US Army Corps of Engineers
Seattle District

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Joint Public Notice

Application for a Department of the Army Permit and a Washington Department of Ecology Water Quality Certification and/or Coastal Zone Management Consistency Concurrence

U.S. Army Corps of Engineers
Regulatory Branch
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SEA Program
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ATTN: Christina Merten

Public Notice Date: 7 January 2009
Expiration Date: 6 February 2009

Reference No.: 200600098
Name: Skagit Environmental Bank

Interested parties are hereby notified that the U.S. Army Corps of Engineers (Corps) and the Washington Department of Ecology (Ecology) have received an application to perform work in waters of the United States as described below and shown on the enclosed drawings.

The Corps will review the work in accordance with Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers and Harbors Act. Ecology will review the work pursuant to Section 401 of the CWA, with applicable provisions of State water pollution control laws and the Coastal Zone Management Act.

APPLICANT: Clear Valley Environmental Farm, LLC
PO Box 1199
Occidental, CA 95465
ATTN: Mr. Jerome Ryan
Telephone: (707) 874-2780

LOCATION: The Skagit Environmental Bank is located 1.5 miles northeast of Mount Vernon in Skagit County, Washington. The 396-acre site is bounded by State (SR) 538 on the south, SR 9 and Babcock Road on the east, and Swan Road on the north. The site has been farmed historically and portions of it continue to be leased for crop production. See attached Figures A-1 and A-2 for the site location and existing conditions maps.

WORK: The proposed work will restore wetlands and streams for use as a wetland mitigation bank. The project will rehabilitate 13,000 feet of existing stream channel and riparian habitat; restore 6,500 feet of new high-flow back channels; enhance, re-establish, or rehabilitate 245 acres of wetlands; and enhance 142 acres of uplands. About 80 percent of the site is expected to be wetland following completion of all phases of construction. See attached Figures B-1, B-2, and B-3 for proposed site plans.

The work will be done in three phases. During Phase 1, three engineered log jams will be placed in the mainstem and east fork of Nookachamps Creek and drainage ditches will be filled with soil from existing berms that restrict overbank flow from the ditches and creeks. After monitoring the effects of Phase 1

activities on groundwater levels and surface flow patterns, Phase 2 will involve extensive grading and planting of the site to restore wetland, create the high-flow back channels, and enhance upland areas. Phase 3 will include minor grading and additional planting as needed.

Proposed alterations to the existing aquatic resources on the site are as follows:

- During Phase 1, about 0.19 acre of wetland ditch will be permanently filled with 1,754 cubic yards of material.
- During Phase 1, the wetlands will receive about 11,372 cubic yards of temporary fill spread over 5.46 acres as a result of grading down berms that block overbank flooding from the ditches and creeks on the site.
- During Phase 1, the mainstem and the east fork of Nookachamps Creek will be temporarily impacted by placement of 3,437 cubic yards and excavation of 640 cubic yards of material from below the ordinary high water mark. This work is associated with the need to access the creek and temporarily bypass stream flows around the work area while installing the engineered log jams.
- During Phases 2 and 3, up to 64,417 cubic yards of material will be removed from 12.9 acres of wetland to lower the ground elevations in those areas and establish wetland hydrology based on data collected after Phase 1 construction.

These impacts are expected to be mitigated by the bank project itself. The net gain of wetland and stream acreage and function will be significant. The overall goals, design, service area map and other details of the mitigation bank project can be seen in the Skagit Environmental Bank Draft Mitigation Bank Instrument (MBI), which is available at the following link to Ecology's website: http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/public-notices.html (Also available in hard copy – see Additional Evaluation section). The impacts to existing aquatic features are shown in Appendix B and Construction Documents associated with the MBI.

PURPOSE: The purpose of the Skagit Environmental Bank is to provide compensatory mitigation for aquatic resource impacts that are anticipated to occur within the service area of the bank. The use of bank credits as future compensatory mitigation would depend on case-by-case approval by the involved regulatory agencies after determining that the use of bank credits would be consistent with all applicable rules and policies of the agencies. The ecological goal for the bank is to restore riverine hydrologic processes, side-channel habitat, and the processes and functions associated with floodplain wetlands. A secondary goal for the Bank is to provide native seeds and plant cuttings for use at the bank site and for public sale.

MITIGATION BANKING: Wetland mitigation banks provide an alternative to traditional, concurrent, compensatory wetland mitigation. Mitigation banks offer an opportunity to implement compensatory mitigation at a regional scale in advance of impacts. "Credits" are established at mitigation banks by restoring, creating, enhancing and, in some circumstances, preserving wetlands and other natural resources. These credits can then be sold to permit applicants who need to offset the adverse environmental effects of projects with unavoidable wetland impacts that would occur within the banks' designated "service area". The document that addresses the bank process is the Mitigation Banking Instrument (MBI). The MBI is a contract that is created in cooperation with the Interagency Review Team (IRT), which includes federal, state and local regulatory agencies. The MBI contains the legal contract between the bank sponsor and IRT agencies, and the technical and procedural elements of constructing, operating, and maintaining the bank.

