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2 **TRANSCRIPT OF APRIL 24, 2013 PUBLIC HEARING BEFORE THE SKAGIT**
3 **COUNTY EXAMINER, RE: SHORELINE SUBSTANTIAL DEVELOPMENT**
4 **PERMIT PL12-0144.**

5 **SKAGIT COUNTY HEARING EXAMINER WICK DUFFORD (HE):** My name's Wick
6 Dufford and I'm the county's Hearing Examiner. We have two
7 items on today's land use agenda. The first is a modification
8 to a shoreline substantial development permit applied for by
9 Douglas and Linda MacGregor and the second is a shoreline
10 substantial development permit in the first instance and the
11 project is an eastern extension of the levee maintenance project
12 initiated by the City of Burlington and Skagit County Dike and
13 Drainage District Number Twelve. So we'll take those in the
14 order they're listed.

15 There are both shoreline cases and in the case of the
16 modification depending on what happens here but if there is an
17 approval then it's a kind of a short course to getting going on
18 the project. In the case of modifications of shoreline permits,
19 it doesn't follow the same sort of lengthy procedures that a
20 regular permit approval would follow.

21 In any event, where you end up, if you want to do some appealing
22 is first with the Board of County Commissioners and then with
23 the State Shorelines Board. What we'll do this morning is what
24 we usually do on these free decision matters. That is we'll
25 have the staff present their report and then we'll hear from the
26 applicants. Then we'll hear from any members of the public that
27 want to testify about the proposals that are before us. After
28 that, if the applicant or the county has anything they want to
29 say in response to the testimony, we'll let them do that.

Public Hearing Transcript RE: PL12-0144

1 Then that will conclude the hearing and I will take the material
2 that I am given and make a written decision within about two
3 weeks. The exhibits and all of that sort of thing are in the
4 file that I haven't yet seen. I have had a chance to look at
5 the staff reports but I'll be needing to go over those other
6 items. Anything else that anybody wants to present during the
7 course of the hearing, they should do that when they get a
8 chance to speak. We'll deal with it then.

9 So that's basically what we're up to. We'll start with the
10 MacGregor application and who's gonna speak for the County?

11 [ABRIDGED FROM 0:03:04 TO 0:16:50]

12 **HE:** We'll call the hearing back to order and this is the
13 shorelines substantial application for the Skagit County Dike,
14 Drainage and Irrigation District Number Twelve. Again, it's
15 the, I guess you're still under oath so go ahead. Okay?

16 **JOHN COOPER [JC]:** Sounds good. I'm going to go ahead and give
17 you exhibits one through eight and two comment letters that were
18 received.

19 This is part of the application materials which includes the
20 final EIS and the biological opinion. These are additional
21 comment letters that we received after [unintelligible] of the
22 staff report. That includes another disk with a comment that I
23 think you received independently of our department.

24 Then I made several copies of the diagrams of the hydrologic
25 model, hydraulic model that are located in the final EIS.

26 **HE @ 18:16:** Okay, so the EIS itself is part of this act?

27 **JC:** Actually part of this large [unintelligible].

Public Hearing Transcript RE: PL12-0144

1 **HE:** So these are excerpts?

2 **JC:** Yes, yes.

3 **HE:** Alright, according to the staff report, again we have nine
4 exhibits from the official file and two comment letters
5 mentioned and then you have given me a letter from Kyra Symonds
6 as an additional exhibit and I think, wait a minute, here's a
7 letter from the Conservation District, a letter from the Dike
8 District No. 20, and a letter from the City Supervisor Eron Berg
9 of Sedro-Woolley, and finally some comments of Concrete
10 Nor'West.

11 **UNK:** That's correct. You should also have a comment letter by
12 Mr. Larry Kunzler. That's one that's attached to the disk.

13 [COLLOQUOY]

14 **HE:** I assumed that was basically his testimony rather than a
15 comment letter. It'll get into the record at any event whatever
16 we call it. So could you give exhibit numbers to those items I
17 just handed you?

18 [0:20:00]

19 **HE:** And if we've done that, then we have admitted, then I am
20 admitting all those items to the record. Mr. Cooper, go ahead.

21 **JC:** Okay, I'll try to summarize this here. This is Shoreline
22 Development, Substantial Development Application PL12-0144 for
23 Skagit County Dike and Drainage Irrigation District Number 12.
24 The area subject to the proposed shoreline stabilization flood
25 protection improvements is along the right to northwest bank of
26 the Skagit River extending from Lafayette Road in the North to
27 Gardner Road in the South. Project is an eastern extension of
28 the levee maintenance project initiated by the City of

Public Hearing Transcript RE: PL12-0144

1 Burlington and Skagit County Dike, Drainage and Irrigation
2 District Number Twelve intended to increase flood protections
3 for the City of Burlington. Dike District Number 12 proposed to
4 enlarge both the width and height of the existing Skagit River
5 levee along a 1.53 mile section of the river there. The project
6 extends from Burlington city limits to Gardner Road north to the
7 terminus of Lafayette Road. The elevation at the top of the
8 levee will be increased by approximately four feet in height and
9 the toe or base of the levee will be increased by approximately
10 sixty feet in width. The widening of the dike will be limited
11 to an area landward of the existing levee toe. The purpose of
12 the improvements is for structural reinforcements of the levee
13 system to prevent failure during elevated flood events and to
14 obtain levee certification from the United States Army Corps of
15 Engineers.

16 This section of levee - existing levee - is constructed on a
17 louver (sic) terrace and runs the outer bend along an elongated
18 meander of the Skagit River. The operation continues along this
19 reach of the river and as appropriate progresses the base on the
20 north end. Rock has been placed at the waterward toe of the
21 levee at this location to prevent further erosion and
22 encroachment in the levee.

23 They did submit a geotech report with the materials, the
24 application materials, the geotech report indicates the dike is
25 currently stable in its current configuration, with the
26 exception of there's some unresolved [UNINTELLIGIBLE] they were
27 not able to measure the stability due to the rock in that
28 portion that's below the Skagit River so there's some question
29 about the stability of the dike as well. Also it's... this dike
30 is located in an area of high liquefaction potential so in an
31 extreme seismic event there could be damage to the dike.

Public Hearing Transcript RE: PL12-0144

1 [UNINTELLIGIBLE] Some improvements to the dike are warranted in
2 that respect alone.

3 Let's see. So the, uh, let's see, Skagit County Dike and
4 Drainage District Number 12 has completed some of the actions by
5 placing some fill landward of the site of the dike - this has
6 been done, the remainder of the grading project will be
7 completed during the spring, summer and early fall of 2013. My
8 understanding is that this whole project may take, is planned to
9 take five years, may take a total of six if they run into some
10 difficulties. Something that'll be presented to you later on.
11 Subject property is designated as agricultural, natural resource
12 land as indicated on the comprehensive plan and zoning maps, the
13 subject site has a shoreline designation as rural as indicated
14 in the Skagit County Shoreline Management Master Program. The
15 Skagit River is a shoreline of state significance.

16 Notice of development application was posted on the subject
17 property and published in a newspaper of general circulation on
18 November 22nd and 29th, 2012 as required by section 14.24 point 9
19 point 04 of Skagit County's Shoreline Management Master Program.
20 Notification was provided to all property owners within 300 feet
21 of the subject property. There was a 30-day comment period
22 associated with the notice of development which ended on
23 December 28th, 2012. During that time, two comment letters were
24 received and they were concerned about the effects on the dike
25 on flooding up and across stream or more accurately cross stream
26 in this particular case. It is noted that the existing levee is
27 located within an A7 flood zone as designated as a 100-year
28 flood area.

