



May 13, 2008

RE: Memorandum of Understanding  
Co-Lead on Phased Environmental Review

Chair  
Skagit County Board of Commissioners  
1800 Continental Place  
Mount Vernon WA 98273


Dear Commissioners:

In order to move ahead with critical flood hazard mitigation programs in the Burlington area, a number of closely related issues must be evaluated and a range of alternatives examined in order to determine the best course of action for residents and property owners within the city and the county. As we all agree, there is a need for long term predictability and stability in floodplain regulations and base flood elevations. We believe that the best option for the urban areas is to work toward levee certification, so that credit is given for the levees in FEMA flood hazard mapping as it continues to evolve over time.

Staff members of the County and the City of Burlington recently discussed the possibility of joining forces to study the environmental consequences of levy certification, and the City subsequently drafted the enclosed Memorandum of Understanding. This agreement is intended to facilitate an agreement to proceed with SEPA Co-Lead on a programmatic EIS, consisting of a Phased Review pursuant to WAC 197-11-060(5). Over the years, Skagit County has been SEPA Co-Lead with Burlington on numerous projects and programs. Today, we propose to formalize that relationship through a Memorandum of Understanding for this specific program. Your comments on the draft Memorandum of Understanding would be appreciated.

The City of Burlington is pleased to have this opportunity to work together with Skagit County on our mutual interests, especially flood hazard mitigation programs and projects. We look forward to addressing this mutual concern, for the benefit of our residents.

Sincerely,

  
Edward J. Brunz  
Mayor

Office of the Mayor

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## **MEMORANDUM OF UNDERSTANDING**

WHEREAS, the State Environmental Policy Act, Chapter 43.21C RCW, provides that "each person has a fundamental and inalienable right to a healthy environment"; and

WHEREAS, agencies are directed under WAC 197-11-030 to initiate the SEPA process early in conjunction with other agency operations to avoid delay and duplication; and

WHEREAS, agencies are also directed under WAC 197-11-055 to prepare a threshold determination and environmental impact statement at the earliest possible point in the planning and decision-making process, at the conceptual stage rather than at the design stage; and

WHEREAS, in the event that one or more agencies have jurisdiction over a proposal, agencies are further directed under WAC 197-11-055 to coordinate their SEPA processes wherever possible.

### **I. PARTIES**

This Memorandum of Understanding (MOU) is hereby entered into by, between, and among the City of Burlington, a Washington municipal corporation (the "City,") and Skagit County, a Washington municipal corporation (the "County").

### **II. AUTHORITY**

This MOU is based on and consistent with the authorities provided in the following laws, regulations, orders, decisions and documents:

1. The State Environmental Policy, Chapter 43.21C RCW
2. Environmental Policy Rules, Chapter 197-11 WAC
3. National Environmental Policy Act of 1969, as amended, 42 USC § 4321 et seq.
4. The Endangered Species Act of 1973, as amended, 16 USC § 1531 et seq.
5. *Title 33, Code of Federal Regulations, Part 320*
6. Title 40, Code of Federal Regulations, Parts 1500-1508

### **III. PURPOSE**

As established in the State Environmental Policy Act (SEPA), under which this EIS process is being conducted, it is the continuing policy of the State government to use all practicable means and measures, including technical assistance, in a manner calculated to foster and promote the general welfare, to

create and maintain conditions under which each person is afforded a fundamental and inalienable right to a healthy environment. Accordingly, the purposes of this MOU are:

1. To establish the parties' agreement and commitment in jointly sponsoring a collaborative Environmental Impact Statement ("EIS") process under SEPA in the development of a Phased Review pursuant to WAC 197-11-060(5) consisting of an amendment to the Skagit County Natural Hazard Mitigation Plan adding the goal of levee certification to 100-year flood protection with FEMA accreditation via the LOMR process; adopting the Burlington Agricultural Heritage Credit Program for Farmland Preservation and amending the Urban Growth Area boundaries consistent with the 2005 Comprehensive Plan.
2. To establish the commitment of the Parties to seek agreement on key steps in the EIS process, including: development of a range of alternatives, modeling and analysis of the alternatives, consideration of public comments, and development of a preferred alternative.
3. To affirm the Parties' agreement to jointly sponsor a process in which they will collectively seek the involvement of other entities that may have an interest in participating in the EIS process.

#### **IV. STATEMENT OF PRINCIPLES**

Development of a reliable means of protecting the City of Burlington and its urban growth area has been a subject of great interest to residents of the City, and to other residents of Skagit County. While the Skagit River is prone to flooding and excessive runoff, there are also periods of low flow.

#### **V. STATEMENT OF MUTUAL INTERESTS AND BENEFITS**

The Parties recognize they can benefit from collaboration on the EIS process, as well as from increased communication, disclosure of relevant information early in the analytical process, sharing of available data and staff expertise, improved coordination, avoidance of duplicated efforts, and proactive resolution of interagency disputes. Additionally, the Parties can benefit from engaging in collaboration to help achieve better outcomes for all parties while ensuring that each agency's key mandates and legal requirements are adequately and appropriately met.

#### **VI. ORGANIZATION**

This MOU will be administered through a partnership between the City and the County, who shall serve as co-lead agencies. The City is denominated the nominal lead agency, and shall be responsible to comply with the duties of the lead agency under the Environmental Policy Rules, Chapter 197-11 WAC.

The co-lead agencies are responsible for all aspects of EIS preparation. The co-lead agencies will jointly form an EIS Interdisciplinary Team to prepare the EIS. The co-leads will select staff or consultants based upon technical expertise to serve as core team members on the interdisciplinary team. The expertise required for the core team will be determined by the co-lead agencies based on major issues identified through the scoping and public involvement process. All tasks or data collection required for completion of the EIS will be assigned through the EIS Interdisciplinary Team. To assist in the development of the EIS and in accordance with law, the co-lead agencies will continue to seek input from the general public and stakeholders.

