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June 30, 2014

Skagit County Hearing Examiner
Attn: Wick Dufford
1800 Continental Place
Mount Vernon, WA 98273

Re: Remand Pertaining to the Closed Record Appeal (PL13-0265) Of Hearing Examiner approval of Shoreline Substantial Development Permit (PL12-0191) – Item c.

Dear Mr. Dufford:

Graham-Bunting Associates (GBA) have followed the referenced remand proceedings over the past months with interest. It is noteworthy that no testimony has been received relative to the third item remanded by the Board of County Commissioners for consideration by the Examiner.

c. In considering this Shoreline Permit, the Hearing Examiner shall analyze, consider and render specific findings that document compliance with the County's obligations under the NMFS bi-op.

At the risk of protracting an already lengthy process we would like to offer our perspective on this matter. GBA contracted with Skagit County Dike, Drainage and Irrigation District No. 12 to prepare wetland and fish and wildlife site assessments in conjunction with the District's levee certification project. The assessments are included in the record and are listed as exhibits 7. and 8. in the staff report prepared by Planning and Development Services (April 17, 2013).

The fish and wildlife assessment, (February 27, 2013), speaks specifically to species and critical habitats identified under the Endangered Species Act (ESA) on pages 10 through 13. Further, the assessment also considers the Section 7 Consultation and Final Biological Opinion (bi-op) prepared by the National Marine Fisheries Service relative to implementation of the National Flood Insurance Program (NFIP). The bi-op addresses the effects of the NFIP on the Puget Sound Chinook salmon Evolutionarily Significant Unit and the Southern Resident Killer Whale Distinct Population Segment. While our assessment incorporates a number of elements of the federal BE template, it is not and was not intended to constitute a detailed biological evaluation (BE) consistent with federal requirements. The assessment was prepared consistent with the provisions of the Skagit County Critical Area Ordinance (SCC 14.24) and Flood Damage Prevention Ordinance (SCC 14.34).

SCC 14.24 and 14.34 were recently amended in response to FEMA guidance for incorporation of bi-op findings into local land use codes. In short, these amendments required the District to demonstrate that the levee certification project was not likely to adversely affect species listed under the ESA. Based on the applicable provisions of SCC 14.24, SCC 14.34 and consultation with County Planning Staff, GBA prepared an abbreviated ESA analysis within our site assessment which included:

- Identification of the project action area
- Characterization of existing environmental conditions
- Species information (including ESA status and agency of jurisdiction)
- Analysis of effects (direct/indirect)
- Identification of conservation measures
- Determination of effects (by species)

GBA concluded that by limiting project actions to the area landward of the existing levee and application of appropriate conservation measures, the proposal satisfies the “*not likely to adversely affect*” standard required under Subsection 14.24.630 (3) of the Critical Area Ordinance. Additionally we found that the associated provisions of the Flood Damage Prevention Ordinance outlined under subsection 14.34.220 were also met.

The staff report prepared by John Cooper, dated April 17, 2013, is supportive of GBAs determination of effects and relies upon similar reasoning in its findings. The report includes an analysis of policy guidance provided by the Shoreline Master Program relating to potential impacts on recreation, wildlife and aesthetic resources resulting from the levee certification project and concludes (page 7, Stabilization and Flood Protection – Policies – Impacts, 7.16, IG. (1) & (2):

(1) “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 recreation opportunities, fish and wildlife habitat or current aesthetic values.”

The analysis continues by addressing potential impacts of filling and grading on biological systems, navigation and river hydraulics arriving at the same conclusion:

(2) “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...”

The staff report concludes with a recommendation for approval of the requested shoreline substantial development permit subject to conditions 1 – 7. Condition 4 requires compliance with various chapters of the Unified Development Code including Chapters 14.24 (Critical Areas Ordinance) and 14.34 (Flood Damage Prevention Ordinance). We understand staff’s

recommendation of approval and the Hearing Examiner's subsequent approval of the permit to mean that, as proposed, the project was found to be compliant with the provisions of the Critical Areas Ordinance including the associated provisions of the Flood Damage Prevention Ordinance. The project was designed by the District to be compliant and our site assessment was prepared to assess and demonstrate compliance. If our analysis was found to be insufficient, prior experience indicates, that staff would have advised us to amend the documents to provide additional information or analysis.

The Board's remand (Resolution # R201302780) references the various methods by which local governments may attain compliance with the ESA and further suggests that applications must be reviewed by FEMA on a case by case basis. Because there is a federal nexus based on U. S. Army Corps of Engineers funding and permit requirements, a BE could be required at the request of federal agencies. It should be recognized that federal involvement with the project has not resulted in a request for a BE to date. Federal representatives have been party to project development for many years and more recently attended public meetings and hearings relating to the project. Lacking a request for additional biological information from a federal agency of jurisdiction, it would appear that the analysis submitted by the district provides sufficient detail to address the ESA pursuant to Skagit County requirements.

In summary, GBA addressed Skagit County requirements associated with listed species through the preparation of a fish and wildlife site assessment which included an analysis of the effects of the project on Puget Sound Chinook salmon and Southern Resident Killer Whale. We utilized the guidance provided under the Skagit County Unified Development Code and believe it was sufficient for the task.

We hope that these comments are helpful in developing appropriate findings in response to item c. of the Board's remand.

Sincerely,



Oscar Graham, Principal Ecologist
Graham-Bunting Associates

Copy: John Shultz, Attorney at Law
Skagit County Dike, Drainage and Irrigation District No. 12
John Cooper, Skagit County Planning and Development Services