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

THE CITY OF SEDRO-WOOLLEY, a
Washington municipal corporation

Appellant

vs.

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

Respondent

Nº PL13-0265

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.

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1 The area in question is along an approximately 1.5 mile stretch of riverfront, just West of
2 the Burlington city limits, between Gardner Road and Lafayette Road. The area has been
3 designated a Shoreline of Statewide Significance, hence the requirement for the subject
4 Shorelines permit.

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

10 There are two other project actions as described in the EIS, namely a setback levee in the
11 "3 Bridge Corridor" (i.e. the BNSF bridge, the Riverside bridge, and the I-5 bridge, near
12 Whitmarsh Road), and also restoration of the Gages Slough ecosystem

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

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

21 According to DD12, this project will have minimal effects on upstream properties. The
22 project engineer, Mr. John Semrau, states that there would only be an increase of one tenth of a
23 foot in base flood elevation as the result of the project; however, the City contends that this
24 conclusion is unsupported by the documents entered into the record, specifically due to the fact
25 that this one-tenth increase presupposes that the setback levees in the 3 Bridge Corridor area
26 project are built; however, the instant proposal does not include that as part of the scope of the
27 project. Thus, the conclusion that the project will result in minimal impact seems to be
28 questionable at best.

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1 In addition, it is the City's contention that the project should not proceed in isolation;
2 rather, the GI study should be completed to ensure that this project is done in harmony with an
3 overall flood protection scheme.

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

11 **ARGUMENTS**

13 **1. The Upstream Effects Have Not Been Adequately Documented**

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

19 At the hearing before the Hearing Examiner, Mr. Semrau stated that the forecasted effects
20 on base flood elevation due to the project would be a tenth of a foot increase (using the middle of
21 the road hydrology estimate as set forth in the EIS (**see EIS page 57; Hearing Transcript at**
22 **pages 19-20**). Using the Corps of Engineers numbers, which are more conservative, results in an
23 increase in base flood elevation of .4 feet, at Sterling, not too far from the Sedro- Woolley
24 Wastewater Treatment Plant, and also United General Hospital. **Hearing Transcript, page 20**. It
25 is likely that at the end of the day, the Corps numbers will control. **Hearing Transcript, at page**
26 **21**. Thus, one cannot really base the forecasted upstream effect of being limited to a tenth of a
27 foot, as that hydrology estimate will probably not be used. There is really no evidence in the
28 record to show what the effects of even a tenth of a foot increase in base flood elevation will be,
29

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1 much less an increase four times larger. The City did raise the issue, by letter from City
2 Supervisor/ Attorney Eron Berg (**Exhibit 14**), but the Hearing Examiner essentially disregarded
3 the issue, which, respectfully, was error on his part.

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

12 13 **2. This Project Should Not Proceed in Isolation**

14
15 The Shorelines Management Act, RCW 90.58, as implemented by the Skagit County
16 Shorelines Master Program, SCC 14.26, governs the issuance of the subject permit. The SMA is
17 intended to "prevent the inherent harm in an uncoordinated and piecemeal development of the
18 state's shorelines." RCW 90.58.020. While it is undoubtedly true that DD12 exists to provide
19 flood protection for its geographic area, and that certainly flood protection is vitally necessary for
20 protection of life and property, still those efforts cannot and should not be done in a vacuum and
21 without due regard for the effects on neighboring areas. This is especially true in light of the
22 long-standing regional efforts, specifically the GI process, toward a comprehensive flood control
23 scheme.

24 Sedro-Woolley Mayor Mike Anderson testified at the hearing about the importance of a
25 collaborative effort, including working with Federal agencies, as well as lawmakers. **Hearing**
26 **Transcript, pages 50-51.** It bears repeating that, while of course each dike district, as well as
27 each town and city, not to mention Skagit County, have an obligation to its constituents to exert
28 every reasonable effort to minimize or mitigate flood hazards, still, we are all in the same valley,

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1 we are all dealing with the same river, and for one city or one municipality to essentially go it
2 alone does not further the goal of a comprehensive, region-wide approach. It is true that the GI
3 study has been going on for some time, and it is also true that there are funding challenges, but
4 coming up with a workable, reasonable, basin-wide approach that will work to the maximum
5 extent practicable, is complicated, and there is a lot at stake, obviously. There is really only one
6 opportunity to get this right, and for DD12 to basically say, "well, we can't wait any longer, so
7 we are moving ahead, regardless" does not further that goal. In sum, the City would submit that
8 everybody would be better served by working together rather than working at cross-purposes.

9 10 *CONCLUSION*

11
12 The City does not take the position that the proposed project should not be built. Clearly,
13 as stated above, each city and dike district has the obligation to ensure health and safety, and also
14 to preserve property and economic vitality. But, that does not mean that each entity should just
15 go its own way. The whole purpose of the GI and the other region-wide planning efforts is to
16 prevent what the SMA calls "uncoordinated and piecemeal development".

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

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

- 23
24 a. As a condition of permit approval, require additional protective measures to
25 ensure that the project does not result in additional flooding to upstream areas,
26 specifically the City's wastewater treatment plant and United General Hospital.
27 b. Require that the project only proceed in conjunction with construction of the
28 setback levee in the 3 Bridge Corridor, as set forth in the EIS.
29 c. Require that the project be delayed until completion of the GI process, so as to
30 ensure that the project does not proceed in isolation and that the comprehensive
approach is not jeopardized.

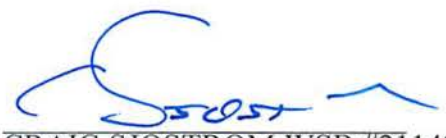
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DATED: 8/15/13

Respectfully submitted:



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Attorney for the City of Sedro-Woolley