

1 A.O. Denny  
2 Skagit County Prosecutors Office

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6 June 21, 2007

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9 Friends of Guemes v. Skagit County

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15 Court's Ruling: June 15, 2007

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18 30 pages

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24 William Meek, CSR No. 2696  
25 Snohomish County Superior Court  
3000 Rockefeller, Department 9  
Everett, WA 98201  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

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FRIENDS OF GUEMES ISLAND, )  
)  
)  
Plaintiff, )  
)  
v. ) No. 06-2-09088-6  
)  
SKAGIT COUNTY BOARD OF )  
COMMISSIONERS, et al., )  
)  
Defendants. )

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TRANSCRIPT OF PROCEEDINGS  
Court's Ruling

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DATE: June 15, 2007

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APPEARANCES:

For the Plaintiff: GERALD STEEL  
Attorney at Law

For the Defendants: A.O. Denny  
Deputy Prosecuting Attorney

The Honorable James H. Allendoerfer  
Department 9

William Meek, CSR  
Official Court Reporter  
CSR No. 2696  
Department No. 9  
Snohomish County Courthouse  
Everett, Wa 98201  
(425) 388-3282

**COPY**

1 BE IT REMEMBERED that on the 15th day of  
2 June, 2007, the above-entitled and numbered cause came  
3 regularly on for Court's Ruling before the Honorable  
4 JAMES H. ALLENDOERFER, one of the Judges of the  
5 above-entitled Court, sitting in Department No. 9  
6 thereof, at the Snohomish County Courthouse, in the City  
7 of Everett, County of Snohomish, State of Washington.

8 The Plaintiff appeared by and through its attorney,  
9 GERALD STEEL;

10 The Defendant appeared by and through its attorney,  
11 A.O. DENNY;

12 WHEREUPON, both sides having announced they were  
13 ready to begin, the following proceedings were had,  
14 to-wit:  
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1 THE COURT: This is the case of Friends of Guemes  
2 Island v. Skagit County. Preliminarily, let me mention  
3 that there were a number of exhibits admitted in this  
4 case that were original documents which came from the  
5 personal files of some of the plaintiffs. At the  
6 conclusion of this afternoon's proceedings, if any of  
7 those persons wish to have their originals returned to  
8 them instead of being lost in the records of the  
9 courthouse, they can come forward, and my clerk will  
10 prepare an order substituting a photocopy. There's no  
11 need for me to keep an original document if a  
12 replacement can be supplied in photocopy format.

13 Now getting to the case at hand.

14 This case relates to Skagit County's decision to  
15 extend the scheduled ferry runs for the Anacortes to  
16 Guemes Island ferry from 6:00 p.m. to 10:00 p.m. Monday  
17 through Thursday, thereby adding five new runs per  
18 evening on those days. This schedule change has been  
19 challenged by the plaintiffs, who are an organized group  
20 of residents on Guemes Island. The focus of their  
21 challenge is the County's threshold determination that  
22 there would be no significant adverse environmental  
23 impact arising from a mere change to the ferry schedule,  
24 and therefore no Environmental Impact Statement needed  
25 to be prepared.

1           A trial on this environmental issue under the State  
2           Environmental Policy Act, RCW 43.21C.075, was conducted  
3           in this court on June 7 and June 8, 2007.

4           1. I will begin my decision with a section on  
5           background facts which need to be considered before a  
6           conclusion can be reached. I have listed 11 such  
7           background facts.

8           1.1 Guemes Island is an 8.2 square mile island off  
9           the coast of Anacortes, Skagit County, Washington. It  
10          is rural in character, and is populated by some 600  
11          residents, which swells to some 2,000 residents during  
12          seasonal recreational months. A colorful description of  
13          the island is found in a Supreme Court decision  
14          captioned Smith v. Skagit County, 75 Wn. 2d 715 (1969).

15          1.2 Since the early 1900s the island has been  
16          served by ferry service from Anacortes. It is  
17          approximately a five minute ferry trip from dock to  
18          dock. In 1964 Skagit County took over the ferry as part  
19          of its transportation system, and has managed it ever  
20          since.

21          1.3 Ferry service on weekdays has always ended at  
22          6:00 p.m., subject to a "no passenger left behind  
23          policy" of continuing clean-up runs at the end of each  
24          weekday to accommodate any and all passengers waiting in  
25          line at 6:00 p.m..

1           This weekday schedule has contributed to a culture  
2           on the island that has discouraged off-island commuters  
3           and families with school-aged children, and has made the  
4           island a haven for persons with lifestyles that do not  
5           depend on convenience and access to urban amenities.  
6           The island is generally populated at this time with  
7           retired persons, artists, and seasonal vacationers.

8           1.4 In 1977 the County proposed to replace the  
9           9-car ferry service to Guemes Island with a 22-car  
10          ferry. It prepared a full Environmental Impact  
11          Statement before agreeing to said replacement. (See  
12          Exhibit 6.)

13          That EIS concluded that natural growth trends of  
14          the Guemes Island population are the driving force  
15          behind demand for larger ferries and more frequent ferry  
16          service, not vice versa. It also stated, however, that  
17          a definitive ferry schedule (with no unscheduled  
18          "on-demand" runs) and minimum runs during commute hours,  
19          would perhaps be an effective means of moderating  
20          population growth on the island so as to preserve the  
21          rural lifestyle for present and future generations. It  
22          concluded that whereas changes in ferry sizing would not  
23          have a significant effect on population, housing or land  
24          use, ferry scheduling changes will.

25          1.5 In 1991 through 1992 the United States

1 Geological Service studied ground water quality and  
 2 availability on Guemes Island, and published USGS Report  
 3 No. 94-4236. It found that ground water is the sole  
 4 source of freshwater for the residents of Guemes Island;  
 5 the island was officially designated as a "sole source  
 6 aquifer" by the Environmental Protection Agency on  
 7 December 1, 1997. The USGS report also found that said  
 8 natural resource was inadequate to support the then  
 9 predicted growth trend on the island, and that there is  
 10 a significant potential for seawater intrusion into the  
 11 Guemes aquifers in the foreseeable future. (See Exhibit  
 12 35.) This resulted in the County adopting an interim  
 13 seawater intrusion policy on December 12, 1994, placing  
 14 limitations on land development in areas where  
 15 inadequate ground water is available.

16 1.6 In 1997 Skagit County adopted its Growth  
 17 Management Act Comprehensive Land Use Plan. An EIS was  
 18 prepared in conjunction with this document.  
 19 Unfortunately, nothing in said plan or the EIS made any  
 20 analysis of a cause and effect relationship between  
 21 ferry service and population growth on Guemes Island.

22 1.7 On March 28, 2002 the County commissioned Berk  
 23 & Associates to perform the Guemes Island Ferry  
 24 Operations Management Analysis. The 50 recommendations  
 25 of that analysis were accepted by the County in

1 Resolution 2003-0074. (See Exhibit 9.) Nine of those  
2 recommendations pertained to the sailing schedule of the  
3 ferry. On January 27, 2003, the County began a plan of  
4 implementing these recommendations, and established the  
5 Guemes Island Ferry Schedule and Fare Task Force to  
6 spearhead that implementation. The Task Force was in  
7 existence from March 11, 2003 until December 31, 2003,  
8 at which time it submitted its recommendations to the  
9 County Commissioners.

10 1.8 On February 9, 2004 the County Commissioners  
11 accepted the Task Force recommendations; (See Exhibit  
12 27.) These recommendations included the following:

13 - The ferry schedule would continue to end at  
14 6:00 p.m. on weekdays, with a no person left behind  
15 policy in effect for the close of the day.

16 - The reasons given for maintaining the status  
17 quo as to weekday schedules were the following:

18 1) Extending the weekday schedule would  
19 increase operating costs and cause a fare increase.

20 2) The residents of Guemes Island could not  
21 reach a clear consensus on extending the weekday  
22 schedule.

23 and, 3) The consequences of extending the weekday  
24 schedule needed to be evaluated in a more comprehensive  
25 way. The subarea comprehensive land use planning

1 process was suggested as an opportunity for this  
2 evaluation.

3 Finally, the County established an Operations and  
4 Performance Roundtable so that Guemes Island residents,  
5 through their ferry committee, could have ongoing  
6 dialogue and collaboration with the County Department of  
7 Public Works with respect to all issues relating to the  
8 Guemes Island ferry.

9 1.9 On February 10, 2003 the County established a  
10 Guemes Island Planning Advisory Committee for the  
11 purpose of initiating a new land use comprehensive plan  
12 for a subarea of the county consisting of Guemes Island.  
13 (See Exhibit 42.)

