

**Larry Kunzler comments to the Hearing Examiner on the
SKAGIT COUNTY PLANNING AND DEVELOPMENT SERVICES
FINDINGS OF FACT re the Shoreline Substantial Development Application PL12-0191**

HEARING AUTHORITY: Skagit County Hearing Examiner

HEARING DATE: April 24, 2013 **Skagit County Hearing Examiner Notice of Public Hearing for 9 AM, Wednesday, April 24, 2013**

COMMENTS SUBMITTED: April 22, 2013

APPLICATION NUMBER: Shoreline Substantial Development Application PL12-0191

APPLICANT: Skagit County Dike, Drainage and Irrigation District No. 12

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OPENING COMMENT:

First my apologies to the Examiner for not being able to testify at this hearing because of circumstances described below I did not learn of the hearing until last Friday and have already made work commitments that I cannot cancel.

As the Examiner I'm sure remembers from the hearings on the Cascade Mall, I have been involved with the Skagit River flood issue for many years. I have served on the on the Skagit River Flood Control Advisory Committee, the State Department of Ecology Floodplain Management Advisory Committee, the Washington State Legislative Joint Select Committee on Flood Damage Reduction, as an advisor to the Skagit River Impact Partnership, and currently serve as an at-large member to the Skagit County Flood Control Zone District Advisory Committee. I also publish a web page at www.skagitriverhistory.com where many of the issues discussed herein are supported by appropriate documentation. I have included an electronic copy of this document in order to assist the Examiner in reviewing the hyperlink embedded within this document. I strongly urge the Examiner to query the site for any assistance it can render in helping the Examiner make an informed decision concerning this application.

It is with a great sense of personal outrage that I submit these comments to the Honorable Hearing Examiner regarding the above listed permit application. If anything personifies the "sleaze factor" in Skagit County it is this application, not only for the way it has been hidden from the current flood committee but how over the years DD12 has conducted itself as a "outlaw government entity" in conjunction with the Burlington City Planning Department and evidently now the Skagit County Planning Department.

On or about February 25th of this year, I met with the Planning Dept. representative and asked to see all active files regarding permits for Dike District 12 ("DD12"). All I was given was a file on a project to raise the levees adjacent to Puget Sound. I asked and I was told emphatically that there were no other files regarding the application for any permits. Clearly by the Exhibits listed in the Findings of Facts this permit application was **submitted and active from July 9th 2012**. I did not learn of this hearing or permit application until last Friday, April 19th. Thus I, and for that matter the general public at large has been denied a full and complete opportunity to review this permit application and provide appropriate comments. This despite the fact that at the last meeting before the Skagit County Flood Control Zone District Advisory Committee ("FCZD") on April 13th, a discussion ensued about the illegal activities of the DD12 permit history and the DD12 attorney was

publically asked about DD12 permits and the response we received was “I can’t comment on that.” Thus the members of the FCZD committee were not given notice of this hearing nor an opportunity for public discussion amongst themselves. Ironically, there was a discussion about how the public needs to be told the truth about the flooding situation in Skagit County. That truth is that the severity of the flooding of the Skagit River in the lower valley is not an Act of God but an act of DD12 (See **The Realities of Flood Control in Skagit County**) and their illegal practices of putting fill in the floodway of the Skagit River (raised their levees along Whitmarsh Road 4 feet without any permits), fill from their keyway projects placed on the riverward side of the levees (i.e. floodway). Their illegal activity that the DD12 commissioners even boast about at public meetings, “Yeah we never do improvements; all we do is maintenance, ha ha ha.” In conjunction with the Burlington City Planning Department and now evidently the Skagit County Planning Department the DD12 is trying to legitimize their complete trashing of the Shoreline Management Act and their illegal activities in the past. I strongly urge the Examiner to review the past permitting (or the lack thereof) history of the DD12. I would ask the Examiner to take judicial notice of the requirement in WAC 197-11-800(3)(c) wherein it states in part

Repair/rebuilding of major dams, dikes, and reservoirs shall also not be considered exempt under this subsection. (Emphasis added.)

PROJECT LOCATION

The area subject to the proposed shoreline stabilization and flood protection improvements is located along the right (north & west) bank of the Skagit River extending from Lafayette Road in the North to Gardner Road in the South, East of Burlington, Washington, within Section 4, Township 34 North, Range 4 East & Section 33, Township 35 North, Range 4 East, W.M., Skagit County, WA.