29 [0:25:00]

Public Hearing Transcript RE: PL12-0144

1 The subject parcel was reviewed with respect to Skagit County's
2 Critical Areas Ordinance. The results of the review indicated
3 that there are critical area conditions within 200 feet of the
4 proposed development. That includes both wetlands and fish and
5 wildlife conservation areas. The applicant submitted a wetlands
6 assessment report by Graham Bunting Associates as well as a Fish
7 and Wildlife Site Assessment to address impacted wetlands and
8 impacts to fish and wildlife resources. [STUTTERING] They also
9 submitted a biological assessment by Anchor QEA. However, that
10 biological assessment is specific to the three bridge corridor
11 south and west of the subject site although it may have some
12 relevance to this project as well.

13 The assessments indicate that the proposed improvements intend
14 to comply with Skagit County's Critical Areas Ordinance and
15 minimal impact would occur to fish & wildlife resources as well
16 as wetlands with the exception of one small wetland which is non
17 jurisdictional to Skagit County with placement of fill to
18 increase the width.

19 This application was actually given to the Skagit County
20 Building Official and Floodplain Manager for review. At that
21 time, the grading and sloping permit indicated Grading in
22 Floodplain permit would be required if construction results in
23 modification of the regulatory floodplain. First a Certified
24 Letter of Map Revision and then a Letter of Map Revision would
25 be required from the Corps. Just the other day he reviewed that
26 and provided me with an e-mail here and his response is that the
27 hydraulic analysis admitted to this project indicates the
28 project will not have a cumulative rise in base flood elevation
29 of more than one foot. Therefore, according to Skagit County
30 Code 14.34.200 a certified letter of map revision or a letter of

Public Hearing Transcript RE: PL12-0144

1 map revision is not required in this case. You do have a copy
2 of that e-mail in your packet.

3 **HE:** That's what you mean when you say CLOMR?

4 **JC:** Certified Letter Of Map Revision.

5 **HE:** Yes, thank you.

6 **JC:** I guess that's an acronym we've gotten used to here at the
7 County. So of course we reviewed this according to the criteria
8 of the Shoreline Management Master Program and we looked at it
9 from a perspective of shorelines of statewide significance.
10 Section on landfills and shoreline stabilization and flood
11 protection, which was primary review purpose here. So I'm going
12 to go through some of these. In general, we found them
13 compliant with the requirement the Shorelines Management Master
14 Program but there's a couple of key points that I want to pull
15 up as we go so I'll just go through this here.

16 Streamway modification and marine diking program should be
17 coordinated. This is a policy on the Shorelines Management
18 Master Program. Should be coordinated and monitored to provide
19 for more comprehensive planning of Skagit County shorelines. We
20 respond streamway modification and marine diking is not included
21 in this project, however increasing the dike height may result
22 in minor modifications of the Skagit River hydrology during
23 elevated flood events. This project has been coordinated
24 between Dike District 12 and the City of Burlington. The
25 project is not considered a coordinated response or improved
26 mitigation measure for flooding by the members of the Skagit
27 River General investigation. The purpose is to solely modify
28 the existing dike system on the north and west side of the
29 Skagit River in order to provide shoreline stabilization and

Public Hearing Transcript RE: PL12-0144

1 greater flood protection to the City of Mount Vernon. Section
2 two, er, policy number two indicates that, recognizing that
3 streamway modifications may cause and interfere with normal
4 river geo-hydraulic processes, may lead to erosion of other up
5 and downriver shorelines. Such modifications and stabilization
6 measures should incorporate basic geohydraulic principles and be
7 located, designed, coordinated and maintained for homogenous
8 river reaches. Such modifications and others should be cited
9 and designed by qualified professional personnel.

10 [0:29:54]

11 This project was designed by the engineers Pacific International
12 Engineering using geohydraulic principles in design and
13 construction although hydraulic modeling of the proposal
14 indicates upstream and downstream impacts may occur during
15 elevated flood events. Dike District 12 and the City of
16 Burlington utilized designs that will minimize these impacts.
17 Proposal is also required to comply with flood damage prevention
18 ordinance.

19 I wanted to add that Pacific International Engineering is not
20 hydrology that has been accepted by all at this time. The
21 applicant did provide hydraulic modeling by both the Pacific
22 International Engineering and also by the Army Corps of
23 Engineers and I'm sure they'll speak to that a little bit later.
24 So I just wanted to make sure you understood that.

25 All bank stabilization and flood protection measures should be
26 constructed to comply with the design and location standards and
27 guidelines of applicable agencies. Project has been designed
28 according to the United States Army Corps of Engineers'
29 guidelines design standards in an effort to receive levee

Public Hearing Transcript RE: PL12-0144

1 certification. The proposal is also required to comply with
2 flood damage prevention ordinance.

3 One of the purposes the applicant has indicated for construction
4 of this levee is the intent to get levee certification by the
5 Army Corps of Engineers. As it stands right now, the levee that
6 is out there is right now not recognized - if I understand this
7 correctly - is not included in the models for the area. So if
8 they are able to achieve levee certification they would include
9 this levee in any modeling designs in the future under the
10 General Investigation.

11 **HE:** Okay.

12 **JC:** In another policy, rated and meandering channels and
13 associated shoreline areas should not be locations for intensive
14 land use developments such as those of an industrial or
15 commercial or residential nature. I want to note here that I
16 want to refer to shoreline jurisdiction and make sure everybody
17 understands shoreline jurisdiction is indicated within an area
18 within 200 feet of the high water mark of shoreline. You look
19 at the maps and signs out there you'll see that there is no
20 intensive development that has been or is proposed within
21 shoreline jurisdiction in that area. So, with the exception of
22 some farmworker housing and urban residential development within
23 the Burlington city limits, which again is outside of shoreline
24 jurisdiction; the proposal is not directly associated with
25 intensive developments - new or old developments.

26 So I'm moving onto regulations - Shoreline Stabilization and
27 Flood Protection Regulations. Number three says the county may
28 require professional design of shoreline stabilization and flood
29 protection works as such projects will cause up and downriver
30 properties shoreline resources. Again, this project was

Public Hearing Transcript RE: PL12-0144

1 designed by Washington State licensed professional engineers
2 using geohydraulic principles in the design and construction.
3 The City of Burlington in conjunction with the Army Corps of
4 Engineers and when I say that, I'm referring to their design
5 criteria has designed this project to protect the city from
6 elevated flood events while minimizing upstream and downstream
7 hydraulic impacts from the proposed dike improvements.

8 [0:34:10]

9 So with that I'm going to move onto recommendations here. I
10 think in this particular case, the best recommendation that I
11 could possibly give in this case would be to wait for completion
12 of the General Investigation, comply with findings, and comply
13 with those findings. Traditionally here, we provide
14 recommendations for approval or not to approve of these
15 particular projects. So with exception of coordination of other
16 jurisdictions, this proposal is consistent with the requirements
17 of the shoreline management master program and it really is an
18 issue of impact here with ... the applicant will be going with you
19 in detail

20 [0:35:00]

21 So, in my review, in looking at the diagrams of the models that
22 have been provided it really comes down to this issue of impact.
23 So with the levee improvements the diagram by - again - the Army
24 Corps of Engineers hydraulic model indicates to me that is
25 provided in the EIS an increase in flood levels of approximately
26 and I'm looking at the model, I'm guessing around half a foot
27 upstream and as much as two inches crossstream to this proposed
28 dike location. Model also indicates a reduction in flooding by
29 three or four feet or possibly even more in other locations
30 within the urban area of Burlington, immediately west of where

Public Hearing Transcript RE: PL12-0144

1 this dike would be placed. Based on this info provided by the
2 applications' information, it appears that the cumulative impact
3 to the people of Skagit County would be, would be best served by
4 approving this for the protection of the people of Burlington.
5 So Skagit County does recommend approval of this Shoreline
6 Management Master Program substantial development permit with
7 the attached seven conditions.