14 On January 24, 2005 the County approved a work plan  
15 for said Advisory Committee, charging it to study, among  
16 other things, future lot sizes, demographics, the ferry  
17 system, the aquifer, and seawater intrusion issues  
18 affecting Guemes Island. Those studies are now actively  
19 underway, and will ultimately result in an EIS and will  
20 be presented to the County Commissioners for review and  
21 approval.

22 1.10 On May 30, 2006 the County adopted Resolution  
23 2006-0184. (See Exhibit 8.) That resolution modified  
24 the Guemes Island ferry schedule for a two-year trial  
25 period through June 2008 by adding ferry runs on weekday

1 evenings every half hour from 6:30 p.m. to 10:00 p.m.,  
2 and ending the policy of having ferry service informally  
3 continue at 6:00 p.m. until no passenger was left behind  
4 at the Anacortes dock.

5 This resolution apparently abandoned the County  
6 Commissioners' 2004 commitment to defer consideration of  
7 ferry schedule changes until a comprehensive evaluation  
8 of all consequences could be conducted as part of the  
9 Guemes subarea planning process. It also apparently  
10 preempted the work plan adopted by the Commissioners in  
11 2005 for the Guemes Island Planning Advisory Committee,  
12 which work plan is currently being implemented and is  
13 studying the overall land use and environmental  
14 consequences of modifying ferry schedules.

15 Instead, the Commissioners opted for a more  
16 practical approach; that is, to try the new ferry  
17 schedule out for two years and study its real life  
18 impacts thereafter.

19 Relying upon this approach, the County did no  
20 environmental assessments of the proposed ferry schedule  
21 modifications whatsoever, and did not even issue a DNS.  
22 When the plaintiffs challenged this in court, however,  
23 the County belatedly did draft an environmental  
24 checklist and issued a DNS on July 27, 2006. (See  
25 Exhibits 12 and 13.) Then, one month before trial last

1 week, the County issued a much more complete and quite  
2 helpful addendum to the checklist and an addendum to the  
3 DNS. (See Exhibits 14 and 15.) None of these  
4 documents, however, addressed the potential cause and  
5 effect relationship between the ferry schedule and the  
6 rate of population growth on the island and its  
7 environmental consequences.

8 1.11 Finally, on December 5, 2006 the County  
9 adopted a Guemes Island Ferry Capital Facilities Plan  
10 covering a projected period from 2006 through 2020.  
11 (See Exhibit 17.) This is a very thorough statistical  
12 analysis of projected population growth on the island,  
13 projected ferry ridership demands, and projected capital  
14 improvements needed to meet said demands. It lists  
15 constraints on future growth and development of Guemes  
16 Island as including saltwater intrusion, steep slopes,  
17 water and septic concerns, environmental regulations,  
18 and market conditions. It does not, however,  
19 acknowledge or assess any concept of a ferry schedule in  
20 the evening commute hours as being a factor in inducing  
21 or accelerating population growth on the island, or  
22 changing the demographics of the resident population.

23  
24 2. The second chapter of my decision deals with the  
25 legal framework for this trial. I have eight legal

1 principles which have guided me in making this  
2 decision.

3 2.1 RCW 42.21C.033 and WAC 197-11-055 contemplate  
4 that a threshold determination and an EIS, if required,  
5 will be prepared at the earliest possible point in the  
6 planning and decision-making process when the principal  
7 features of a proposal and its environmental impacts can  
8 be reasonably identified.

9 This environmental review process should not be  
10 completed, however, before the proposed action is  
11 sufficiently definite to allow meaningful environmental  
12 review.

13 The parties in the instant case disagree on the  
14 application of these rules. Plaintiffs argue that the  
15 proposal to modify the ferry schedule on a permanent  
16 basis is already clear and certain, and that now is the  
17 time for meaningful environmental review, not after the  
18 impacts have already started and have changed the  
19 political landscape.

20 The County argues, however, that all it has  
21 proposed so far is a two-year trial period for the  
22 schedule modification. A mere DNS is appropriate for  
23 now. Once the data from the two-year trial period is  
24 available, a more meaningful environmental assessment  
25 and EIS can be performed at that time, if the County

1 decides to pursue a permanent schedule change.

2 2.2 RCW 43.21C.034 and WAC 197-11-090 authorize  
3 government agencies to use, in whole or in part,  
4 existing environmental documents if those documents  
5 adequately address all relevant environmental  
6 considerations.

7 In the instant case, both parties rely heavily upon  
8 preexisting studies and assessments, dating back as far  
9 as 1977. These assessments relate to land use planning  
10 for Guemes Island, population trends, ground water  
11 considerations, and ferry scheduling considerations.  
12 The plaintiffs argue, however, that these assessments  
13 never address the nexus between extending a ferry  
14 schedule to include evening commute hours and the  
15 acceleration of population growth and change in  
16 demographics on the island.

17 The County, on the other hand, argues that said  
18 nexus is speculative at this time, and that a two-year  
19 trial period is needed before meaningful analysis can be  
20 conducted.

21 2.3 RCW 43.21C.030 and WAC 197-11-330 require a  
22 full EIS for all major actions which significantly  
23 affect the quality of the environment.

24 WAC 197-11-060(4) does not, however, require  
25 consideration of impacts which are merely speculative.

1 But it does require consideration of direct and indirect  
2 impacts caused by a proposal. For example,  
3 consideration of growth impacts caused by a proposal  
4 would be required, as well as the likelihood that a  
5 present proposal will serve as a precedent for future  
6 actions thereby causing more growth and compounding  
7 environmental impacts.

8 In the case of King County v. Boundary Review  
9 Board, 122 Wn. 2d 648, at page 664, the court warned  
10 about making preliminary decisions which might  
11 "snowball" and acquire virtually unstoppable  
12 administrative inertia. The court stated that the risk  
13 of postponing environmental review is that dangerous  
14 incrementalism will occur where the obligation to decide  
15 is postponed successively while project momentum  
16 builds. "... When government decisions may have a  
17 snowballing effect, decisionmakers need to be apprised  
18 of the environmental consequences before the project  
19 picks up momentum, not after."

20 See also Cheney v. Mountlake Terrace, 87 Wn. 2d  
21 338, at page 344:

22 "Implicit in SEPA is the requirement that the  
23 decisionmakers consider more than what might be the  
24 narrow, limited environmental impact of the immediate  
25 pending action. The agency cannot close its eyes to the

1 ultimate probable environmental consequences of its  
2 current action."

3 2.4 In the instant case the County issued a DNS  
4 for a two-year trial modification to the ferry  
5 schedule. To support such a DNS, the record of the  
6 County's action must demonstrate that the environmental  
7 factors were considered in a manner sufficient to amount  
8 to prima facie compliance with SEPA. See Sisley v. San  
9 Juan County, 89 Wn. 2d 78, at 85.

10 It must also be demonstrated that the County  
11 actually considered all relevant environmental impacts  
12 of the proposed action. See Lassila v. Wenatchee, 89  
13 Wn. 2d 804, at 814.

14 2.5 When a DNS is challenged in court, the  
15 standard of review by the judge is whether the  
16 government agency's decision was "clearly erroneous."  
17 That is, despite whatever supporting evidence the agency  
18 may have in its records, the court can overturn a DNS if  
19 it can firmly conclude that a mistake has been  
20 committed. See Sisley v. San Juan County, at 84.

21 2.6. The focus of the court's inquiry, however, is  
22 simply whether the government agency thoroughly  
23 considered all significant environmental impacts. After  
24 such consideration, the government agency is still free  
25 to disregard such impacts, and make an environmentally

1 insensitive decision anyway. That is not the court's  
2 concern under SEPA; that is, instead, a political  
3 concern for the Board of County Commissioners and their  
4 constituents. See Public Utility District v. Hearings  
5 Board, 137 Wn. App. 150, at page 158.

6 2.7 RCW 43.21C.090 provides that when a court  
7 reviews a government agency's decision to issue a DNS  
8 and opt out of an EIS, the court should accord the  
9 agency's decision "substantial weight."

10 In the instant case, however, the County's DNS  
11 documents were all prepared after this lawsuit was filed  
12 and pending. They were prepared for litigation  
13 purposes, and not for use by the County Commissioners in  
14 deciding whether to modify the ferry schedule or not.  
15 In fact, they were not even available until months after  
16 the resolution modifying the ferry schedule had already  
17 been passed and implemented.

18 Although these DNS documents are well drafted and  
19 helpful to the Court, I consider them to be litigation  
20 pleadings prepared in an advocacy context, and I will  
21 not give them the "substantial weight" which would  
22 otherwise be appropriate.

23 2.8 Finally, WAC 197-11-704(2) categorizes all  
24 actions as being either "project actions" or  
25 "non-project actions." It is admittedly a close call as

1 to whether the County's resolution modifying the ferry  
2 schedule in the instant case was a project or a  
3 non-project action.

4 The plaintiffs argue that it is a project action  
5 because adding ferry runs to Guemes Island after 6:00  
6 p.m. on weekdays is equivalent to building a whole new  
7 transportation system or facility. For example, they  
8 argue it's like a new bridge to the island being built  
9 just for the benefit of commuters coming home after  
10 work.

11 I choose, however, to categorize it as a  
12 non-project action, that is, a mere change in the  
13 program or plan of operation for an existing  
14 transportation system.

15 Transportation programs are often used to create  
16 incentives or disincentives for the public who use  
17 existing roads or ferries, and they are always subject  
18 to modification. Examples are:

- 19 - Car pooling programs.
- 20 - Park and ride programs.
- 21 - Public transportation incentives.
- 22 - HOV lanes.
- 23 - Increases or decreases in fares, fees and  
24 tolls.
- 25 - Or, in the instant case, establishing or

1           modifying ferry schedules to either encourage or  
2           discourage ferry use after 6:00 p.m. on weekdays.

3           In my opinion, these are not new transportation  
4           projects, like a new bridge or a new highway  
5           interchange. These, instead, are new programs for the  
6           operation of an existing transportation system. These  
7           should, therefore, be categorized as non-project actions  
8           under SEPA.

9           Per WAC 197-11-442(1), government agencies have  
10          more flexibility in preparing environmental documents on  
11          non-project actions because there is normally less  
12          detailed information available on their possible  
13          environmental impacts.

14          Such documents need only analyze environmental  
15          impacts at a highly generalized level of detail. See  
16          Citizens v. Klickitat County, 122 Wn. 2d 619, at 641  
17          through 642.

18  
19          3. Now moving on to chapter three of my decision.  
20          This chapter addresses the basic premise of the  
21          plaintiffs that the proposed ferry schedule change will  
22          induce accelerated growth on the island, and change the  
23          demographics, thereby leading to environmental  
24          degradation, particularly with respect to available  
25          ground water.

1           3.1 I find that historically Guemes Island does  
2 have a slower growth rate than the rest of Skagit  
3 County. Its growth rate has been between 1.1 percent  
4 and 2.9 percent for the past 16 years, whereas Skagit  
5 County in general has grown at the rate of 10 percent  
6 per year, at least for the past six years.

7           I further find that the demographics of Guemes  
8 Island differ from the rest of Skagit County. On Guemes  
9 Island the average number of persons per household is  
10 1.9. In Skagit County generally, the average number of  
11 persons per household is 2.6.

12           Only one-third of the residents of Guemes Island  
13 commute to work during the week.

14           The median age of Guemes Island residents is 53  
15 years old.

16           Children are only 12 percent of the population of  
17 the island.

18           Residents between 20 and 40 years of age represent  
19 only 6 percent of the population.

20           And 50 percent of the resident households on Guemes  
21 Island collect Social Security.

22           Moreover, I find that over 50 percent of all houses  
23 on the island are vacant most of the year, although 80  
24 percent of those vacant houses are seasonally occupied  
25 for recreational purposes.

1                   3.2 These statistics paint a picture of Guemes  
2 Island as being a unique enclave in Skagit County. This  
3 is apparently the result of a variety of factors,  
4 including the following:

5                   - The inconvenience of the weekday ferry schedule  
6 before the recent change (per the argument of the  
7 plaintiffs).

8                   - The constraints of limited potable water and  
9 limited soil suitable for on-site septic systems.

10                   - The lack of on-island employment  
11 opportunities.

12                   - The lack of convenient commercial services.

13                   - The relative lack of public services.

14                   - The relative inaccessibility of urban  
15 amenities.

16                   - And, a variety of other real estate marketing  
17 factors.

18                   3.3 Plaintiffs argue that the ferry schedule is  
19 the primary factor among all those listed above which  
20 has constrained growth and demographic development.  
21 They point, for example, to the experience on Anderson  
22 Island in Pierce County, where the sudden addition of  
23 three new ferry runs per day, including a commute hour  
24 run at 7:30 p.m. instituted in 2004, caused an  
25 unprecedented housing and population boom which took

1 over and transformed the island's former rural character  
2 in just three years. This outcome, incidentally, was  
3 not predicted by a consultant study which Pierce County  
4 had commissioned. That study projected a mere  
5 continuation of historical growth and demographics for  
6 20 years into the future regardless of the ferry  
7 schedule.

8 3.4 The plaintiffs' example of Anderson Island,  
9 however, is countered by examples of Shaw, Lopez and  
10 Lummi islands. All of these islands have a long history  
11 of frequent scheduled ferry service, even during commute  
12 hours, but none has seen a growth or development boom to  
13 date.

14 Their growth rates remain at 2.5 percent per year,  
15 and their residential build-out remains well under 50  
16 percent. What explains these differences from the  
17 Anderson Island experience? Which island is the best  
18 predictor for Guemes Island?

19 3.5 I must conclude that it remains uncertain and  
20 speculative that ferry scheduling considerations can be  
21 fairly characterized as being the primary factor in  
22 inducing growth and development of island communities.  
23 This issue needs more study before it can be  
24 meaningfully evaluated, and before it alone should  
25 trigger an EIS.

1           Even more study, however, is somewhat problematic.  
2           Look at what happened on Anderson Island. A  
3           consultant's study of the induced growth issue and its  
4           long-term consequences proved to be 100 percent wrong.

5           Perhaps the Skagit County Commissioners have a  
6           better approach; that is, to do a two-year trial period  
7           with the modified ferry schedule, and then step back and  
8           evaluate the actual results. Under this controlled  
9           experiment it can more reliably be determined whether  
10          ferry schedules themselves induce growth and  
11          development, and at what rate.

12  
13          4. Now turning to the fourth chapter of my  
14          decision. This chapter addresses the question of  
15          whether or not what Skagit County did in the instant  
16          case, when it issued a mere DNS, was compliant with the  
17          law.

18          4.1 In the process of evaluating the proposed  
19          ferry schedule change, the County Department of Public  
20          Works issued two environmental checklists, one on July  
21          27, 2006, and an extensive addendum on April 9, 2007.

22          These checklists were not created in a vacuum.  
23          They drew upon land use plans, development regulations,  
24          consultant's studies relating to ferry service,  
25          consultant's studies relating to ground water and

1 seawater intrusion, citizen committee recommendations,  
2 task force recommendations, a capital facilities plan  
3 for the ferry, and County Commissioner resolutions  
4 relating to all of the above. These studies and  
5 documents spanned the years from 1977 through 2006,  
6 almost three decades.

7 4.2 It cannot be argued that the County failed to  
8 consider the environmental impacts covered in this  
9 extensive list of studies and documents. After all, the  
10 County itself generated or commissioned 100 percent of  
11 the studies and documents itself. Although it can be  
12 argued that the County did not base its ultimate  
13 decision to extend the ferry schedule on an  
14 environmentally sensitive interpretation of the data and  
15 predictions in these studies and documents, that  
16 argument is beyond the scope of SEPA and beyond the  
17 scope of this trial. That is a policy issue in the  
18 political realm that must be left to the discretion of  
19 the County Commissioners and their constituents.

20 4.3 There are, however, some omissions of  
21 significance in the County's environmental review which  
22 are of concern to the Court, and which are within the  
23 Court's SEPA jurisdiction.

24 The first such omission relates to ground water  
25 issues. It has been over ten years since any

1 comprehensive study has been done of these issues for  
 2 Guemes Island, or since interim regulations relating to  
 3 seawater intrusion were adopted by the County. Even ten  
 4 years ago the studies predicted serious problems were  
 5 fast approaching. Other San Juan islands with similar  
 6 hydrogeological characteristics have identified these  
 7 same problems, and two of those islands, Lopez and  
 8 Orcas, have been forced to impose temporary building and  
 9 occupancy moratoriums.

10 Skagit County must realistically foresee the same  
 11 crisis for Guemes Island, and should be preparing for  
 12 it. But the County has not even started a long-term  
 13 watershed resource planning study for Guemes Island as  
 14 provided for in RCW 90.82.