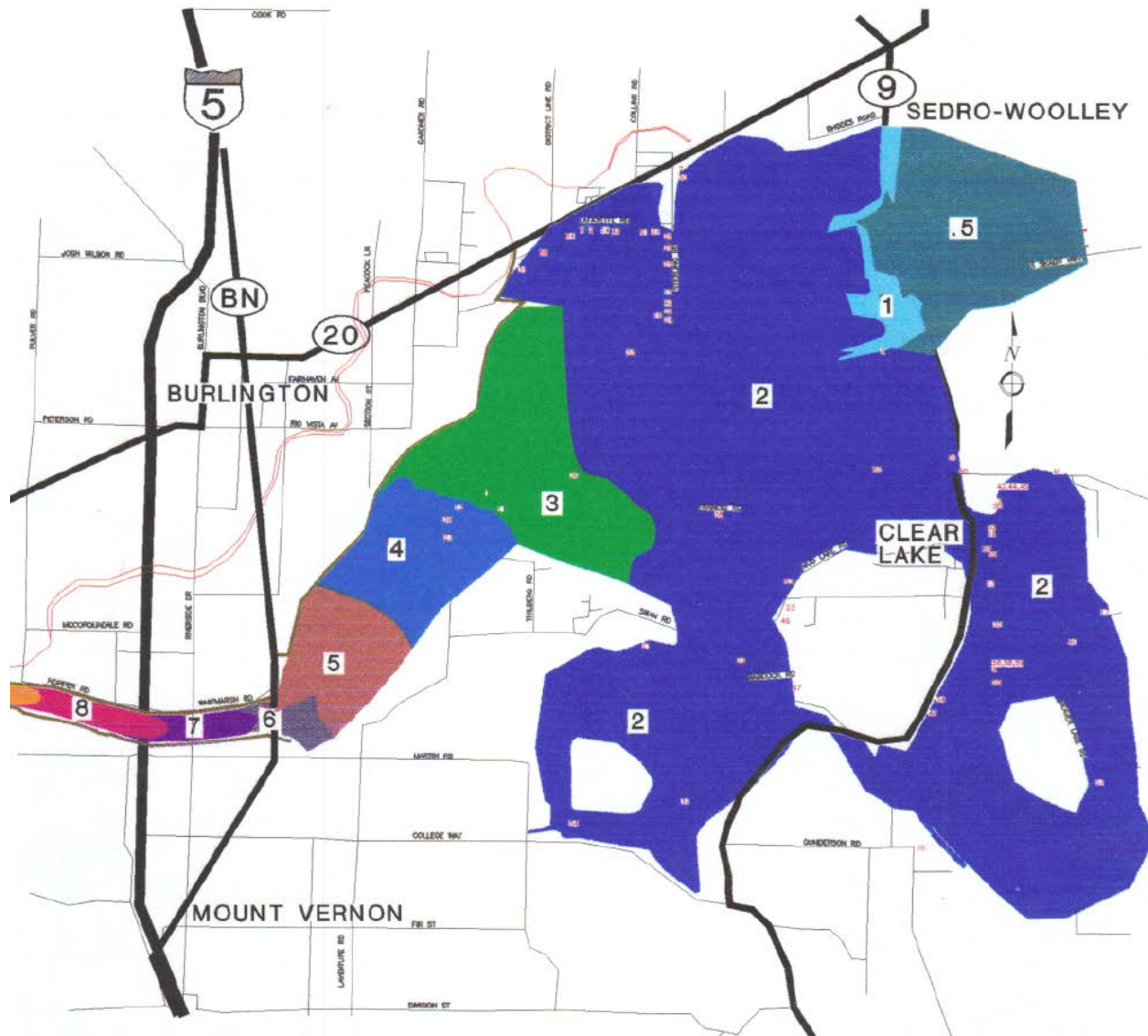
PROJECT DESCRIPTION

This project is an eastern extension of the levee maintenance project initiated by the City of Burlington, and Skagit County Dike, Drainage and Irrigation District No. 12, intended to increase flood protections for the City of Burlington. Skagit County Dike, Drainage and Irrigation District No. 12 propose to enlarge both the width and the height of the existing Skagit River levee along the 1.53 mile long project site. The project extends from the Burlington City limits at Gardner Road north to the terminus of the Burlington Northern Santa Fe Railroad on Lafayette Road in the North. The elevation at the top of the levee will be increased by approximately 4 feet in height and the toe

or base of the levee will be increased by approximately 60 feet in width. The widening of the dike will be limited to an area landward of the existing levee toe. The purpose of the **improvements** is for structural reinforcement of the levy system to prevent a failure during elevated flood events.

Below is a graphic summary prepared by Skagit County and the Corps of Engineers hydraulic consultant (nhc) on the impacts of the current levee system on upstream property owners.

GRAPHIC SUMMARY OF INCREASES IN 1990 FLOOD LEVELS DUE TO LEVEE SYSTEM



The numbers represent the amount in feet of ADDITIONAL water the levee system described above currently artificially stores upstream. This artificial storage impacts not only the Nookachamps/Sterling/Clear Lake/Sedro-Woolley communities but is responsible for pushing floodwaters over Highway 20 to the North and thus flooding the old natural channel of the Skagit River, Gages Slough which as you can tell from the graphic below is several hundred yards wide, high ground to high ground.



(Source: 12/1982 **Dames & Moore Report**)

SITE DESCRIPTION

This section of the existing levee is constructed on an alluvial terrace and runs along the outer bend of an elongated meander of the Skagit River. Bank erosion continues along this reach of the river and has progressed to the base of the levee on the north end. Rock has been placed at the waterward toe of the levee at this location to prevent further erosion and encroachment into the levee prism.

COMMENT: What the above Site Description fails to inform the Examiner is that the entire location of the proposed project sits atop volcanic lahars. (See 11/2010 **DRAFT Skagit River Flood Risk Reduction Study, Environmental Without-Project Condition Report** and **Figure 4** of Report on Mount Vernon Flood Protection Project Geotechnical Assessment, Mount Vernon Washington)

Environmental Setting

The Skagit River watershed supports the Puget Sound's largest populations of naturally reproducing salmon and steelhead trout, and has been identified as a core watershed for the recovery of Endangered Species Act-listed Chinook salmon, steelhead, and bull trout. The assessment reach is utilized by recreationalists such as boaters and fisherman.

The area water ward of the proposal provides habitat for the Chinook salmon, steelhead trout, and bull trout including adult and juvenile migration in the channel; juvenile rearing along the channel margins; spawning habitat, and refuge habitat in riparian forests during high flow events. Habitat conditions for terrestrial species are primarily dominated by forest plant communities with the exception of small scale farms, roads, and residences. Bald eagles perch on suitable-sized trees along the riparian corridor and feed on salmon within the project area.

EXHIBITS:

1. Departmental Staff report.
2. Shoreline Substantial Development/Conditional Use application PL12-0050 submitted July 9, 2012.
3. Skagit County Assessor's Parcel & Tax Account Number list for PL12-0191.
4. Site Plans.
5. Notice of Development Application, published November 22 & 29, 2012.
6. SEPA Final EIS issued July 16, 2010 by the City of Burlington.
7. Wetland Site Assessment Report by Graham Bunting Associates, dated November 8, 2012.

8. Fish and Wildlife Site Assessment Report by Graham Bunting Associates, dated February 27, 2013.

COMMENTS RECEIVED

9. A comment letter was received from Dike District No. 20, dated January 2, 2013, indicating that the addition to the height of the levee at the proposed location will result in increased flood levels in the Nookachamps Drainage.
10. A comment letter was received from DeVries Dairy, dated January 2, 2013, indicating that the addition to the height of the levee at the proposed location will result in increased flood levels in the Nookachamps Drainage.

COMMENT: The fact that as of the original publication of the “Findings of Fact” the Planning Department on received two “Comments” should add to the creditability of the statements earlier referring to the way this application has been handled as “sleazy”. DeVries Dairy and Dike District #20 are one of the same so in reality they only received one comment. When a project of this magnitude will impact hundreds of people and communities one comment should certainly be suspect to the Examiner.

GENERAL PROPERTY/PROJECT INFORMATION:

- **PARCEL #:** P38223, P38305, P38304, P38302, P38307, P38220, P38308 & P38303
- **DEVELOPMENT SCHEDULE** – Skagit County Dike, Drainage and Irrigation District No. 12 has completed some of the actions by placing some fill on the landward side of the dike. The remainder of the grading project will be completed during the spring, summer and early fall of 2013.

COMMENT: The fact is that DD12 got caught putting fill in the floodplain in the below newspaper article without a permit and decided it was time to apply for a permit, something they clearly in the past were not used to doing.

County could ask cities, dike districts for money to advance flood study

County being asked to come up with \$150,000 this year, \$600,000 next year

By KATE MARTIN Staff Writer



Scott Terrell / Skagit Valley Herald Workers spread part of about 50,000 cubic yards of fill along an existing levee Wednesday along the Skagit River, east of Gardner Road. The Dike District 12 project is being done now so that the fill will be on hand to shape the dikes along the river in the future.

- **PROJECT ACCESS** – The project is served by access off of Gardner Road or Lafayette Road.
- **PROJECT TRAFFIC AND PARKING** – No additional traffic or parking should occur as a result of the improvements. Temporary traffic delays may be necessary during construction of the expanded levee.
- **SURROUNDING LAND USE** – Current use of the adjacent properties is dominated by residential properties, agriculture, and natural areas such as the riparian corridor along the Skagit River. The land adjacent to the project site is designated by the Skagit County Comprehensive Plan as Agriculture - Natural Resource Land.

- **AESTHETIC IMPACTS** – The improvements are located on the shoreline of the Skagit River. Some aesthetic impacts are anticipated as a result of increasing the size of the levee. This may alter the visual character of the shoreline until the riparian areas recover.

