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**From:** Massey, Patrick  
**Sent:** Monday, October 15, 2001 9:15 AM  
**To:** Larry Kunzler; Scuderi, Michael R NWS; Massey, Patrick  
**Cc:** Cook, Carl  
**Subject:** RE: Skagit Valley Herald

Larry:

Here's my response to your letter. I am troubled that your ignorance of the regulations underpinning the NFIP are causing you to unwarrantly attack FEMA.

### **Cumulative Rise Standard (60.3(c)(10))**

First, your entire, long, argument about the lack of enforcement of the "cumulative rise" standard in Section 60.3(c)(10) is wrong. Section 60.3(c)(10) only applies to developments in floodplains where a floodway has NOT been designated. Since a floodway has been designated along the Lower Skagit (within levee), c10 doesn't apply -- what does apply is d3 (the floodway no-rise standard). You accuse FEMA of "never enforcing Section 60.3(c)(10)". You're right, we haven't enforced it, because it doesn't apply. This is NFIP 101.

### **Floodway No-Rise Analysis Standard (60.3(d)(3))**

Your second major point concerns the floodway along the Skagit River. Yes, the floodway, established in 1985, is located between the landward toes of the levee. So, yes, this means that there can be no fill or any other development (outside of the original cross-section) located within this designated floodway. By the way, this is a regulatory floodway -- I don't know what your point is about this just being a "floodway (not a regulatory floodway)" -- the two terms are synonymous.

Anyway, if a development has occurred between the levees this would be an NFIP compliance issue. Have the levees been raised or widened since the communities joined the NFIP and the FIRMs were published in 1985? If so, this would be a

violation of d3. You state that "millions of tons of fill have been dumped into the floodway of the Skagit River". Were these fills used to improve the levees, or simply return them to their previous condition following flood damages? If the fill/rock was used to repair levees to their pre-flood condition, then this is not a violation of d3.

### **Gages Slough Special Flood Risk Zone**

Gages Slough is a unique flood zone. Frankly, I would have ripped a floodway through it 20 years ago, but I wasn't around. Instead we developed special development standards for this area with Burlington. Admittedly, Burlington has done a poor job of enforcing these special standards.

Certainly FEMA bears some responsibility for the increased flood damage potential in the Skagit Valley. But again, your assertion that "FEMA has been a total failure in Skagit County" is bogus -- You only make this assertion because: (1) you are confused about minimum NFIP requirements (see above); and, (2) like the present day Muslim-world, you are looking for a scapegoat to blame your problems on. This is dishonorable.

FEMA is trying to do our part to help. We are working with the Corps to turn the data they developed in their feasibility study into a Flood Insurance Study -- hopefully, these new maps will better reflect the true flood risk to the Delta. Secondly, we will be working with the local communities to develop some kind of floodway for the new maps. The form this floodway will take is anyone's guess, since it will be up to the communities to agree upon the methodology that we (ie Corps) uses to delineated the floodway. Remember, communities need to meet 60.3(d)(2) when delineating the floodway. It is not FEMA's call to tell communities *how* they will develop their floodways.

In sum, all of us care about the Skagit River, and the natural environment -- but as you know, we are dealing with several generations of bad land-use decisions, coupled with a muddled and complex political environment. Lambasting others for their "failures" doesn't solve the problem, but only weakens your case and your credibility. It is time to stop blaming others for the sins of the past (real or imagined), and time to start building alliances to find a solution.

P.S. I couldn't open the attachment you sent me showing the home in the floodway. If you resend it, I will investigate it.

-----Original Message-----

**From:** Larry Kunzler

**Sent:** Saturday, October 13, 2001 6:49 AM

**To:** Scuderi, Michael R NWS; Massey, Patrick

**Cc:** Cook, Carl

**Subject:** RE: Skagit Valley Herald

Patrick:

I have purposely waited to answer your e-mail until I could calm down and do so in somewhat a

rational tone (I wouldn't want to completely step out of character or reputation). Nonetheless I am infuriated at your response and shocked at your total lack of knowledge or working understanding of the NFIP and how that program has been a total failure in Skagit County. You are right about the land use authority, however, FEMA decisions or lack thereof have a tremendous impact on how local decisions are made. FEMA carries the "big stick". You can throw local communities, like Burlington, out of the NFIP for failure to enforce the NFIP. You have not done so, what you have done is "reward" Burlington by lowering flood insurance rates. The NFIP is a joke and a terrible charade on the taxpayers of this country largely due to the failure of FEMA to meaningfully enforce every element of the NFIP.

Your total lack of knowledge of the history of decisions in Skagit County as well as your lack of administrative ability to enforce the NFIP leads one to no longer question your inefficiency or gross incompetence for it is unquestionable and undeniable. I have copies of all the letters FEMA wrote concerning the floodway decision in the 1980's. FEMA has never enforced "fill in the floodway". FEMA never enforced 44 CFR Sec. 60.3c10. Contrary to your self serving, arrogant, pompous dissertation below, a floodway (not a regulatory floodway) was designated in the lower valley and it was not just the channel as you have stated. It was the landward side of the levees (which would include the levees for you Army types) across the river to the opposite landward side of the levees. In this area NO FILL was suppose to be allowed. The levees were raised and widened riverwards of the landward toe of the levee. Where was FEMA? Even when FEMA was notified by certified registered mail of the fill being placed into the floodway FEMA did nothing. FEMA is still doing nothing.

Contrary to your statements below FEMA is charged with many more responsibilities other than "simply map floodplains, and then try to ensure that communities enforce the **minimum** floodplain development regulations per the National Flood Insurance Program (NFIP). "

Since it appears that your lack of knowledge begins with your lack of understanding the history of floodways in Skagit County perhaps a quick review will help bring you up to speed.

FEMA defines floodway as:

*“. . .the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.”[1][1] (Emphasis added.)*

Skagit County, Burlington and Mt. Vernon almost to the letter adopted this standard in their local flood ordinances. In the early 1980's FEMA designated the channel of the river and it's levees as the floodway in the Skagit River. As such the levees were not suppose to be raised or widened at any point within that floodway.

On June 19, 1981 the Mt. Vernon City Building Official wrote to FEMA and asked:

*“If the designated floodway included all of our existing dikes, would we be able to maintain the dikes, repair the dikes or increase the dikes as needed or would we be precluded from doing so by including them in the designation.?”[2][2] (Emphasis added.)*

On July 17, 1981 FEMA responded:

*“ . . .if a floodway is designated in the future and the dikes are included in that zone, you would be able to maintain and repair the dikes to their present profile elevations. Raising the dikes is another matter. Hydraulic studies of the river have shown that increasing the height of the dikes would cause an increase in flood levels upstream.”[3][3]* (Emphasis added.)

On March 24, 1982 FEMA wrote to the Mayor of Burlington and stated:

*“ . . .we have decided to build on and refine your thoughts regarding density criteria, in conjunction with establishing a minimum floodway that will encompass the channel and overbank areas including levees.”[4][4]* (Emphasis added.)

On August 22, 1983 FEMA stated the following:

*“Despite the fact that the FEMA has not designated a regulatory floodway, it is still recognized that there is a need for development to be regulated in order that flood hazards are not significantly increased. Section 60.3C of the CFR is designated for areas where 100 year flood elevations have been established but no regulatory floodway identified. The City of Burlington and Skagit County will be required to adopt ordinances which comply with the requirements of Section 60.3C in order to maintain participation in the NFIP. Part of this requirement will be to ensure that no new construction, substantial improvements, or other development (including fill) is permitted within Zones A1-A30 on the FIRM, unless it is demonstrated that the cumulative effect of proposed development, when combined with all other development, will not increase the water-surface elevations of the base flood more than 1.0 foot at any point within the community. . . .”[5][5]* (Emphasis added.)

On February 1, 1984 FEMA again wrote to the Mayor of Burlington and stated the following:

*“Thus, only lands within and including the Skagit River levees were designated as floodways in the conventional manner.”[6][6]* (Emphasis added.)

In the mid-1980's FEMA began an internal search for policy guidelines on floodway issues. Across the state of Washington some communities were put on probation for filling within the floodway. FEMA's Region X Bothell Office requested guidance of the Federal Insurance Administrator, Jeffrey Bragg in Washington, D.C. in order to “assure uniform interpretations throughout the Regional Offices and States.”[7][7] Specifically, the Region X office wanted to know:

1. Step-Backwater Analysis: Must they require a step-backwater analysis to assure modifications are produced with the same sophistication as the original study?
2. No Rise: Does “no rise” always and literally mean no rise?

3. Intermediate Cross Sections: Must new intermediate cross sections be surveyed at the site and provide for a “no rise” certification, the rise being calculated as the difference between pre- and post-development conditions at these sections?
4. Cumulative Effect: Does the community have to require that the developer provide an analysis of not only his site, but include any potential additional development that can occur in the same reach?

