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

APPELLANT'S MEMORANDUM

COMES NOW APPELLANT, by and through its attorney, and submits the following
Memorandum in support of its appeal of the decision by the Skagit County Hearing Examiner to
grant a Shoreline Substantial Development Permit to respondent, under File No. PL12-0191.

FACTUAL BACKGROUND

Respondent Dike, Drainage & Irrigation District #12 (hereinafter referred to as “DD12”) is seeking to increase the height and width of an existing levee along the Skagit River, specifically a height increase of up to 4 feet and a width increase of up to 60 feet. The avowed purpose of the work is to enhance protection for the urban core of the City of Burlington.

Appellant City of Sedro-Woolley (“City”) is objecting to the issuance of the permit, at least without certain modifications.
The area in question is along an approximately 1.5 mile stretch of riverfront, just West of the Burlington city limits, between Gardner Road and Lafayette Road. The area has been designated a Shoreline of Statewide Significance, hence the requirement for the subject Shorelines permit.

An Environmental Impact Statement (EIS) was prepared by DD12, in conjunction with the City of Burlington. The EIS included as a “project action” enlargement of the existing levee system, of which the subject proposal is a part. However, there was no analysis in the EIS of the effects of the proposed project on upstream areas, specifically the City wastewater treatment plant, as well as United General Hospital, both of which are at relatively low elevations.

There are two other project actions as described in the EIS, namely a setback levee in the “3 Bridge Corridor” (i.e. the BNSF bridge, the Riverside bridge, and the I-5 bridge, near Whitmarsh Road), and also restoration of the Gages Slough ecosystem.

In addition, there are two regional flood hazard mitigation efforts underway, one being conducted by the U.S. Army Corps of Engineers, and known as the Skagit River General Investigation (“GI”), and the other being a Skagit County process known as the Comprehensive Flood Hazard Management Plan. Both of these processes have been underway for a number of years.

The GI involves a basin-wide, comprehensive approach to flood risk management. The proposal at issue here has not been incorporated into any recommendations or conclusions that may be reached as part of the GI process.

According to DD12, this project will have minimal effects on upstream properties. The project engineer, Mr. John Semrau, states that there would only be an increase of one tenth of a foot in base flood elevation as the result of the project; however, the City contends that this conclusion is unsupported by the documents entered into the record, specifically due to the fact that this one-tenth increase presupposes that the setback levees in the 3 Bridge Corridor area project are built; however, the instant proposal does not include that as part of the scope of the project. Thus, the conclusion that the project will result in minimal impact seems to be questionable at best.
In addition, it is the City's contention that the project should not proceed in isolation; rather, the GI study should be completed to ensure that this project is done in harmony with an overall flood protection scheme.

Therefore, the City of Sedro-Wookey respectfully would request that the Board of County Commissioners reverse the approval of the permit, and remand the matter back to the Hearing Examiner to determine what the upstream effects will be, and how best to ameliorate them. As an alternative, the Board should reverse the Hearing Examiner and direct that this project be stayed pending determination through the regional planning processes, specifically the GI, to see how this project should be tailored to best fit in as part of a comprehensive approach.

ARGUMENTS

1. The Upstream Effects Have Not Been Adequately Documented

As stated, the EIS (Exhibit 6) did not address in any detail the upstream effects of the project, other than to state that floodwater would channel out at Sterling as has historically been the case, and would presumably be dealt with as had been done previously, i.e. by sandbagging efforts and the like.