DEPARTMENTAL FINDINGS:

1. **ZONING/COMPREHENSIVE PLAN.** The subject property is designated as Agriculture - Natural Resource Lands as indicated on the Comprehensive Plan and Zoning maps adopted December 23, 2008, and as amended thereafter. The subject site has a shoreline designation of Rural as indicated in the Skagit County Shoreline Management Master Program (SCSMMP). The Skagit River is a Shoreline of Statewide Significance.
2. **PROCESSING.** A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on November 22 & 29, 2012 as required by Section 14.26.9.04 of Skagit County Code. Notification was provided to all property owners within 300 feet of the subject property. There was a 30 day comment period associated with the Notice of Development which ended on December 28, 2012. **Two comment letters were received, see exhibits 9 & 10.**
3. **STATE ENVIRONMENTAL POLICY ACT.** A Determination of Significance (DS) was issued by the City of Burlington and a draft environmental impact statement (DEIS) was completed on Feb 13, 2009 for the dike stabilization project. The Final Environmental Impact Statement (EIS) was issued on July 16, 2010. The final EIS is included as **Exhibit 6.**

COMMENT: Exhibit #6 is the **Final Environmental Impact Statement/FEIS To Adopt A Strategic Program for Comprehensive Flood Hazard Mitigation.** In my personal opinion the document was one of the greatest insults to the planning community and SEPA ever prepared. I personally submitted a 20 page document of comments regarding the DEIS. Responses to my comments alone were not only an attempt to mislead the reviewer but a flat out lie. Example: See my comment and picture on page #121 of the FEIS, page #14 of my letter. Clearly I was talking about the 4 feet of fill placed in the floodway of the Skagit River, **riverward of the old levee along Whitmarsh Road.** In the FEIS on page #39 addressing that concern it was reported that I was talking about rocks along the Whitmarsh levee. In my opinion, these untrustworthy scoundrels cannot be trusted to comply with the requirements of SEPA and personify the sleaze factor in Skagit County. Again in my opinion it does not matter whether it is Dike District commissioners, planners, Shoreline Administrators or even the attorneys representing them, they cannot be trusted. What kind of a person would flood someone else with their floodwater? What

kind of people put an additional 60,000 plus cfs (6 feet or more) to travel downriver so other communities have to spend millions on a floodwall to protect themselves from DD12's water? What kind of people raise their existing levees 4 feet knowing that it will impact upriver communities by at least another 2 feet of water as well as prolong the volume of water into the Samish Basin? What kind of people indeed!! Almost this exact same project was proposed in 1979. Even the residents of Burlington voted it down. ([See 1979 Levee Improvement Project Historical Index](#) in general and specifically [11/7/79 SVH](#) article titled [Decisive defeat at the polls – Flood control future unclear](#). Voters in Burlington voted it down by a 65.9% vote. Countywide the voters turned down the project by a 71.4% no vote. But evidently the DD12, shoreline administrators and planners don't care about what voters want presumably because they know what's best for "their people" and the hell with who their project hurts.

4. **FLOOD AREA REVIEW.** The existing levee is located within an A7 flood zone which is designated as a 100 year flood area as indicated on FIRM Community Panel Number 530151 0235D, effective September 29, 1989, and Panel Number 530151 250C, effective January 3, 1985.

5. **CRITICAL AREA REVIEW:** The subject parcel was reviewed with respect to the Skagit County Critical Areas Ordinance, Chapter 14.24 of the Skagit County Code. The results of the critical areas review indicated that critical areas/conditions were on or within 200 feet of the proposed development, which include wetlands and fish & wildlife habitat conservation areas. The applicant submitted a wetland site assessment report by Graham Bunting Associates, dated November 8, 2012, a fish and wildlife site assessment by Graham Bunting Associates, dated February 27, 2013, and a Biological Assessment by Anchor QEC, LLC, dated October 2009. (The biological assessment is specific to the three bridge corridor south and west of the subject site. Although the study was limited to the three bridge corridor).

The assessments indicate that the proposed improvements were determined to be in compliance with Skagit County's Critical Areas regulations. Additional critical areas compliance and environmental protections are provided under the provisions of SCC 14.24.040 (3), Jurisdictional Substitution with the United States Army Corps of Engineers.

COMMENT: For many years now I have maintained that FEMA designated the levees from the landward toe of the levee to the landward toe of the levee as areas that should be treated as floodways which would necessitate them being classified as critical areas. I tried again in my 20 page letter of comments on the DEIS for this project. Once again to no big surprise that effort was not properly addressed. I would call the Examiners attention to the following documents:

12/1982	<u>Dames & Moore Report</u>	100 year flood determined to be 240,000 cfs at Sedro-Woolley. 110,000 cfs assumed to stay in channel. 130,000 cfs assumed to flow overland. Assumed 86,000 cfs flowing to Padilla Bay and 44,000 cfs flowing to Skagit Bay via the Samish basin. I-5 will ultimately be overtopped. Used Mannings "n" values of .045 to .06. Recommended 10% of floodplain could be developed using density floodway method until flood waters would be raised 1 foot.
2/1/1984	<u>FEMA letter re denial of appeal filed on Burlington FIS</u>	This letter explains why the appeal of the Burlington FIS was denied by FEMA. Regulations only require FEMA to use available topographic data. Lands within and including the Skagit River levees were designated as floodways. Unlikely that historical depth of floodwaters would be repeated.
11/08/1984	<u>Transcript of Burlington City Council Meeting November 8, 1984</u>	“Lastly there is the FLOODWAY which in the case of Burlington is only the area that runs landward of the dike by fifty feet. When you’re landward of the dike and your looking towards the river essentially nothing can be built from that distance to the river.” (Steve Ladd, City Planner)

I will give appropriate kudos to the writers of the FEIS for at least one section wherein they stated on page 13:

The 1984 Flood Insurance Study stated “...for the Skagit River proper, **the levees confining the channel and adjacent areas have been designated as floodways,**” **using the most landward levees** to establish the floodway boundary.

“Conventional floodways are not appropriate for the Skagit River delta area for a number of reasons. Although flood elevation and depth criteria can be established for the delta based upon general flood risk assessments which consider possible modes and locations of levee failure in flow path computations, such analyses are not appropriate for establishing floodways on the delta. Unlike typical valley situations, the exact location of flow paths during any particular flood event on the delta cannot be known in advance due to the uncertainty of where levee failures will occur, the relative sequence of levee failures, and the volumes of flow that will result. Likewise, because of the topographic nature of the delta, flooding occurs in sheet flow patterns and no one particular

flow path is inherently more efficient than other possible alternatives, making the selection of a floodway location highly arbitrary.”

“Therefore, it is recommended that all communities with land use jurisdiction on the delta assume a responsibility to maintain flow paths for floodwaters in order to minimize backwater effects which may increase flood levels. Suggested measures include design of new roads and streets to be at grade in order that obstructive fills not be placed perpendicular to local flow paths, preservation of swale areas, and existing drainage channels such as Gages Slough, and a minimization of development density in currently zoned agricultural areas.”

Regarding a floodway designation in Burlington, FEMA helped with a compromise in 1984, which was to designate Gages Slough a “Special Flood Risk Area,” having a ground elevation which is three feet or more below the 100-year floodplain elevation. In addition, FEMA included as floodway, areas lying within 300 feet of the landward toe of the levee. (Emphasis added.)

So the levees AND 300 feet from the landward toe of the levee were designated as “floodway” which prohibits fill, so *how* can the Examiner allow this project to go forward when the project is asking to put 4 feet of “fill” on top of the levee and add 60 feet of “fill” to the landward toe of the levee? I do not believe that either proposal conforms to the letter of the law and therefore urge the Examiner to deny the permit.

6. **HEALTH DEPARTMENT REVIEW:** The application was routed to the Skagit County Health Department for review. The Health Department commented “WAC 173-200 & 173-201A shall be observed. As long as staging/fill areas and work do not impact any septic & wells we have no concerns. SCC 14.24.330 2 (a) requires a narrative memo that no wells are in the area that could be impacted.” The Health Department requested that the following condition be added to the staff report: If the demolition of any buildings occurs that discovers septic systems, DF/tanks, septic lines or pipes under the proposed project area, then the contractor shall call SCHD to obtain decommissioning approval. Any wells GB-1 to GB-9 impacted or removed from the project site shall be decommissioned per state WAC.

7. **PUBLIC WORKS DEPARTMENT REVIEW:** Public Works commented “The proposed project will need to comply with section 14.32.060 of the Skagit County Code. This section deals with erosion and sediment controls. A grading permit is required.”

COMMENT: I would ask the Examiner to determine who in the Public Works Department made this comment? The Public Works Dept. works directly with the FCZD and at no time did the department ever bring this subject up for discussion.

8. **CURRENT PLANNING REVIEW:** Current Planning staff had no comment on the project.

COMMENT: Really? Current Planning staff had no comment? One has to wonder if that is because they know how badly the Burlington City Planning Dept. and DD12 have trashed the SMA in the past?

9. **BUILDING OFFICIAL/FLOODPLAIN MANAGER REVIEW:** The Building Official comments: A grading and floodplain permit will be required. If the construction results in modification of the regulatory floodplain, first a CLOMR and then a LOMR will be required.

COMMENT: This would be the same floodplain manager who told me in February that there were not any other open files on permits for DD12?

10. **FIRE MARSHAL REVIEW:** The Fire Marshal did not have any comments on this project.

11. **SHORELINE MANAGEMENT MASTER PROGRAM CRITERIA:** Skagit County’s SMMP, SCC 14.26, indicates that SMMP policies and regulations will be reviewed when approving or denying Shoreline permits. The proposed improvements are located within a Shoreline of Statewide Significance. Chapter 5.03 Shoreline of Statewide Significance, Chapter 7.06 Landfills, and Chapter 7.16, Shoreline stabilization and Flood Protection were all reviewed with respect to the project and found to be in general compliance. Comments to Chapter 7.16 are as follows:

Shoreline Stabilization and Flood Protection – Policies – General, 7.16, 1A.

- (1) Streamway modification and marine diking programs should be coordinated and monitored to provide for more comprehensive planning of Skagit County’s Shorelines.