8 [0:36:27]

9 Those conditions include the applicant comply with state water
10 quality criteria, temporary erosion sediment control measures be
11 utilized in accordance with Skagit County code - the drainage
12 code, the applicant comply with Northwest Clean Air Agency
13 requirements, they comply with all applicant parts of Skagit
14 County Code including the Shoreline Management Master Program,
15 critical areas ordinance, flood damage prevention ordinance, and
16 zoning code. We request that, uh, a condition that the
17 aesthetic impacts be minimized and that the applicant should
18 strictly adhere to the project information submitted with the
19 proposal. If the applicant proposes any modification of the
20 subject proposal, he or she shall request a permit revision from
21 this office. Number seven states that if the demolition of any
22 of the buildings occurs, and they discover septic systems or
23 drainfields, septic tanks, septic lines or pipes under the
24 proposed project area, then the contractor shall contact the
25 Skagit County Health Department to obtain decommissioning
26 approval. Any wells impacted or removed from the project shall
27 be decommissioned per state requirements. That concludes my
28 summary. I'm sure there's lots of questions and a lot of people
29 that can talk about this that are [unintelligible].

Public Hearing Transcript RE: PL12-0144

1 **HE:** Okay, yes, I'm a little confused. When you started out
2 talking about where you come out on this, you said something
3 about waiting?

4 **JC:** Yeah so.

5 **HE:** What did you mean by that?

6 **JC:** There's a General Investigation going on for Skagit River.
7 It's a collaborative effort and we do have some folks from
8 Public Works and members of the General Investigation that can
9 speak to that a little bit more accurately. But the purpose of
10 that group is to get together and come back with a concentrated
11 effort that is to the benefit of all parties. That's ongoing
12 right now. This is moving forward before that is concluded.
13 So, ideally, it would be nice to have that completed before they
14 move forward with this action. But again looking at it from a
15 shoreline perspective, and looking at it from impacts to the
16 public um, um, I feel compelled to recommend approval because it
17 seems to lessen the impacts to the greater density in urban
18 areas.

19 [0:39:12]

20 **HE:** Okay. One of the additional letters I have is from Kyra
21 Symonds, and I assume that's the outfit you were just referring
22 to.

23 **JC:** Yes.

24 **HE:** And she says, the Skagit River General Investigation
25 involves a basin-wide comprehensive approach of a preferred
26 alternative has not been selected for the General Investigation.
27 Therefore, from the Investigation's perspective, it hasn't been
28 determined how this proposal fits within that framework.

Public Hearing Transcript RE: PL12-0144

1 Uniformity in levee heights, levee raises that increase the
2 level of protection are currently being analyzed. So this tells
3 me they haven't gotten to this or figured it out but it doesn't
4 say don't do it. I'm not sure where to come down on this. I
5 guess that's where you are?

6 [0:40:04]

7 **JC:** That's exactly where I am, yes.

8 **HE:** Okay. Does this project need a flood control permit?

9 **JC:** It needs a flood permit, yes.

10 **HE:** Okay.

11 **JC:** And they have applied that already.

12 **HE:** And there is, involved in this somehow the City of
13 Burlington although as I understand it the applicant is the Dike
14 and Drainage District. What is the City have to do with this?

15 **JC:** The City is part, this is the final part of a three part
16 project which is addressed in the final environmental impact
17 statement. The project was, involves the stabilization and,
18 uuuuh, modification of the dikes within the City of Burlington.
19 My understanding is that has been completed or in the process of
20 being completed and they're also doing some, I think,
21 environmental improvements farther downstream on Gages Slough
22 and I'm not sure what that is. This is the final element that
23 is addressed in that final environmental impact statement.

24 **HE:** So this isn't in this specific project outside of
25 Burlington?

26 **JC:** This particular project is outside of Burlington.

Public Hearing Transcript RE: PL12-0144

1 **HE:** Okay but nonetheless apparently Burlington did the SEPA
2 analysis, is that right?

3 **JC:** Yes.

4 **HE:** Looking at the whole thing?

5 **JC:** Yes.

6 **HE:** So an impact statement was written and that covered the
7 whole thing, I assume?

8 **JC:** Those three projects, it does have some, there are some
9 other programmatic issues that need to be addressed and I
10 believe that is in conjunction with the General Investigation.
11 But I'll leave that to the City of Burlington to clarify.

12 **HE:** Okay. Let's see if there's not anything I wanted to ask
13 right now. I guess not of you.

14 **JC:** Okay.

15 **HE:** Is there somebody here from the City of Burlington that
16 could enlighten me on some of this?

17 What's your name?

18 [0:42:43]

19 **MARGARET FLEEK [MF]:** My name is Margaret Fleek; I'm the
20 Burlington Director of Planning and Community Development.

21 **HE:** Okay, let me swear you in. You swear and affirm the
22 testimony you give will be the truth, the whole truth so help
23 you?

24 **MF:** Yes.

Public Hearing Transcript RE: PL12-0144

1 **HE:** Alright. Can you help me out on sort of the big picture
2 here.

3 **MF:** Yes. Basically, uh, after the 1990 flood the level of repair
4 and maintenance started to really ramp up, there were all kinds
5 of sand boils and sandbagging required so they started
6 installing keyways and then Burlington acquired Skagit River
7 Park to prevent any further development behind the levees but
8 the other issue there was to get the levees designed for
9 overtopping. To have the long backslopes and the wide tops so
10 the levees wouldn't break out, that they would gently overtop in
11 a major flood event. It has, the goal is not a substantial
12 change in the effects of flooding, the railroad bridge is the
13 big barrier and we're just trying to make the levees really
14 solid and wide and then, uh, increase it to meet the Corps of
15 Engineers' 25-year standard.

16 Nobody's agreed on how much water actually gets here so until
17 that's resolved, we just want to make the levee solid, provide
18 for overtopping, and public safety. The City Limits of
19 Burlington end at the Gartner Road Boat Launch Ramp so the
20 upstream levee segment is in Skagit County. They're a number of
21 high density residential facilities, houses in this area as well
22 as a huge urban level apartment development - Raspberry Ridge -
23 which is on septic and that system failed last year. We have
24 become very concerned about public health should there be a
25 major flood event.

26 So, uh, when we looked at all the issues we're facing in
27 Burlington and Dike District 12 and Skagit County, we decided we
28 should do an environmental impact statement to get everything
29 laid out on the table, take a comprehensive look around the
30 edges of our city, we're farmland on 2 sides, river on 2 sides,

Public Hearing Transcript RE: PL12-0144

1 and we've got Gages Slough running through the whole town. So
2 um, we, um, asked Skagit County specifically to be SEPA co-lead
3 with us and the Dike District on the EIS and they refused.

4 [0:45:02]

5 So we went ahead with the EIS with the Dike District as our
6 partner. We, uh, spent a couple of years working on it to make
7 sure everything was addressed and basically taking basically the
8 big picture view. This is really an important project. I was
9 here for the '90 and '95 floods, and there were sand boils and
10 people running around sandbagging like crazy but what does end
11 up happening is Burlington doesn't get protected completely from
12 flooding. It goes to the Nookachamps, it goes to Sterling, and
13 then it comes around the end of the levee because it's not
14 connected to anything, it goes down Gages Slough. So we've done
15 things like build a huge pump station that can pump against any
16 head in the river, and, uh...

17 One of the really positive things that's coming out of this
18 project is we've always felt, I felt guilty we weren't doing
19 anything for salmon restoration. Where the Gartner Boat Launch
20 Ramp goes in, just upstream from that is a place called Johnson
21 Bar and it's a really degraded riverine wetland area and now
22 that the dike district is purchasing the rest of that, we will
23 jointly own that and we will be able to do a major salmon
24 rearing habitat restoration project which is in all the reports.
25 So that's a real positive from this but, um, our goal is to
26 protect the public and, and not adversely, significantly
27 adversely impact the upstream areas and that's what we feel that
28 this project does.

Public Hearing Transcript RE: PL12-0144

1 **HE:** Okay, I haven't of course looked at this impact statement.
2 But does it in effect say what you just said in terms of impacts
3 on the upstream areas.

4 **MF:** Yes, it does.

5 **HE:** Okay. Anything else you want to tell me?

6 **MF:** Uuuuuh, it would be really positive to get this done before
7 the, as soon as possible. It's a timely project and, uh, we're
8 in the dry years right here right now so I think it would be
9 really timely to get this work done. I do not see that the GI
10 Study, if it ever ends, will have any significant impact on the
11 need for this level of urban flood protection.

12 **HE:** Okay.

13 **MF:** I'm just the voice of a million other people that have been
14 working on this and I am certainly not an engineer.

15 **HE:** Alright, thank you very much. Anyone here from the Diking
16 District that wants to speak. Yes, sir.

17 [0:47:44]

18 **JOHN SCHULTZ [JS]:** Thank you, Mr. Hearing Examiner. My name's
19 John Schultz, I'm the attorney from Burlington and uh, and I've
20 come...

21 **HE:** Give some testimony?

22 **JS:** Yes.

23 **HE:** Let me swear you in. You'll swear the testimony you give
24 will be the truth, the whole truth and nothing but the truth, so
25 help you?

Public Hearing Transcript RE: PL12-0144

1 JS: Yes, thank you. My purpose for being here is, is uh, to,
2 actually to, just to, explain some of the issues that have, that
3 have gone forward, that I didn't quite think would come up but
4 they have. The GI Study, how it bears on our project, and some
5 of the engineering and some of the history and the background.
6 It's very important we understand the history and the
7 background. There are a number of moving parts that have moved
8 and some have worked, some are not that have gotten us to this
9 point. Um and uh, I've represented the Dike District for many
10 years, uh, of course I'm not an engineer so I come here to
11 discuss some of the background information.

12 I was involved with the City of Burlington, the City of Mount
13 Vernon and the three years of litigation with PSE for the flood,
14 the flood storage and the issuance of the license which has a
15 bearing on what we're talking about here. I've been involved
16 with the GI Study process and with the county I've gone back to
17 Washington D.C. a couple of times to discuss those issues, and
18 so I have some background I can relay on that.

19 The third thing I wanted to go through bit by bit the history of
20 what, what goes on here. I find when you start talking about
21 flood hydrology and engineering issues you kind of get lost in
22 the weeds and the terminology. So my intent is kind of stand
23 back and give an overall picture so you can understand and put
24 this in context.

25 [0:49:38]

26 This is a matter that's gone on for a long time since 2003,
27 since 2007. I've been reading some of the comments. There are
28 those who may want you to believe that this is a new situation,
29 that there really hasn't been any oversight, that there's been
30 work done without permits, this is gonna harm people, and I hope

Public Hearing Transcript RE: PL12-0144

1 after I discuss some of these things in a fair and objective
2 manner I hope you'll conclude some of these comments are worthy
3 of consideration but that the permit should be, should be
4 granted.

5 [0:50:15]

6 Now let me take one of the last things first and that's the GI
7 Study. The GI Study is a General Investigation Study by the
8 Army Corps of Engineers. It has gone on now for eighteen years,
9 they've been studying various proposals, the stack of documents
10 that they've generated is probably, well it would reach up to
11 the ceiling in this room. But the point is the GI Study's gone
12 nowhere. So that prompted changes recently in Washington DC
13 where they've had what they call a reset, Lorna Ellstad's been
14 involved with that and the County has, Dan Berentson's been a
15 real leader on that issue. The Reset, is a, is a, situation
16 where they're resetting all the GI Studies in the United States.
17 Ours has gone on for 18 years and they're probably about 50 or
18 60 other GI Studies that have not gone on as long. But they're
19 equally unproductive.

20 So there was a reset and the reset is that it's called a 3-3-3.
21 The Corps calls it the 3-3-3 reset. They reset and started over
22 the study. The study conclusion cannot be any more than three
23 inches thick, it cannot take more than three years and the study
24 itself cannot exceed three million dollars. So we're a couple,
25 we're about a year down the road and you've heard earlier they
26 have not yet identified the projects that are going to be done.
27 What we're talking about today doesn't really fit into the GI
28 process at all. But if it did, the study has to go three more
29 years, they have to identify a project, they have to submit that
30 to the Corps, there has to be a Chief's report, once the Chief,

Public Hearing Transcript RE: PL12-0144

1 the Chief's report indicates there's a cost-benefit ratio and
2 you know a project is worthy of pursuing, we've already, we
3 already have information that the projects that are proposed,
4 none of which are this project will not meet the cost-benefit
5 ratio. But if they do then the Chief's report will be done
6 which will be submitted to Congress. If the Chief's report is
7 done, if it's submitted to Congress, the Congress approves it,
8 if there's funding, then we may get a project. In three years.
9 In a study that's already gone on eighteen years.

10 So the Dike Districts, the City of Burlington learned many years
11 ago we have to proceed on our own. So in 2003, with the
12 partnership of Dike 12 and the City, there was an interlocal
13 agreement signed for Phase I of this project which would start
14 beefing up and stabilizing the levees. So there were fill and
15 grade permits, there were three of those issued since 2003.
16 There's been cooperation with the City of Burlington, and the
17 levee so far has been subject to fill and grade permits, they've
18 been widened but they've not been raised. The dirt has been
19 raised to the existing levee.

20 So now this is Part Two. We're seeking now a permit to raise
21 the levees and the raising of the levees will go up four feet.
22 But it doesn't really go up four feet. The, Dike 12 and City of
23 Burlington are now working through another interlocal agreement
24 to do the design and construction and in 2011 the City of
25 Burlington issued a substantial development permit to the dike
26 district for work inside the city in, during the last several
27 years we've had three fill and grade permits and uh, and those
28 fill and grade permits were issued on and I can give you the
29 number but I have an outline and the summary here from Semrau
30 Engineering that I'd like to submit. It's going to take some
31 time to go through the numbers and the date they were issued.

Public Hearing Transcript RE: PL12-0144

1 But suffice to say that there were three fill and grade permits
2 - first one in 2003, which was reissued in 2009; another one in
3 March 15, 2007 for construction which was approved May 15, 2010;
4 and then there was a third fill and grade permit which county
5 staff had alluded to and which when Mr. Cimarron testifies, he
6 will show the application to renew that fill and grade permit.
7 It's ready to go. So we're going to renew that in hopes of
8 getting this permit approved to move forward with the work.

9 [0:55:14]

10 **HE:** Is this, uh, is there a year attached to that if I were to?

11 **JS:** Yes, the last fill and grade permit, um, which one was it,
12 oh, yeah that's the fill and grade permit number BP070267
13 submitted March 15th, 2007 and issued for construction on May 15,
14 2010. It expires May 14 this year and that will be renewed.

15 So I alluded earlier on to those comments that may and I think
16 you'll see those in one of the comments that dike district has
17 been filling the levees without permits. That's not true.
18 There have been four fill and grade permits and I think you
19 heard Margaret allude to the substantial development permit that
20 was issued in 2011.

21 So to wrap up the issue of the GI Study. We've been advised by
22 Corps people who have not even identified the project yet not to
23 wait. We have to take our own action and so the action the
24 parties have taken has been in terms of our interlocal agreement
25 between Dike 12 and Burlington to certify the levees. Now the
26 certification is a long process. We acknowledge it will
27 probably take ten years, I think Mr. Cooper indicated it might
28 take another six years. The certification involves getting an
29 accreditation from FEMA that we can design and build to the 100

Public Hearing Transcript RE: PL12-0144

1 year level and once they accredit it then it'll be a
2 certification tool to lower peoples' flood rates.

3 [0:57:01]

4 FEMA requires the certification involve raising the levees four
5 feet. When we say four feet, the levees are not exactly
6 horizontal. Sometimes they're lower, sometimes they're higher.
7 So in the project the levee will be raised sometimes a foot,
8 sometimes three feet, sometimes four feet. But the plan
9 submitted to FEMA must have four feet because that's three foot
10 of freeboard. In other words, once we reach a certain flood
11 level - the 100-year in this case - the Corps and FEMA require
12 another three feet above that for safety factor and so I think
13 the plan is to raise the levee one foot for flood control and
14 I'll let the engineer talk about this. But we have to add
15 another three foot for the freeboard and that's a requirement of
16 FEMA. If we're going to certify the levees, and protect the
17 City of Mount Vernon - I mean Burlington - and protect the
18 County under this levee certification those are the steps we
19 have to take.

