



FEMA

May 21, 2009

City of Burlington, Washington
Department of Planning and Community Development
833 South Spruce Street
Burlington, Washington 98233
Attn: Margaret Fleek, Planning Director

Dike District #12
1317 South Anacortes Street
Burlington, Washington 98233
Attn: Chuck Bennett

Dear Ms. Fleek and Mr. Bennett:

The U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) Region 10 received your request for comments on the "Draft Environmental Impact Statement to Adopt a Strategic Program for Comprehensive Flood Hazard Mitigation in the Burlington Urban Area and Adjacent Land with a Range of Structural and Non-Structural Components." This EIS was prepared as a requirement under the State Environmental Policy Act (SEPA). Although we have no regulatory responsibilities in reviewing SEPA determinations, we do review them for consistency with national goals in mitigating future disasters and promoting sound floodplain management.

The following comments were garnished from Mitigation staff and are submitted for your consideration:

1. If a federal nexus occurs the National Environmental Policy Act (NEPA) will be applicable and FEMA would consider the purpose and needs statement insufficient for meeting NEPA. In defining the purpose, FEMA recommends the city address the following:
 - The Purpose is analogous to the problem. It is the "what" of the proposal. The Purpose should be stated in a concise manner. The Purpose should be stated as the positive outcome that is expected. For example, the purpose is to reduce flooding impacts in the City of Burlington.
 - The project Purpose should address strategic goals such as:
 - Taking Care of What We Have
 - Making the System Work Better
 - Increasing Capacity
 - Improving Safety
 - The Purpose should avoid stating a solution, for example: "the purpose of the project is to build a levee."

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- Similarly, it should be stated broadly enough so that more than one alternative can be considered and alternatives are not dismissed prematurely.

The need:

- Should establish the evidence that a problem exists, or will exist if projected population and planned land-use growth are realized.
 - Should be factual and numerically based.
 - Should support the assertion made in the purpose statement. For example, if the purpose statement is based on safety improvements, the need statement should support the assertion that there is or will be a safety problem to be corrected.
(source: Utah DOT guidance on Purpose and Need Statements)
2. FEMA doesn't prescribe structural solutions for addressing flooding problems. FEMA recognizes, however, that structural solutions may be the only viable option. FEMA recommends that further investigation and evaluation be done on non-structural solutions to thoroughly rule out those alternatives. If federal funding will be used, the Executive Order 11988 review process will require a rigorous review and documentation to identify practicable alternatives that avoid the floodplain.
 3. If levees are deemed to be the only practicable solution, then FEMA encourages and supports levee setbacks as far from the river as possible to protect natural and beneficial functions of the floodplain (water, biologic and societal resources) and to provide for fish habitat and the incorporation of large woody debris between the levee and the river. Please refer to element 5D of the Reasonable and Prudent Alternative (RPA) issued by the National Marine Fisheries Service (NMFS) to FEMA on September 22, 2008. Following the criteria outlined in the RPA can help ensure compliance with the Endangered Species Act (ESA).
 4. The DEIS does not include discussion of the effects of the proposal on the natural and beneficial functions of the floodplain in light of the National Marine Fisheries Services (NMFS) September 22, 2008 Endangered Species Act-Section 7 Consultation Final Biological Opinion (Bi-Op). The primary environmental mitigation action presented is the restoration, maintenance and management of the Gages Slough habitat and wetland corridor, but without sufficient details on location and actions to be taken, the determination on the sufficiency of the mitigation cannot be made.
 5. The proposed action indicates the construction of a 100-year certified levee "in appropriate" locations and provides other flood measures "as necessary and appropriate." The DEIS should clarify and provide specifics.

6. The DEIS states that other flood measures “as necessary and appropriate” will be provided. What are the other appropriate flood control measures to protect the City of Burlington’s urban area under consideration? Additional information is necessary to be able to assess potential impacts.
7. The use of the phrase “in appropriate locations” throughout the document makes reviewing the impacts of the proposal difficult. Once identification of specific “appropriate” locations is made, FEMA can provide more specific comments referencing impacts to the floodplain.
8. Although the document states that impacts to the local property owners for flood insurance requirements will occur, it is difficult to estimate what those specific impacts will be without knowledge of the proposed location of the levees.
9. The Draft Environmental Impact Statement (DEIS) states that, “No action will generate extremely high flood insurance premiums for the families that live in the community.” Flood Insurance premiums are based on the maps that were in effect during construction of the home or business, unless the structure is substantially damaged or substantially improved.
10. The use of the most accurate hydrology and hydraulics is important to the design and construction of the levee; however, it is hard to determine what the effects of the project might be without knowing the requirements that it must meet. FEMA recommends that the city use at least one set of data to establish the effects of the levee for review purposes.
11. The downstream impacts are not clearly identified in the DEIS. Utilizing the best available hydrologic and hydraulic data would help to evaluate the impacts. Also, the specific impacts to both upstream and downstream communities need to be evaluated for those communities to determine additional measures they should take to protect themselves. A more holistic approach to a project like this would be more appropriate for the Skagit River Delta. Skagit County and the City of Mount Vernon should be included in the planning and design of this project.
12. Specific to downstream effects, the table on page 20 of the DEIS outlines the potential impacts from the two different scenarios. The U. S. Army Corps of Engineers (USACE) report identifies downstream impacts while the Pacific International Engineering (PIE) report makes no mention of downstream effects. Upstream and downstream impacts must be addressed, especially for adjacent jurisdictions (Skagit County and City of Mount Vernon) and their residents.

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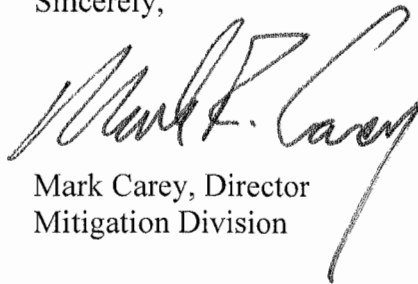
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13. FEMA did not define a floodway for Skagit River delta communities. The City of Burlington must therefore administer their floodplain ordinance in accordance with 44 CFR 60.3 (c) (10) which states: "no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-30 on the community's FIRM unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community."
14. The proposed action and the "no action" alternatives discuss potential economic impacts; however, they do not assess the risk of flooding in their assessment and discussions. The construction of a levee does not constitute a "no risk" scenario.

Finally, since the NMFS issued its final Biological Opinion on September 22, 2008 FEMA advises all communities participating in the National Flood Insurance Program (NFIP) that before any permit is issued an application for a Conditional Letter of Map Revision (CLOMR) should be submitted. This will initiate FEMA's review of the project under Section 7 of the Endangered Species Act. Of course, the applicant or community always has the option to pursue a Section 10 ESA permit with the U.S. Fish and Wildlife Service or National Marine Fisheries Service.

Thank you for the opportunity to comment. We look forward to reviewing additional documents as you progress further in your planning.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark F. Carey". The signature is written in a cursive style with a long, sweeping tail on the last letter.

Mark Carey, Director
Mitigation Division

MR:bb