

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: Kella Fox

Address: Anacortes

Email: _____

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

Trails are a very important component of transportation. Across America, trails are providing a larger market share for moving people from place to place. Vehicle use has gone down tremendously in ~~Skagit~~ Seattle and other Northwest places. We need to make sure we plan and accommodate non-motorized transportation needs. Please provide bike lanes, separate corridor trails and sidewalks. The Centennial Trail needs to connect to the Cascade Trail; all the way to Snohomish County.

more information at www.skagitcounty.net/2016Update

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: STEVEN LANGE

Address: 2120 E. BROADWAY
MV 98274

Email: LANGSTANG96@YAHOO.COM

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

- COMPLETION OF FRANCIS ROAD
- BIKE CONNECTION - AWAY FROM HWY - SR20-536 TO DUANE BRONSON BRIDGE.
- TRAFFIC CALMING ALONG LAVENTURE
- ENFORCE A HIGHER SPEED LIMIT ON SR536 - BASED ON 85TH, NOT POLITICAL LIKE IT WAS TO REDUCE TO 45 MPH BY WSU EXTENSION. SHOULD BE 55 MPH BASED ON 85TH BEFORE REDUCTION.
* LEFT HAND TURN LANES

more information at www.skagitcounty.net/2016Update

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: BRIAN ADAMS
Address: ANACORTES
Email: _____

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

AS THE PARKS DIRECTOR FOR SKAGIT COUNTY, I KNOW HOW IMPORTANT TRAILS ARE TO THE PUBLIC. AT EVERY OPPORTUNITY OUR COMMUNITY RESIDENTS ASK FOR TRAILS TO CONNECT TO THEIR PLACES OF IMPORTANCE. LETS MAKE SURE TO PROVIDE NON-MOTORIZED TRAILS AND BIKE LANES FOR THE PUBLIC

more information at www.skagitcounty.net/2016Update

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: _____
Address: _____
Email: _____

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

- integration of local and regional plans that consider business needs and that of employees and retirees and visitors to /through Skagit County.
- more focus on increasing public transit options and access for all
- prioritizing projects based on fund availability, safety, and importance to quality of life for Skagit citizens

more information at www.skagitcounty.net/2016Update

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: John Pope

Address: 4001 Peters Ln

Email: popej@comcast.net

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

This is a critical period for our county. We are a very popular destination for cycling. We have a healthy and very active cycling population and a good cycling infrastructure, with a few missing gaps. We need the County Comp Plan to reflect the cycling priority network shown in the Skagit County Bike Map and in Anacortes' Bike/Ped plan which includes Fidalgo Island, and help fill in the gaps, many along ^{main} rural corridors (SR 9, SR 20).

Good Comp goals: Design the most popular regional routes so drivers expect cyclists and cyclists know the safest routes.

② Work to complete the Centennial Trail

③ Help Sedro Woolley connect by bike/ped path to Burlington along the SR 20 corridor.

④ Popularize the new USBR 10 route that links Anacortes to Port Harbor, Maine and celebrates Skagit County's towns and cities along the way.

These routes improve health and quality of life while boosting the economy.

more information at www.skagitcounty.net/2016Update

March 18, 2015

To: Kirk Johnson, AICP
Senior Planner/Team Supervisor
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273
Phone: 360.336.9410 Ext. 5916
Fax: 360.336.9416
E-mail: kirkj@co.skagit.wa.us

From: Marie Erbstoeszler, MHA
Consultant, Health Services Planning (Retired)
217 E Division St.
Mount Vernon, WA 98274
260-336-5896
erbst@cnw.com

RE: Public Input Comments regarding the 2016 Update of the Skagit County Comprehensive Plan-Transportation Element

Thank you for the opportunity to attend the March 17, 2015 Meeting of the Skagit County Planning Commission's Comprehensive Plan Update – Transportation Element Session. Unfortunately, I had to leave prior to the end of the small group discussions; therefore I am submitting my comments below:

With a career in Health Services Planning and as a member of the Active Community Task Force, and also as a bicyclist, I will direct my comments primarily to the importance of transportation safety and non-motorized transportation issues.

I request that the Skagit County 2016 Comprehensive Plan – Transportation Element Update continue to emphasize the overall GMA goal for transportation: “Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans. (RCW 36.70a.020(3))”

Within the specific GMA content requirements for the transportation element (RCW 36.70a.070(6), I request that the following item be addressed and included in the updated Skagit County Comp. Plan (vii) “Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.”

The current Skagit County Comprehensive Plan – Transportation Element includes the following goals which I believe should continue to be included and emphasized in the 2016 update:

Goal A: Plan and maintain a safe and efficient system for the movement of people and goods in partnership with the Skagit Council of Governments.

Goal A6: Non- Motorized Transportation:

- Provide a safe and efficient network of trails and bikeways, including both on- and off-road facilities that link populated areas of the County with important travel destinations.
- Achieve high standards in meeting the needs of non-motorized users, through appropriate planning, design, construction and maintenance of user-friendly facilities.
- Increase education, information and traffic enforcement efforts associated with non-motorized transportation as a means of lowering collision and injury rates associated with these modes.
- *(Specific Comment: With increasing emphasis and concerns about Population Health, the updated Comp. Plan should include encouragement, engineering and education regarding pedestrian and bicycle facilities and corridors that encourage enhanced community access and promote healthy lifestyles. Not every road needs to be a pedestrian or bicycle facility, but some identified strategic priorities should be addressed and implemented over the six year span of the Comp. Plan – one good example would be the Centennial Trail.)*

Goal A8: Tourism and Recreation:

- Support the promotion of tourism, recreation, and special events through the County Transportation System. *(Specific Comment- many counties have found that bicycle trails and/or bicycle routes on existing roads have increased tourism. The Centennial Trail should be a priority in this regard.)*

Goal A10: Traffic Safety:

- Provide a safe travel environment for county residents and visitors in all modes of transportation.
- Recognize public safety, education, and law enforcement as integral to the development of non-motorized transportation opportunities in Skagit County.

Goal A11: Road Maintenance and Monitoring:

- Develop a systematic approach for monitoring and maintaining the transportation system in a cost-effective manner. *(Specific Comment: address the concerns of the Skagit Bicycle Club regarding chip seal sizes and its impact on the road riding surface. Note- the successful road resurfacing project which took place on Edison- W. Bow Hill Road. I hope that this type of resurfacing can be replicated.)*

Feedback Card

2016 Comp Plan Update
Transportation Element
Workshop

Your Name: Randy Good
Address: 35482 SR 10
Sedro Woolley WA
Email: RLGood30@Frontier.com

We want your feedback on the Comprehensive Plan's Transportation Element. What do you see as the major transportation issues facing Skagit County in the coming years?

1. Failure to keep up maintenance of existing roads & bridges, failure to do safety projects. 2. There is adequate funding - need to reprioritize scoring criteria to address maintenance/preservation instead of building more trails at a cost of 1 million/per mile.
 3. Need to form citizens advisory of all transportation users at county level (and also at SCOB) to review projects before they are put on to by TIP. Now businesses and landowners living next to a project have no knowledge of it or that it will come to a hearing for TIP. Would give transparency that is now lacking at County level.
- Non-Motorized - County already has regional connectors between cities w/ the U.S. Bike Route 10 Anacortes to east County / line 104 miles, that provides safe routes along SR 10. 9 foot shoulders, plus vehicles move over to centerline to make at least 15' path. US Bike Route 10 has many other side routes through the county, city Anacortes has over 134 miles of trails within its jurisdiction, ~~Port of Skagit~~ 12 miles, Ample trails

more information at www.skagitcounty.net/2016Update

Over

throughout all the other cities. Can't take care of what already exists.
Funding - Funding has been available for years. SCOG's TAC Needs
to reprioritize its scoring criteria when ranking projects
to score needed maintenance of roads and bridges higher.
Instead of always altering scoring to award funds to trails.