20 So it's not willy-nilly that the Dike District or the City is
21 doing this. It's required by FEMA. I want to mention here that
22 this is a project that has had extensive oversight. Extensive
23 oversight. Some of the comments would have you believe that
24 this is just a new thing we've all the sudden discovered,
25 terrible Dike District 12 and the City of Burlington raising the
26 levees four feet and it's going to endanger everyone. That's
27 not the case. We've had PIE Engineering who helped in preparing
28 the Environmental Impact Statement, which I think you have a
29 copy. The freeboard requirement of FEMA you'll see on page ten.
30 So it's taken me years to understand that. I still don't

Public Hearing Transcript RE: PL12-0144

1 understand the whole thing but if you want a good education,
2 it's on page ten of the EIS. That'll tell you the FEMA
3 requirements.

4 If you want to see the project that Dike 12 and the City have
5 approved and subject to permits. It's the basis of the permit
6 work filing with the county now. You can look at page 57.

7 Now that's, Margaret said earlier that there's competing
8 hydrology all over the place and I'll discuss my involvement
9 with the reissuance of the license of PSE. Hydrology was a big
10 thing there. Now the Corps has certain hydrology it's based on
11 historic flooding from the early 1800s which showed three
12 catastrophic floods of Biblical proportions and so the Corps has
13 reached certain hydrology parameters and same with FEMA. But we
14 have hired our own engineers to look at this. [1:00:01] We've
15 created models that actually show and comply with all the flood
16 studies for all the actual floods that have occurred for the
17 last 25 years. The engineers that did that were, was PI
18 Engineering and some people have disputed their hydrology. The
19 point is if you believe the Corps hydrology, there's no point in
20 doing any type of flood construction project; we're wiped out
21 because the levels are so high based on their hydrology. So we
22 felt years ago their hydrology was wrong and we had PI
23 Engineering redo the hydrology. They've created models that
24 actually predict and show the actual floods in 1990, 1995, 2003
25 and 2006. The Corps' hydrology does not do that. In addition
26 to PIE, we've had Reichert and Ebey Engineers involved in this.
27 They engineered and helped design the prior fill and what we
28 want to do in the future. We have Cimarron Engineering, which
29 is doing the current, um, planning and design for the
30 construction of the anticipated. We've had nhc engineering on
31 this. We've had the county analyze it, we've had Golder and

Public Hearing Transcript RE: PL12-0144

1 Associates, um and we've had the Army Corps of Engineers. The
2 Army Corps of Engineers has been a partner and all of these
3 designs are in compliance with the Army Corps of Engineers
4 standards and regulations. All of 'em. I will tell you that
5 the PI Engineering - they even played the devil's advocate.
6 They used the Corps hydrology, and they designed a project that
7 would provide flood protection in Skagit County. That's on page
8 57 of the EIS. It was done several years ago, subject to
9 comment and approval. That plan is based on modeling and it
10 shows the net effect of this project to be one tenth of a foot
11 above the base flood elevation. So we're talking that much,
12 we're talking *two inches* which would be the maximum engineered
13 conclusion of the flood effect on certain areas of the county if
14 we reach flood stage. So there are a number of ifs there.

15 I think you heard the county say that they recommend basic
16 approval of this permit. I certainly compliment the County for
17 their efforts in this. They reviewed it and I think very
18 thoroughly.

19 We certainly like their analysis that, um, although there may be
20 some flood effects they're fairly minimal and I don't, when I
21 say that, I don't mean to disparage anybody damaged if they take
22 some extra floodwater. We certainly don't want to feel callous,
23 it's all important but if you look at the broader picture the
24 floodwaters, the flood increase that will occur from this
25 project from a numerical standpoint is one to two inches. I
26 think Mr. Cooper said two inches to six inches. Again, balance
27 that against the protection that's provided the entire county
28 and given that the GI Study will probably never be completed, if
29 it does it won't be, **it won't include this project because we're**
30 **doing this on our own.** We're doing this from Burlington
31 funding, from whatever funding we can get from the government

Public Hearing Transcript RE: PL12-0144

1 and from Dike 12 operating fund. So, this is a project I would
2 submit there's been vast, vast oversight since 2003 and I
3 haven't read all the comments that came in today but I've
4 discussed with some people and summarized. Those same comments
5 were submitted, I believe, in the EIS. They were dealt with and
6 the county factored those into the final, the FEIS which was
7 issued and there were a lot more comments in the EIS process
8 than there are here. But again, these comments address some of
9 the issues I would submit have already been addressed.

10 A couple of other issues here. Um, I don't want to go through
11 all the planning documents - they've done an excellent job - but
12 there has been due diligence and extensive work done to get this
13 project approved. The County seems to like it, we like it, it
14 works for us and we're ready to move forward with the next phase
15 and that would be widening some of the levees on the landward
16 side and raising the levees in certain areas.

17 [1:05:00]

18 We're only talking about 1.5 miles, 1.3 miles from I think
19 Gardner Road to Lafayette, Lafayette Road. It's a very short
20 segment we want to improve but having said that, it's a segment
21 that impacts the Nookachamps area. I think that's where we get
22 the most of the comments. But Graham and Bunting has been on
23 this, they've assessed the wildlife and wetlands site assessment
24 which was found acceptable. We have a Biological Opinion which
25 was submitted. Graham and Bunting have done a wildlife, I'm
26 sorry, a wildlife assessment.

27 Um, and, and there's, there was one comment that the county made
28 that I did want to address. That is, um, it's in the county
29 comments on page five. It once again addresses this issue, this
30 complaint that raising the levees will cause additional flood

Public Hearing Transcript RE: PL12-0144

1 damage to certain properties. Question pren two, pren on page
2 five.

3 **HE:** Page five of what? The staff report?

4 **JS:** Mr. Hearing Examiner, this is page five of the findings of
5 fact and conclusion.

6 **HE:** Okay

7 **JS:** Page five of eleven and there was talk again in paragraph
8 pren 1 pren they talk about, uh, let's see increasing the dike
9 height may result in minor modification of Skagit River
10 hydrology during elevated events but I wanted to look at number
11 two. It addressed this issue that is being commented on and
12 that is raising the levee and that is causing more flood damage.
13 I'll read the comment for pren two on page five of eleven. *"This
14 project was designed by the engineers of Pacific International Engineering utilizing geohydraulic
15 principles in design and construction. Although hydraulic modeling of the proposal indicates that
16 upstream and downstream impacts may occur during elevated flood events, Dike District 12 and the
17 City of Burlington utilized designs that will minimize those impacts. The proposal is also required to
18 comply with the Flood Damage Prevention Ordinance"* which Mr. Cooper says it
19 already does.

20 So clearly if, to play the devil's advocate, if the commenters
21 have fears that the upstream-downstream impacts may cause more
22 water, again not to appear callous, it's going to be minimal and
23 the City and the Dike District have gone to great lengths to
24 minimize those impacts with their, uh, design. At the end of
25 the day, I think like Mr. Cooper said, net balance this will be
26 a benefit to the county and certainly to Burlington. Uh, those
27 downstream communities too, I think there will be a net benefit
28 **although the adjacent Nookachamps area may experience a little**
29 **bit more water.** But in the case of high water, whether you use

Public Hearing Transcript RE: PL12-0144

1 PIE hydrology, hydrology, [unintelligible] or Army Corps
2 hydrology. In the event of flood flooding, the Nookachamps is
3 going to take water. It's just a matter of doing what we do now
4 despite the fact the Federal Government has not been able to do
5 anything for us for eighteen years. Doing what we can do now
6 with our own resources to protect our own people. So that's
7 really what this is all about.