A. BASIC ROLES. The City is the lead agency for the EIS process with the sole and ultimate decision-making authority for the Record of Decision and primary responsibility for SEPA compliance, as well as preparation of the environmental impact statement.

B. THE CITY SHALL:

1. Serve as the nominal lead agency for the EIS process with sole and ultimate decision-making authority for the Record of Decision and primary responsibility for SEPA compliance, as well as preparation of the environmental impact statement.
2. Designate County as co-lead agency in the EIS process.
3. Fully utilize the relevant data and assessments provided by the County in support of the decision-making process.
4. Fully consider the views of the County and other interested parties in developing its Record of Decision.

C. THE COUNTY SHALL:

1. Serve as a cooperating agency and co-lead with the City on a collaborative EIS process.
2. Contribute data and information relevant to the EIS process.
3. Provide adequate staff resources to ensure active participation in the preparation of the EIS.

D. THE CITY AND THE COUNTY SHALL:

1. Work collaboratively with each other on detailed ground rules for their interaction, a statement of the purpose and need for the proposed action, the goals and objectives for the proposed action, the process for scoping relevant issues, the process for involving other interested and affected entities, the schedule for completion of milestones, development of a range of alternatives, modeling and analysis of alternatives, consideration of public comments, and development of a preferred alternative.
2. Designate appropriate representatives with relevant technical and policy expertise, and seek to develop consensus-based recommendations for consideration by agency policy decision-makers in accordance with the respective decision-making requirements of each agency.

## **VII. OPERATING PRINCIPLES**

The operating principles for the co-lead agencies are as follows:

1. Co-lead agencies will meet monthly or as needed.
2. Organizational contacts will be identified under an operating protocol.
3. The public will be appropriately notified by City of open meetings.
4. Public may attend meetings and will be given an opportunity to ask questions or make statements at the end of the meeting.
5. Decision-making will be cooperative.
6. Co-lead agencies will fully consider any recommendations and guidance from the general public, stakeholders.

## **VIII. GROUND RULES FOR INTERAGENCY COLLABORATION**

Within sixty (60) days following the effective date of this MOU, the Parties shall develop and agree upon a detailed set of ground rules for their interagency collaboration. Among the elements to be addressed and clarified in these ground rules will include:

1. Schedules and deadlines for the overall EIS process and key milestones
2. Development of alternatives
3. Content of Exhibits
4. Distribution list and consultation program
5. Protocols for sharing information
6. Lead agency roles and responsibilities
7. Cooperating agency roles and responsibilities
8. Policy review and ratification process for interim recommendations
9. Process for resolution and/or peer review of technical issues
10. Frequency, schedule, length, agendas, location, organization, planning, conduct, and documentation of team meetings
11. Communications with the media, the public, the courts, political institutions
12. Expectations regarding costs and expenses for participants and for facilitation and mediation services
13. Constituent outreach and communication plan
14. Public participation plan

This MOU shall be amended to incorporate the ground rules for the Parties' collaboration on the EIS process once they are developed.

## IX. TERM

This MOU will remain in effect for an undefined time period beginning with the implementation of the MOU and ending when the co-lead agencies complete the final EIS.

## X. STANDARD CONDITIONS

1. **AUTHORITIES.** Nothing in this MOU shall be construed to extend the jurisdiction or decision-making authority of any party to this MOU beyond that which exists under current laws and regulations. Nothing in this MOU shall be construed as limiting or affecting the authority or legal responsibility of any Party, or as binding any Party to perform beyond the respective authority of each, or to require any Party to assume or expend any specific sum of money. The provisions of this MOU are subject to the laws and regulations of the State of Washington. Nothing in this MOU shall be construed as affecting the decision-making requirements of any Party or impairing the independent judgment of each Party regarding policy decisions.
2. **LEGAL RIGHTS AND REMEDIES.** Nothing in this MOU shall be construed to alter the legal rights and remedies that each Party would otherwise have. No Party waives any legal rights or defenses by entering into this MOU or participating in the process contemplated hereby. This MOU may not be used as evidence by or against any Party in any legal proceeding, whether now existing or subsequent.
3. **SEVERABILITY.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and any Party may renegotiate the terms affected by the severance.
4. **THIRD PARTY BENEFICIARY RIGHTS.** The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only among the Parties to this MOU, and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU.
5. **MODIFICATION.** Any Party may request changes in this MOU. Any changes, modifications or amendments to this MOU which are mutually agreed upon by and among the Parties to this MOU shall be incorporated by written instrument, executed and signed by all Parties to this MOU.

6. **TERMINATION.** Any party to this MOU may terminate in writing its participation in this agreement in whole, or in part, at any time before the date of expiration, with 30 days notice to the other parties.
7. **ENTIRETY OF AGREEMENT.** This MOU represents the entire and integrated agreement among the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
8. **EFFECTIVE DATE.** The effective date of this MOU is the date of the signature last affixed to these pages.

IN WITNESS HEREOF, the undersigned have caused this MOU to be executed in accordance with the terms of this document.

SIGNED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2008

THE CITY OF BURLINGTON

\_\_\_\_\_  
Edward J. Brunz, Mayor

Attest:

\_\_\_\_\_  
Gregory Thramer, Finance Director

Approved as to form:

\_\_\_\_\_  
Scott G. Thomas, City Attorney

Approved as to content:

\_\_\_\_\_  
Jon T. Aarstad, City Administrator

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
SIGNED BY THE MAYOR:  
PUBLISHED:  
EFFECTIVE DATE: