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**BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR SKAGIT COUNTY**

THE CITY OF SEDRO-WOOLLEY, a  
Washington municipal corporation

Appellant

vs.

DIKE, DRAINAGE & IRRIGATION DISTRICT  
#12, a special purpose district

Respondent

No. PL13-0265

RESPONDENT'S MEMORANDUM  
IN RESPONSE AND IN OPPOSITION  
TO APPEAL

COMES NOW RESPONDENT, by and through its attorney, and submits the following Respondent's Memorandum In Response to the City of Sedro-Woolley's appeal of the Decision of the Skagit County Hearing Examiner approving the Shoreline Substantial Development Permit, under File No. PL12-0191.

**I. INTRODUCTION**

Skagit County Dike, Drainage & Irrigation District #12 ("DISTRICT") the Respondent in this proceeding, filed this Memorandum In Response to the appeal filed with the Board of Skagit County Commissioners ("BOARD") by the City of Sedro-Woolley on July 2, 2013. In the FEIS issued July 16, 2010, it was noted that the project will prevent any upstream effects,

1 due to the likely overland flow of flood waters.<sup>1</sup> Further that the Project was not shown likely  
2 to significantly impact upstream water surface levels.<sup>2</sup>

3 In addition, there was extensive evidence that the project had been professionally  
4 designed and followed all laws and regulations.<sup>3</sup> The County Staff Report found, and the  
5 evidence in the record clearly found that there would be no significant adverse impacts  
6 upstream or downstream from the project.<sup>4</sup>

7 There was substantial evidence in the record for this, and Appellant cites no evidence or  
8 finding of the Hearing Examiner which was clearly erroneous. Respondent submits that  
9 Appellant's claims are without merit, are not supported by the records and Exhibits, and fail to  
10 satisfy Appellant's burden of proof of a clearly erroneous decision. Further, that the Appeal  
11 should be dismissed for lack of standing. The appeal should be dismissed, and the Decision of  
12 the Skagit County Hearing Examiner ("EXAMINER") issued in the June 28, 2013  
13 ("DECISION") should be affirmed.

## 14 II. BACKGROUND FACTS

15 Skagit County Dike, Drainage and Irrigation District No. 12 (hereinafter "District")  
16 sought a Shoreline Substantial Development Permit ("SDP") to make improvements to existing  
17 Skagit River levees.

18 The project is the eastern extension of a larger levee upgrade initiated by the City of  
19 Burlington. Levee improvements within the City limits between Whitmarsh and Gardner Roads  
20 were authorized by the City through a Substantial Development Permit approved June 20, 2012.  
21  
22

23 <sup>1</sup> See Hearing Findings of Fact No. 25 and 26.

24 <sup>2</sup> See Hearing Findings of Fact No. 27.

25 <sup>3</sup> See Hearing Findings of Fact No. 31.

26 <sup>4</sup> See Hearing Findings of Fact No. 33, and Conclusions of Law Paragraph 8.

1 The section to be improved under the current permit application lies east of Burlington  
2 City limits and along the north banks of the Skagit River extending from Gardner Road to  
3 Lafayette Road.

4 Under an Interlocal Agreement with the City of Burlington dated March 13, 2008,  
5 geotechnical analysis of the levees has been done, along with significant engineering analysis  
6 and flood modeling and hydrology.<sup>5</sup> The analysis and hydrology have analyzed flood effects in  
7 areas including City of Burlington, the Three Bridge Corridor, and impacts downstream as well  
8 as upstream in Sedro-Woolley. There has also been extensive modeling using Corps hydrology,  
9 as well as other engineering firms.

10 The project was started in 2007 with the City of Burlington, and pursuant to Interlocal  
11 Agreement, with the ultimate goal of obtaining levee certification at the 100 year flood level.  
12 This involves complying with FEMA regulation, which requires "freeboard", or a buffer zone  
13 above the 100 year level to provide additional safety. This project has been ongoing for several  
14 years, and has been subject to the following fill and grade permits:

- 15 1. Fill and Grade Permit BP07-0267 on March 15, 2007 and issued for  
16 construction May 15, 2010; BP07-0267 expires on May 14, 2013, with a six  
month extension recently filed.
- 17 2. Fill and Grade Permit BP03-0564/BP06-0817 with Shoreline Exemption  
18 PL03-0487 submitted on May 16, 2003, reissued on July 27, 2009.
- 19 3. Fill and Grade Permit BP07-1051 submitted on August 24, 2007 issued  
November 5, 2010 and will expire on November 14, 2013.

20 An FEIS was issued on July 16, 2010. The FEIS included maps and flood modeling  
21 analysis in the area of Sedro-Woolley. The FEIS was not appealed. In addition to the appeal  
22 application, the following exhibits and documentation was filed and approved by Skagit County  
23 Planning Department:

- 24 1. Shoreline Substantial Development/Conditional Use Application PL12-0050.
- 25 2. SEPA final FEIS issued by City of Burlington on July 16, 2010.

26 <sup>5</sup> See Exhibit 25.

- 1 3. Wetlands Site Assessment report by Graham Bunting Associates dated
- 2 November 8, 2012.
- 3 4. Fish and Wildlife Site Assessment by Graham Bunting Associates dated
- 4 February 27, 2013.
- 5 5. Biological Assessment by Anchor QEC dated October 2009.
- 6 6. Critical Area Ordinance Review reviewed and approved.
- 7 7. Engineering analysis and review done by engineering firms including Pacific
- 8 International Engineering, Reichardt and Ebe Engineers, Golder &
- 9 Associates Engineers, U.S. Army Corps of Engineers, Northwest Hydrology
- 10 Engineers, the City of Burlington Public Works, and Skagit County Public
- 11 Works.

12 The Applicant asserts, and engineering and modeling would support the assertion that  
13 this project will have minimal effects upstream and downstream of the project site. In reference  
14 to this project, the Skagit County Planning Department prepared a Staff Report and Findings of  
15 Fact on April 22, 2013, after having reviewed all pertinent information, and recommended  
16 approval with certain conditions which were acceptable to Applicant.

17 Under the proposal, the elevation of the top of the levee will increase by as much as four  
18 feet and the base will also be widened. As designed, the raised levee is expected to meet the  
19 FEMA requirement for 3-feet of "freeboard" above the 100 year flood level.

20 This matter then went to hearing before the Hearing Examiner on April 24, 2013, and a  
21 second hearing on June 12, 2013. The Hearing Examiner issued a Decision on June 28, 2013  
22 approving the Shoreline Substantial Development Permit subject to conditions which had been  
23 requested by the County.

24 This matter has now been appealed by the City of Sedro-Woolley on July 2, 2013, to be  
25 heard by the Skagit County Commissioners.

26 In the response to this appeal, Skagit County Dike, Drainage and Irrigation District No.  
12 hereby respectfully requests that the permit approval by the Hearing Examiner be approved  
and affirmed by the Skagit County Commissioners, and that the appeal of Sedro-Woolley be  
denied.

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### III. ARGUMENTS

1. **Contrary to Appellant's Argument, the Upstream Effects of the Project Have Been Extensively Documented, Studied and Adequately Addressed as Found by the Hearing Examiner.**

Appellant states that the FEIS did not address in any detail the upstream effects of the project. Appellant cites extensively from the FEIS, but disregards the fact that the FEIS addressed these issues in detail, was approved, and the Substantial Development Permit was also approved by Burlington on June 20, 2012.<sup>6</sup> In the FEIS, the upstream effects were addressed, including analysis at Mount Vernon, Sedro-Woolley and Concrete, including a synopsis of Skagit River hydrologic differences, and BFE maps. These included Army Corps of Engineers hydrology using the Flo2d modeling, Pacific International Engineering hydrology modeling, and Northwest Hydrology Consultants modeling.<sup>7</sup> Various hydrologic and BFE flood maps were prepared by these engineering firms and considered in the FEIS.<sup>8</sup>

Most importantly, the FEIS at pages 56, 57 and 58, clearing show estimates of the effects of the various hydrology on the base flood elevation in the project area, and upstream of the project area, in areas in Sedro-Woolley, and specifically the area of the United General Hospital and the Sedro-Woolley Wastewater Treatment Plant. What is apparent on page 57, which is the Levee Alternative and PIE hydrology, which assesses 0.1-FT BFE impact, or one-tenth of a foot in base flood elevation, clearly shows minimal or no effect at United General Hospital or the Wastewater Treatment Plant, areas of Appellant's concerns. This is the Project, being permitted and hydrology which is proposed under the permit, and which has been approved by multiple agencies, including Skagit County. John Semrau, of Semrau Engineering testified that there would be minimal effects in these areas and that any effects were not

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<sup>6</sup> See Exhibit 18.

<sup>7</sup> See FEIS Exhibit 1, pages 44.

<sup>8</sup> See FEIS pages 44-58; 6/12/2013 Hearing Transcript pages 18-19.

1 measurable. In addition, at the Wastewater Treatment Plant, which is even at a higher elevation  
2 than the rest of the study area, there would be no effect.<sup>9</sup>

3 Even in the FEIS, there is reference to the importance which City of Burlington and  
4 DD12 place on minimizing upstream and downstream impacts. The report states:

5 ... The need to take a carefully balanced approach to flood hazard  
6 mitigation is clearly understood by the City and Dike District #12. To  
7 the extent practicable, it is the intention of the City of Burlington and Dike  
8 District #12 to minimize upstream and downstream impacts on existing  
9 conditions, while maintaining or enhancing current levels of flood  
10 protection and achieving FEMA accreditation of a segment of Dike  
11 District #12's levee system.<sup>10</sup>

12 As stated further:

13 A key component of developing the levee certification project is addressing  
14 the impacts of the proposed action on upstream and downstream areas.  
15 Burlington and Dike District #12 recognize that positive support from the  
16 community is essential for successful project implementation, including  
17 Sedro-Woolley and the Sedro-Woolley Wastewater Treatment Plant, United  
18 General Hospital, ...<sup>11</sup>

19 In addition, as far as the ultimate effect in the Sedro-Woolley area from the project permit  
20 proposed, and approved by City of Burlington, Skagit County Planning Department, and the  
21 Hearing Examiner, it was stated as follows:

22 The 1984 Burlington Flood Insurance Study details how the overbank  
23 sheet flow patterns function north, at Sterling, and the variety of scenarios  
24 that result with levee failures or overtopping at downstream locations. **If  
25 Burlington and Dike District #12 are able to go forward with the  
26 concept to upgrade the existing levee segment with no extension to the  
east, this will continue to allow water to escape at Sterling and prevent  
any upstream backwater effects.**<sup>12</sup>

27 <sup>9</sup> See FEIS pages 44-58; see also 6/12/2013 Hearing Transcript at pages 18-23.

28 <sup>10</sup> See FEIS at page 6.

29 <sup>11</sup> See FEIS, page 11.

30 <sup>12</sup> See FEIS, page 12.

1 The FEIS also goes into further references to the fact that new topographic data was developed  
2 in 2008 based on aerial flights of the area upstream from Burlington to Sedro-Woolley which  
3 provides confirming modeling data in addition to additional geotechnical investigation in the  
4 area of Lafayette Road which has been completed.<sup>13</sup>

5 **2. Appellant Confuses and Misinterprets Data When Citing Corps of**  
6 **Engineers Numbers and 0.4 Feet BFE.**

7 Appellant then states that using Army Corps of Engineers numbers, that in fact the flood  
8 elevation may be "0.4 feet, at Sterling, not too far from the Sedro-Woolley Wastewater  
9 Treatment Plant and also United General Hospital." Appellant then concludes that: "Thus, one  
10 cannot really base the forecasted upstream effect of being limited to a tenth of a foot, as the  
11 hydrology estimate will probably not be used. There is really no evidence in the record to show  
12 that the effects of even a tenth of a foot increase in base flood elevation will be much less an  
13 increase four times larger."<sup>14</sup>

14 This statement clearly displays a misinterpretation of the FEIS and a lack of  
15 understanding regarding the engineering data used, the hydrology, and the permit which is being  
16 proposed. As noted above, there is in fact substantial evidence of the effects of a one-tenth a  
17 foot increase in BFE in the area of concern, and that no measurable impact is expected. Even at  
18 the Wastewater Treatment Plant the site is several feet above the area of hydraulic model, and  
19 BFE would have no effect.

20 More importantly, as noted above there are three different hydrology models, produced  
21 by the Corps of Engineers, PIE, and NHC. Based on the extent of modeling and historical data,  
22 it was found that the most accurate modeling was provided by PIE, which the Hearing Examiner  
23 also found to be the most reasonable.<sup>15</sup> Because of extensive volumes of data, engineering,

24 <sup>13</sup> See FEIS pages 16 and 17.