Streamway modification and marine diking is not included within the project proposal. However, increasing the dike height may result in minor modification of the Skagit River hydrology during elevated flood events. This project has been coordinated between Dike District 12 and the City of Burlington. The proposal is not considered a coordinated response or an approved mitigation measure for flooding prescribed by the members of the Skagit River General Investigation. The proposal is solely designed to modify the existing diking system on the north and west side of the Skagit River in order to provide shoreline stabilization and greater flood protection to the City of Burlington.

COMMENT: Since this project so closely resembles the Corps of Engineers 1979 levee project at a minimum the increased dike height would result in at least 1.5 to 2 feet of water upstream of the project. Two more feet of water on top of the water the DD12 people are already “storing” upstream on property is at least 12 feet higher than downtown Burlington. How can these people sleep at night? What government agency wants to say that putting water into an 89 year old grandmother’s house is okay with them? To date that would be DD12, Burlington Planning Department and now evidently the Skagit County Shoreline Administrator.

- (2) Recognizing that streamway modifications may cause interference with normal river geohydraulic processes that may lead to erosion of other up and down river shorelines, then such modifications and stabilization measures should incorporate basic geohydraulic principles and be located, designed, coordinated and maintained for homogeneous river reaches. Such modifications and measures should be sited and designed by qualified, professional personnel.

This project was designed by the engineers of Pacific International Engineering utilizing geohydraulic principles in design and construction. Although hydraulic modeling of the proposal indicates that upstream and downstream impacts may occur during elevated flood events, Dike District 12 and the City of Burlington utilized designs that will minimize those impacts. The proposal is also required to comply with the Flood Damage Prevention Ordinance SCC 14.34.

COMMENT: And so with the knowledge that the project has adverse impacts on upstream and downstream property owners the Shoreline Administrator thinks it’s okay? Did they go upstream and downstream and ask the property owners if it was okay with them? Somehow I really doubt it because they would have had more than one comment letter.

Shoreline Stabilization and Flood Protection – Policies – Design and Location, 7.16, 1B.

- (1) All bank stabilization and flood protection measures should be constructed to comply with the design and location standards and guidelines of applicable agencies.

The project has been designed according to the United States Army Corps of Engineers (USACE) guidelines, designs and standards in an effort to receive levee certification. The proposal is also required to comply with the Flood Damage Prevention Ordinance SCC 14.34.

- (2) Riprapping and other bank stabilization measures should be located, designed, and constructed primarily to prevent damage to agricultural land, public roads and bridges, existing homes and residential areas, or other structures or natural features whose preservation is in the public interest. Such measures should not restrict the flow of the river or stream.

Although riprapping is not proposed, the bank stabilization project is located and designed to minimize impacts from the Skagit River to the City of Burlington during flood events. Hydraulic modeling completed by Pacific International Engineering indicates the proposal should not result in significant adverse impacts to areas upstream or downstream of the subject site.

COMMENT: Who is it that defines significant? PIE? Wouldn't that be the private consultant who cost the County millions of dollars only to have not a single federal agency accept their hydrology? Why now is Skagit County accepting their work? Is the Planning Department not in sync with the County Commissioners or the Public Works Department? I would urge the Examiner to review the Corps of Engineers Internal Audit Report dated September 2002. (**See Memorandum thru Deputy Commander, Seattle District for Commander, Seattle District re: IR Audit Report NWS-IR 2002-09.**)

- (3) **Fish and Wildlife Resources** - Recognizing the value and interdependency of water bodies and associated wetlands as biologically productive habitats and recognizing the intent of the Shoreline Management Act (RCW 90.58.030(2) and WAC 173.22.030, shoreline stabilization and flood protection projects should be located landward of natural wetlands, marshes, and swamps of associated fresh and marine water bodies.

The shoreline stabilization project is not located within wetlands, marshes or swamps. However, the hydraulic model generated by the City of Burlington and Dike District 12 indicates that some impacts to wetlands located downstream and across the river may receive some additional flooding during a elevated flood event. It is not anticipated that the additional flood waters will have a significant adverse impact to the wetlands.

- (4) Braided and meandering channels and associated shoreline areas should not be the locations for intensive land use developments such as those of an industrial, commercial, or residential nature.

With the exception of existing farmworker housing and urban residential development within Burlington City limits, This proposal is not directly associated with intensive land use developments.

COMMENT: OMG!! I can't believe, with all that has been said in this staff report that the planner who wrote this still has a job. This proposal is not directly associated with intensive land use development? Why do they need it then?

- (5) Substantial stream channel direction modification, realignment, and straightening should be discouraged as a means of shoreline and flood protection and for protection of road rights-of-way, navigational routes, and other construction or developmental projects.

The project does not include provisions for stream channel direction modification, realignment and straightening.

COMMENT: What does a levee 4 feet higher do except change the direction of the stream channel flood waters and send them where God never intended them to go?