Skagit County Transportation Planning Meeting
Health in Transportation
March 17, 2015

The obesity epidemic has huge consequences on the health and economy of our nation. It is linked to a rise in major chronic diseases including heart disease, stroke, and diabetes. Chronic disease costs our nation billions of dollars in health care costs and reduces the quality of life. Transportation planning has the ability to prevent and reduce the numbers of obesity related diseases by incorporating people based planning. The people who walk, bike, ride transit, or have disabilities should be just as important as people who drive a car.

About 66% of adult Americans are overweight and obese. 80% do not meet the recommendations for physical activity and rates of chronic diseases and premature death continue to rise. Skagit County generally mirrors the data for our nation and state. We are not unique.

Updating the Transportation element of the Skagit County Comprehensive Plan is a great opportunity for us to look at how we plan and build a transportation network that meets the needs of all of our residents supporting successful and sustainable options for active living.

Looking for ways to plan safe environments for people who walk, bike and use transit, helps ensure that our residents have better access to more places. Creating opportunities for people to be physically active and considering the needs of all people supports health for all Skagit County residents.

Our County's transportation plan has a responsibility to provide a transportation network for our rural, non-urban residents. But must also look to how we support our urban areas in the same plan. Our cities and towns are like islands, each responsible for transportation planning for their residents but linked by the county providing a strong connected transportation network for all users.

Investing in transportation facilities impacts the health of our residents and our county's economy health. Our county is a gateway to amazing natural resources such as the San Juans Islands, our agricultural heritage and the North Cascade's, attracting tourists from all over the world. We have an opportunity through this planning exercise to expand on the economic benefits that active recreation and transportation offer. Skagit County resident John Pope, in partnership with Washington Bikes and Washington State Department of Transportation were successful in getting National US bike route 10, east west across Washington, designated last year. Route 10 is the first of four routes that could travel through Skagit County, bringing with them people who need places to eat, sleep and buy supplies as they tour our state and country by bike.

By working with community partners to develop a transportation network that meets the needs of all people in Skagit County we investment in our county's health, economy and future.

Making Skagit County a great and healthy place to live, work and play.

Liz McNett Crowl
Skagit Healthy Communities Coordinator
Skagit Regional Health
PO Box 1376
Mount Vernon, WA 98273
360-428-2331
lcrowl@skagitvalleyhospital.org

From: [Debra L. Nicholson](mailto:Debra.L.Nicholson)
To: [Debra L. Nicholson](mailto:Debra.L.Nicholson)
Subject: FW: 2016 Comp Plan Update: Transportation
Date: Monday, March 23, 2015 10:33:36 AM

From: CLANCEY [<mailto:gclancey@comcast.net>]
Sent: Sunday, March 22, 2015 8:06 PM
To: Linda Christensen
Subject: 2016 Comp Plan Update: Transportation

Skagit Co. Planning Commission:

I understand that the Planning Commission is seeking Public Feedback for the **“Transportation Element” of the Comp Plan Update.**

Please add my comments below to the Public record in response to the six questions I have seen circulated by the Commission.

1. Main Priority for Transportation should be upgrade & maintenance of Roads & Bridges.
2. Skagit Co. economy needs reliable roads to transport of people, goods, and services. Deliveries are not made here on foot or by bicycle.
3. Skagit Co. has no role in dictating personal physical activities. Non-motorized trails & paths are overabundant & under used. We need no more at this time; maybe not ever.
4. Over budget for Road Maintenance ? Divert funds wasted on unused trails to used and useful roads.
5. Please invest in the Roads we have. They work. We keep hearing about the importance of “InfraStructure.” This is it.
6. Transport patterns will not changed unless we are forced to go back to Horse & Buggy. That would be renewable and reusable, but regressive and regrettable. *O Tempora ! O Mores !*

Gary Clancey
3351 Green Cliff Rd.
Anacortes, WA 98221

Jones & Smith

Attorneys at Law

Gary T. Jones

Gail R. Smith

RECEIVED

MAR 16 2015

SKAGIT COUNTY
PDS

March 11, 2015

Dale Pernula, Director
S.C. Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

**Re: Non-Motorized Transportation Plan / Use of Riverbend Dikes as Trails
Skagit County Diking District No. 17**

Dear Mr. Pernula:

The commissioners of Skagit County Diking District No. 17 have become aware of renewed work on the Skagit County Non-Motorized Transportation Plan as part of the 2016 Comprehensive Plan Update due July 2016. You are hosting a March 17 evening Workshop for example. Skagit Council of Governments Regional Transportation Planning Organization has a hand in this element of the Comprehensive Plan. Please understand that Diking District 17 and other districts including particularly Skagit County Dike District No. 1 and Skagit County Dike District No. 12 have previously stated their objections to building trails on dikes.

The fundamental problem is that special purpose districts such as diking and drainage districts acquire property for a particular purpose, to deliver benefits to land owners by building and maintaining an engineered set of improvements that reduce flood risk and improve interior drainage in exchange for an assessment. The process for acquisition of property does not extinguish all rights of the underlying fee simple owner. There has been no compensation paid by diking districts to landowners for the impacts of non-motorized transportation or for the burdens on their remaining land which such a use imposes.

More importantly achievement of the purpose of each district is paramount. To the extent that assessment money, staff time, permit expenses, law enforcement, garbage clean up, recreational management functions fall on diking districts the districts are outside the scope of the authority given to them by the State Legislature. In effect they are misappropriating benefit assessments from the land owners inside the district.

Furthermore, the public use of dikes is more practical in some settings than other settings. For example, the Riverbend Road has abutting houses and businesses. To allow or encourage the associated noise, invasion of privacy, and access to property owners private land when a person comes down from the top of the levee is more of a hardship in rural areas than in the city where facilities, services and police response are more readily available. The experience of Districts is that public use creates expectations for parking, public restrooms, recreational pursuits that are not compatible with best management practices for local sponsors of nonfederal flood control works in the Rehabilitation and Inspection Program administered by the Army Corps of Engineers under PL 84-99.

All these issues and additional issues were raised when Skagit County attempted in the year 2000 to declare non-significant the Non-Motorized Transportation Plan. See attached hereto an appeal which was filed under PL#00-0685 received October 23, 2000. John Schultz signed the appeal and the appeal was

pursued by Districts 3, 17, and 22 in addition to Districts 1 and 12. As a result of the appeal the County was forced to issue a Mitigated Determination of Non-significance which had two central conditions considered "binding" and may not be altered by subsequent decisions unless a threshold determination is reissued.

- “1. Any future trail projects proposed on dikes or levees shall require the planning and permit center to meet, consult and obtain approval of any involved dike district and affected property owner.
2. Complete necessary and adequate environmental review prior to issuing a mitigated determination of non-significance for each specific project proposal on dikes or levees.”

This action was taken April 23, 2002.

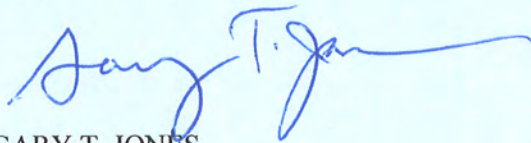
Further evidence of the importance of this action include the April 21, 2003 Skagit County Updated Status Report on Long Term Postponed Issues. See page 2 heading B.