8 I'm almost done here. Um. I could go on and on about the other
9 issues that the City thought acceptable like the fill material,
10 the natural features, recreation, wildlife; but suffice to say I
11 think that the county, uh, would advocate for approval of the
12 permit and certainly we would too. If we don't have approval of
13 the permit then we're stopped in our flood control efforts.
14 There's no benefit to anyone: Burlington, Skagit County, no one.
15 Like Margaret said, the County was asked to be a SEPA co-lead
16 and they weren't able to do that at that time. So we're trying
17 to do something for the County on this that we can. Um, so I
18 think that's all I have.

19 [01:09:53]

20 Now there was a, now Mr. Hearing Examiner, this is, I'm, I've
21 discussed some of these things from the standpoint of Mr.
22 Semrau's summary, I'd like to submit this as an Exhibit. Or
23 have Mr. Semrau submit it, he prepared it.

24 **HE:** Okay. Um, why don't, let's have Mr. Semrau submit it and
25 then he can identify it with some authority.

26 [COLLOQUY]

27 **JS:** I think that would be proper.

Public Hearing Transcript RE: PL12-0144

1 **HE:** Okay. So I assume that Mr. Semrau is going to be the next
2 person up. Let's get that document in and then we'll take a
3 brief recess.

4 **JOHN SEMRAU [JS]:** You like me to explain what that is?

5 **HE:** So, let me swear you in. You swear, affirm the testimony
6 you will tell the truth, the whole truth, nothing but the truth
7 so help you?

8 **JS:** I do.

9 **HE:** You are?

10 **JS:** I'm John Semrau, I'm a licensed Civil Engineer and Land
11 Surveyor with Semrau Engineering and Surveying here in Mount
12 Vernon.

13 **HE:** Okay and what's the document you are offering?

14 **JS:** This is the narrative that I prepared for the permit
15 application and what John was referring to, uh, was on, uh, the
16 last page on page three I gave a summary of the permitting that
17 was underway at the time. Now when I wrote this a year ago
18 preparing for this permit application, I, I, kind of intended
19 that we be in hearing last fall. Uh, so in this at that time we
20 had three construction fill and grade permits that were still
21 underway on this project and at this point two of those have
22 been completed and those have expired. There is one permit that
23 we're still under that we didn't finish some of the work that we
24 were doing last fall so we buttoned it up for the winter. That
25 is a permit for I've applied for the extension. Applied for a
26 six month extension. That's the one that expires on May 14th
27 this next month so. But everything I've been involved in
28 permitting for the District, I've been involved in this project

Public Hearing Transcript RE: PL12-0144

1 since 1997, ever since the 1996 [1995] flood event I've been
2 working on this project. So I've been through the whole. We
3 have done numerous permits - I can't think of a year where we
4 haven't had two to four permits. We had four fill and grade
5 permits that I had prepared in progress last year. We probably
6 will have five this summer. Um, so there's, everything we do is
7 permit-based. I actually spent close to \$20,000 in permit fees
8 last year for the district to the counties and cities. So...

9 **HE:** Okay and this narrative isn't something I already have, I
10 gather. Mr. Cooper, do you have any motion?

11 **JC:** I didn't see it in the...

12 [COLLOQUOY]

13 **HE:** Good. Let's give it a number and take it in. So, um, this
14 would be fifteen? Sixteen? Okay. So we'll admit this as
15 exhibit sixteen. All right then so let's take a recess for
16 about five minutes and then come back and finish up.

17 [1:13:21]

18 **UNK:** It's hard when he's talking.

19 **HE:** Thank you. [1:13:34]

20 **HE:** Okay, Order. [1:13:40]

21 **HE:** Aah, okay Mr. Semrau you were beginning your testimony and
22 why don't you continue?

23 **UNK:** This, uh, this. [1:14:03]

24 STATIC

25 **UNK:** You've heard me. [1:14:55]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **HE:** This particular... [1:15:03]

3 STATIC

4 **UNK:** ...to the county. [1:15:40]

5 STATIC

6 **HE:** Okay, this CD is more than the Golder study? Or it's
7 different than or what? [1:15:58]

8 STATIC

9 UNINTELLIGIBLE SOUND [1:16:02]

10 STATIC

11 BACKGROUND NOISE [1:16:35]

12 **HE:** Okay this thing I'm looking at here is in the Golder Study I
13 gather.

14 **UNK:** That's correct.

15 **HE:** So it would be included in the, on the CD?

16 **UNK:** That's correct.

17 **HE:** Okay. Let's call the CD exhibit 17 would that be correct?
18 [PAUSE] And, uh, I'll admit it.

19 **JC:** Just for clarification, you do have a copy of that CD
20 already. That is part of the application materials.

21 **HE:** It's in this business here?

22 **JC:** It's one of the CDs that I gave you.

23 **HE:** Okay. We've got it again.

Public Hearing Transcript RE: PL12-0144

1 **JC:** Now you've got an extra.

2 **HE:** Okay.

3 **UNK:** This CD... [1:17:17]

4 **HE:** So this is going to have a few more things? [1:17:37]

5 UNINTELLIGIBLE [1:17:39]

6 **UNK:** The CD that I submitted.

7 **JC:** He has those as well. [1:17:51]

8 **HE:** Okay. [1:17:53]

9 STATIC

10 **HE:** Okay and that's a separate submission? [STATIC] Okay, so
11 that would be exhibit eighteen. That's the substantial
12 development permit? [1:19:30]

13 STATIC

14 **HE:** That correct? [1:19:34]

15 STATIC

16 **HE:** We have the EIS. [1:20:45]

17 STATIC

18 **HE:** I can see it right in front of me, I'm fine. [1:21:50]

19 STATIC

20 **UNK:** We've [1:22:24]

21 STATIC

22 **UNK:** Next exhibit. [1:22:32]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 UNINTELLIGIBLE [1:22:40]

3 STATIC

4 COUGHING [1:22:45]

5 STATIC

6 **UNK:** Construction work. [1:22:50]

7 STATIC

8 UNINTELLIGIBLE [1:23:20]

9 STATIC AND MORE STATIC

10 UNINTELLIGIBLE [1:24:30~]

11 STATIC

12 **UNK:** The unmentioned times [1:24:45]

13 STATIC

14 **UNK:** The certification [1:24:58]

15 STATIC

16 UNINTELLIGIBLE [1:25:26]

17 STATIC

18 **UNK:** Good place for [1:26:34]

19 STATIC

20 **UNK:** Is this the method [1:27:22]

21 STATIC

Public Hearing Transcript RE: PL12-0144

1 **UNK:** Before I do that [1:27:46]
2 STATIC
3 **UNK:** Um, what they mean by [1:27:50]
4 STATIC
5 UNINTELLIGIBLE STUTTERING AND PAGES BEING TURNED [1:28:05]
6 STATIC
7 **UNK:** Although this levee. [1:28:42]
8 STATIC
9 **UNK:** When they model [1:28:49]
10 STATIC
11 **UNK:** Cough [1:31:47]
12 STATIC
13 **UNK:** This gift [1:32:01]
14 STATIC
15 **UNK:** Floodwater, [1:33:45]
16 STATIC
17 **UNK:** You can see it not do anything [1:34:08]
18 STATIC
19 **HE:** Where does that appear? [1:34:18]
20 STATIC
21 **HE:** This is 48.

