



SKAGIT COUNTY BOARD OF COMMISSIONERS

DON MUNKS, First District
KENNETH A. DAHLSTEDT, Second District
SHARON D. DILLON, Third District

May 9, 2008

Mayor Bud Norris and Council
P.O. Box 809
City of Mount Vernon
Mount Vernon, WA 98273

Mayor Ed Brunz and Council
833 South Spruce Street
City of Burlington
Burlington, WA 98233

RE: FEMA Flood Map Review

Greetings,

As you know, FEMA's new flood maps for the Skagit River basin will reportedly be published in late summer 2008. The cities of Burlington and Mount Vernon invited Skagit County to participate in a joint challenge of the forthcoming maps along with several local dike districts. Given the critical importance of this matter to our community, we write to make our expectations *clear going forward*.

To protect the community's interests, the County retained former Senator Slade Gorton of the K&L Gates law firm; and NHC, a nationally-recognized hydrology expert. The County's legal and technical efforts have delivered substantial benefits to the community over the past several months:

- County consultant NHC identified material defects in the Flo2d flood mapping software;
- On that basis, County attorneys successfully persuaded FEMA to delay map release (originally scheduled for Feb. 19, 2008) until such time as the software issues are identified and fully resolved;
- The resolution of software problem appears to have produced a significantly lower base flood elevation in certain areas, the City of Burlington in particular.

These results have come with a cost: the County has incurred nearly \$200,000 in legal fees on this matter, which the County is funding alone.

When the Board agreed to help fund an appeal, we clearly outlined our expectation that the cities and dike districts would collectively pay half the legal costs involved. See, Board Resolution No. R20080037 (copy attached). But despite extensive effort, the various cost sharing proposals proposed by the County have not been accepted.

As recent press reports reflect, the County's revenues are far less than expected this year, and we are forced to cut expenditures. Until we are able to agree on a cost sharing formula through an appropriate interlocal agreement approved by your city councils, the County is unable to continue unilaterally funding the legal costs of the appeal.

While the County has taken the lead on the legal front, the City of Burlington has taken the lead in conducting field research and developing the scientific information on which a challenge to the maps might be based. In particular, the City of Burlington is conducting intrusive investigation of various structures in the Crofoot Addition, Town of Concrete, utilizing forensic engineering firm WJE. It is believed that WJE's investigation could provide evidence supportive of lower flood discharge volume. Skagit County Public Works has been providing surveying and other support.

Skagit County seeks flood maps based on the best available science, something we have made clear from the outset of our participation in this effort. See, Board Resolution No. R20070500 (copy attached). We believe this approach will appropriately balance the community's economic interests with the safety of its citizens. Moreover, as public officials, we have an obligation to ensure that the legal actions we undertake have some reasonable probability of success, something made all the more important given the budget constraints imposed by current economic conditions.

After we receive WJE's written expert report detailing the results of the Crofoot work, the County's hydrology consultants will review the report. Specifically, we have asked our consultants to advise us whether there is an adequate scientific basis from which to mount an appeal that has a reasonable probability of success. We intend to operate on the basis of our expert consultant's advice, in consultation with our city and dike district partners.

We thank you in advance for your prompt attention to this matter, and look forward to working with you to protect our community's interests.

Sincerely

BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



Don Munks, Chairman



Ken Dahlstedt, Commissioner



Sharon Dillon, Commissioner

cc: Dike Districts 1, 3, 12, 17, 20, 22
Prosecuting Attorney
Public Works Director

**A RESOLUTION TO PROTECT THE COMMUNITY'S INTERESTS WITH RESPECT
TO FLOOD RISK MAPPING BY THE FEDERAL EMERGENCY MANAGEMENT
AGENCY**

WHEREAS, the Board of Skagit County Commissioners has declared protection of life and infrastructure during flood events to be of paramount importance to Skagit County; and,

WHEREAS, the Skagit River poses a threat of seasonal flooding, with attendant risk to life, property, businesses, and infrastructure within Skagit County; and,

WHEREAS, the Federal Emergency Management Agency (FEMA) performed a Flood Insurance Study for the Skagit River (FIS or Study) and prepared and issued Flood Insurance Rate Maps (FIRMs or Flood Maps) adopted by Skagit County (County) in 1984; and,

WHEREAS, FEMA is currently in the process of performing a new Study with the intent to issue updated Flood Maps for Skagit County; and,

WHEREAS, the Board of Skagit County Commissioners has made extensive efforts to work cooperatively and proactively with FEMA and other federal agencies to ensure accurate and appropriate flood data and information are utilized in the development of the updated Flood Maps; and,

WHEREAS, the Board of Skagit County Commissioners recognizes that FEMA's policy of applying failure analysis will lead to a significant increase in existing base flood elevations assumed by the updated Flood Maps in any event, and, accordingly, the impact to the community created by the updated Flood Maps will be substantial regardless of the data, methodologies and assumptions at issue; and,

WHEREAS, the Board of Skagit County Commissioners is committed to rational decision analysis on the basis of objective science and data, and, conversely, does not support outcome oriented decision analysis; and,

WHEREAS, the Board of Skagit County Commissioners is also insistent that any updated Flood Maps produced by FEMA reflect the public risk and potential for damage with the highest degree of accuracy possible, and, among other things, do not exhibit undue reliance on unwarranted precautionary assumptions; and,

WHEREAS, the Board of Skagit County Commissioners believes the community as a whole is entitled to a more exhaustive and thorough research and analysis of contested and incomplete data, methodologies and potentially unwarranted precautionary assumptions before FEMA's updated Flood Maps are imposed on the community; and,

WHEREAS, the Board of Skagit County Commissioners has retained a consulting firm with particular expertise in river hydraulics and hydrology to assist the County in its review of work performed by FEMA in the development of the updated Flood Maps, and to perform an independent, objective review of river hydraulics and hydrology work previously performed at the direction of other jurisdictions within Skagit County; and,

WHEREAS, the County has recently brought forward to FEMA new information which the County believes, if utilized in the Study Flood Maps, would result in Preliminary Flood Maps issued for public review that would more appropriately reflect flood elevations and potential risk from Skagit River flooding; and,

WHEREAS, pursuant to 42 U.S.C. § 4104 the Skagit County Board of Commissioners is designated the primary local entity to bring appeals forward on behalf of the community and has, therefore, been assigned by Congress a critical leadership role in representing the interests of the community with respect to the updated Flood Maps; and,

WHEREAS, the appeal process created by FEMA under 44 C.F.R. 67 is exceedingly onerous in that it requires the County as party appellant to coordinate with the entire community and then submit proposed alternative Flood Maps within ninety (90) days following the second newspaper publication by FEMA of the proposed new flood elevations; and,

WHEREAS, the County, without waiving any rights, claims or defenses of any nature, will continue to work cooperatively and proactively with FEMA in its development of updated Flood Maps, concurrently preparing for the eventuality that it may be in the best interest of the community to appeal and/or litigate FEMA's Preliminary Flood Maps after they are published.

NOW, THEREFORE, BE IT RESOLVED AND HEREBY ORDERED BY THE BOARD OF SKAGIT COUNTY COMMISSIONERS,

Section 1. The Skagit County Public Works Department is directed to continue working cooperatively with FEMA to ensure the most appropriate data and information is utilized in the Skagit River Flood Insurance Study and development of the updated Flood Insurance Rate Maps.

Section 2. The Skagit County Public Works Department is directed to work with the County's consultants to conduct necessary analysis for the preparation of alternative Flood Insurance Rate Maps in accordance with FEMA guidelines utilizing supportable data and other information available, and seeking to eliminate unwarranted reliance on precautionary assumptions.

Section 3. The Skagit County Administrator, together with the Public Works Department, is directed to work in conjunction with the Office of the Prosecuting Attorney to develop successful appeal and/or litigation strategies consistent with the goals and objectives of this Resolution.

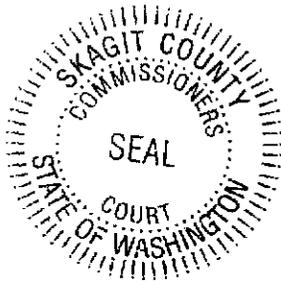
Section 4. The Board of Commissioners requests the Office of the Prosecuting Attorney to develop and prepare, if necessary, for an appeal of the Preliminary Flood Insurance Rate Maps in accordance with 44 C.F.R. 67. The Board of Commissioners also requests the Office of Prosecuting Attorney to develop a Professional Services Agreement for the professional services of Slade Gorton, esq. and Bart Freedman, esq. of the Kirkpatrick & Lockhart Preston Gates Ellis LLP law firm, to assist in matters related to this Resolution, amount not to exceed \$50,000 without express Board consent, subject to appropriate subsequent Board and other requisite approval of the terms and conditions of said Professional Services Agreement.

Section 5. County Administration and the Public Works Department are directed to work with cities, dike districts and other affected parties in a unified community effort to develop alternative Flood Insurance Rate Maps consistent with supportable data and analysis.

BE IT FURTHER RESOLVED, Skagit County Public Works Department staff shall regularly report to the Board of Skagit County Commissioners its progress in continued efforts to work cooperatively with FEMA and the Cities of Mount Vernon and Burlington to develop Flood Insurance Rate Maps that most appropriately reflect the risk of Skagit River flooding in Skagit County.