None of the issues which were apparent in the comprehensive planning for non-motorized transportation in the year 2000 through 2006 have changed in 2015. In an urban setting with appropriate investment of time and money for design, construction, maintenance and operation it is possible for the public to be accommodated concurrently with flood protection / flood risk mitigation. The most likely areas for purchase of land and development of trails would be inside the Mount Vernon city limits after the appropriate environmental review and design conditions to protect primary functions and financial integrity have been established to the mutual satisfaction of the districts and the jurisdiction that desires additional non-motorized transportation.

Thank you for your consideration of these comments. Response may be made to our law office or to Daryl Hamburg, manager of Skagit County Diking District No. 17 at 121 Stewart Road, Mount Vernon, WA 98273.

Respectfully yours,

JONES & SMITH



GARY T. JONES
GTJ/lfid

Enclosure

Jones & Smith

Attorneys at Law

Gary T. Jones

Gail R. Smith

June 16, 2009

FILE COPY

Skagit County Planning Commission
c/o Gary Christensen, Director of Planning
1700 E. College Way
Mount Vernon, WA 98273

Re: Open Space / Recreational Use of District dikes and levees

Dear Commission:

Please consider the following comments on behalf of Skagit County Consolidated Diking District No. 22, Skagit County Diking District No. 3, and Skagit County Dike District No. 17.

The named Districts are special purpose districts under Chapter 85 of the revised Code of Washington. The land acquired by the special purpose districts for diking projects are not the equivalent of fee simple ownership of land which carries the right to control all activities from the center of the earth to the top of the sky. Rather they are rights to carry out a plan of protection for the benefit of the properties that abut the dike right of way and for the benefit of those lands within the district which pay taxes for the reduction of flood risk and provision of interior drainage.

The dikes in Skagit County and in the Districts mentioned do represent the line of division between the flood way and the upland. To the extent that landowners within the flood way are specially restricted by the increased hazard of that environment, the Districts are supportive of zoning restrictions on use.

Use of the dikes which diminishes the utility of the structures for flood protection, flood fighting and maintenance, operation and repair must be managed very carefully to preserve the integrity of the property and collected tax monies devoted to diking and drainage for the special benefit of lands within the district.

In the 2000 and 2002 rounds of Non-Motorized Transportation planning, the Districts made an effort to itemize the concerns and SEPA checklist mitigation requirements which would accompany any use of District dikes as transportation corridors or for other purposes. I attach to this letter some example materials. I understand that John Schultz of Skagit County Diking District No. 12 and Skagit County Diking District No. 1 may be independently providing you with some of the same material.

Pine Street Legal Center • 415 Pine Street
P.O. Box 1245 • Mount Vernon, WA 98273
Telephone (360) 336-6608 • Facsimile (360) 336-2094

The message from the Diking Districts is not to assume that there is a general public interest which can be overlaid on the prism of the dike without consequences for the Districts, the abutting property owners and the public in general.

The City of Mount Vernon is an example of a jurisdiction that has taken a responsible approach by entering into interlocal agreements with Skagit County Diking District No. 3 to create a park connecting Lions Park to the Downtown Flood Hazard Reduction Project along the riverfront in downtown Mount Vernon. Compensation is being paid to the abutting landowners and detailed easements are being drafted for signature by those landowners and the District to identify the elements of flood protection use and the appropriate limitations on use of dike tops as trails in an urban setting.

Thank you for your consideration.

Respectfully yours,

JONES & SMITH

Gary T. Jones
by Jewella Davis
per instruction

GARY T. JONES

Attorney for Diking District No. 3,
Consolidated Diking District No. 22 and
Dike District No. 17

GTJ/lfd

Attachments:

1. Mitigated Determination of Nonsignificance
2. Gary Jones Letter to Kendra Smith 10/6/2000
3. Skagit County Dike Trail Feasibility Study

cc: Skagit County Diking District No. 3
Skagit County Dike District No. 17
Skagit County Consolidated Diking District No. 22

RECEIVED
AUG 21 2003
JONES & SMITH

BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

ABENROTH, et al.,)	
)	NO. 97-2-0060c
Petitioners,)	
)	SKAGIT COUNTY'S UPDATED
vs.)	STATUS REPORT ON LONG-
)	TERM POSTPONED ISSUES
SKAGIT COUNTY,)	
)	
Respondent.)	

I. INTRODUCTION.

The Twenty-First Order Extending Time Regarding Postponed Issues, dated May 21, 2003, required the County to provide an updated status report by August 20, 2003. The April 6, 2001, memo from the Presiding Officer identified three issues which remain in this case: (1) Bayview Ridge UGA; (2) Non-Motorized Transportation Plan; (3) Consistency of Functional Plans with Comprehensive Plan. The County responds on each of these matters in the following section. Please reference the County's Updated Status Report dated May 29, 2001, for background

1 information. This Report supplements the May 29, 2001 Report, and the Updated
2 Status Report dated October 14, 2002.

3 II. CURRENT STATUS OF REMAINING ISSUES.

4 A. Bayview Ridge UGA.

5 On April 3, 2003, the County issued, for public review and comment, the draft
6 Bayview Ridge Subarea Plan, development regulations and Draft Environmental
7 Impact Statement (DEIS). The Planning Commission held a public hearing on the
8 draft documents on May 20, 2003. The public comment period expired at the end of
9 May. The public comments are currently being addressed in conjunction with the
10 drafting of a Final Environmental Impact Statement (FEIS). It is anticipated that the
11 FEIS will be issued this Fall and that the Planning Commission will hold an additional
12 public hearing after its issuance. After the Planning Commission considers additional
13 public comment, deliberates and forms a recommendation on the Bayview Ridge
14 Subarea Plan and associated implementing regulations, that will be forwarded to the
15 Board of County Commissioners for its review and action. The Board of County
16 Commissioners will likely take action on the proposal in the first quarter of 2004.

17 B. Non-Motorized Transportation Plan (NMTP).

18 The NMTP has been folded into the County's update of its Transportation
19 System Plan (TSP). A Notice of Availability indicating that the TSP would be
20 available for public review was issued on July 11, 2003, and a new SEPA checklist
21 was completed. A Mitigated Determination of Non-significance (MDNS) was issued
22 on July 11, 2003, with the following conditions: (1) Any future trail projects proposed
23 on dikes or levees shall require the Planning and Permit Center to meet, consult and
24

1 obtain the approval of any involved dike district and affected property owner; and (2)
2 Complete necessary and adequate environmental review prior to issuing a Mitigated
3 Determination of Non-Significance for each specific project proposal on dikes or levees.
4 A public hearing on the TSP has been set for September 16, 2003, before the
5 Planning Commission.
6

7 C. Consistency of Functional Plans with the Comprehensive Plan.

8 The County has nothing to add to its comments on this issue in its last Status
9 Report.

10 Dated this 20th day of August, 2003.

11
12 SKAGIT COUNTY PROSECUTING ATTORNEY

13
14 By: 

15 JOHN R. MOFFAT, WSBA #5887
16 Chief Civil Deputy
17 Attorney for Skagit County

18 Approved as to Content:

19 SKAGIT COUNTY PLANNING
20 AND PERMIT CENTER

21 

22 By: _____
23 GARY R. CHRISTENSEN, AICP
24 Assistant Director

MITIGATED DETERMINATION OF NONSIGNIFICANCE (MDNS)

Description of proposal: A non-project proposal to establish the Skagit County Nonmotorized Transportation Plan. The plan focuses on nonmotorized travel alternatives for Skagit County. The Plan reviews current activities, trends, problems and opportunities for Nonmotorized transportation including a description of new mandates. An inventory and assessment of existing facilities is followed with the demand and needs for such facilities. Current policies and regulation are evaluated and specific recommendations are made on the system, facilities, design standards, regulations, safety, education/enforcement and intermodal transportation. The Plan also includes strategies for implementation.