PREVIOUS PUBLIC NOTICES: A public notice was previously published by the Corps and Ecology on the Prospectus for this Bank on March 10, 2006 (available at: http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/pdf/PublicNotices/skagit_pn.pdf). That notice included general information on the proposed goals and design of the Bank and its service area. Since then, the specific design, credit value, and other components of the Bank have been developed in greater detail and are proposed in the MBI. This current public notice announces the availability of the MBI for review by the public.

SERVICE AREA: The service area of a mitigation bank is the geographic area over which credits may be used for compensatory mitigation. The proposed service area for the Skagit Environmental Bank extends to within the Skagit County portion of the Water Resources Inventory Area 03 (WRIA 03), located in the Lower Skagit River Basin. The service area includes all fresh water wetland habitats of the Lower Skagit/Samish Watershed east of the easternmost boundaries of Swinomish Slough, Skagit Bay, Padilla Bay, and Samish Bay, excluding all islands and all brackish marshes, halotrophic wetlands or wetlands influenced by saline conditions of >0.5 parts per thousand salt at any time during the year. Figure E-1 shows a map of the currently proposed service area.

CREDIT RATIOS: Credit ratios are negotiated between the IRT and the Bank Sponsor during development of the draft MBI. These ratios represent the acreage of restoration that is needed to earn each credit. Ratios vary depending on the type of restoration activity and the likelihood of success of the restoration. For example, in the case of this Bank, 1.5 acres of successfully rehabilitated wetland can earn one credit. In wetland rehabilitation, the Bank Sponsor is expected to restore historical processes and functions to degraded areas of existing wetland. The proposed credit ratios for this Bank are 1:1 for re-establishment of wetland, 1.5:1 for rehabilitation of existing wetland, 3:1 for restoration of riparian upland, and 5:1 for restoration of other upland areas. Based on these ratios, the total number of credits that may potentially be made available for sale is about 242.

As credits become available for release, proponents of development projects may purchase them for use as permitted compensatory mitigation. Credits are permitted for use only after applicants have shown that mitigation sequencing has been followed. Ratios recommended by the IRT for credit use from this Bank are 1.2:1 for impacts to Category II wetlands, 1:1 for Category III wetland impacts, and 0.85:1 for Category IV wetland impacts. Credit requirements to compensate for impacts to Category I wetlands are reviewed on a case-by-case basis. These ratios represent the number of Bank credits that are recommended to compensate for each acre of wetland impact. Use of mitigation banks as compensation for development projects, as well as the number of required credits, must be approved by the permitting agencies with jurisdiction over the affected aquatic resources.

CREDIT AWARD SCHEDULE: Credits for mitigation banks are awarded to the Bank Sponsors by the IRT agencies as performance standards are met at the Bank site. Performance standards include administrative milestones, such as recording the conservation easement that places the property under permanent protection, as well as actual targets for performance such as establishing wetland hydrology, or meeting the minimum required cover for native trees and shrubs. The total available credits are scheduled to be released throughout the period during which the Bank site is becoming established. The establishment period for this Bank may vary depending on when each of the three phases is constructed, but it will extend over a minimum of 13 years from the date that the MBI is signed. Of the potential 242 credit total, it is proposed that 30% be released during Phase 1, 55% during Phase 2, and 15% during Phase 3.

ENDANGERED SPECIES: The Endangered Species Act (ESA) requires federal agencies to consult with the National Marine Fisheries Service (NMFS) and/or U.S. Fish and Wildlife Service (USFWS) pursuant to Section 7 of ESA on all actions that may affect a species listed (or proposed for listing) under the ESA as threatened or endangered or any designated critical habitat. The U.S. Army Corps of Engineers has evaluated the potential impact of this project to proposed and/or listed species and their designated critical habitat. The Corps made the following determinations for this project and received concurrence from National Marine Fisheries Service in July 2006: 1) "May affect, not likely to adversely affect" Puget Sound Chinook (*Oncorhynchus tshawytscha*) salmon, and 2) "May affect, not likely to adversely affect" designated critical habitat for Puget Sound Chinook. Subsequent to the ESA listing of steelhead, NMFS concluded that the Corps did not need to reinitiate consultation for this project, and concurred with a determination of "may affect, not likely to adversely affect" for steelhead in September 2007. In October 2006, the USFWS concurred with the Corps determination of "may affect, not likely to adversely affect" bull trout (*Salvelinus confluentus*) and bald eagle (*Halieaeetus leucocephalus*); the latter has since been delisted.

ESSENTIAL FISH HABITAT: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996, requires all Federal agencies to consult with the National Marine Fisheries Service (NMFS) on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations. This proposed project includes habitats which have been designated as EFH for various life stages of Chinook, coho (*O. kisutch*), and Puget Sound pink (*O. gorbuscha*) salmon. NMFS did not provide any conservation recommendations specifically for EFH because the conservation measures that were proposed to address ESA concerns were considered adequate to avoid, minimize, or otherwise offset potential adverse effects to EFH.