25 <sup>14</sup> See Appellant's Memorandum page 3.

26 <sup>15</sup> See Hearing Findings of Fact No. 20; see Hearing Testimony pages 19-22.

1 computer modeling, and visitation to areas and houses which were flooded since 1909, DD12  
2 and the City of Burlington have relied on this hydrology for the permit, which has been  
3 approved under the FEIS, and the County. The PIE hydrology has been extremely accurate in  
4 back testing and verifying prior flood events which have previously occurred. It was this  
5 hydrology under the Certified Levee Alternative 2 which was used for project engineering. This  
6 was the hydrology and modeling analysis used for the conclusion that there would be a 0.1 foot  
7 BFE impact on the project as shown on page 57 of the FEIS. From this and the comparison of  
8 the published BFE maps pages 48 and 49 for PIE hydrology, and pages 47 and 50 for Corps  
9 hydrology there is no measurable effect in the BFE at United General Hospital. Comparison of  
10 this BFE map results also indicate the effect of the proposed project ends approximately 0.75  
11 miles upstream of the project which is 2.25 miles downstream of the Wastewater Treatment  
12 Plant.<sup>16</sup>

13 Appellant confuses use of this hydrology with the use of Corps hydrology, which in all  
14 cases has higher BFE and flood elevations. Further, the Corps has contracted with FEMA to  
15 provide engineering data and not only are the Corps hydrology numbers deemed to be  
16 excessive, FEMA will not consider uncertified levees and interprets hydrology as if levees do  
17 not even exist. In fact, excellent and well-built levees do exist in Skagit County. In using a  
18 project which relies upon Corps hydrology, there are also additional requirements which were  
19 tied to a proposed Corps project. These include higher levee heights and cross-sections, due to  
20 higher flood hydrology, as well as providing levee setbacks in the Three Bridge Corridor. If  
21 these parameters are used, this involves a different project than is being proposed, then the BFE  
22 in the subject area would be 0.4 feet.<sup>17</sup>

23 Appellant further states that the 0.1 BFE increase "presupposes that setback levees in the  
24 Three Bridge Corridor project are built." However, this is incorrect. That would be the project

25 <sup>16</sup> See FEIS, pages 44-58; Hearing Transcript pages 18-23.

26 <sup>17</sup> See Hearing Testimony, pages 17-18, 20-21, and page 70.



1 using Corps hydrology, and that is not this project being proposed. This project does not  
2 propose setback levees or higher levees due to Corps hydrology, and are inapplicable to the  
3 present situation. There is not a difference in interpreting between 0.1 foot BFE and 0.4 foot  
4 BFE, because the latter is not the proposed or approved project. The 0.4 foot BFE project is a  
5 taller levee and would stop the DD12 spill above the BNSF bridge shown in figure 4 of Exhibit  
6 19.<sup>18</sup>

7 The Appellant misinterprets the data when it is stated that there is no evidence in the  
8 record to show the effects of either a 0.1 BFE or a 0.4 BFE. The FEIS in fact examined three  
9 different scenarios, and the project was based on parameters and PIE analysis, with hydrology  
10 which would yield only the 0.1 foot BFE as shown on page 57 of the FEIS. Any other analysis,  
11 argument, or reference to other projects not under consideration is not relevant to this appeal.

12 Also, it should be noted that Highway 9 and the old railroad grades are both downstream  
13 of the Sedro-Woolley Wastewater Treatment Plant and are the actual structures that cause the  
14 increase in water surface elevation at the Wastewater Treatment Plant. These two parallel  
15 structures and the two instream bridges with debris, generate a backwater effect creating  
16 hundreds of acres of important peak attenuating flood storage that extends well upstream.

17 The potential impact of 0.1 foot from a project located more than three miles  
18 downstream below major controlling structures, is too small and well within any model "noise"  
19 and can't be modeled with any certainty because of the dominate features and the uncertainty of  
20 the amount of debris on either or both of the bridges. The potential impact of the proposed  
21 levee project has been evaluated extensively by the City of Burlington, engineering firm, and  
22 FEMA modeling runs both without levees and with levees included to establish the preliminary  
23 BFEs for this location. The GI Hydraulic Evaluation, as well as other engineering studies of all  
24 the proposed alternatives have determined that the debris loading on the BNSF bridge is the  
25 controlling parameters driving water surface elevation in the Nookachamps Basin, and not the

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26 <sup>18</sup> See Exhibit 19.

1 levees, and let alone this project. This project will improve safety downstream, and the effects  
2 upstream will either be none or not measurable in the areas in concern of the City.<sup>19</sup>

3 **3. Contrary to Appellant's Argument, This Project is Not Proceeding in**  
4 **Isolation.**

5 Appellant argues that DD12's project cannot and should not be done in a vacuum and  
6 without due regard for the effects on neighboring area. Appellant mischaracterizes the facts of  
7 this case. Dike District 12 has the statutory obligation and responsibility under RCW 85 et  
8 seq.<sup>20</sup> to engage in flood control efforts for protection of persons within its district. DD12 has  
9 engaged in these activities, and followed all regulations, since 2007, with its various fill and  
10 grade permits, and construction along the river in phases, for the protection of persons and  
11 property within its District.<sup>21</sup> The City of Burlington, County areas, and portions of Sedro-  
12 Woolley, including United General Hospital are in its District.

13 In various flood efforts, the District has partnered with the Army Corps of Engineers,  
14 City of Burlington, other Dike Districts along the Skagit River, the City of Mount Vernon, and  
15 downstream dike districts and drainage districts, in coordinated flood control. In this regard  
16 DD12 has even formed the Skagit County Flood Control Partnership, consisting of five Dike  
17 Districts. DD12 has even consulted with United General Hospital on plans for a ring dike,  
18 which, along with a ring dike for the Wastewater Treatment Plant have been incorporated into  
19 the GI Study.<sup>22</sup>

20 Recently, DD12 has reached out to the City of Sedro-Woolley regarding their concerns,  
21 but rather than engaging with DD12 in constructive dialogue and planning, has chosen to appeal  
22 the permit, and request that the permit approval be reversed and all flood work stopped. This is

23 <sup>19</sup> See FEIS, page 11.

24 <sup>20</sup> RCW 85.05.070, et seq.

25 <sup>21</sup> See Hearing Testimony, page 25; Exhibit 24.

26 <sup>22</sup> See Hearing Testimony, page 35.