On August 7, 1985 the Director of FEMA responded:[8][8]

*“1. Hydraulic Modeling for Fill in Floodway. Floodway fills violate the encroachment standard of Part 60.3(d)(3) of the NFIP. . . Any floodway revision requires use of a hydraulic model which, at a minimum, is as sophisticated as the original model employed to determine the floodway. Thus, if a step-backwater model was used to determine the floodway, the same model should be used for any revision analysis.*

*2. No Rise in Flood Level. Part 60.3(d)(3) of the NFIP regulations states that the community shall “Prohibit encroachments. . . within the adopted regulatory floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge.” . . . Technically, no obstruction, regardless of size, can be placed within the floodway without obstructing flow and causing some increase in water surface elevation. . . The effect of a single encroachment placed within the floodway of a moderately sized stream, may often be insignificant and difficult to measure with conventional hydraulic models. Yet, as the number of such encroachments increase, these effects accumulate and become significant. . . under Part 60.3(d)(3) it is assumed that there can be no cumulative effects because the permissible rise is zero. (Emphasis added.)*

*3. Intermediate Cross Sections. In order to determine the effect a proposed encroachment in the floodway will have on the flood elevation, the appellant must incorporate in the hydraulic model a new cross section(s) at the site of the proposed construction. . . . If the post-encroachment flood elevation is greater than the pre-encroachment flood elevation, the proposed development should be denied. (Emphasis added.)*

*4. Cumulative Effects. Where a community has adopted a regulatory floodway . . . and the net effect of a proposed floodway encroachment and compensatory action is demonstrated to be zero, analysis of the effect of similar development in the floodway is generally not required since a zero rise would also have to be demonstrated in each similar, subsequent case.*

*The purpose of prohibiting encroachment into the floodway which would result in any increase in flood levels is to prevent actions by one property owner from causing increased damages to his or her upstream neighbors due to increased flood levels. . . . We must emphasize that once a floodway is designated an allowance for an increase in flood stages of up to one foot has already been provided.*

*In conclusion, nothing which offers any resistance to the flow of flood waters may be placed within a regulatory floodway unless compensatory action is taken to restore the lost conveyance.”*

As previously stated FEMA as part of their administration of the National Flood Insurance Program ("NFIP") designated "...lands within and including the Skagit River levees ..." as floodways. Further, FEMA required Skagit County and the cities of Burlington and Mt. Vernon to comply with and incorporate within their local flood plain ordinances, the following language:

*(10) Require until a regulatory floodway is designated, that 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.[9][2] (Emphasis added.)*

Although both Skagit County and the City did in fact adopt the above referenced language neither Skagit County nor the City has ever enforced that section of their ordinance. Indeed, only the City of Burlington applied the language to only one project, the Cascade Mall. FEMA recognized that study as inadequate when it stated:

*"The 63,000 cfs discharge identified by John E. Norman for Gages Slough in the Cascade Mall Environmental Impact Statement is not supported by any scientific or technical data and must be considered as speculation." [10][3]*

The only true hydraulic analysis performed in the Skagit River Basin was recently performed on behalf of the Plaintiff's in the recently decided Halverson vs. Skagit County lawsuit.[11][4] This analysis clearly shows that the current system of levees stores at least 1 to 5 feet of water on upstream property owners and raises flood waters as much as 10 feet down the channel of the Skagit River. Since this analysis was performed, millions of cubic yards of fill material has been dumped into the floodway of the Skagit River by the U.S. Army Corps of Engineers, Skagit County Public Works Department, Dike Districts and the City of Mt. Vernon. One can only summarize, that the impacts of that fill has exasperated an already intolerable situation given the fact that the seven floods experienced since the 1990 floods have all achieved higher water levels with lower cfs readings.

What I find most upsetting is the fact that FEMA has the Corp of Engineer "state of the art" hydraulic analysis. This analysis clearly shows that what I stated in my appeal of the flood elevation FIS done for the City of Burlington which was based on "historical data" was in fact true then and is true now. My appeal was turned down because I didn't submit "scientific and technical data." Well, you now have that scientific and technical data and you are still sitting on your ass and doing nothing about it. Major developments are being proposed in areas that according to the Corp analysis will have tremendous velocity and depths of flood waters. And you are doing nothing because you feel that your only responsibility is to map floodplains and raise residences to one foot above the BFE.

Then you have the audacity to quote an "old army saying." That saying could be very well applied to FEMA, not the residents of Skagit County. It is FEMA through their TOTAL FAILURE to enforce all elements of the NFIP that is acting as the catalysis for urban development. If you had done your jobs none of this development would be in harms way. I have said it before and will continue to say it until you prove me otherwise, "FEMA--Region X, has been a TOTAL FAILURE in Skagit County."

I have taken the liberty of attaching a picture that was taken last week of a STRUCTURE in the FLOODWAY of the Skagit River constructed within the last month. What is FEMA going to do about it? Behind the structure you will find levees raised 2 to 4 feet. If allowed at all it would not exempt it from the CRITICAL ANALYSIS demanded by 60.3C(10). When you produce the "cumulative impact analysis" required by the CFR, and when you use the state of the art hydraulic analysis provided you by the Corp of Engineers and analyze the fill put in the floodplain since 1985, then, and only then would I consider changing the conclusions reached in this e-mail. For FEMA HAS BEEN, CONTINUES TO BE, AND SHOWS NO SIGNS OF BEING ANYTHING OTHER THAN A TOTAL FAILURE IN SKAGIT COUNTY.

As a proud US Navy Vietnam Veteran we in the Navy had our own sayings. One of them was, "Get the hell of your dead ass and do you damn job." (We weren't quite as eloquent as the Army but we were more direct to the point.)

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All of the above cited references are in your files but if you have trouble finding them I would be glad to provide you copies.

-----Original Message-----

**From:** Massey, Patrick  
**Sent:** Tuesday, October 09, 2001 1:32 PM  
**To:** Larry Kunzler; Scuderi, Michael R NWS  
**Cc:** Massey, Patrick; Cook, Carl  
**Subject:** RE: Skagit Valley Herald

Hi Larry,

Thanks for keeping me in the loop with all the various news articles that you send out. To give a fast reply to your correspondence with Mike Scuderi, I take exception to your comment that FEMA has been "a total failure in Skagit County". As you know, FEMA has no land-use authority -- such authority, per the US Constitution, rests with the States (or the locals through enabling legislation). We simply map floodplains, and then try to ensure that communities enforce the **minimum** floodplain development regulations per the National Flood Insurance Program (NFIP).

Generally speaking, Skagit County communities have been enforcing the minimum NFIP standards -- namely that the lowest floor of residences be built above the BFE. Since there is no floodway outside of the channel downstream of Sedro Wooley, restricting floodway development is not an issue. The County and Cities could adopt a whole range of higher regulatory floodplain development standards if they so choose. FEMA tries to encourage this through reduced flood insurance premiums in the NFIP Community Rating System (CRS) -- of which Burlington, MTV, LaConner and the County participate.

On the new flood maps for the County, we could delineate a floodway by any number of means (equal conveyance, depth/velocity, density) -- this would arguably help to keep developments away from higher risk areas. But, since a floodway must be adopted by the locals, we must get concurrence from all the affected local governments before we (Corps) model the floodway and place it on the map.

The bottomline is, Skagit County and the Cities are responsible for development decisions in the Skagit Delta. As they used to say in the Army, "seek responsibility and take responsibility for your actions".

-----Original Message-----

**From:** Larry Kunzler

**Sent:** Friday, September 28, 2001 3:21 PM

**To:** Scuderi, Michael R NWS

**Cc:** Patrick J. Massey; Carl Cook

**Subject:** RE: Skagit Valley Herald

It is simple. It's exactly what I told them in 1983 when I fought the Cascade Mall. Change the Zoning. What is needed here is for FEMA to step up and do their jobs. Put the interim floodway designation in place NOW not after we build a project. They have your hydraulic analysis. Get them off their ass. We could muster a lot of support for the project if the locals knew it would make the FEMA designation go away. So for that designation has not been part of the public discussion. FEMA has been a total failure in Skagit County. Never enforcing anything. Like I said to the flood control working group, we are where we are because of failure. Failure of FEMA to enforce the NFIP. Failure of DOE to enforce SEPA and the SMA on the dike districts. Failure of the Corp to apply NEPA to its PL 99 projects. Failure of local government to institute proper land use controls. Skagit County has been the largest single recipient of flood control welfare in the history of the state. In this century, FAILURE IS NOT AN OPTION.

Have a great weekend.

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[\[1\]\[1\]](#) Mt. Vernon City Code 15.36.030(12)

[\[2\]\[2\]](#) 6/19/81 letter to FEMA from Ron Maynock



[\[3\]\[3\]](#) 7/17/81 letter to Ron Maynock from FEMA.

[\[4\]\[4\]](#) 3/24/82 letter to Ray Henery from FEMA.

[\[5\]\[5\]](#) 8/22/83 letter to Larry Kunzler from FEMA.

[\[6\]\[6\]](#) 2/1/84 letter to Ray Henery from FEMA.

[\[7\]\[7\]](#) 6/19/85 memorandum to Jeffrey Bragg from William Mayer.

[\[8\]\[8\]](#) 8/7/85 memorandum to William Mayer from Jeffrey Bragg.