Proponent: Skagit County

Location of proposal, including street address, if any: 200 West Washington Street, Mount Vernon, WA 98273.

Lead Agency: Skagit County Planning and Permit Center

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This determination is subject to the mitigated measures as identified below and shall be deemed conditions of approval of the Non-motorized Transportation Plan. Such conditions are considered binding and may not be altered by subsequent decisions unless a threshold determination is re-issued.

1. Any future trail projects proposed on dikes or levees shall require the Planning and Permit Center to meet, consult and obtain the approval of any involved dike district and affected property owner.
2. Complete necessary and adequate environmental review prior to issuing a Mitigated Determination of Non-Significance for each specific project proposal on dikes or levees.

This MDNS is issued under 197-11-350(2); the lead agency will not act on this proposal for 15 days from the date below.

Comments must be submitted by May 10, 2002.

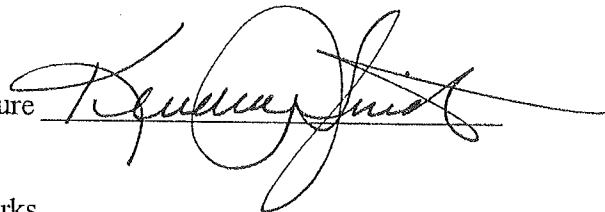
You may appeal this threshold determination by addressing those criteria as set forth in SCC 14.08 and 14.12.210 and then by filing such with the Skagit County Planning and Permit Center for service to the SEPA responsible official within fourteen (14) calendar days after the date of the threshold determination comment period.

Appeals must be submitted by May 24, 2002.

SEPA responsible official: Planning Director

Contact person: Kendra Smith, Assistant Director

Address: 200 West Washington Street
Mount Vernon, WA 98273
(360) 336-9410

Date: 4/23/02 Signature 

cc: Dike Districts, Public Works,
Transmitted to SVH on 4/23/02
Publish one time only on 4/25/02

B/W - Dec. 13, 2001

April 23, 2002

> comment -

DEIS - NMTP -



Planning & Permit Center

Application for an Appeal

Pursuant to SCC Chapter 14.06

PL#: 00-0685

Date Received

Type of Appeal:

- Appeal of Administrative Interpretations, Decisions and Actions to the Hearing Examiner
- Appeal of Hearing Examiner Decisions, Decisions and Actions to the Board of County Commissioners
- Request for Reconsideration of a Hearing Examiner Decision
- Shoreline Master Program
- Appeal of Impact Fees: Type: _____ District/City: _____

SKAGIT COUNTY
PERMIT CNTR.

OCT 23 2000

RECEIVED

Attach additional sheet if necessary.

1. File/Permit number of the decision being appealed: N/A. DNS re: Skagit County
Nonmotorized Transportation Plan published September 21, 2000.
2. Please attach a copy of the interpretation or decision being appealed. Attached? Yes No
3. Date of the decision of the case file/permit being appealed/reconsidered: September 21, 2000

4. Appellant Contact Information

Skagit County Dike District No. 1 and Skagit County Dike District No. c/o their attorney, Law Office of John R. Shultz
Name

160 Cascade Place, Suite 218, Burlington, WA 98233
Address

404-2017 404-2018 jsmvwa2@cascadeisp.net
Phone Fax e-mail address

[Signature] 10/23/00
(Signature) (Date)

5. Contact Information

John R. Shultz
Name

Law Office of John R. Shultz, 160 Cascade Pl, Ste 218, Burlington 98233
Address

404-2017 404-2018 jsmvwa2@cascadeisp.net
Phone Fax e-mail address

6. What is the nature of the decision being appealed or reconsideration request? see attached pages

7. What is your interest in this matter? see attached pages

8. Please outline how you are aggrieved by the decision see attached pages

9. What are the specific reasons why you believe the decision is wrong? *(i.e. erroneous procedures, error in law, error in judgment, discovery of new evidence, etc..)*
see attached pages

10. Please describe new evidence if any:
see attached pages

11. Please list sections of Skagit County Code that are relevant:
see attached pages

12. What is the sought after decision? see attached pages

6. The nature of the decision being appealed in this administrative appeal is an environmental threshold determination by an Administrative Official, resulting in issuance of a Determination of Nonsignificance (DNS) regarding a non-project proposal to establish the Skagit County Nonmotorized Transportation Plan. This issuance of a DNS was clearly erroneous, and should be reversed on appeal.
7. Skagit County Dike District No. 1 operates and maintains a district in West Mount Vernon, Skagit County, with property valuation of \$147,074,650. Skagit County Dike District No. 12 operates and maintains a district in Burlington, Skagit County, with property valuation of \$920,000,000. Both districts are governed by publicly elected commissioners, who are statutorily required to maintain and operate the district and the system of dikes and levees solely for the purpose of flood control and protection of life and property within the districts. Inclusion of the dikes and levees in said districts in a nonmotorized transportation plan would be wholly inconsistent with the mandated purposes of the respective dike districts for flood control and protection of life and property. These districts are opposed to issuance of the DNS, and inclusion of the districts within any future nonmotorized transportation plan.
8. Skagit County Dike Districts No. 1 and 12 are aggrieved by this decision because this DNS was issued without adequate basis in law or in fact, without an Environmental Impact Statement (EIS), without any contact or consultation with commissioners of either district regarding any adverse environmental impact on the districts, and without any consideration of the impacts, feasibility, design standards, or need for a system of trails on the dikes. Without such consideration of impacts, design standards, consultation with the district, and the feasibility of this project, this decision dispenses with an EIS, and fails to give consideration for adverse environmental impacts of a system of trails on the dikes. It will also potentially expose both districts to substantial liability, violation of regulations by the U. S. Army Corps of Engineers and other affected agencies, substantial unfunded mandates, and violation of statutory mandates governing the districts and requiring use of the dike system only for flood control and protection of life and property.
9. This decision is clearly erroneous based on procedural defects, errors in law, and errors in judgment. The process that determined the DNS was fatally flawed, and the DNS was improperly issued.

The DNS notice indicates that the decision was made after review of a completed Environmental Checklist and other information on file with the lead agency. Further, it was determined that an EIS was not required and that it has been determined that: "This project does not have a probably significant adverse impact on the environment." In fact, these determinations were substantially in

error, and based on the fact that the Environmental Checklist was incomplete, lacked substantial critical and necessary information, lacked any reference to the impact on the dike districts, and failed to incorporate other available information on file with the agency.

The Environmental Checklist contained 90 questions. Of these questions, 71 were answered as "N/A" and three were blank. For example, question number 3.a.(1) which asks, in reference to water, whether there is any surface water body on or in the immediate vicinity of the site, along with a description of the same. The answer is "N/A". In question 3.a.(2), in response to the question of whether or not work would be required over, in, or adjacent to "within 200 feet" of the described waters, the answer was "N/A". Further questions in paragraph 3 entitled "water" were posed regarding wetlands, fill material, and proximity to surface water, location within a 100-year flood plain, discharge of surface waters, water runoff, and control of surface water runoff. Answers to all of these questions were "N/A".

