

BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

In the Matter of the Remand of the)
Application of)
)
SKAGIT COUNTY DIKE, DRAINAGE)
AND IRRIGATION DISTRICT NO. 12)
)
For a Shoreline Substantial Development)
Permit for Improvements to a Portion of)
Dike along the Skagit River)
_____)

PL 12-0191

**SCHEDULING ORDER
FOR REMAND PROCEEDINGS**

On October 29, 2014, at 1800 Continental Place in Mount Vernon, a conference was held for the scheduling of further hearings in this matter.

Appellant Sedro Woolley was represented by Craig Sjostrom, Attorney at Law. Intervenor Larry Kunzler appeared pro se. Respondent Dike District No. 12 (DD12) was represented by John Shultz, Attorney at Law. Respondent City of Burlington was represented by Leif Johnson, City Attorney. Skagit County was represented by Jill Dvorkin, Deputy County Prosecutor.

Also participating were John Graves of FEMA Region X; Eron Berg, City of Sedro Woolley; John Semrau, Dike District 12 engineer; and John Cooper, Skagit County Planning. Graves provided a useful explanation of what FEMA looks at with respect to the biological impacts of levies.

The following issues were remanded to the Hearing Examiner for further consideration by the Board of County Commissioners:

- A. DD12 shall present analysis of the actual effects of the levee modifications envisioned under the Shoreline Permit, applying Corps hydrology, comparing actual pre-project conditions and post-project conditions, taking into consideration and depicting (i) upstream impacts to the City of Sedro Woolley and environs as well as the Nookachamps Basin, including but not limited to impacts to United General Hospital and the Sedro Woolley wastewater treatment plant; and (ii) downstream impacts.
- B. DD12 shall provide analysis of the pathway and volume of water that will be diverted outside the main river channel in a 100-year flood event before and after the Project, applying Corps hydrology.
- C. In considering this Shoreline Permit, the Hearing Examiner shall analyze, consider and render specific findings that document compliance with the County's obligations under the NMFS bi-op.

As a result of the discussion at the conference, the following schedule is established:

1. On or before December 1, 2014, Skagit County will circulate its Staff Report, focusing on the County's response to Remand Issue C above.
2. On or before December 1, 2014, the City of Sedro Woolley shall complete the transcript of the hearing session on June 12, 2013 and make it available to all parties.
3. On or before January 7, 2015, the parties shall file and serve any written responses they wish to make to the County's Staff Report.
4. On or before January 7, 2015, the Applicant (DD12), the City of Burlington and the County shall file and serve lists of the witnesses they intend to call and the exhibits they intend to introduce.
5. On or before January 14, 2015, the Appellant (Sedro Woolley) and the Intervenor (Larry Kunzler) shall file and serve lists of witnesses they intend to call and the exhibits they intend to introduce.
6. The witness lists shall include a brief description of the subject of each witness's testimony and of the expertise of each witness to be called as an expert.
7. The hearing shall be held on February 4, 5, and 6, 2015, at 1800 Continental Place in Mount Vernon, commencing each day at 9:00 a.m. The 4th and 5th will be devoted to the presentations of the parties concerning the remand questions. The 6th will be devoted to public testimony. Subsequent hearing sessions will be scheduled if required.

During the first two hearing days the presentations of the parties will take place in the following order:

1. Dike District 12/City of Burlington -- Remand Issues A and B.
2. Skagit County -- Remand Issue C
3. Sedro Woolley -- Response
4. Larry Kunzler -- Response
5. Dike District 12/City of Burlington --Rebuttal
6. Skagit County -- Rebuttal
7. Sedro Woolley -- Surrebuttal
8. Larry Kunzler -- Surrebuttal

Evidence at the remand hearing sessions shall be limited to the remand issues quoted above.

Testimony shall be under oath. Cross examination will be allowed.

Service of papers and the filing thereof may be accomplished by email.

For the purposes of this Order, the term "parties" refers to those named entities or persons who are participants in the appeal of the Hearing Examiner's initial decision on this application. The term "file" shall mean receipt by the Hearing Examiner's Office of any document or item. "Service" shall be accomplished by receipt of a document or item by the party served.

ENTERED, this 31st day of October, 2014.

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Hearing Examiner