Shoreline Stabilization and Flood Protection – Policies – Materials, 7.16, 1C.

- (1) Shoreline stabilization and revetment material should consist of substantial rock and should meet the standards and guidelines of the Soil Conservation Service.

The project proposes to utilize glacially derived fill material sufficiently well sorted, ranging from fine to coarse, to function as a hydraulic barrier and meet the Army Corp of Engineering standards and guidelines for geotechnical construction of the diking system.

- (2) Junk and solid waste should not be permitted for shoreline stabilization and revetment material. Concrete and concrete waste should not be used as stabilization and revetment material.

Concrete, junk and solid waste, including concrete waste, are not proposed to be utilized in project construction.

- (3) Shoreline stabilization programs should utilize natural, perennial vegetation either as stabilization material alone or as complementary to other materials.

Consistent with diking practices in Skagit County, the dike will be reseeded with grass and maintained. Perennial vegetation maybe used in areas that do not conflict with ongoing dike maintenance.

Shoreline Stabilization and Flood Protection – Policies – Natural Features, 7.16, 1D.

- (1) Natural features such as snags, stumps or uprooted trees which support fish and other aquatic systems, and do not intrude on the navigational channel or reduce flow, and do not threaten agricultural land and existing structures and facilities should be allowed to remain.

No snags, stumps and uprooted trees are currently located within the proposed improvement area. The area east and south of the existing dike, adjacent to the Skagit River will remain in its current configuration. Any snags, stumps or uprooted trees occurring at or near the OHWM will not be removed.

Shoreline Stabilization and Flood Protection – Policies – Alternatives, 7.16, 1F.

Shoreline stabilization programs should be encouraged to develop alternative methods of streamway modifications utilizing natural systems of stabilization and geohydraulic principles.

The project does not include provisions for streamway or channel direction modification, realignment and straightening

[See comment above.](#)

Stabilization and Flood Protection – Policies – Impacts, 7.16, 1G.

- (1) Recognizing that shorelines of recreation, wildlife, and aesthetic value are limited and irreplaceable resources, than shoreline stabilization and flood protection projects should consider their potential effects and impacts upon such resources.

All work is proposed west or landward of the existing levy. It is not anticipated that this proposal will have a significant adverse impact on recreation opportunities, fish and wildlife habitat, or current aesthetic values.

- (2) Recognizing that the related shoreline stabilization and flood protection activities of filling, grading, lagooning, and dredging may have a substantial impact upon the existing aquatic and biological systems, navigation, and river hydraulics by subsequent erosion and sedimentation, then these activities and their possible impacts should be recognized.

All work is proposed west or landward of the existing levee. It is not anticipated that this proposal will have a significant adverse impact on fish and wildlife habitat or create navigation barriers. The possible impacts were recognized and

balanced with the need to provide public protections. Potential biologic impacts resulting from this project may be mitigated by re-establishing and maintaining native vegetation in riparian and upland areas.

Stabilization and Flood Protection – Regulations – Shoreline Areas, 7.16, 2A.

(3) Rural.

- a. Shoreline stabilization and flood protection measures are permitted subject to the General Regulations.

Stabilization and Flood Protection – Regulations – General, 7.16, 2B.

(2) Qualifications for approval - Shoreline stabilization and flood protection measures shall be allowed only when adequate evidence is presented that one of the following conditions exist:

- a. Significant erosion of agricultural lands.
- b. High water or erosion threatens public works and properties, including roads, bridges, railroads, and utility systems.
- c. High water or significant erosion damages or threatens existing homes and residential areas.
- d. High water or significant erosion damages or threatens to damage existing commercial and industrial uses and developments.

This project is designed to provide additional flood protection to the City of Burlington, and meets the criteria for high water threatening public works and properties, including roads, bridges, railroads, and utility systems, for high water threatening existing homes and residential areas, and for high water threatening existing commercial and industrial uses and developments.

COMMENT: Didn't they just say "This proposal is not directly associated with intensive land use development?"

- (3) **Professional design** - The County may require professional design of shoreline stabilization and flood protection works where such projects will cause interference with normal river geohydraulic processes, leading to erosion of other up and down river shoreline properties or adverse effects to shoreline resources and uses.

This project was designed by Washington State licensed professional engineers utilizing geohydraulic principles in design and construction. The City of Burlington in conjunction with the Army Corps of Engineers designed this project to protect the city from elevated flood events while minimizing upstream and downstream hydraulic impacts from the proposed dike improvement.

COMMENT: The Examiner should determine what public meetings and public documents did the Corps prepare and how much did the Corps charge DD12 and Burlington?

- (4) **Channel modifications** - River and stream channel direction modification, realignment, and straightening are not permitted unless for substantiated purposes connected with uses consistent with this program.

The project does not include provisions for river realignment and straightening.

- (5) **Design and construction**

- a. Existing streambank vegetation shall be preserved to the maximum extent feasible during shoreline stabilization and flood protection work.
- b. New or expanded dike, revetment, or riprap systems, cut and fill slopes, and backfilled areas shall be progressively planted with compatible, self-sustaining, and soil stabilizing vegetation.