Numerous other of the 71 questions answered "N/A" have specific reference to water or other conditions relating to the dike districts. However, none of the answers reference the dike districts, the dike districts were not consulted in any manner, and in fact no consideration was even given to any impact, environmental or otherwise, or any adverse impact on the environment as it relates to the dike districts. Clearly, in reference to any project involving trails on the dikes, there would be relevant issues of paving of the trails, work within 200 feet of water, work within a flood plain, surface water runoff from trails, pollutants from trail work migrating to the Skagit River and wetlands, including asphalt residue, and numerous other issues, which were not even mentioned, let alone adequately addressed in the Environmental Checklist.

Clearly, this Environmental Checklist is wholly lacking in terms of any relevant inquiry regarding environmental impacts, and can, in no way, support a decision that an EIS is not required. Issuance of the DNS is substantially defective, lacking in relevant information and consideration of impacts, and was clearly erroneous, and should be reversed.

In addition, other relevant information on file was not addressed or reviewed. This includes a substantially detailed feasibility study developed by the Regional Transportation Planning Organization (RTPO), which was prepared by ALTA, the County's consultant. The Administrative Officer failed to note or consider this feasibility study document and issuance of the DNS was made without appropriate consideration or review of factors contained in the feasibility study regarding probable adverse impacts on dike districts. Reference should have been made to findings in the feasibility study, which included, among other things,

conclusions that the plan would have affects on the dike districts, and that consideration of dike districts be made on a case-by-case basis, and after consultation with the district commissioners and addressing concerns of liability and property ownership.

In addition, the DNS is faulty in that it indicates various items underlying issuance, which were, in fact, not accurate. The notice indicates that the Skagit County Nonmotorized Transportation Plan had included a description of new mandates, when in fact no mandates are contained therein as they relate to dike districts. In fact, the policy of the plan for transportation is inconsistent with the mandates of the dike districts, which are strictly for flood control and protection of life and property.

Further, the notice indicates that an inventory and assessment of existing facilities was made, when no such inventory was made of any of the dike districts. In fact, no commissioners were even contacted in reference to existing dikes or facilities. Further, the notice indicates that design standards and regulations in safety were addressed, when, in fact, no such issues were addressed regarding any of the dike districts, in terms of design standards, regulations by any other governmental body, or safety considerations.

In summary, the DNS was issued after only a cursory and superficial review of available information, and without any consideration of any adverse environmental impacts relating to the dike districts. Also, that the review and determination that there were no probably significant adverse impacts on the environment, thus dispensing with the need for an EIS, was without any factual basis, lacking in legal authority, and was substantially and clearly erroneous.

Appellant also submits additional reasons as contained in a letter filed with the responsible administrative official, dated October 6, 2000, a copy of which is attached hereto as Exhibit "A".

10. See answer to No. 9. Also, see the letter to the Administrative Official dated October 6, 2000, as attached to No. 9. Further, new evidence which was not considered by the Administrative Official would include the findings contained in the feasibility study developed for the RTPO by the County's consultant, ALTA. Further, the Administrative Official failed to consider work and findings done by its consultant at the Skagit Council of Governments, and findings regarding both verbal and written public comments provided at prior hearings on the Nonmotorized Transportation Plan, which identified numerous adverse environmental impacts on the dike districts, relative to this plan.

11. SCC 14.12.210; SCC 14.06, *et seq.*; RCW 43.21C.075; WAC 197-11-680; WAC 197-11-340(2); RCW 43.21C.030(2)(c).

12. Appellant seeks to have issuance of the DNS and this threshold determination reversed, and invalidated. Further, for a determination that the DNS was clearly erroneous, improperly issued, and issued as a result of lack of an adequate Environmental Checklist, and based on inadequate review of available information, consultation with the dike district commissioners, and consideration of impacts on the respective dike districts. Further, for a remand of this matter back to the Administrative Official for purposes of re-evaluation and preparation of an adequate Environmental Checklist, for a determination of probable significant adverse impacts on the environment and the involved dike districts, and for the required preparation of an EIS in reference to impacts of this plan on the respective dike districts.

**DETERMINATION
OF
NONSIGNIFICANCE
(DNS)**

SKAGIT COUNTY
PERMIT CNTR.

OCT 23 2000

RECEIVED

Description of proposal:

A non-project proposal to establish the Skagit County Nonmotorized Transportation Plan. The plan focuses on nonmotorized travel alternatives for Skagit County. The Plan reviews current activities, trends, problems and opportunities for Nonmotorized transportation including a description of new mandates. An inventory and assessment of existing facilities is followed with the demand and needs for such facilities. Current policies and regulation are evaluated and specific recommendations are made on the system, facilities, design standards, regulations, safety, education/enforcement and intermodal transportation. The Plan also includes strategies for implementation. **Proponent:** Skagit County
Location of proposal, including street address, if any: 200 West Washington Street, Mount Vernon, WA 98273. **Lead Agency:** Skagit County Planning and Permit Center. The lead agency for this proposal has determined that it does not

have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This DNS is issued under 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments must be submitted by October 6, 2000. You may appeal this threshold determination by addressing those criteria as set forth in SCC 14.12.210 and then by filing such with the Skagit County Planning and Permit Center for service to the SEPA responsible official. Appeals must be submitted by October 23, 2000. SEPA responsible official: Planning Director. Contact person: Kendra Smith, Assistant Director. Address: 200 West Washington Street, Mount Vernon, WA 98273 (360) 336-9410

**Published September
21, 2000 H-3286**

LAW OFFICE OF
JOHN R. SHULTZ
CASCADE PROFESSIONAL CENTER
160 CASCADE PLACE, SUITE 218
BURLINGTON, WASHINGTON 98233

JOHN R. SHULTZ

SKAGIT COUNTY
PERMIT CNTR.

OCT 23 2000

RECEIVED

TELEPHONE: (360) 404-2017
FACSIMILE: (360) 404-2018

October 6, 2000

Kendra Smith, Assistant Director
Skagit County Planning and Permit Center
200 W. Washington Street
Mount Vernon, WA 98273

**Re: Skagit County Non-Motorized Transportation Plan;
Determination of Nonsignificance (DNS);
Comments – Skagit County Dike Districts No. 12 and 1**

Dear Ms. Smith:

I am the legal counsel for Skagit County Dike Districts No. 12 and No. 1 (“Districts”). This written response is made in reference to the Skagit County Non-Motorized Transportation Plan (“Plan”) Determination of Nonsignificance (“DNS”), published in the *Skagit Valley Herald*, including comments on behalf of Dike Districts No. 12 and No. 1.

In this regard, and to summarize, both Districts are opposed to implementation of the Plan in general, and specifically opposed to any inclusion of the dike districts within said Plan. Based on both factual and legal issues, as outlined in the following, it is clear that the Districts should not be included in the Plan and should be omitted from adoption of the Plan. In addition, substantial procedural defects exist in the prior process to adopt the Plan, and including the DNS, which is fatally defective based on lack of consideration and evaluation of the effects on the dike districts, and the substantial lack of factual and legal basis underlying the issuance of the DNS.