CULTURAL RESOURCES: The District Engineer has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible and other sources of information. Due to the project area's position in the landscape (i.e. adjacent to a waterbody), there is the potential for unknown historic properties to occur in the project area. An historic properties investigation has been conducted and no pre-contact archaeological resources were found. Also, no sites determined eligible for or listed on the National Register of Historic Places were found to exist within the permit area. The Washington State Department of Archaeology & Historic Preservation concurred with the finding of No Historic Properties Effected in April 2006. The District Engineer invites responses to this public notice from Native American Nations or tribal governments; Federal, State, and local agencies; historical and archeological societies; and other parties likely to have knowledge of or concerns with historic properties in the area. This public notice initiates consultation under Section 106 of the National Historic Preservation Act with any Tribe that has information or concerns with historic properties in the proposed permit area.

PUBLIC HEARING: Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing.

EVALUATION – CORPS: The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered,

including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

The Corps is soliciting comments from the public; Native American Nations or tribal governments; Federal, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps to determine whether to issue, modify, condition, or deny a permit for the work. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

The described discharge will be evaluated for compliance with guidelines promulgated by the Environmental Protection Agency under authority of Section 404(b)(1) of the CWA. These guidelines require an alternatives analysis for any proposed discharge of dredged or fill material into waters of the United States.

EVALUATION – ECOLOGY: Ecology is soliciting comments from the public; Federal, Native American Nations or tribal governments, State, and local agencies and officials; and other interested parties in order to consider and evaluate the impacts of this activity. Ecology will be considering all comments to determine whether to certify or deny certification for the proposed project.

ADDITIONAL EVALUATION: The bank sponsor is currently working with a multi-agency review team to develop the mitigation bank instrument (MBI) in accordance with 33 CFR Part 325 and 332 *Compensatory Mitigation for Losses of Aquatic Resources; Final Rule*, dated April 10, 2008, and applicable state, local, and other federal requirements. The Draft MBI is available electronically for review and comment at http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/public-notices.html.

Hard copies of the MBI are also available for review at the following locations:
U.S. Army Corps of Engineers, Regulatory Branch
4735 East Marginal Way South
Seattle, WA 98134-2385

Washington State Department of Ecology
300 Desmond Drive SE
Lacey, WA 98503

Washington State Department of Ecology
3190 - 160th Ave. SE
Bellevue, WA 98008-5452

Skagit County Planning and Development Services
1700 East College Way
Mount Vernon, WA 98273

COMMENT AND REVIEW PERIOD: Conventional mail or e-mail comments on this public notice will be accepted and made part of the record and will be considered in determining whether it would be in the public interest to authorize this proposal. In order to be accepted, e-mail comments must originate from the author's e-mail account and must include on the subject line of the e-mail message the permit applicant's name and reference number as shown below. Either conventional mail or e-mail comments must include the permit applicant's name and reference number, as shown below, and the commentor's name, address, and phone number. All comments, whether conventional mail or e-mail must reach this office, no later than the expiration date of this public notice to ensure consideration.

All e-mail comments should be sent to gail.m.terzi@usace.army.mil and/or chme461@ecy.wa.gov. Conventional mail comments should be sent to U.S. Army Corps of Engineers, Regulatory Branch, Attn: Gail Terzi, Post Office Box 3755, Seattle, Washington, 98124-3755 and/or Department of Ecology, SEA Program, Attn: Christina Merten, Post Office Box 47600, Olympia, Washington 98504-7600.

To ensure proper consideration of all comments, responders must include the following name and reference number in the text of their comments: Skagit Environmental Bank – File No. 200600098.

Encl: Figures (6)

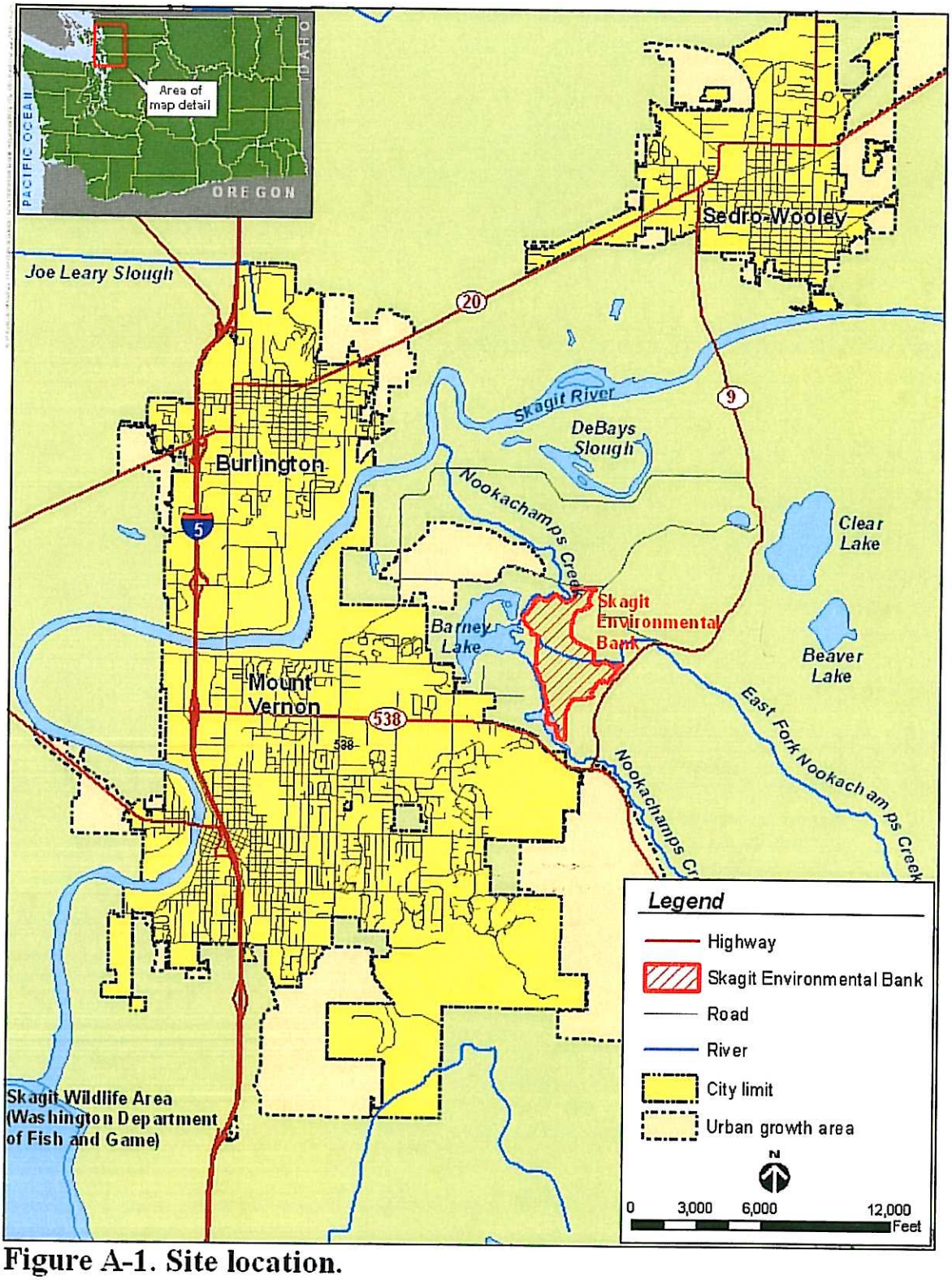


Figure A-1. Site location.

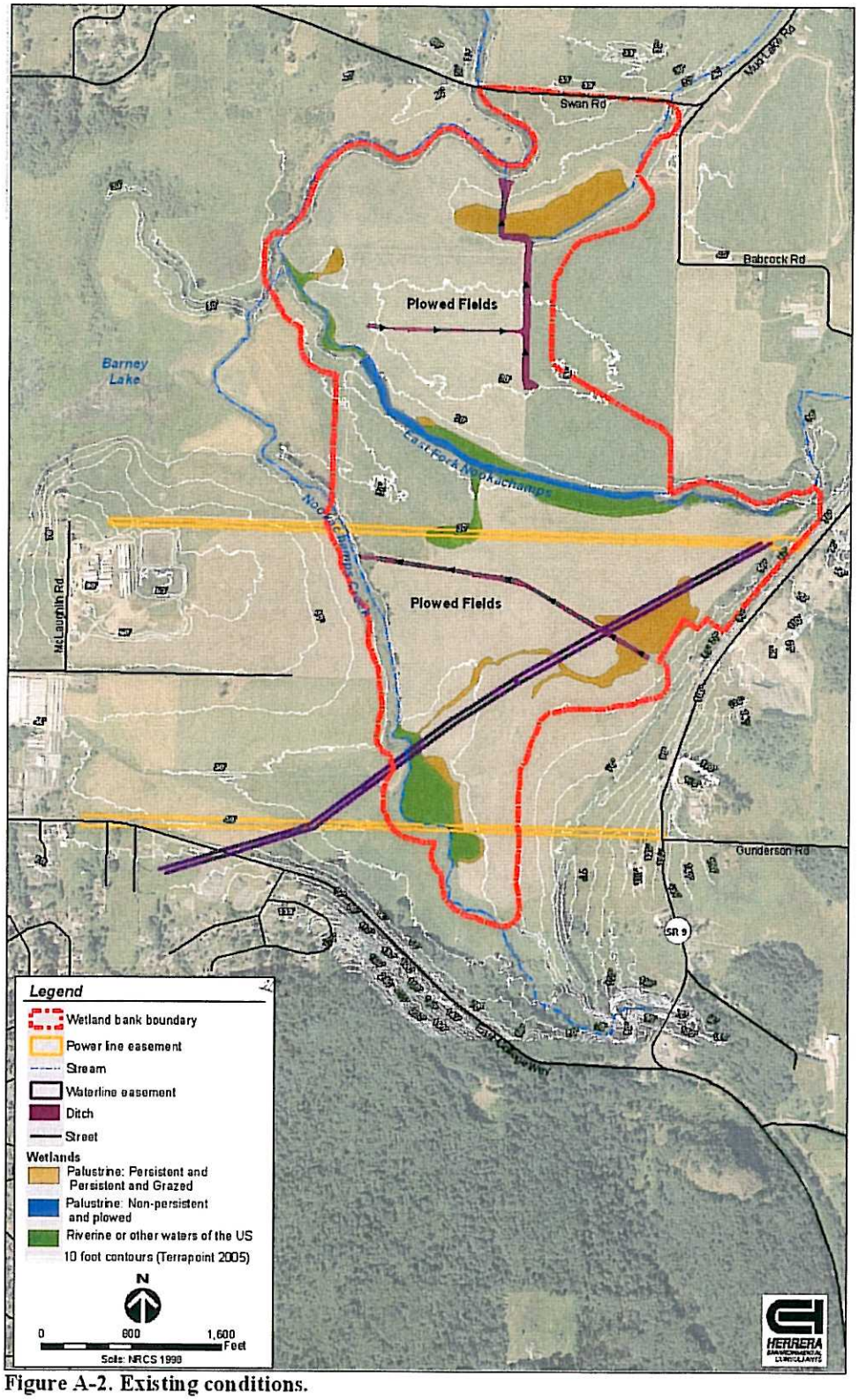
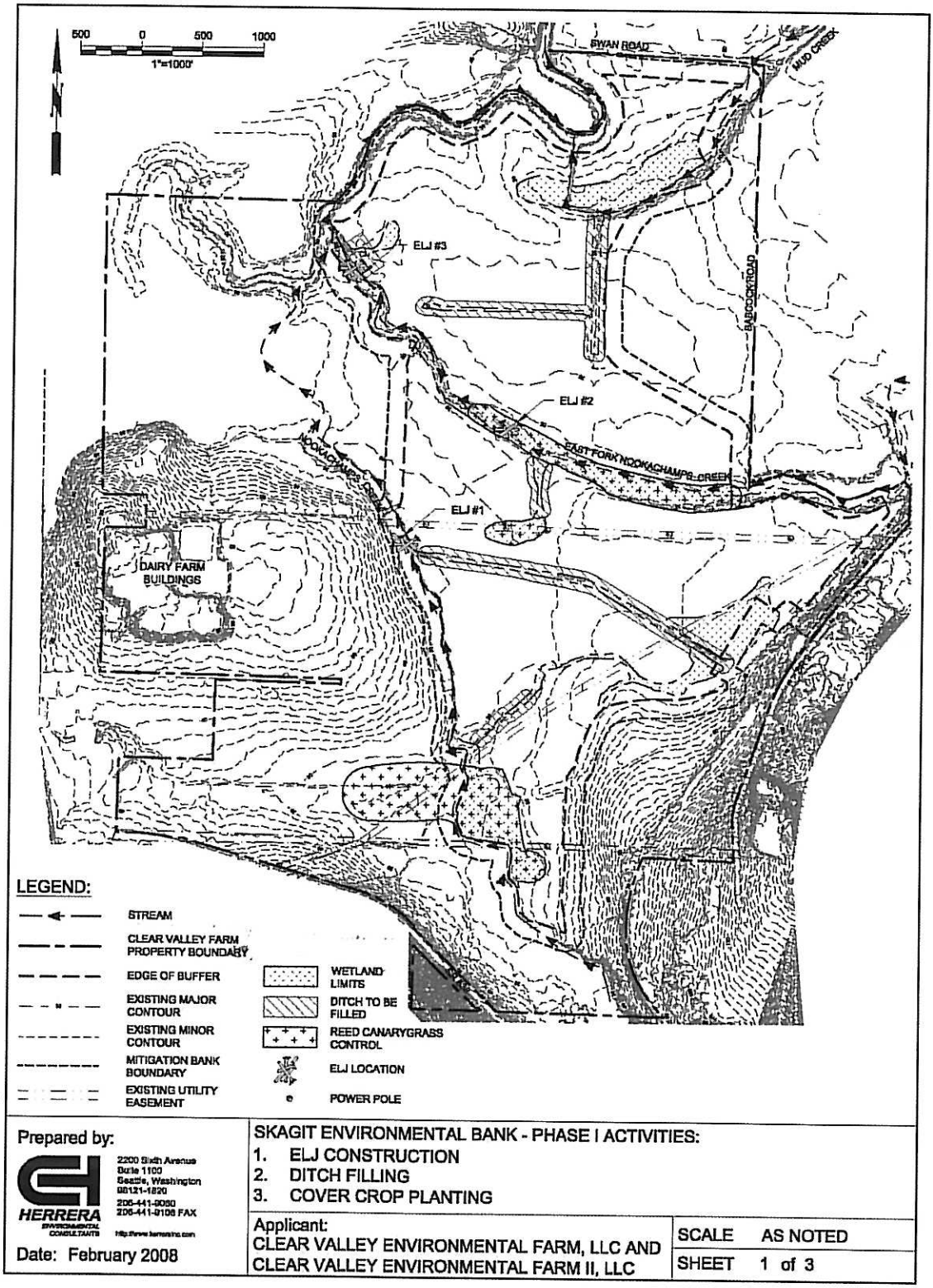