1 a permit which has received the approval of the Hearing Examiner, City of Burlington, the  
2 Skagit County Planning Department, the Army Corps of Engineers, and along with several  
3 engineering firms and environmental consultants. Instead the City of Sedro-Woolley seeks to  
4 deny the permit and, stop work until issues are again re-studied longer term. All the while, the  
5 Skagit River visits with is annual threat of devastation. The Appellant isolates itself. This is not  
6 a prudent or proactive policy of flood protection. It should be rejected in this appeal.

7 **4. The Project should not be stopped to await the GI Study**

8 A request to stop DD12 work and wait for GI Study completion is an argument that has  
9 no merit. All of the technical work for the GI Study has already been completed. The GI Study  
10 has been ongoing for nearly 20 years and has yet to identify a project. Furthermore the GI is not  
11 the final phase for establishing a Federal Project. It only establishes a federal interest and  
12 funding in participating in proposed projects.<sup>23</sup> The proposed projects will still have local  
13 sponsors. The timeline is not adequate, nor is the logic, since there will never be a “project”  
14 that will be funded and built in one phase nor could it for safety reasons.

15 In fact, the best argument for DD12 moving forward is the fact that the section of levee  
16 will be constructed and seasoned for a few years and would be in a position to provide the  
17 necessary foundation and supplement any eventual “Corps/GI” funded and supported urban  
18 protection project. It should also be noted that waiting for the GI may be unwise, in any event,  
19 as the GI may impose urban protection to the hundred year level, which would result in even  
20 higher levees under Army Corps hydrology standards, eliminating the option to spill water north  
21 of BNSF bridge, and also requiring the building of setback levees downstream of BNSF bridge.  
22 The setback levees imposed by the Corps would be higher structures built landward of the  
23 current levees, allowing the current levees also to remain. This would have the effect of  
24 backing up water to a higher levee upstream, and it could likely raise the BFE, and result in  
25 higher water at Sedro-Woolley.

26 <sup>23</sup> See Hearing Testimony, pages 31-32.

1 In any event, waiting for the GI to be completed based on the current analysis and the  
2 work which has been already done would be inadvisable and an inappropriate delay. Regardless  
3 of the outcome of the GI Study, the levees need to be maintained, repaired and improved to  
4 certification and FEMA standards. The levees must be maintained and repaired to Corps  
5 inspection standards whether or not the GI Study is completed.<sup>24</sup> If the City's argument and  
6 suggestion was followed 20 years ago, there would have been no levee work or projects done in  
7 the past 20 years and the river may likely have flooded much of the property in the urban areas.  
8 The "no-action" and "continue to do nothing" strategy is not beneficial to the citizens of Skagit  
9 County, for flood control. The City's request to reverse the permit approval and to place  
10 conditions on the permit should be rejected.

11 **In support of the permit**, a letter introduced from the U.S. Army Corps of Engineers,  
12 Doug Weber, P.E., Chief, Emergency Management Branch who encouraged the Districts to  
13 continue immediate operations, repair and maintenance work of the existing levee and noted  
14 that waiting for GI Study completion would increase flood risk. Mr. Weber stated:

15 "In the last several years, the Army Corps of Engineers has invested  
16 significant resources in assisting the Skagit River diking districts with  
17 levee repairs, inspections and technical evaluations in order to help  
18 maintain reliable flood control systems while the General Investigation  
19 study develops a long-term solution that will reduce the flood risk. The  
20 Army Corps of Engineers spent approximately \$2 Million to conduct  
21 repairs on the Dike District No. 12 levee in the summer of 2011. It is  
22 important to conduct levee repairs and maintenance immediately. Waiting  
23 for the development of the long-term solution increases the flood risk to  
24 the community."<sup>25</sup>

25 The prior director for the Skagit County Department of Public Works, then the City of  
26 Burlington Public Works, and now City of Bremerton Public Works, wrote a letter in support of

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24 See Hearing Transcript, pages 15-16; Exhibit 23.

25 See Letter from Department of Army, USACE, Douglas Weber, Chief Emergency Management  
26 Branch, Exhibit 27.

1 DD12's project on May 1, 2013. Mr. Martin has vast knowledge of Skagit County flood  
2 improvements and history. In that letter, he discusses the "raising" of the levees, which as noted  
3 in the hearing, is more a function of freeboard, or margin of safety in FEMA certification, than  
4 any overtopping, which may be caused by extending the levee beyond the present project  
5 permit. Mr. Martin stated as follows:

6 It is significant that this project does not propose to add any upstream  
7 length to the existing levee. This is significant because the flood modeling  
8 shows that if the levees northwest terminus does not change then there is  
9 no significant impact on upstream water surface levels compared to the  
10 existing conditions. That is because the existing levee tops are already  
11 largely at the 100-year flood elevation as shown by the hydraulic  
12 modeling. So long as the levees hold, there would only be (relatively  
13 minor) overtopping, primarily in the segment *just north of the railroad*  
14 *bridge*. **So raising the levees by about three feet only provides a factor**  
15 **of safety – it does not hold back any additional water which would**  
16 **impact the upstream water surface levels for the 100 year event.**

17 However, if the levee is extended further upstream, the hydraulic  
18 modeling shows an impact because this make it harder for water to leave  
19 the system in the Sterling area. **The City of Burlington was away of this**  
20 **and so in partnership with the Dike District, did not suggest this**  
21 **approach, recognizing its regional ramifications. Extending the levees**  
22 **further, or not is an issue better addressed in the GI Study but this**  
23 **project does not extend the levees upstream.**<sup>26</sup>

24 Mr. Martin clearly indicates that the upstream "regional ramifications" were assessed  
25 and analyzed in detail, and to avoid upstream complications to Sedro-Woolley, the project  
26 limited the extension of the levee to avoid increasing surface water in the area of Sedro-  
Woolley. Also, however, he notes that if this matter is determined after waiting for the GI  
Study completion, then levees may be extended which may have an effect on Sedro-Woolley, if  
the GI Study recommends and approves such a project.

<sup>26</sup> See Letter from Chal Martin, Director of Public Works City of Bremerton, (formerly City of  
Burlington and Skagit County); Exhibit 29.

1 That, however, is not the current project and permit nor is it even part of the current  
2 debate about allowing the permit to move forward. At this time it is speculative and uncertain  
3 when the GI Study will be finally approved, when a project would meet the cost-benefit ratio for  
4 approval, when funding would be approved, and even if there will be funds from the Federal  
5 Government to do the project. Waiting for the GI Study to be completed is unwise and not an  
6 appropriate flood protection plan.