- c. All works shall allow for the passage of surface and ground waters.
- d. All works shall be designed and constructed to meet the requirements and standards of the County Engineer, State Departments of Fisheries and/or Game, Corps of Engineers where applicable, and Soil Conservation Service.

The Department has concluded that all of the above criteria, a –d, will be met. The City of Burlington and Dike District 12 have proposed to preserve the natural vegetation in the area waterward of the existing dike. Areas exposed as a result of grading activities will be replanted with grass for soil stabilization. The expanded levee system should not interfere with the passage of surface or ground waters greater than what currently exist. The project has been designed and constructed to meet the requirements of the Army Corps of Engineers for levee design.

(6) Materials

- a. Materials for shoreline stabilization and flood protection works shall not consist of solid waste, junk or abandoned automobiles, asphalt or macadam, or any building demolition debris except that which is used for emergency purposes.
- b. Techniques utilizing totally or in part vegetative bank stabilization procedures shall be preferred over structural means such as concrete revetments or extensive riprap.

Junk and solid waste including asphalt & demolition debris are not proposed to be utilized in construction of the project. The proposed improvements will be replanted with natural grass vegetation in the upland areas of the project site.

- (7) Estuaries and wetlands** - Any proposal to dike, drain, or fill tidelands, estuaries, salt marshes, and associated water bodies and wetlands shall provide a thorough evaluation of the natural productivity of the wetlands to be displaced and the proposed use.

A wetlands complex is located on the west side of the Skagit River adjacent to the project site. As all work is proposed landward of the existing levee, it is not anticipated that this project will have an adverse impact on the wetland complex. A second wetland complex is located landward of the existing levee. The wetland site assessment prepared by Graham Bunting Associates indicates the wetland landward of the levee meets Skagit County's critical areas ordinance criteria as not regulated by Skagit County.

- (9) **Project information** - The county shall require and utilize the following substantiating information during review of shoreline stabilization and flood protection proposals:
- a. River channel hydraulics and floodway characteristics up and down stream from the project area shall be identified contingent upon the extent and nature of project work involved. Updated topography maps or phased (old and recent) aerial photography would be adequate.
 - b. Existing shoreline stabilization and flood protection works within the area stipulated above.
 - c. Physical, geological, and/or soil characteristics of the area.
 - d. Existing and proposed shoreline water uses for the project area and area stipulated above.
 - e. Predicted impact upon area shore and hydraulic processes, adjacent properties, and shoreline and water uses.

The Department is satisfied that the appropriate information has been provided as part of the application.

The Department also reviewed SCC 14.26, Chapter 5.03 Shoreline of Statewide Significance and Landfills SCC 14.26, Chapter 7.06. The review indicated that the project is consistent with the policies and regulations of these chapters.

13. **Time Requirements:** Under the provisions of RCW 90.58.143 (2) & (3) and WAC 173-27-090 (2)(a), the applicant is required to begin the project within 2 years and complete the project within 5 years.

RECOMMENDATION

Based on a review of all submitted information and the above findings, Skagit County Planning and Development Services recommends approval of shoreline substantial development permit request PL12-0191 for the proposed shoreline stabilization and flood protection project by Dike District 12 and the City of Burlington subject to the following conditions:

- 1) The applicant and its contractors shall comply with the State Water Quality Criteria, Surface Water WAC 173—201A and Ground Water WAC 173-200.
- 2) Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 Drainage.
- 3) The applicant shall comply with Northwest Clean Air Agency requirements.
- 4) The applicant shall comply with all relevant provisions of Skagit County Code 14.26 Shoreline Management Master Program, Skagit County Code 14.24 Critical Areas Ordinance, Skagit County Code 14.34 Flood Damage Prevention Ordinance and Skagit County Code 14.16 Zoning.
- 5) Aesthetic impacts shall be minimized.
- 6) The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request a permit revision from this office.
- 7) If the demolition of any buildings occurs that discovers septic systems, drain fields, septic tanks, septic lines or pipes under the proposed project area, then the contractor shall contact the Skagit County Health Department to obtain decommissioning approval. Any wells GB-1 to GB-9 impacted or removed from the project site shall be decommissioned per state requirements..

Prepared By: John Cooper

Dated: April 17, 2013

COMMENTOR RECOMMENDATION: For the reasons stated herein I strongly recommend that the Examiner deny this permit request for DD12 (PL12-0191). I request that the Examiner review and consider all of the electronic hyperlinked documents by using the electronic copy of this document provided by Larry Kunzler.

Again, Mr. Examiner, I apologize for not being able to be at the meeting or having longer to draft these comments. Had I had a longer period of time, I would have drafted a legal memorandum for your perusal and made the presentation personally.

/s /

Prepared By: Larry Kunzler
4/21/2013

Submitted By: Larry Kunzler
4/22/2013