Figure A-2. Existing conditions.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BYAN ROAD
MUD CREEK
ELJ #3
BABCOCK ROAD
ELJ #2
EAST FORK NOOKACHAMPS CREEK
NOOKACHAMPS CREEK
ELJ #1
DAIRY FARM BUILDINGS
LEGEND:
STREAM
CLEAR VALLEY FARM PROPERTY BOUNDARY
EDGE OF BUFFER
EXISTING MAJOR CONTOUR
EXISTING MINOR CONTOUR
MITIGATION BANK BOUNDARY
EXISTING UTILITY EASEMENT
WETLAND LIMITS
DITCH TO BE FILLED
REED CANARYGRASS CONTROL
ELJ LOCATION
POWER POLE
Prepared by:
HERRERA ENVIRONMENTAL CONSULTANTS
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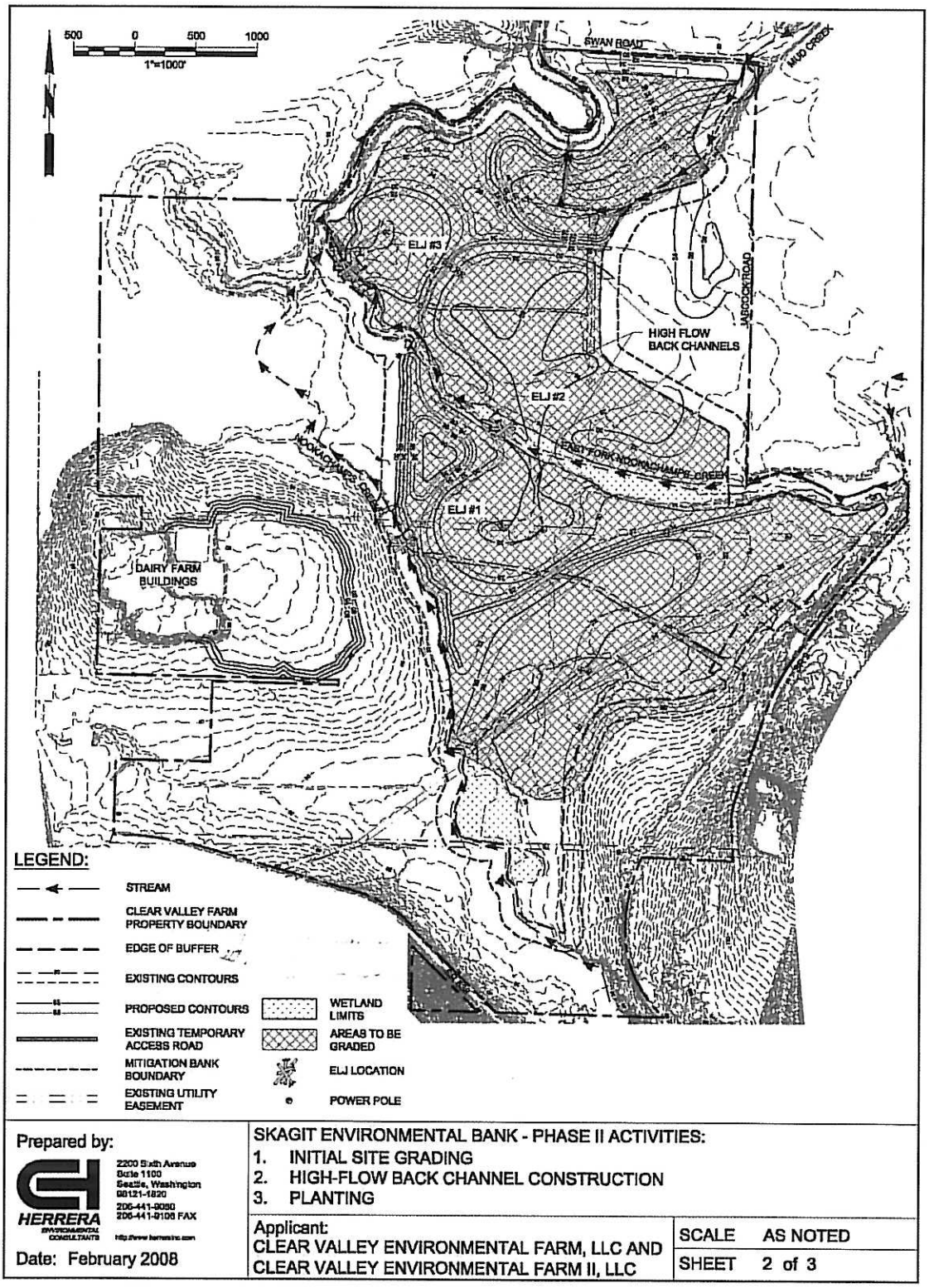
Suite 1100
Seattle, Washington
98121-1820
206-441-9080
206-441-9106 FAX
http://www.herrerainc.com
Date: February 2008
SKAGIT ENVIRONMENTAL BANK - PHASE I ACTIVITIES:
1. ELJ CONSTRUCTION
2. DITCH FILLING
3. COVER CROP PLANTING
Applicant:
CLEAR VALLEY ENVIRONMENTAL FARM, LLC AND
CLEAR VALLEY ENVIRONMENTAL FARM II, LLC
SCALE AS NOTED
SHEET 1 of 3