We note preliminarily that during the many months that this Plan has been pursued, it appears to be a constant theme and a presumption of the Plan that dikes and levees will be used as trails, without contacting dike district commissioners for input. What input has been presented at public hearings thus far has been negative and in opposition in terms of use of the dikes for public trails. However, much of the comments and input of the various districts and the public have been ignored in the County’s proceeding forward on this Plan. A great deal more consideration and consultation with dike districts needs to be

made prior to inclusion of any Skagit County dikes within the trails system. There are vitally important issues that need to be addressed in terms of the relationship of dikes and levees to trails, which have not been adequately explored, evaluated, or presented in the Plan.

At prior meetings, discussion and presentation by the dike districts and the public has been clear that use of the dikes for public trail purposes is inconsistent with the statutory mandates of flood control and dike and levee preservation. The statutory authority granted the dike district commissioners, and which is strictly limited statutory authority, is to operate, maintain, improve, and utilize the dikes within the narrow boundaries of the right-of-way strictly for flood control and protection. The commissioners have no mandate, and in fact are prohibited from granting any other use of the dikes or levees for any purpose not related to flood control efforts. Accordingly, even if a dike district wished to allow public pathways and trails, there is no statutory authority authorizing use of the dikes or levees for this purpose.

Secondly, there are serious liability issues dealing with use of the dikes or levees as a public trail system. The dike district commissioners are always sensitive about lawsuits and litigation, as demonstrated by a recent flood litigation suit that has proceeded for many years. The commissioners can incur liability for exceeding their statutory authority or for negligence, or for failing to maintain, monitor, or keep in good repair the levees and dikes within their district.

If the public was permitted on the dike, this would compound the liability in terms of injuries, possible deaths, assaults, criminal activity, property crimes, equestrian activity, and driving on the dike with cars and other motorized vehicles, as well as damage or impairment of the stability or integrity of the dikes, including removal of rock or soil or vegetation. If the public is permitted on the dikes, this increases liability and the chances that some liability creating circumstance would arise which would either jeopardize life or property in the county or create lawsuits for the district.

This is why dike districts routinely post "No Trespassing" signs on the dikes, and even then the commissioners frequently deal with trespassers, drug usage and parties, and other unwarranted intrusions and damage to the dikes. Further, if a hazardous condition is created, or injuries occur, or the public is permitted on the dikes, this may drastically affect insurance rates, or even create a possibility of cancellation of insurance coverage.

Also, the U. S. Army Corps of Engineers is required to inspect the dikes yearly for certification, and the districts must be in compliance with all Army Corps of Engineers'

rules and regulations and must maintain and repair the dikes to Army Corps of Engineers' standards. Public visitation and use of the dikes would create problems and diminish the ability of the dike district commissioners to adhere to these standards, in addition to creating a larger liability problem for every district.

There is also the further problem of authorization and authority in the districts in reference to the respective property ownerships. There are very few, if any, dike districts that have outright ownership of the property upon which the dike is located. Most every district is a scattered series of ownerships in various people of various degrees. Some property ownership is in the dike district and other ownership is in adjacent property owners in fee simple. In most cases, the dike district has only a right-of-way over a parcel of property, which right-of-way is designated only for use for flood protection and control. In some areas the dike is essentially landlocked, and access to the dike must be across private property.

All of these situations pose great and substantial problems in including the dikes in a trail system. There is no one entity or person who can grant authority to use an entire expanse of the dike for a trail, as there is no one consistent owner or ownership interest. The dike districts cannot grant access for a trail system over property it does not own, or to which it only has an easement for dike maintenance purposes, or over an objection of any property owner, and it is a certainty that there will be many property owners who object to allowing trails over their length of the dike. In this case, even if a dike district was in favor of allowing a trail, it could not do so unless it had approval of all of the adjacent property owners. Even the Skagit County Comprehensive Plan provides that any trails over dikes must have resolution of the liability issues and adjacent property owners' rights before any trail is adopted.

Based on the above concerns, the commissioners deem that this proposed Plan over the dike is unworkable and completely inconsistent with use of the dike and levee system. In addition, there are a whole host of other concerns with use of the dikes as trails. Deposit of garbage and refuse, and allowing dogs or horses access to the trails on dikes would create problems of pollution, contamination, and additional maintenance. The dikes are unique in that they generally will nearly always be close to river or water sources, in contrast to other city sidewalks or public transportation routes.

In addition, parking on or near the dikes would create problems, as well as safety concerns from traffic, possible assaults, and other activities that could occur when persons congregate in remote or rural areas near the dikes. Crime would be an additional problem where the dikes would serve as a pathway for persons to enter property from the

Kendra Smith, Assistant Director
Skagit County Planning and Permit Center
October 6, 2000
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dike instead of public accesses. There are also many property rights concerns regarding trespassing, vandalism, and other complaints that adjacent property owners will have if the public is permitted access to the dikes.

It has recently become apparent after reviewing the Plan that the trail system, in order to qualify for federal funding, must be paved. Some of the dike district commissioners, or members of the public, did not previously know that these trails are required to be paved. This would create additional problems in that the paving would have to comply with certain standards and requirements for trails and pathways, in terms of thickness, width, shoulders, and construction.

This would require additional maintenance for the dike districts, as well as the potential of surface runoff water, water quality issues, and toxic runoff from asphalt or other composite surface material that would pose potential pollution problems with surface water and the adjacent river. Again, dikes are unique in that they will generally be located near water and these same water quality issues would not be experienced in public trails within cities or towns.

These problems with the dike districts, in terms of water quality, would create difficulties and potential liability with the Department of Ecology, Fish & Wildlife Department, and other ecological agencies. These would all serve to increase the responsibility of the dike district commissioners and, therefore, liability of the commissioners, and would serve also to create a number of unfunded mandates on their current duties.

These would include the costs of maintenance of the trails, costs to comply with additional regulations, legal fees regarding litigation and lawsuits, title searches, and having to deal with disputes between local neighbors. If there were no trails on the dikes, then none of these problems occur, so to a large degree to permit trails on the dikes would involve the commissioners inviting a number of additional problems with little corresponding benefit.

Also, it has recently been learned that in the trail concept, horse or equestrian traffic is also a required element of the Plan. This would be accomplished by widening the paved pathway, and putting an adjacent path with a softer surface next to the pathway to accommodate horse traffic. This, as well as public access, is clearly inconsistent with the use of the dikes, and would increase liability and create problems regarding pollution and maintenance. In addition, some of the tops of the dikes are very narrow, and major improvements or changes to the dikes would be needed in order to accommodate even a paved trail, let alone a paved trail plus an expanded area for horse traffic.

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Skagit County Planning and Permit Center
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In addition, and aside from the numerous problems noted above, the commissioners feel that the essential underlying basis of this Plan is faulty and should not include dikes in the trail system. The underlying policy of this Plan is to provide public transportation, and not for recreational uses. Transportation uses are certainly pertinent in city areas where citizens must commute from one point to another for a specific transportation-related purpose. However, this would not be the case in use of the dikes, which are predominantly rural and would not provide a transportation use that is not available elsewhere. Use of the dikes would be purely recreational, and not related to transportation, and inconsistent with the policies of the Plan.

Moreover, we feel that this Plan needs much more study before it is even adopted by the County. I note that the proposed Plan was developed in 1994, and has seen little public activity until just recently. A steering committee meeting occurred on February 16, 2000, and an agency meeting began on February 22, 2000. The first public meeting/workshop occurred on March 1, 2000. We had public meetings on April 6, 2000, and it was anticipated that on April 16, 2000, the RTPO Policy Board would deliberate and adopt the Plan and then it would go to the County Commissioners for approval. Given the fact that the Plan remained dormant from 1994 to February 2000, the process now to adopt the Plan is moving at rapid speed, with inadequate public notice for hearings, lack of investigation and fact-finding, and lack of adequate notice and opportunity for the public to be heard given pursuant to notification requirements of local codes or the GMA.

In summary, the basis of this Plan is faulty, and the implementation of the Plan has not provided adequate notification or public hearing, or adequate study or public comment. The Plan cannot properly be adopted without further public input, and notice and opportunity to comment on the proposed Plan.

Accordingly, and given the numerous concerns noted above, the Commissioners of Dike Districts No. 12 and No. 1 hereby register their opposition to the Districts being included in any transportation plan. The Districts oppose the implementation of this Plan based on defective and deficient policy and procedural reasons. In addition, the Districts strongly oppose this Plan as it may relate to any inclusion of the Districts to participate in the Plan or to locate trails that are part of the Plan within the Districts.

In addition to the numerous factual, practical, and legal problems relating to the Plan, we submit that the process that determined the DNS has been fatally flawed, and that the DNS was improperly granted. The notice indicates that the decision for the DNS was made after review of a completed Environmental Checklist and other information on file with the lead agency.

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Skagit County Planning and Permit Center
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Further, it was determined that an Environmental Impact Statement (EIS) was not required and that the lead agency had determined that this project does not have a probable significant adverse impact on the environment. These determinations are substantially and profoundly in error, based on the fact that the Environmental Checklist was incomplete and lacked substantial critical and necessary information.

In referring to the EIS, it is clear that many inquiries and factual considerations were not considered. To begin with, no dike district commissioners were consulted regarding locating trails on the dikes or levees, or in connection with the Plan. This would have provided critical information for preparation of the Plan, and an EIS, and, in fact, consideration of trails on dikes is wholly lacking from the Environmental Checklist. In this regard, the Environmental Checklist was totally lacking in vital and relevant information.

The Environmental Checklist contained 90 questions. Of these questions, 71 were answered as "N/A", and three were blank. Understandably, "N/A" may be appropriate in answering some questions, but this checklist includes such references as question number 3.a. (1), which asks, in reference to water, whether there is any surface water body on or in the immediate vicinity of the site, along with a description of the same. The answer is "N/A". Obviously, in any situation dealing with the dikes or levees, they would be immediately adjacent to water, in this case the Skagit River. It is inconceivable that an adequate Environmental Checklist could be prepared for a project involving dikes and indicate that proximity to water is "N/A". This clearly represents a defect in the Environmental Checklist, for lack of consideration of relevant issues.

In addition, at question 3.a. (2), in response to the question of whether or not work would be required over, in, or adjacent to "within 200 feet" of the described waters, the answer was "N/A". Further questions in the paragraph 3 entitled "Water", were posed regarding wetlands, fill materials and proximity to surface water, location within a 100-year flood plain, discharge of surface waters, water runoff, and control of surface water runoff. Answers to all these questions were "N/A".

Clearly, in reference to any project involving trails on the dikes, there would be relevant issues of paving of the trails, work within 200' of water, work within a flood plain, surface water runoff from the trails or other pollutants, and including asphalt residue which may enter into the adjacent water, including the Skagit River. All of these inquiries were simply ignored with the reference "N/A". This Environmental Checklist is wholly lacking by reference to any inquiry regarding these issues as they relate to trails on the dike system.

In paragraph 8 regarding land and shoreline use, and in reference to questions regarding the current use of the site and adjacent properties, structures on the site, shoreline designations, and other related issues, the answers again are all "N/A". Clearly, these site-specific issues dealing with the dike system have not been considered in this Environmental Checklist, and cannot form the basis of a decision regarding an EIS or a DNS.

In paragraph 14 under transportation, and questions regarding placement of roads or streets, public access, and project use within the immediate vicinity of water, the answers again are "N/A". Again, no reference is made to the dike or levee system and how this project may impact, affect, or use that system.

In paragraph 11, in reference to a "complete description of your proposal, including the proposed uses and the size of the project and site", there is no complete description, or description of the size of the project and site as it relates to the various dike districts. The answer indicated that the Plan reviewed current activities and problems and opportunities, including a description of new mandates. The Plan, in fact, does not identify any problems whatsoever regarding the dike districts, which problems have been noted above.

Further, the answer states that an inventory and assessment of existing facilities was made, and specific recommendations are made regarding system, design standards, and other items relating to transportation. In fact, no inventory of the physical layout of the dikes was done, and no evaluation or specific recommendations were made regarding design standards, regulations, or safety relating to any plan to build trails on dikes. Again, the Environmental Checklist is defective for failing to even address the issues relating to dike districts.

Another example of this is paragraph 10, which requests a list of any government approvals or permits that would be needed for the proposal, with the answer "N/A". In fact, to have a trails system on dikes would require interlocal agreements with dike districts, indemnity contracts regarding satisfying liability concerns, and issues regarding easements and approvals and rights of access from property owners.

Because dikes are near water, very likely there would be permit requirements from the Department of Ecology, U. S. Army Corps of Engineers, and other affected agencies. An answer of "N/A" completely omits any relevant information. Again, no substantial or relevant inquiry has been made in connection with the Environmental Checklist, and this cannot possibly form the basis of a valid decision for a DNS or decision that an EIS is not needed.

Kendra Smith, Assistant Director
Skagit County Planning and Permit Center
October 6, 2000
Page 8

The Environmental Checklist also requires consideration of alternatives to dikes, and no such consideration was made. One alternative would be simply to omit the dikes from the Plan, and this alternative has not been considered or addressed. At a minimum, the Districts would request complete omission from the Plan, as use of the dike cannot be supported factually or legally, or for any valid transportation purpose. The purpose of the Plan is for transportation, not recreation, and not use of a location where other alternatives exist. Dikes and levees are statutorily mandated for non-transportation purposes, including flood control, and are inappropriate for inclusion in any plan of this nature.

Also, flood emergencies, even if trails were implemented, would put certain areas off limits during the time of emergencies. The flooding would cause substantial danger to the public, and potential liability to the County and the dike districts for allowing personnel in close proximity to hazardous flood conditions. In addition, SEPA has given no exemption for any trails and none should be granted by a plan that does not comply with an adequate investigation, and evaluation of the proposal under SEPA guidelines.

Also, in reference to the Environmental Checklist, it cannot be said that all of the answers are general because this is a non-project specific proposal. Even if this were construed as a non-project specific proposal, still, an EIS must examine alternatives, identify issues, and must make a substantial inquiry into relevant issues regarding the project. The checklist must include specific facts and must identify relevant issues regarding the project and components of the project.

This Environmental Checklist wholly fails to identify the project or component parts, and does not even have a basic description of dikes and levees or their inclusion in the Plan, or issues relating to dikes and levees. These substantial and glaring omissions from the Environmental Checklist are fundamental defects in this process, and fail to form a basis for a decision that an EIS is not necessary and that a DNS be issued. This is a large and massive proposal that is short on details, explanations, and any basis for approval without a significant amount of further evaluation, study, and documentation in terms of the Environmental Checklist and decisions regarding an EIS and DNS.

Based on the above, both Dike Districts No. 12 and No. 1 take the position that this Plan should not be adopted, in whole or in part, and that the County Commissioners reject adoption of the Plan in its entirety. In the alternative, if this Plan ultimately is adopted, no dike district should be subject to, affected by, or included in the Plan in any manner. The use of dikes for a trails system is completely inconsistent with the statutory mandate for

Kendra Smith, Assistant Director
Skagit County Planning and Permit Center
October 6, 2000
Page 9

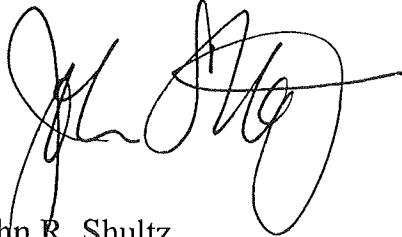
the dike districts. Further, any approval of trails on the dike would be nearly impossible to obtain from adjacent landowners and from the various dike district commissioners.

Aside from the fact that this Plan is inappropriate and misguided in reference to inclusion of the dikes, the process, including the Environmental Checklist, is fatally flawed, and fundamentally and profoundly lacking in relevant factual inquiries and addressing the necessary issues relating to the Plan and decision regarding lack of probable significant adverse environmental impacts, and decision dispensing with an EIS and granting a DNS. The issuance of the DNS was improper, procedurally defective, incorrect, and based on a lack of adequate inquiry, evaluation, and factual basis.

Please call if you have any questions or wish to discuss the above, or if we can provide any information regarding the above comments. At this point, and as is noted above, both Dike District No. 12 and Dike District No. 1 are in fundamental opposition to granting of the DNS, or any adoption of a Non-Motorized Transportation Plan in its entirety, or any plan which includes or involves Skagit County diking districts.

Very truly yours,

LAW OFFICE OF JOHN R. SHULTZ

A handwritten signature in black ink, appearing to read 'John R. Shultz', written over a horizontal line.

John R. Shultz
JRS:PJ

c: Commissioners, Skagit County Dike Districts No. 12 and No. 1



PLANNING AND PERMIT CENTER

TOM KARSH, DIRECTOR

GARY R. CHRISTENSEN, AICP
Assistant Director
Community Planning

KENDRA SMITH, ASLA, AICP
Assistant Director
Community Development

BILL DOWE, CBO
Building Official
Permit Center

TO: John R. Shultz
Chuck Bennett

FROM: Kendra Smith
Assistant Director

DATE: March 1, 2002

RE: Skagit County Nonmotorized Transportation Plan

RECEIVED
MAR - 4 2002
JOHN R. SHULTZ

Please find enclosed a copy of a Summary I have received from our consultant, Phil Miller, regarding adjustments reflecting inclusion of the dike-trail feasibility study as an element of the Skagit County Nonmotorized Transportation Plan.

Please review the enclosed document to see if it meets your needs and concerns.

After you have reviewed the document, perhaps we could meet on Tuesday, March 19, 2002, at 11:00 a.m. at the Planning & Permit Center. Please call Patti Chambers at 336-9410 to confirm your availability for such a meeting.

Enclosure

C: Bob Dean 3/6/02
3604042018 =>

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03/06'02 14:37

**SUMMARY OF ADJUSTMENTS REFLECTING INCLUSION OF THE DIKE-TRAIL
FEASIBILITY STUDY AS AN ELEMENT OF THE SKAGIT COUNTY
NONMOTORIZED TRANSPORTATION PLAN**

Inclusion of Skagit Dike Trail Feasibility Study – Page 2

Add:

A significant element of the research supporting this plan is represented by the Skagit County Dike Trail Feasibility Study. Summarized on page 43 of this document, the study was requested by the County to investigate issues raised by Dike Districts, parks agencies and the public during the development of the Draft Skagit County Nonmotorized Transportation Plan in 1996. The development of the study incorporated significant input from the Dike Districts, local and state agencies as well as the general public.

At the time the Study and revised plan were being finalized, a concern was expressed on the part of several Dike Districts that the Feasibility Study not be incorporated into the Proposed Final Nonmotorized Transportation Plan. Accordingly, a summary of the points presented was included but the Study was not formally included in the Plan.

Subsequently and upon further consideration and testimony by the Diking Districts, the Skagit County Commissioners directed County staff to include by reference the Dike Trail Feasibility Study as an adopted element of the Nonmotorized Transportation Plan. The resolution directing this inclusion and the Skagit County Dike Trail Feasibility Study itself are attached as a separate Technical Appendix to this document.

This inclusion does not change the content, findings or conclusions of either the Plan or the Study as reviewed previously by the public and the County Commissioners.

Policy Findings: Use of Dikes for Trails and Pathways

1. Individual Diking Districts are under no obligation to provide for or participate in the development of trails on their facilities. While such participation is in the public interest in many instances, participation is voluntary and subject to the negotiation and approval of effective interlocal agreements.
2. A potential result of a Diking District not participating in a project of high perceived public need and popularity involves accountability to that public in subsequent elections. That is a normal and anticipated consequence of any decision made by an elected representative of any public agency or government.
3. While state law is clear that the purpose of Diking Districts is the provision of flood control services, these same laws do not preclude diking districts from engaging, participating or allowing other activities, so long as the ability of the Diking District to perform its function is not diminished.
4. When facilities are developed according to accepted design principles, there is little if any physical impact on most larger dike facilities.

5. Joint use of dikes for trails can have a broad public transportation benefit, separate from any recreation benefit, particularly where the dike property crosses other man-made barriers such as freeways.
6. Many dike, canal and riverfront trails exist in Western Washington and throughout the nation, establishing a base of knowledge regarding potential environmental impact, acceptable and preferred design practices, and workable legal and institutional arrangements needed to protect the interests of both Diking Districts and any adjacent property owners.
7. Trails (on dikes or not) developed with transportation revenues and for transportation purposes should link identifiable trip origins and destinations, provide an alternative to routes with identifiable hazards, or provide unique access. In Skagit County, dikes that have these characteristics tend to be located near urban areas such as Mount Vernon and Burlington.
8. While there is an identifiable recreation benefit associated with locating trails on a large number of dikes throughout western Skagit County, this benefit must be weighed against the costs of interfering with agricultural operations and potential impact to the wildlife resources of the County. Transportation benefits are better realized through a corridor rather than a systems approach to project identification.
9. Many utilities and other quasi-public agencies in Washington (including at least one Diking District in Skagit County) have entered into interlocal agreements allowing trail development on rights of way under their ownership and control. Such agreements usually feature limits on District liability and delineation of the responsibility of the trail manager to provide for the maintenance and security of the trail without exposure to the utility.
10. Interlocal agreements between Diking Districts and potential trail managers are a critical element to limiting exposure of the Diking Districts and keeping the Districts within the guidelines established by Washington State statutes regulating their operations.

Such agreements should at a minimum:

- Convey all liability associated with trail construction, operation and maintenance to the managing authority of the proposed trail;
- Preserve absolutely all rights of access and maintenance of the Diking Districts for activities relating to the administration of the dikes and levees;
- Establish standards for signing, fencing, facility development and maintenance of the trail facility; and
- Establish enforcement responsibility for trail use and access, as well as defining the responsibility of the trail manager to provide for this security and enforcement.

PAGE 43 – Policy 3.1.2 –Use of Dikes for Trails and Pathways

Add:

The Skagit County Dike-Trail Feasibility Study conducted as an element of the background development of the Nonmotorized Transportation Plan is to be considered as an adopted element of this plan and is attached as a separate Technical Appendix.

PAGE 77 – Mount Vernon

Add:

Reference to new language in Policy 3.1.2 regarding County policy and the adoption of the feasibility study.

Universal:

Delete: Language referring to the advisory nature of the Dike Study.