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **HE:** Then again, there's a page in the [1:35:18]

3 STATIC

4 **UNK:** Using the Corps [1:36:03]

5 STATIC

6 **UNK:** Ah. [1:36:13]

7 STATIC

8 **UNK:** And this is the [PAUSE] 100 year [1:36:57]

9 STATIC

10 **UNK:** The EIS ... the search [1:37:33]

11 STATIC

12 **UNK:** Listen [1:38:38]

13 STATIC

14 **UNK:** Um, there's twenty different [1:39:22]

15 STATIC

16 **HE:** Let's just do the Burlington levee. [1:39:55]

17 STATIC

18 **HE:** This would be exhibit nineteen? [1:40:06]

19 STATIC

20 **UNK:** There is a [1:41:16]

21 STATIC

Public Hearing Transcript RE: PL12-0144

1 **UNK:** And uh [1:44:45]
2 STATIC
3 **UNK:** It [1:45:10]
4 STATIC
5 **UNK:** The EIS [1:46:05~]
6 STATIC
7 **UNK:** And they're uh [1:46:22]
8 STATIC
9 **UNK:** That we [1:46:25]
10 STATIC
11 **UNK:** I just want to make sure [1:46:41]
12 STATIC
13 **UNK:** And we [1:47:20]
14 STATIC
15 UNINTELLIGIBLE [1:48:06]
16 STATIC
17 UNINTELLIGIBLE [1:48:28]
18 STATIC
19 **UNK:** When will this under? [1:48:36]
20 STATIC
21 UNINTELLIGIBLE [1:48:51]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **UNK:** Development [1:48:58]

3 STATIC

4 **UNK:** That is such. [1:49:08]

5 STATIC

6 **UNK:** Ummmmmmmmmmmmmm [1:49:35]

7 STATIC

8 **UNK:** The wording on that [1:49:38]

9 STATIC

10 **UNK:** Haven't seen it. [1:51:00]

11 STATIC

12 **UNK:** Any question? [1:51:33]

13 STATIC

14 **HE:** I don't think so, um, why are the, is the Corps hydrology so
15 different from what you recently had done? [1:51:52]

16 STATIC

17 UNINTELLIGIBLE [1:52:00~]

18 STATIC

19 **UNK:** Models that take, uh [1:53:20]

20 STATIC

21 **HE:** Now as I understand it, you already have some substantial
22 development permits from the City of Burlington that are

Public Hearing Transcript RE: PL12-0144

1 projects that are either done or underway is that right?

2 [1:53:38]

3 STATIC

4 **HE:** Notwithstanding the lack of completion of this larger study
5 that we've been discussing.

6 **UNK:** Yes.

7 **HE:** Alright, thank you. Okay, anything else on behalf of the
8 applicant here? Okay it's time for public comment. I'm
9 thinking maybe if you don't mind we should take another brief
10 recess and then we'll come back and finish up and we'll go until
11 we're done. If you're late for lunch, it's one of those things.
12 So, uh, we'll be back in five minutes. [1:54:43]

13 **HE:** I think we're ready. [1:54:50~]

14 UNINTELLIGIBLE

15 **HE:** Alright, we'll be back on the record.

16 **UNK:** I gotta go.

17 **HE:** Now is the time for public comment, uh, on this application.
18 So, uh, who'd like to be first? Uh, you sir.

19 I'd like to ask the public commenters if they would limit what
20 they had to say to no more than ten minutes if possible.

21 Alright and your name?

22 **UNK:** My name is... [1:55:39]

23 STATIC

Public Hearing Transcript RE: PL12-0144

1 **HE:** Alright, raise your right hand do you swear, affirm that the
2 testimony you're about to give is the truth, the whole truth, so
3 help you? Okay.

4 STATIC

5 **UNK:** In Skagit [1:59:04]

6 STATIC

7 UNINTELLIGIBLE [2:00:14~]

8 STATIC

9 **HE:** Okay they'll get a chance to respond to that in a little
10 while. [2:00:30]

11 STATIC

12 **HE:** Alright, who's next? Sir? [2:00:45]

13 STATIC

14 **HE:** Alright, let me swear you in. Do you swear and affirm the
15 testimony you'll give you'll tell the truth, the whole truth and
16 nothing but the truth so help you? [2:01:12]

17 **UNK:** I do. [2:01:14~]

18 STATIC

19 **UNK:** And uh [2:01:55]

20 STATIC

21 **UNK:** State your name, talk about [2:03:19]

22 UNINTELLIGIBLE [2:03:24~]

23 STATIC

Public Hearing Transcript RE: PL12-0144

1 **UNK:** To the ... and the higher the water ... the more that's
2 going on ... and the Corps' [2:03:53]
3 STATIC
4 **UNK:** I assume that's normal [2:04:02]
5 STATIC
6 **UNK:** Unreal [2:04:20]
7 STATIC
8 **UNK:** So, um [2:04:45]
9 STATIC
10 **HE:** Alright, thank you. Alright sir, your turn. [2:05:06]
11
12 UNINTELLIGIBLE [2:05:21]
13 STATIC
14 **HE:** Let me swear you in? Do you affirm the testimony you'll
15 give you'll tell the truth, the whole truth and nothing but the
16 truth so help you?
17 **UNK:** I do.
18 **HE:** Okay. Go ahead.
19 **UNK:** I'll just talk.
20 **UNK 2:** 1990. [2:05:50]
21 STATIC
22 **UNK:** But all your [2:06:10~]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **UNK:** This never [PAGES RUSTLING] this. [2:07:05~]

3 STATIC

4 **UNK:** There's two. [2:10:35~]

5 STATIC

6 **HE:** Thank you. [2:15:30~]

7 STATIC

8 **HE:** Ah, someone else want to speak? Yes. [2:15:40~]

9 **LEONARD HALVERSON (LH):** Yes, sir my name is... [2:15:56]

10 STATIC

11 **HE:** Okay, let me swear you in if I may? You swear the testimony
12 you'll give you'll tell the truth, the whole truth and nothing
13 but the truth so help you?

14 **LH:** I do. Uh, I'd like to start out [STATIC]

15 [UNINTELLIGIBLE BACKGROUND NOISE]

16 **LH:** Unintelligible [2:17:51]

17 [UNINTELLIGIBLE BACKGROUND NOISE]

18 **LH:** And uh [2:18:24]

19 STATIC

20 **LH:** There's [UNINTELLIGIBLE] ground. [2:20:38]

21 STATIC

22 **LH:** Heard there was somebody taking [2:21:06]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **LH:** Headed north. [2:21:25]

3 STATIC

4 **LH:** UNINTELLIGIBLE [2:21:37]

5 STATIC

6 Page Turning [2:21:41]

7 STATIC

8 **HE:** Okay, you, you are talking about this brochure. Are you
9 talking about this as report about?

10 **LH:** I think it's...

11 **HE:** The ones on the table back there?

12 **LH:** I think so.

13 **HE:** Okay, good enough. [2:21:55]

14 STATIC

15 **HE:** Alright, thank you.

16 **LH:** You're welcome.

17 **HE:** Okay, ah, we have, do we have other people who want to be
18 heard? [BACKGROUND CONVERSATIONS] Oh yeah, I'm sorry we'll
19 include this as an exhibit. This would be 20?

20 **UNK:** I think there's about...

21 **HE:** Okay but we'll have exhibit 20 have six parts. Uhm, all
22 right sir and that...

23 **UNK:** And the names of the comments. [2:22:45]

Public Hearing Transcript RE: PL12-0144

1 STATIC

2 **HE:** Okay, Mr. Shehan I don't think you've been sworn in this
3 proceeding so if you'll raise your and you swear the testimony
4 you'll give you'll tell the truth, the whole truth and nothing
5 but the truth so help you?

6 **UNK:** I do. [2:23:00]

7 STATIC RETURNS

8 **HE:** Alright, thank you. [2:24:50]

9 **UNK:** Thank you.

10 **HE:** Ah, is there anyone else? Sir! [2:25:00~]

11 STATIC

12 **HE:** Alright, let me swear you in. You swear, affirm the
13 testimony you give you'll tell the truth, the whole truth,
14 nothing but the truth so Help you.

15 **UNK:** I do. [2:26:25]

16 STATIC

17 **UNK:** I. [2:26:45]

18 STATIC

19 **UNK:** Compensation. [2:27:21]

20 STATIC

21 **HE:** That's just fine. Okay is there anybody else who wants to
22 testify?