Figure B-1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MUD CREEK
ELJ #3
HIGH FLOW BACK CHANNELS
JASCOCK ROAD
ELJ #2
EAST FORK NOOKACHAMPS CREEK
ELJ #1
DAIRY FARM BUILDINGS
LEGEND:
STREAM
CLEAR VALLEY FARM PROPERTY BOUNDARY
EDGE OF BUFFER
EXISTING CONTOURS
PROPOSED CONTOURS
EXISTING TEMPORARY ACCESS ROAD
MITIGATION BANK BOUNDARY
EXISTING UTILITY EASEMENT
WETLAND LIMITS
AREAS TO BE GRADED
ELJ LOCATION
POWER POLE
Prepared by:
HERRERA ENVIRONMENTAL CONSULTANTS
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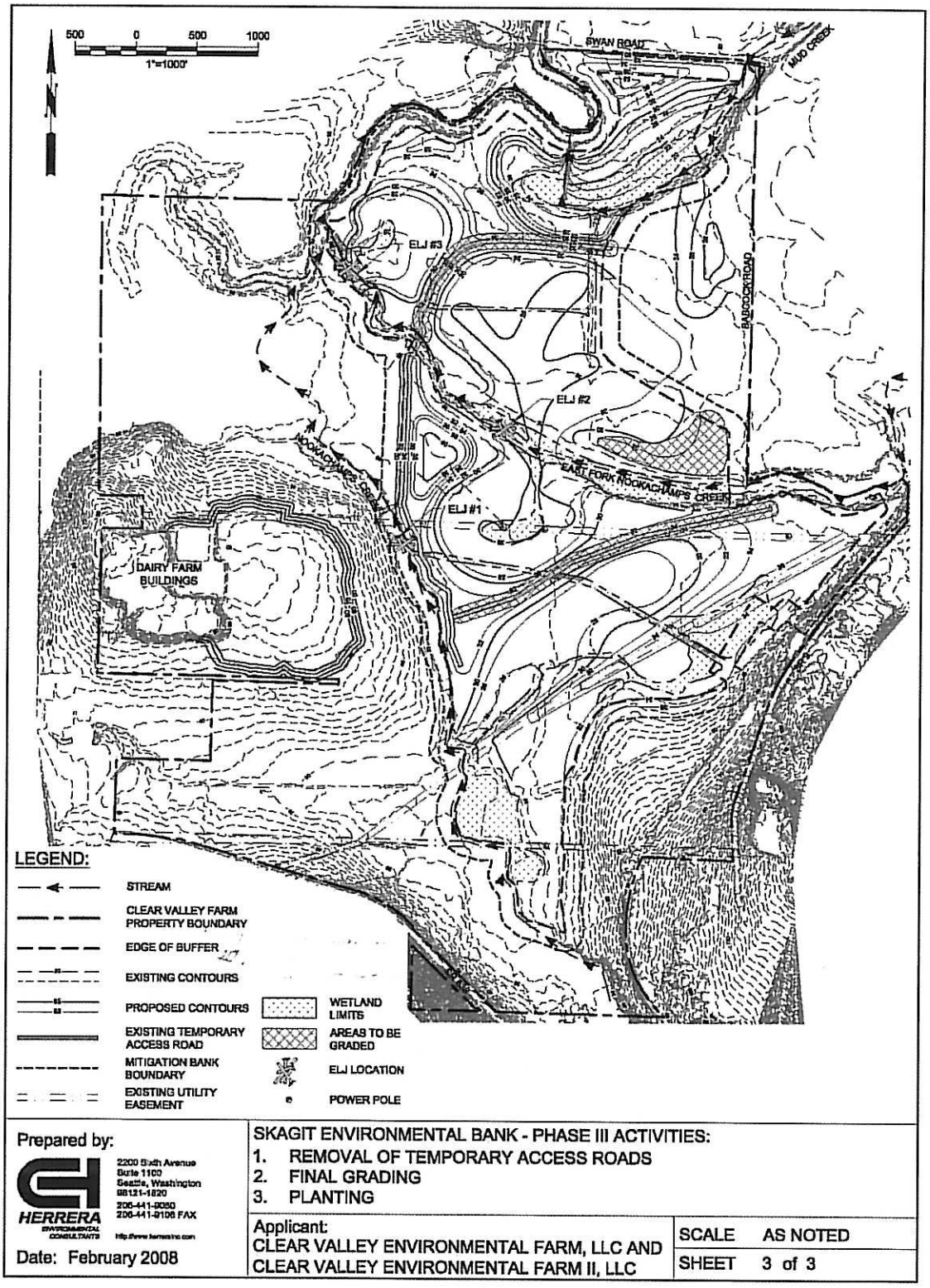
Suite 1100
Seattle, Washington
98121-1820
206-441-9080
206-441-9106 FAX
Date: February 2008
SKAGIT ENVIRONMENTAL BANK - PHASE II ACTIVITIES:
1. INITIAL SITE GRADING
2. HIGH-FLOW BACK CHANNEL CONSTRUCTION
3. PLANTING
Applicant:
CLEAR VALLEY ENVIRONMENTAL FARM, LLC AND
CLEAR VALLEY ENVIRONMENTAL FARM II, LLC
SCALE AS NOTED
SHEET 2 of 3