7 To adopt the Appellant's argument that the continuation of the permit should await  
8 completion of the GI Study is essentially a bridge to nowhere. The Study may be complete in  
9 two years, or three years or five years, no one knows. What we do know is that the Study has  
10 been ongoing for nearly 20 years, like many studies in the United States, with no end in sight,  
11 and with little, no, or sporadic funding coming from the Federal Government. In the  
12 meanwhile, every year of delay would cause severe problems and potential flooding if work is  
13 stopped, in areas including City of Burlington, and all areas downstream in the event there is a  
14 breach of the levee in the area of Burlington.

15 Further, in the Appellants Memorandum, the City states that: "The City does not take  
16 the position that the proposed project should not be built." However, the City's position to  
17 impose new conditions on a permit, including new studies, protecting the City, requiring  
18 additional setback levees, and then tying completion to a GI process which has already taken 20  
19 years, are onerous to the point where the proposed project would not be built. The only  
20 certainty in granting the City's request is that there will be no further work for flood protection  
21 benefitting anyone, for an indefinite period of time. The Appellant's position is illogical, has no  
22 support in fact, and should be rejected as poor flood prevention.

23 **5. Standard of Review and Burden of Proof.**

24 Skagit County's SMP provides that "[a]ny person aggrieved by the granting, denying,  
25 rescinding or revision of a shoreline permit by the Skagit County Hearing Examiner may ...  
26 submit an appeal to the Board of Commissioners in accordance with [the zoning ordinance

1 permit appeal procedures].<sup>27</sup> According to these appeal procedures, appeals to the Board  
2 challenging decisions of the Examiner as to permit decisions of the Administrative Official are  
3 addressed through closed record hearings.<sup>28</sup>

4 Appellants bear the heavy burden of proving that the Examiner's decision was **clearly**  
5 **erroneous**. SCC 14.06.170(3) provides that, on appeal, the appellant "shall have the burden of  
6 demonstrating that the decision or recommendation of ... the Hearing Examiner ... is clearly  
7 erroneous." A decision is clearly erroneous when a decisionmaker is "**left with the definite**  
8 **and firm conviction that a mistake has been committed**."<sup>29</sup> In a closed record land use  
9 appeal, review of evidence is deferential, viewing the evidence in the light **most favorable to**  
10 **the party that prevailed** in the highest forum exercising fact finding authority, a process that  
11 necessarily entails acceptance of the factfinder's views regarding the credibility of witnesses  
12 and the weight to be given reasonable but competing inferences.<sup>30</sup> All inferences must therefore  
13 be construed in favor of Respondent.

14 In the present case, the City of Burlington and DD12 have been working on this project  
15 for ten years. It has gone through approval of FEIS, SEPA, issuance of a Substantial  
16 Development Permit in Burlington, oversight and review by 1) U.S. Army Corps of Engineers,  
17 2) U.S.G.S., 3) Reichert and Ebe Engineering, 4) Semrau Engineering, 5) Northwest Hydrology  
18 Engineers, and 6) Pacific International Engineering, who at various stages of the project have  
19 been consultants to the City of Burlington, and Skagit County. Substantial evidence has been  
20 submitted supporting permit approval.

21 \_\_\_\_\_  
22 <sup>27</sup> SMP § 13.01(1). "Chapter 14.04.240 of the Skagit County Code (Zoning Ordinance)," cited in SMP §  
23 13.01(1), has been repealed and replaced with the permit procedures under Chapter 14.06 SCC.

24 <sup>28</sup> SCC 14.06.120, .170.

25 <sup>29</sup> Cougar Mountain Assoc. v. King County, 11 Wn.2d 742, 747-79, 765 P.2d 264 (1988) (quoting  
26 Polygon Corp. v. City of Seattle, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978)).

<sup>30</sup> See Schofield v. Spokane County, 96 Wn.App. 581, 586-87, 980 P.2d 277 (1999); Freeberg v. City of  
Seattle, 71 Wn.App. 367, 371-72, 859 P.2d 610 (1993).

1 On the other hand the Appellant/City has filed no independent studies, no engineering  
2 data, no hydrology, no reports from consultants, and no documents from the Army Corps of  
3 Engineers. Appellant's entire case consists of one letter from the City Supervisor/Attorney, and  
4 one letter from the Mayor, with brief testimony of the Mayor, along with letters and testimony  
5 from three or four individuals. Most all of the opposition testimony and letters were also  
6 submitted and addressed in the FEIS, which was approved in favor of project acceptance.

7 And even this testimony submitted by Appellant was speculative, registering  
8 "concerns", and worry regarding "unintended consequences" with no scientific, engineering, or  
9 hydrology basis in opposition to the permit. There can be no basis for a fair and reasonable  
10 decisionmaker to be "left with a definite and firm conviction that a mistake has been  
11 committed." The permit should be upheld and the appeal dismissed based solely on evidence,  
12 law and fact.

13 **6. Appellant's Claims Should Be Dismissed for Lack of Standing.**

14 As a related matter, and before even reaching the merit of the issues, the Appellants lack  
15 standing to bring this appeal. In order to have standing to appeal a matter, a person must  
16 establish that he or she is within the zone of interest that forms the legal basis for his or her  
17 complaint and must also establish, **as a matter of fact** that he or she **will be harmed** by the  
18 actions he or she asserts will occur if relief is not granted. Appellants have not established that  
19 they are a "person aggrieved"<sup>31</sup> for purposes of SMP § 13.01(1), nor did Appellants preserve the

20 <sup>31</sup> Anderson v. Pierce County, 86 Wn.App. 290, 299, 936 P.2d 432 (1997) ("the term 'person aggrieved'  
21 has been interpreted to include anyone with standing to sue under existing law") (citing Trepanier v. City  
22 of Everett, 64 Wn.App. 380, 382, 824 P.2d 524 (1992)) To satisfy the standing requirement, a person  
23 must establish that he or she is within the zone of interest that forms the legal basis for his or her  
24 complaint and must also establish, as a matter of fact, that he or she will be harmed by the actions he or  
she asserts will occur if relief is not granted. See, e.g., Save a Valuable Env't v. City of Bothell, 89  
Wn.2d 862, 866-67, 576 P.2d 401 (1978); Preserve Our Islands v. King County & Nw. Aggregates,  
Shoreline Hearings Bd. Nos. 04-009 abd 04-010, 2004 WL 1855631 at \*6 (2004).

25 This test for standing is also applied under the Land Use Petition Act, Chapter 36.70C RCW  
26 ("LUPA"), which limits standing to persons "aggrieved or affected," defined as those persons who meet  
all of the following criteria:



1 issues it now seeks to raise on appeal by arguing these issues below. These deficiencies cannot  
2 be cured after-the-fact and therefore, as a matter of law, the appeal must be dismissed.

3 **7. Appellants Have Not Demonstrated an Injury-in-Fact.**

4 In the letters filed by the Appellants and in the course of their brief testimony before the  
5 Examiner, Appellants did not offer any evidence of harm that they will suffer, assuming,  
6 *arguendo*, that the permit project at issue in this proceeding will, in fact, cause a specific injury  
7 or harm to the City. Appellant notes in their appeal that certain areas of the City “may be  
8 jeopardized by that backing up of flood waters”; “that may occur due to the work”; and  
9 including “concerns raised by the City of Sedro-Woolley”.<sup>32</sup>

10 In point of fact, the Appellant acknowledges that it does not even know whether or not  
11 there are any effects from the project and that: “There is really no evidence in the record to  
12 show what the effects of even a tenth of a foot increase in base flood elevation will be much less  
13 and increase four times larger.”<sup>33</sup> Although it is stated that the City raised these issues by letter  
14 of the City Supervisor/Attorney, the letter only references vague assertions of possible  
15 damage.<sup>34</sup> The scope of injury cannot even be known or quantified, when the term is used by  
16 the City of “unintended consequences”.

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19 (a) The land use decision has prejudiced or is likely to prejudice that person;

20 (b) That person’s asserted interests are among those that the local jurisdiction was  
21 required to consider when it made the land use decision;

22 (c) A judgment in favor of that person would substantially eliminate or redress the  
23 prejudice to that person caused or likely to be caused by the land use decision; and

24 (d) The petitioner has exhausted his or her administrative remedies to the extent required  
25 by law.

26 <sup>32</sup> See Notice of Appeal and Basis for Appeal.

<sup>33</sup> See Appellants Memorandum, page 4.

<sup>34</sup> See Exhibit 14.

1 From the reading of these comments, it could be a distinct possibility that after further  
2 review and study advocated by the City, that there may be no identifiable damage. Appellant  
3 cannot and has not identified an actual injury-in-fact, and when all of the engineering data and  
4 evidence prove that there is no injury, Appellant refuses to accept the evidence. The appeal  
5 should be dismissed.

6 On the one hand, Appellant complains that this project somehow will damage or cause  
7 risk to the City of Sedro-Woolley. In a letter from the City, it states that concern: "... that this  
8 flood protection project ... will have the unintended consequences of backing the water onto  
9 Sedro-Woolley properties, including the Sedro-Woolley Wastewater Treatment Plant and  
10 United General Hospital."<sup>35</sup> However, as noted previously, these specific issues have been  
11 addressed in extensive hydrology analysis, was referenced in the FEIS, and the City of  
12 Burlington Substantial Development Permit, the County Planning Department, and the prior  
13 Hearing Examiner, all in agreement that there will be minimal if no damage to any of these  
14 facilities. Also, that the "project will not likely result in significant adverse impacts upstream or  
15 downstream of the subject site ..."<sup>36</sup> John Semrau testified at the time of the hearing that any  
16 effects would be minimal and not measurable.<sup>37</sup> This matter has in fact been studied by three  
17 different engineering firms and is the subject of mountains of data, for which Appellant wants to  
18 stop or delay the project so that it can be studied further. Presumably, the City would want this  
19 at the expense of Dike District 12 and the City of Burlington, without any further proactive  
20 measures or cooperation by the City. After substantial time, costs and engineering analysis  
21 finds no actual damage or injury, then it is difficult to envision that more years of additional  
22 study will be convincing to Appellants.

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<sup>35</sup> See Exhibit 14.

25 <sup>36</sup> See Hearing Findings of Fact No. 33; Exhibit 1.

26 <sup>37</sup> See Hearing Testimony page 18-22.

1 In any event, Appellant has provided absolutely no controverting or opposing scientific  
2 or hydrologic basis to conclude that there actually is the specific harm which is alleged.  
3 Appellant's argument, in its simplest form is that we are worried about "unintended  
4 consequences", which may or may not occur, but there is "really no evidence on the record"  
5 regarding specific harm, but we won't accept any engineering that says there is no harm and you  
6 must stop your work, and do the studies at your expense to prove our allegations of harm. Here,  
7 Appellants have not demonstrated an injury-in-fact and their claim should be dismissed for lack  
8 of standing.

9 There is no harm or "injury-in-fact" alleged by Appellants that is attributable to the  
10 DD12 permit project. The DD12/Burlington project provides flood control enhancement, while  
11 at the same time minimizing regional effects and damage to other entities, and does not cause  
12 flooding upstream.<sup>38</sup> Appellant's desire, although otherwise legitimate and well-intentioned, to  
13 secure further flood control enhancements, protection of their area from flooding, or further  
14 delay and study of issues which have already determined that there is no expected injury to  
15 Appellants, does not constitute an injury-in-fact for standing to appeal. Accordingly, this appeal  
16 should be denied for lack of standing and proof of any actual, verifiable injury-in-fact.

17 **8. Appellants Do Not Have Standing to Raise Issues They Did Not Raise Before**  
18 **the Examiner.**

19 The issues raised on appeal by Appellants regarding actual injury, and including any  
20 specific injury regarding the Wastewater Treatment Plant or United General Hospital were not  
21 raised in sufficient detail by Appellants in either written statements or oral testimony before the  
22 Examiner. Appellants alleged only "concerns" and "potential for damage" and "unintended  
23 consequences" but no specific verifiably injury caused by the project. The most that was raised  
24 was vague, nonspecific assertions of damage from flooding. Appellants are limited to the scope  
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26 <sup>38</sup> See FEIS, pages 11 and 12; Hearing Transcript, pages 18-22.

1 of issues they engaged in at hearing.<sup>39</sup> Just as no new evidence or testimony is allowed in a  
2 closed record appellate proceeding, appellate rules provide that only issues that a party raised in  
3 the previous proceeding can be raised on appeal.<sup>40</sup> Moreover, “[t]he doctrine of standing  
4 generally prohibits a party from asserting another person’s legal right.”<sup>41</sup> Here, there was no  
5 written statement or testimony by United General Hospital in these present hearings. The  
6 protectable interest asserted also “must be more ... than simply the abstract interest of the  
7 general public in having others comply with the law.”<sup>42</sup>

8 On appeal, Appellants are raising specific issues that they did not raise below. They did  
9 not specifically discuss surface water elevations or hydrology **relating to the specifics and in**  
10 **connection with the actual project which has been approved** and which has been submitted  
11 under this permit. Appellant argues hydrology and surface water elevations relating to Army  
12 Corps of Engineers hydrology and a levee project which is **not** under this permit, along with a  
13 BFE which is the result of a different Corps project, and not the specific project under  
14 consideration. For an issue to be properly raised before an administrative tribunal, “there must  
15 be more than simply a hint or slight reference to the issue[.]”<sup>43</sup> Because Appellants did not  
16 make these arguments below, they have not preserved these issues for appeal,<sup>44</sup> and Appellants

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18 <sup>39</sup> See Rules of Appellate Procedure (“RAP”) 2.5. This rule provides exceptions for issues regarding: (1)  
19 lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3)  
20 manifest error affecting a constitutional right.” None of the exceptions apply here.

21 <sup>40</sup> See, e.g., RAP 2.5(a); Suquamish Indian Tribe v. Kitsap County, 92 Wn. App. 816, 826, 965 P.2d 636  
22 (1998); State v. Scott, 110 Wn.2d 682, 685, 757 P.2d 492 (1988).

23 <sup>41</sup> Timberland Homeowners Assoc. Inc. v. Brame, 79 Wn.App. 303, 307, 901 P.2d 1074 (1995) (citing  
24 Haberman v. WPPSS, 109 Wn.2d 107, 138, 744 P.2d 1032, 750 P.2d 254 (1987), appeal dismissed, 488  
25 U.S. 805, 109 S.Ct. 35, 102 L.Ed.2d 15 (1988)).

26 <sup>42</sup> Biermann v. City of Spokane, 90 Wn.App. 816, 820, 960 P.2d 434 (1998) (citation omitted).

<sup>43</sup> King County v. Wash. State Boundary Review Bd., 122 Wn.2d 648, 670, 860 P.2d 1024 (1993); see  
also Citizens for Mt. Vernon v. Mt. Vernon, 133 Wn.2d 861, 869, 947 P.2d 1208 (1997).

<sup>44</sup> See Westside Bus. Park, LLC v. Pierce County, 100 Wn. App. 599, 608, 5 P.3d 713 (2000) (failure to  
raise issues during the course of an administrative hearing precludes the consideration of such issues on  
review).

1 are not allowed to appeal on behalf of other parties who have not appealed the Decision.<sup>45</sup>  
2 Accordingly, Appellants have failed to meet the exhaustion prong of standing requirements and  
3 these issues should be dismissed.

4       **9. Appellants Should Take Action to Engage in Cooperative Efforts for Flood**  
5       **Control, Rather Than Reject the Right of its Neighbors to Engage in Flood**  
6       **Control.**

7       It would appear that Appellant is really asking that DD12, as a condition of continuing  
8 their permit work, to not only provide its studies and engineering for their project, but also to  
9 provide additional analysis and studies for all of Sedro-Woolley regarding the effects upstream,  
10 in addition to building simultaneous setback levees, awaiting the completion of the 20 year GI  
11 Study and, all at the cost of DD12.<sup>46</sup> This form of flood control, which is based on delay,  
12 studies, inaction, denial of permit, and no realistic flood control is not prudent flood planning.  
13 After spending millions of dollars, with numerous studies and partnerships with the Corps of  
14 Engineers, City of Burlington, five other Dike Districts, and the City of Mount Vernon and  
15 others, the “delay work and do nothing” approach is not an option for DD12. The Dike District  
16 is statutorily required under RCW 85 to provide flood protection for the community within its  
17 district and the County, and for years it has done a good, and thorough job of well-engineered  
18 projects in compliance with all required permits and regulations. Appellants would have DD12  
19 abrogate these responsibilities, and place a roadblock preventing legitimate well-designed,  
20 permit-approved, and needed project for the protection of citizens and property in Skagit  
21 County.

22       As a related matter, Sedro-Woolley has known that United General Hospital and the  
23 Wastewater Treatment Plant can be at risk of catastrophic flooding since they were constructed,  
24 and these areas have needed additional flood protection during high-water events since it was  
25 constructed. These are risks which will be ongoing at the time of catastrophic flooding. These

26 <sup>45</sup> See Timberland Homeowners Assoc. Inc., *supra* note 27.

<sup>46</sup> See Appellant’s Memorandum page 5.

1 facilities are not jeopardized under this current project. The Sedro-Woolley Wastewater  
2 Treatment Plant ring dike has been listed as flood protection projects in the Skagit River  
3 Comprehensive Flood Hazard Management Plan. Yet the City has failed to take any measures  
4 to plan, fund, or construct the identified protection of its infrastructure against a known flood  
5 hazard which also leaves all downstream communities at risk of serious water quality issues in  
6 times of flooding.

7 Further, it would appear that Sedro-Woolley is the only local municipality that does not  
8 currently have a flood protection plan in place, and if they do, this has not been shared with  
9 Skagit County for purposes of regional flood risk planning. No action in the face of a known  
10 flood risk is not an effective flood hazard management strategy.

11 Being inactive is different from being proactive. And failing to be proactive, while  
12 denying or delaying a neighbors right to pursue a proactive plan of flood control is not good  
13 flood policy and is not fair, reasonable or effective to protect persons and property in either  
14 jurisdiction.

15 To study and re-study and analyze hydrology which has already been studied and  
16 analyzed with conclusive, but not refuted conclusions; to delay or stop a project until other work  
17 which is not related to this project occurs; to halt or delay work pending the conclusion of an  
18 inconclusive 20-year study; and to opt for an inactive approach, are all non-productive solutions  
19 to flood protection for the citizens of Skagit County. Although Appellant states that: "There is  
20 really only one opportunity to get this right ...", it is unfortunate that the City chooses to miss the  
21 opportunity to work with DD12 and City of Burlington, and instead fights approval of the  
22 permit and rejects the ability of its neighbor to protect themselves from flooding, with no real,  
23 scientific, or hydrologic basis to do so. Appellant chooses litigation rather than cooperation.