At the hearing before the Hearing Examiner, Mr. Semrau stated that the forecasted effects on base flood elevation due to the project would be a tenth of a foot increase (using the middle of the road hydrology estimate as set forth in the EIS (see EIS page 57; Hearing Transcript at pages 19-20). Using the Corps of Engineers numbers, which are more conservative, results in an increase in base flood elevation of .4 feet, at Sterling, not too far from the Sedro-Wooley Wastewater Treatment Plant, and also United General Hospital. Hearing Transcript, page 20. It is likely that at the end of the day, the Corps numbers will control. Hearing Transcript, at page 21. Thus, one cannot really base the forecasted upstream effect of being limited to a tenth of a foot, as that hydrology estimate will probably not be used. There is really no evidence in the record to show what the effects of even a tenth of a foot increase in base flood elevation will be,
much less an increase four times larger. The City did raise the issue, by letter from City
Supervisor/ Attorney Eron Berg (Exhibit 14), but the Hearing Examiner essentially disregarded
the issue, which, respectfully, was error on his part.

In addition, it appears that the base flood increase estimates presupposed having the new
setback levee in place along the 3 Bridge Corridor, along with the enlargement of the levees
under the subject permit. There has not been any information presented that set forth the effects
of the proposed project on upstream properties in the absence of the setback levee, which is the
scope of the project as it stands now. The City would contend that to proceed with this project
without requiring the simultaneous construction of the setback levee will be a shot in the dark;
while it would presumably benefit DD12, the effects on the City and the other upstream areas
would be unknown (at least, until a large flood occurs, but of course then it would be too late).

2. This Project Should Not Proceed in Isolation

The Shorelines Management Act, RCW 90.58, as implemented by the Skagit County
Shorelines Master Program, SCC 14.26, governs the issuance of the subject permit. The SMA is
intended to “prevent the inherent harm in an uncoordinated and piecemeal development of the
state's shorelines.” RCW 90.58.020. While it is undoubtedly true that DD12 exists to provide
flood protection for its geographic area, and that certainly flood protection is vitally necessary for
protection of life and property, still those efforts cannot and should not be done in a vacuum and
without due regard for the effects on neighboring areas. This is especially true in light of the
long-standing regional efforts, specifically the GI process, toward a comprehensive flood control
scheme.

Sedro-Woolley Mayor Mike Anderson testified at the hearing about the importance of a
collaborative effort, including working with Federal agencies, as well as lawmakers. Hearing
Transcript, pages 50-51. It bears repeating that, while of course each dike district, as well as
each town and city, not to mention Skagit County, have an obligation to its constituents to exert
every reasonable effort to minimize or mitigate flood hazards, still, we are all in the same valley,
we are all dealing with the same river, and for one city or one municipality to essentially go it alone does not further the goal of a comprehensive, region-wide approach. It is true that the GI study has been going on for some time, and it is also true that there are funding challenges, but coming up with a workable, reasonable, basin-wide approach that will work to the maximum extent practicable, is complicated, and there is a lot at stake, obviously. There is really only one opportunity to get this right, and for DD12 to basically say, “well, we can’t wait any longer, so we are moving ahead, regardless” does not further that goal. In sum, the City would submit that everybody would be better served by working together rather than working at cross-purposes.

CONCLUSION

The City does not take the position that the proposed project should not be built. Clearly, as stated above, each city and dike district has the obligation to ensure health and safety, and also to preserve property and economic vitality. But, that does not mean that each entity should just go its own way. The whole purpose of the GI and the other region-wide planning efforts is to prevent what the SMA calls “uncoordinated and piecemeal development”.

Obviously, DD12 will take the position that this issue has been studied nearly to death, and it is time (or past time) to proceed with construction. However, what has not been studied, to any significant extent at least, is the effects of this project on the upstream communities.

In sum, then, the City respectfully requests that the Skagit County Commissioners reverse the decision of the Hearing Examiner granting the subject Shorelines Substantial Use Permit, and impose one or more of the following requirements:

a. As a condition of permit approval, require additional protective measures to ensure that the project does not result in additional flooding to upstream areas, specifically the City’s wastewater treatment plant and United General Hospital.

b. Require that the project only proceed in conjunction with construction of the setback levee in the 3 Bridge Corridor, as set forth in the EIS.

c. Require that the project be delayed until completion of the GI process, so as to ensure that the project does not proceed in isolation and that the comprehensive approach is not jeopardized.
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Respectfully submitted:

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