Figure B-2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SWAN ROAD
MUD CREEK
ELJ #3
BABCOCK ROAD
ELJ #2
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EXISTING TEMPORARY ACCESS ROAD
MITIGATION BANK BOUNDARY
EXISTING UTILITY EASEMENT
WETLAND LIMITS
AREAS TO BE GRADED
ELJ LOCATION
POWER POLE
Prepared by:
HERRERA ENVIRONMENTAL CONSULTANTS
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Seattle, Washington
98121-1820
206-441-9060
206-441-9106 FAX
Date: February 2008
SKAGIT ENVIRONMENTAL BANK - PHASE III ACTIVITIES:
1. REMOVAL OF TEMPORARY ACCESS ROADS
2. FINAL GRADING
3. PLANTING
Applicant:
CLEAR VALLEY ENVIRONMENTAL FARM, LLC AND
CLEAR VALLEY ENVIRONMENTAL FARM II, LLC
SCALE AS NOTED
SHEET 3 of 3

Figure B-3

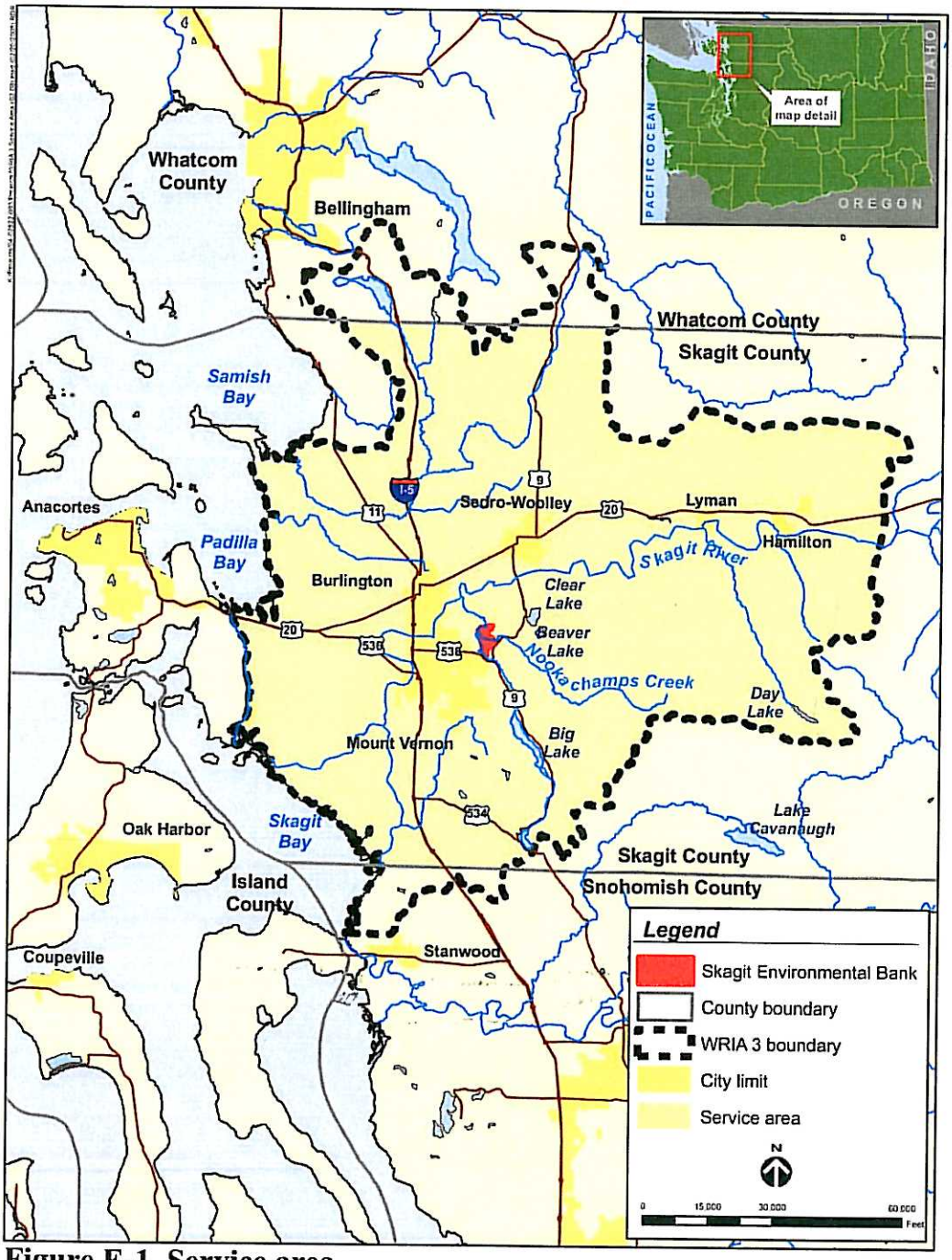

Figure E-1. Service area.