24 The Respondent respectfully requests that the Commissioner reject the appeal of  
25 Appellant, and affirm the approval of the Shoreline Substantial Development Permit under File  
26 No. PL 12-0191.

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#### IV. CONCLUSION

This project permit process has been ongoing for nearly ten years. DD12 seeks to make width and height modifications, in connection with an Interlocal Agreement with the City of Burlington to obtain certified levees under FEMA and Army Corps guidelines. Under the terms of the permit and analysis and hydrology, the permit will provide protection primarily for Burlington, but it will also strengthen the levees from the Three Bridge Corridor on the south to the City of Sedro-Woolley. A strengthened levee will resist flooding which could be catastrophic not only to Burlington, but to downstream communities.

The Shoreline Substantial Development Permit was approved by the Hearing Examiner on June 28, 2013, after years of study, analysis and hydrology was undertaken. **All of these studies, culminating in issuance of permit, demonstrated that the project would have minimal and no measurable effects on upstream properties in Sedro-Woolley, including the Sedro-Woolley Water Treatment Plant and the United General Hospital.** This analysis included an extensive FEIS approved July 16, 2010, analysis and hydrology provided by Army Corps of Engineers, Pacific International Engineering, Reichardt and Ebe Engineers, Golder & Associates Engineers, Northwest Hydrology Engineers, Graham Bunting Consultants, the City of Burlington Public Works, and Skagit County Public Works.

Based on this analysis and hydrology, DD12's permit was granted. There have been numerous Fill & Grade permits issued for the project, the City of Burlington approved a Substantial Development Permit, and Skagit County Planning recommended approval of the permit. All reviewing and permitting entities, and including the Hearing Examiner found that the proposed project would result in **no significant adverse impacts to areas upstream or downstream of the project site, and there would be no upstream backwater effects to Sedro-Woolley from the project.**

The City appeals the permit, claiming that the upstream effects on Sedro-Woolley have not been adequately documented, and more documentation and study is needed. These claims

1 are incorrect and unfounded, and in any event not before the Board. It is alleged that there are  
2 different hydrologys which reach different conclusions and there is really no evidence in the  
3 record to show the effect on Sedro-Woolley. On the other hand, DD12 notes that there is  
4 substantial information, analysis, and hydrology which determines that the effect would be no  
5 more than one-tenth of a foot base flood elevation on areas in Sedro-Woolley and that the actual  
6 effect would be minimal and not measurable as evidenced by hydrology maps and flood  
7 modeling approved in the FEIS.

8 There would be no measurable effect in Sedro-Woolley, at the Wastewater Treatment  
9 Plant and United General Hospital. Further, that the City has not refuted the permit hydrology,  
10 because it cites hydrology based on alternate Army Corps proposed projects, which are not the  
11 projects being done or under consideration. In summary, the City's argument against the permit  
12 is based on alternative hydrology, as well as additional work, and setback levees, which are not  
13 conditions of the permit, and are not relevant to the arguments in a closed record review.

14 The City then requests that the project be stopped, or additional terms and conditions be  
15 attached to the permit before proceeding, which include additional studies of issues already  
16 studied, analysis of flood effects in other areas of Sedro-Woolley unrelated to the project, and  
17 requiring work which had been included in other different Corps projects and not in this permit.  
18 Further, the City also wants to await the completion of the GI Study which has now taken nearly  
19 20 years, without yet reaching a conclusion on any projects.

20 Exhibits have been filed including a letter from Doug Weber, the Chief of Emergency  
21 Management Branch of U.S. Army Corps of Engineers who has been involved in the GI Study.  
22 He advises that continued maintenance, repair and projects for flood control must be done  
23 immediately and continue, and that **waiting for completion of a long-term study would**  
24 **increase the flood risk to the community.** Further, a letter from Chal Martin, the prior Skagit  
25 County Director of Public Works, and Burlington Public Works notes that the project will only  
26 increase the level of safety along the river, that there will be no impact to upstream water



1 surface levels, and that the requirements of this permit would not affect areas in Sedro-Woolley  
2 north upstream of the project.

3 The standard of review, and burden of proof upon Appellant is a heavy burden.  
4 Appellants must prove that the Hearing Examiner's Decision was **clearly erroneous**. This  
5 means that there must be proof that the Hearing Examiner was clearly wrong and that the  
6 decisionmaker is "**left with a definite and firm conviction that a mistake has been**  
7 **committed.**" In reviewing the evidence, it must be viewed **in the light most favorable to the**  
8 **party that has previously prevailed.** Here, the Respondents engineering, data and hydrology  
9 underlying its permit constitute a substantial and enormous volume of material.

10 The City of Sedro-Woolley has not refuted any of the analysis, or hydrology which  
11 warranted project approval. The City has submitted no engineering, studies, analysis, or  
12 hydrology refuting the basis of the permit. The City has not provided any evidence that **this**  
13 **project permit** causes damage or injury to the City. The City has not met its burden of proof  
14 and there can be no basis that the present reviewing Commissioners can be "left with a definite  
15 and firm conviction that a mistake has been committed." The permit should be upheld and  
16 appeal dismissed based solely on evidence, law and fact.

17 In addition, on alternate legal grounds, the City has **failed to demonstrate an actual**  
18 **injury-in-fact, and has no standing to bring this appeal.** Under the Shoreline Master  
19 Program § 13.01 an aggrieved party must establish as a matter of fact that the party will be  
20 harmed if relief is not granted. This must be an **actual injury-in-fact**, and not a speculative or  
21 general assertion of potential or possible injury. Here, the City of Sedro-Woolley, without any  
22 scientific or hydrology evidence or basis, claims that they have "concerns" and there is a  
23 "potential for damage" and there may be "unintended consequences", **without specific**  
24 **demonstrable evidence that this particular project permit in fact causes a specific injury**  
25 **or damage.** In fact, all the available evidence finds to the contrary. Accordingly, this appeal  
26


1 should be dismissed, given that Appellants have no standing and have not demonstrated any  
2 specific injury-in-fact.

3 For the above reasons, Respondent Skagit County Dike, Drainage and Irrigation District  
4 No. 12 respectfully requests that the Appellants appeal be denied and the Shoreline Substantial  
5 Development Permit under File No. PL12-0191 approved by the County Hearing Examiner be  
6 affirmed and approved.

7 DATED: 8/26/13

Respectfully submitted:

8 SHULTZ LAW OFFICES

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10   
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