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Margaret Fleek, Director
Planning and Community Development
City of Burlington
833 South Spruce Street
Burlington, WA 98233

RECEIVED

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PLANNING DEPT.

**Re: Draft Environmental Impact Statement
Comprehensive Flood Hazard Mitigation in Burlington Urban Area
and adjacent land.**

Dear Ms. Fleek:

City of Burlington and Dike District No. 12 as co-leads issued a draft environmental impact statement (DEIS) on February 13, 2009. I found out about it because of skagitriverhistory.org and Larry Kunzler in March. The Skagit Valley Herald had a story March 7, 2009. Skagit County Diking Districts 22 and 3 were asked for letters of support for a railroad bridge project recently, but not for comments on the DEIS. Appendix F does not list any Drainage or Dike Districts on its Distribution List.

The document puts forward for the public and governmental entities a detailed statement required by RCW 43.21C.030(2)(c) because of proposals which would have a significant environmental impact. The Appendices assemble important data and sources of law which should guide the City of Burlington in its proposed action. There are many more sources of information, including the Anchor Environmental Consultants' impact statement underway for the Three Bridge Corridor which are relevant. I had no access to the maps which are referenced in the DEIS, and will try to get them.

The inescapable conclusion is that the actions described in the DEIS involve multiple levels of local, Skagit County and Burlington policy, and planning; state shoreline and flood hazard mitigation planning and regulation through the Department of Ecology, as well as federal issues including the Letter of Map Revision by the Federal Emergency Management Agency approval and or permits as well as Coastal Zone Management Consistency Determination. Endangered Species Act consultation is triggered by both the FEMA request and the permits which would be required from the Corps of Engineers under the Clean Water Act and Rivers and Harbors Act to build levees or bridges.

Under the frame work of the State Environmental Policy Act and particularly RCW 43.21C.060:

“Any governmental action may be conditioned or denied pursuant to this chapter: PROVIDED, That such conditions or denials shall be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible basis for the exercise of authority pursuant to this chapter. Such designation shall occur at the time specified by RCW 43.21C.120. Such action may be conditioned only to mitigate specific adverse environmental impacts which are identified in the environmental documents prepared under this chapter. These conditions shall be stated in writing by the decision maker. Mitigation measures shall be reasonable and capable of being accomplished. In order to deny a proposal under this chapter an agency must find: (1) The proposal would result in significant adverse impacts identified in a final or supplement environmental impact statement prepared under this chapter; and (2) reasonable mitigation measures are insufficient to mitigate the identified impact.”

The DEIS is ambiguous as to whether it is intended as a project or non project environmental impact statement (“EIS”). Based on its content and the lack of site specific analysis the EIS appears to be non project or programmatic. See page 18 paragraph 1, page 9 paragraph 1. Nevertheless project actions are spelled out in the summary at page 14. Is the City intending to use the FEIS as a basis for declaring that projects in the document are “planned action” authorized without further environmental review under RCW 43.21C.031(2), WAC 197-11-164/172. If so the Districts object. An acceptable use of the FEIS would be to initiate Phased Environmental Review under WAC 197-11-060(5). The line on the DEIS cover sheet says “This is a phased review pursuant to WAC 197-11-060(5). By moving from the current broad review and assessment of City policy to achieve 100-year flood protection to later narrower site specific analysis of projects implementing levee set backs, changes to a bridge or structure, impacts can be better identified, investigated, mitigated, and implemented.

A key document in the draft environmental impact statement is an overview which you prepared and submitted to the Land Use Planning Technical Committee, a subdivision of the Advisory Committee to the Skagit County Board of Commissioners under its comprehensive flood hazard management planning process. This process is a local advisory response to the General Investigation (“GI”) Study being conducted by the Corps of Engineers under contract with Skagit County. Skagit County in turn is managing this project through its Countywide Flood Control Zone District. The GI Study has proven to be an expensive process for local jurisdictions, led by Skagit County.

Some added flood storage at dams of PSE on the Baker River is conditioned on completing the GI Study. The DEIS published by Burlington and the Mount Vernon Flood Protection Project, aimed at similar objectives for downtown Mount Vernon when its EIS was completed last year.

It is not accurate to refer to the GI study as the no action alternative. It is fair to identify the GI study as a watershed flood plain flood hazard reduction plan rather than urban growth protection plan. How long either plan requires for implementation is speculative.

In light of several parallel processes which are active at the time of this DEIS publication and the multi level consideration of legal and factual issues which are relevant to the Burlington proposal, I am writing to request that additional time be granted to respond to the impact statement. WAC 197-11-455 allows extension of time.

Among the benefits which could flow from additional time for written response to the draft environmental impact statement will be some opportunity for developing a consensus about a preferred alternative or rational basis for supporting or opposing a particular alternative among those set forth on page 6 of the impact statement. In my initial review of the document I do not see links to the City of Burlington's plans which involve transportation agencies. The so called "Three Bridge Corridor" is identified in the hydrology documents as a barrier to passage of the flood having a one percent chance of occurring in any year. Debris management, set back levees and other components of alternative plans are essential for managing the 100-year flood or larger flows in the Skagit River. All these studies report that more than 160,000 cubic feet per second will not pass through the railroad bridge owned and operated by Burlington Northern Santa Fe at the up stream end of the Three Bridge Corridor. Any evaluation of the environmental impacts of a flood plain management plan for Burlington and Skagit County must resolve questions such as whether these bridges will be modified to accommodate a 100-year flood and whether an alternative to passage of the flood through the Bridge Corridor can be done consistent with public safety, and environmental protection.

Diking District No. 12 has involved other districts, including all five of the main stem Skagit River corridor diking districts in a joint effort partially funded by a Puget Sound Energy settlement gained by the efforts of Skagit County Diking District No. 12 and District No. 1. Speaking for Skagit County Consolidated Diking District No. 22 and Skagit County Diking District No. 3 it is crucial that all plans for managing flood water slow the velocity and reduce the water surface elevation by providing corridors for flood waters to leave the flood plain by means other than the main stem of the river. These districts propose that a comprehensive plan be developed starting at the salt water dikes and working up stream to reduce barriers to interior drainage and accommodate water, silt and debris generated by a flood event greater than the base flood which has the

probability of occurring equal to one percent in any given year on Skagit County's flood plain.

The cumulative impact of protecting Mount Vernon and Burlington Urban Growth Area as allowed by the common enemy doctrine will have impacts on other private and public entities which face a higher risk of levee failure if concurrent action is not taken to reduce the velocity and water surface elevation of a major flood. The Burlington DEIS does not identify a path to salt water for flood water avoided on the Burlington portion of the Skagit flood plain.

It will take more time than the March 13, 2009 deadline allows to complete meaningful comments on the DEIS with its many appendices on behalf of the other dike and drainage districts and their constituents. This writer commends the City of Burlington for a serious effort to involve and inform the public about its plans and the choices which are facing the community of Burlington and its neighbors. A 30-day extension of time for comments would be the minimum to allow public bodies such as dike and drainage districts which meet periodically to formulate their response. By this letter I am requesting that the time for response be extended to Wednesday, May 13, 2009.

Thank you for your consideration of this request for additional time to analyze the draft environmental impact statement.

Respectfully yours,

JONES & SMITH

A handwritten signature in black ink that reads "Gary T. Jones". The signature is written in a cursive style with a long horizontal line extending to the right.

GARY T. JONES
GTJ/afd