PASSED this 8th day of October, 2007.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON



Sharon D. Dillon
SHARON D. DILLON, Chair

Don Munks
DON MUNKS, Commissioner

Kenneth A. Dahlstedt
KENNETH A. DAHLSTEDT, Commissioner

Attest:

Linda Hammen, Assistant
~~Joanne Giesbrecht~~
Clerk of the Board

SKAGIT COUNTY
Resolution # R20070500

Approved as to Content:



Gary Rowe
Skagit County Administrator

Approved as to Form:



William Honea
Chief Civil Prosecuting Attorney

SKAGIT COUNTY
Resolution # R20070500

SKAGIT COUNTY
RESOLUTION NO. _ Resolution # R20080037

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**A RESOLUTION DIRECTING COUNTY STAFF HOW TO PROCEED
WITH CONTESTING FEDERAL EMERGENCY MANAGEMENT
ADMINISTRATION (FEMA) 100-YEAR FLOOD MAPS**

WHEREAS, flooding of the Skagit and Sauk River systems adversely impacts the health, safety, and economy of Skagit County and the State of Washington; and

WHEREAS, the Federal Emergency Management Administration (FEMA) is currently updating its flood maps associated with the Skagit River that identifies the likely inundation by a 100-year flood event; and

WHEREAS, Skagit County (County), the Dike Districts, and Cities and Towns of Skagit County desire that the updated FEMA flood maps accurately depict the 100-year flood event and that the maps are based on hydrology derived from the best available science, data, and methodology; and

WHEREAS, the County and the Cities of Mount Vernon and Burlington and Dike Districts 1 and 12 have initiated a joint effort to contest FEMA's flood maps with a strategy of ensuring any proposed 100-year map revision is reviewed and accepted by an independent three-member scientific panel; and

WHEREAS, the Board of Skagit County Commissioners adopted Resolution No. 20070500, authorizing staff to retain the law firm of Kirkpatrick Lockhart Preston Gates Ellis LLP as counsel to develop a potential strategy to appeal FEMA's updated flood maps; and

WHEREAS, counsel has successfully persuaded FEMA to consider the formation of a three-member scientific panel, with a charge to review and determine the most accurate hydrology for the Skagit River system; and

WHEREAS, the County is committed to spending resources necessary to scientifically determine the most accurate hydrology associated with the Skagit River, including investigation of high-water marks in the Crofoot area to evaluate the magnitude of the 1897 and 1909 flood events, as well as a Paleoflood Investigation in the Dalles area to evaluate the magnitude of the 1897 flood event. The County believes such investigation may provide more scientifically accurate information about the foregoing flood events than that relied upon by FEMA to date; and

WHEREAS, the Cities of Mount Vernon and Burlington will be the principal municipal beneficiaries of any reduction in the 100-year flood hydrology and associated base flood elevation, and have to that end represented their intention to pay a reasonable portion of the costs of the appeal and associated technical work; and

WHEREAS, the County has committed substantial resources and has embarked on a specific course of action with respect to this issue in material reliance on public representations by City and Dike District representatives that the costs of an appeal would be shared equitably.

NOW, THEREFORE, BE IT RESOLVED AND HEREBY ORDERED THAT:

The Board of Skagit County Commissioners adopts the following findings of fact:

1. It is in the community's best interest to work jointly with the City of Mount Vernon and the City of Burlington to advance a technical appeal of FEMA's base flood maps.

2. It is in the community's best interest to seek review of the hydrology and base flood elevations by a three-member independent scientific panel.
3. The City of Mount Vernon, the City of Burlington, Dike District 1, and Dike District 12, as the principal beneficiaries of any reduction in the Skagit River system hydrology and base flood elevation, should collectively contribute at least 50% of the appeal costs incurred by the County.

BE IT FURTHER RESOLVED AND HEREBY ORDERED THAT:

Section 1. The Board of Skagit County Commissioners directs the Skagit County Public Works Department to prepare and forward to the Board for consideration necessary contractual agreements, with Northwest Hydraulics Consultants, the Bureau of Reclamation, Kirkpatrick Lockhart Preston Gates Ellis LLP, and other entities necessary to prepare and defend a scientifically accurate hydrology of the Skagit River system before an independent three-member panel.

Section 2. The Board of Skagit County Commissioners directs staff to develop an interlocal agreement with the City of Mount Vernon and the City of Burlington for work associated with preparing and defending a scientifically accurate hydrology of the Skagit River system before an independent three-member panel.

WITNESS OUR HANDS AND THE OFFICIAL SEAL OF OUR OFFICE this 22 day of January, 2008.

**BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Don Munks
DON MUNKS, Chairman

Kenneth A. Dahlstedt
KENNETH A. DAHLSTEDT, Commissioner

Sharon D. Dillon
SHARON D. DILLON, Commissioner



APPROVED AS TO CONTENT:

Gary Rowe
Gary Rowe, County Administrator

APPROVED AS TO FORM:

[Signature]
William Honea, Chief Civil Deputy
Skagit County Prosecutor's Office

ATTEST:

Linda Henneman, Assistant
Joanne Giesbrecht, Clerk
Skagit County Board of Commissioners

SKAGIT COUNTY
Resolution # R20080037