Multiply that by the magnitude of wetland loss that's been tolerated in the Puget Sound region in the past 100 years, and you begin to see why floods have become worse, Puget Sound water quality has degraded, and salmon runs have belly-flopped.

Under the new wetland banking concept, scientists at the Corps and the Department of Ecology supervise the mitigation wetlands, most of them 200-400 acres in size. They rule on the location, oversee the design, building, and operation, and decide when or whether the owner-investors can begin selling credits to developers. If a new wetland doesn't work, it doesn't pay off. The bankers fix it or forfeit performance bonds, which they have to provide early in the process.

"Under these new rules," Terzi told me, "we and Ecology have yes-or-no authority over these mitigation banks from the first day. First, the developers have to avoid the wetland if they possibly can. Second, they have to try to mitigate for their damage close to the development site. If neither of those is possible, then they can buy credits from a wetlands bank, at the ratio of three to four acres for every acre of wetland they're destroying."

There are four privately-owned, for-profit wetland mitigation banks in Washington ready to do business, with several others in various stages of getting ready. The first approved and certified to sell wetland credits is the one Victor Woodward created in 2005 on the King-Snohomish County line between Monroe and Duvall. His 225 acres had been a wetland, then a dairy farm. Woodward turned it back into a wetland. The State Department of Transportation, the City of Marysville, the Lake Stevens school district as well as private landowners and developers, have bought compensatory credits from Woodward, to make up for wetlands they destroyed on their development projects within the Snohomish River basin.

A few weeks ago, state regulators found problems with the way Woodward was monitoring and reporting on the condition of his wetland, and shut his business down temporarily. "They get pickier all the time," Woodward says. "Being one of the first, I've been the guinea pig, and had to keep changing my operation to meet the changing requirements. But it's worth it, it's a good thing." Woodward says he hopes to be

"unfrozen" and selling credits again some time in June.

Before he found the Monroe site, Woodward says he considered buying the now-disputed Clear Valley farm in the Skagit. "I'm glad I'm out of there and not dealing with that [public opposition] problem," he told Crosscut. "I think it's ironic that the farm preservationists are working so hard to stop wetland mitigation, when there's already the worst sprawl I've ever seen right in their neighborhood."

He's referring to Burlington and Mt. Vernon, two I-5 towns with parts that look as though they were shoveled out of the back end of a moving truck on what used to be cropland. Skagit farmland advocates say they're painfully aware of the sprawl, and they see it as an argument against converting even more farmland to other uses. "It's just a happy accident that this valley isn't that way from here to the saltwater," Ellen Bynum says. "We're all coming at this way too late, so we've got to try and stop what we can, to save what farmland is left."

Investors in the Clear Valley wetland bank have put millions into the project, with no way to know when appeals will end and profits begin. None of the three principals (Jake Hodge, Jerome Ryan, and Kevin Noon) would talk on the record for this story. Their attorney, Brent Carson of Seattle, referred Crosscut to a legal brief the corporation filed with the Skagit County Hearing Examiner earlier this year. In it, Clear Valley argues that the farm they bought is too wet for most crops, that it floods frequently, and is an ideal candidate for becoming a restored wetland.

Hodge did grant an interview to science writer Erik Ness, for the publication "Ecosystem Marketplace." Hodge indicated that he and his partners heard little opposition before they bought the Clear Valley property. "We have not been able to discover what caused the change," he told Ness, "other than the fact that people began to be alarmed with the accumulation of restored property."

Just downstream from the Clear Valley project with its flood of criticism, is another wetland mitigation bank of 241 acres, that has caused hardly a ripple. It's being constructed by Wildlands, a California firm, but with a hometown partner, Dan Mitzel, whose family has developed land in the Skagit Valley for years. Their wetland bank has its critics, but no formal appeals were filed, and all five of the agencies with authority over the project had approved it by mid-April.

"That's because it's urban," says Mary Heinrich, a determined farmland activist who describes herself as a "farm nag." Once the city of Mt. Vernon annexed the property, Heinrich says, it could no longer be considered ag land. "We're focusing on rural farm land," she says, "and trying to make the Department of Ecology pay attention to the desires of the valley people."

Ecology will get an earful of the desires and distresses of valley people on June 4. The department has scheduled a public hearing on the Clear Valley wetland bank at Skagit Station in Mt. Vernon, at 6 p.m. They expect a stormy night.

Nearly everyone Crosscut contacted for this story, on both sides of the wetland-farmland conflict, senses the need to reverse the loss of wetlands if there's to be any hope for the recovery of Puget Sound and its creeks and rivers. Some wetland advocates, however, doubt that the mitigation banks offer the best route to recovery, and wonder if the Department of Ecology and the non-profit land trusts who'll inherit the responsibility for the restored wetlands, can afford to monitor and maintain them forever.

Still, no one seems to offer a better idea — except to enforce, at last, existing regulations against destroying wetlands for profit. That would mean a return to what was once a common legal dictum against changing the essential nature of property: "You bought a swamp. You must have wanted a swamp."

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Printed on June 05, 2009