23 If not, uh, I have here a, uh, document prepared by Larry
24 Kunzler who went over the staff report and made extensive

Public Hearing Transcript RE: PL12-0144

1 comments on it and included a CD and since, um, he hasn't
2 testified I'm going to admit that as an exhibit and that'll be
3 included in the things I consider. That would be exhibit 21 I
4 think. Both the CD and the written thing in the same exhibit
5 and with that then, let's ask the applicant if they have any
6 responsive remarks. Mr. Semrau? [2:29:02]

7 STATIC

8 UNINTELLIGIBLE [2:29:20]

9 STATIC

10 **UNK:** One, three. [2:29:25~]

11 STATIC

12 **UNK:** Process is [2:30:10]

13 STATIC WITH INTERRUPTIONS

14 **UNK:** And in those cases, we get things complete. [2:32:43]

15 STATIC

16 UNINTELLIGIBLE [2:34:31]

17 STATIC

18 **UNK:** Is the [2:36:15]

19 STATIC

20 **UNK:** And there is [2:37:05]

21 STATIC

22 **UNK:** But. [2:37:15]

23 STATIC

Public Hearing Transcript RE: PL12-0144

1 **UNK:** In order to [2:37:21]

2 STATIC

3 **HE:** Okay, thank you, the City of Burlington...

4 **MF:** I want to make one note of clarification.

5 **HE:** Identify yourself for the...

6 **MF:** Margaret Fleek, Burlington Planning.

7 **HE:** Alright.

8 **MF:** The, if we get the letter to the levees' 25-year Corps of
9 Engineers approval - regardless of the certification and all
10 that - we will get credit in the Community Rating System for the
11 existence of the levee. That program has a lot of public
12 outreach and education and it does give people a percentage
13 decrease in their flood insurance rate. It doesn't take it
14 away; it gives 'em a little bit of a break. So that's an
15 important thing because everybody in town's paying.

16 **HE:** Okay, ah, Mr. Schultz.

17 **JS:** Yes, Mr. Hearing Examiner. I'd like to make one further
18 comment on the [UNINTELLIGIBLE]. I think a speaker earlier
19 wondered why there's a dispute between hydrology and the Corps.
20 There really isn't a dispute in the last 10 years with the Chal
21 Martin, City of Burlington and the use of PI Engineering. Um,
22 what PI Engineering did and nhc, um, after painstaking creation
23 of models, what they did was improved upon the Corps' work. The
24 Corps' hydrology which to this day they refuse to change goes
25 back to the late 1800s when there was some catastrophic floods
26 which were way out of character. The proof of those was um, an
27 engineer that went through the, went along the rivers and he

Public Hearing Transcript RE: PL12-0144

1 wrote some notes in his logbook and some of which were frankly
2 engineers found alright and some of which were wrong. But PIE
3 went through a series of probably five or six years and they
4 reviewed with computers, created computer models, the Corps
5 model, the Flo2D model, which is somewhat outdated.

6 [2:40:03]

7 So what PIE did, they went through many years of refining the
8 Corps data because we have the benefit of all the gauges, we
9 have the benefit of the computer models, they created computer
10 models which mimic exactly the prior floods. So it was a
11 situation where Burlington after going through this process for
12 levee certification needed to pin down that hydrology simply
13 came up with better, more complete, more accurate data. So it's
14 not an issue of not cooperating with the Corps, they're just
15 fixed on their data, they won't change it, and Burlington and
16 Dike District 12 felt that they had better data.

17 Because, as John said, we have an intimate relationship with the
18 Corps and Dike District has for years. They bail us out in
19 emergencies, they're our friends, they come up here, we know
20 them all by name, they respond to Skagit County immediately when
21 there's a flood, and if anybody should doubt that all you have
22 to look is for the last [2:41:00] five years of the levee
23 improvements between the two bridges that involved, uh, five
24 dike districts: 1, 5, 12, 17, 22. Three. That was a project we
25 worked intimately with the Corps on and, uh, it's a situation
26 where the Dike District working with the Corps can get things
27 done and there is funding for PL 84-99 work, provided we meet
28 our inspection protocol every year. We respect we have to
29 follow the Corps guidelines, and in this project we follow to
30 the letter of the law the design and the specifications for the

Public Hearing Transcript RE: PL12-0144

1 Army Corps. They're our friends and so I want to just clarify
2 the difference between the hydrology there.

3 **HE:** Alright, thank you. There any other comments, responsive
4 comments by the applicant? Sir?

5 Have you been sworn?

6 **UNK:** No I have not.

7 **HE:** Alright, let me do that. You swear and affirm the testimony
8 you give you'll tell the truth, the whole truth, and nothing but
9 the truth so Help you.

10 And you are?

11 **UNK:** My name is Dan. [2:14:15]

12 STATIC.

13 **HE:** You're showing us some kind of, uh, [2:42:35]

14 STATIC

15 **HE:** Okay. [2:42:39]

16 STATIC & UNINTELLIGIBLE BACKGROUND NOISE

17 [2:45:00]

18 STATIC

19 **HE:** Thank you. Okay, uh, anything further from the County?

20 **JC:** Just, uh, two quick points. I want to, I wanted to get
21 clarification on these additional parcel numbers, what I just
22 heard is that, these parcel numbers, these nine additional
23 parcel numbers actually expand ownership of Dike District 12 and
24 do not directly apply to the proposal at hand. Is that correct?

Public Hearing Transcript RE: PL12-0144

1 **JS:** Well, uh, yes and no. Because in some, in some cases those
2 were intended to be boundary line adjustments and so we would
3 have expanded the existing parcel since we're now actually
4 purchasing or have purchased those properties now the project
5 will be on those parcels because we don't expect parcel, um, so
6 where we thought we were going to expanding our right of way
7 that's not occurring and so now the facility's going to be on
8 additional parcels.

9 **UNK 2:** It does not expand the project as represented to Skagit
10 County Planning.

11 **JS:** No, it only, it only changes as to how it changes on the
12 Assessor's Map. I mean, how it's but we also have, we also have
13 County parcels that don't have parcel numbers. So they're
14 within the project area.

15 **JC:** Secondly, I just wanted to make sure everybody understands
16 that Skagit County doesn't necessarily endorse this project.
17 Ah, this is, uh, GS's approval recommendation for this proposal
18 and was result of review of the project with respect to the
19 requirements of Skagit County's Shoreline Master Program.
20 That's all I have to say.

21 **HE:** Okay, so on your public work guy stands up and says he's
22 working on something else I'm not to say that the county has
23 endorsed *this* particular.

24 **JC:** That's correct.

25 **HE:** Alright. But you do think it meets the Shoreline Permit
26 Requirements?

27 **JC:** I believe it does, yes sir.

28 **HE:** Mr. Semrau?

Public Hearing Transcript RE: PL12-0144

1 **JS:** Can I make one quick clarification? We keep talking about
2 four feet and the Golder report goes through and mentions how
3 much it's being raised. I think it varies from 1.8 feet to the
4 maximum of 4.4. A lot of areas are close to 4, 3.8, uh, up to
5 four feet. I mean there's actually, there is one section right
6 next to the Gardner Road.

7 **HE:** I think I understood.

8 **JS:** Yeah.

9 **HE:** Alright, thank you very much. I, uh, hate to say this but
10 there's a lot of stuff in this record and so I'm going to ask
11 you for an additional week [2:49:00] before I get my decision in
12 but it won't be forever. But it will maybe be three weeks
13 instead of two. Okay? Thank you very much.

14 **UNK:** Thank you.

15 [Colloquoy]

16 **HE:** I want to reopen the record for a moment. I forgot to
17 respond to this gentleman's request for another week or so to
18 comment and so I think that's appropriate. We'll keep the
19 record open for an additional week and then, uh, I'll start
20 writing. So anything that's received within the next week will
21 be included in the record and we'll let people know what we get.

22 **UNK:** We can submit testimony but not comments? I can submit
23 comments within the next week?

24 **HE:** Sure. Yeah. The more the better. Okay.

25 **UNK:** I haven't complied most of this stuff.

26 [2:50:07]

Public Hearing Transcript RE: PL12-0144

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