15 The environmental checklist for the ferry schedule  
 16 project has two paragraphs relating to ground water and  
 17 associated impacts. The County filled in these  
 18 paragraphs by simply stating that no such impacts would  
 19 result or merited consideration. This answer certainly  
 20 highlights the County's generalized blind spot relating  
 21 to the ground water crisis facing Guemes Island, and the  
 22 lack of serious long-range planning with respect to the  
 23 same. However, the cause and effect relationship  
 24 between extending the ferry schedule and exacerbating  
 25 the ground water crisis is speculative at best. The

1 nexus between the two is dependent upon the theory that  
2 a commute hour ferry schedule will induce accelerated  
3 population growth, and change the demographics of the  
4 island's residents to such an extent that ground water  
5 resources will be adversely affected. Without such a  
6 nexus, a generalized reference to the ground water  
7 situation on Guemes Island, even a reference which is  
8 based upon 10-year-old data, is legally sufficient for a  
9 non-project action such as is proposed here.

10 4.4 Therefore, the Court must next look closely at  
11 the environmental checklist to see if the theory of  
12 induced growth was adequately acknowledged, considered  
13 and evaluated by the County.

14 There are two paragraphs in the environmental  
15 checklist which relate to issues of induced growth of  
16 vehicular trips, ferry usage and land development.  
17 However, these paragraphs conclude that these are not  
18 issues triggered by a mere extension of a ferry  
19 schedule. Therefore, no consideration or analysis was  
20 performed. Induced growth resulting from a commute hour  
21 ferry schedule was basically off the County's radar  
22 screen, and was not brought to the attention of the  
23 County Commissioners when they proceeded to adopt the  
24 resolution extending ferry service in 2006.

25 4.5 This potentially serious omission, however,

1 must be put into the context of the actual wording of  
2 the resolution adopted in 2006. That resolution only  
3 approved a two-year trial program of evening ferry  
4 service on weekdays. The trial period automatically  
5 expires on June 30, 2008, and the ferry schedule then  
6 automatically reverts to the previous schedule with the  
7 last ferry leaving for Guemes Island at 6:00 p.m. on  
8 weekdays.

9 The resolution specifically contemplates that at  
10 the end of the trial period, County staff will evaluate  
11 the results of the schedule change and report back to  
12 the Board of County Commissioners before any further  
13 action is taken.

14 This somewhat vague plan for evaluation and action  
15 at the end of the trial period was fortunately  
16 elaborated upon by the County's deputy prosecuting  
17 attorney, Mr. Arne Denny, at the conclusion of the trial  
18 of this case last week. I had Mr. Denny's remarks  
19 transcribed, and am filing the transcription as part of  
20 the record of this case. The significance of these  
21 remarks is that Mr. Denny, as a speaking agent for the  
22 County, clearly stated that the original environmental  
23 checklists and DNS documents dealt only with a temporary  
24 two-year trial ferry schedule change; that if this is  
25 ever converted to a permanent schedule change it will be

1 a whole new action requiring another complete  
2 environmental review with either a new DNS or, more  
3 probably, an EIS; the original DNS documents could no  
4 longer be relied upon.

5 These remarks are consistent with my earlier  
6 conclusion relating to the speculative nature of the  
7 induced growth theory. The first, and most appropriate  
8 time to meaningfully evaluate whether a ferry schedule  
9 change will or will not probably induce growth and  
10 development on Guemes Island is after a controlled  
11 experiment is conducted for a two-year trial period.  
12 That is preferable to some isolated and theoretical  
13 consultant's study such as was done for Anderson Island  
14 and later proved to be 100 percent wrong and  
15 misleading.

16 4.6 Therefore, I will hold the County to Mr.  
17 Denny's admissions and helpful elaborations. At the end  
18 of the two-year trial period the ferry schedule change  
19 will automatically revert to its former 6:00 p.m.  
20 cut-off, and no evening weekday extension will again be  
21 considered unless and until there is a new, thorough,  
22 and SEPA compliant environmental review, including,  
23 among other issues, the probability of induced growth,  
24 and the direct and indirect adverse environmental  
25 impacts resulting from the same.

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5. On the basis of the foregoing, this Court hereby enters the following conclusions:

5.1 The Skagit County staff and responsible SEPA official considered all known and non-speculative environmental impacts of an extended ferry schedule for the Guemes Island ferry over a two-year trial period of time. This consideration was in prima facie compliance with SEPA.

5.2 The DNS issued by Skagit County's responsible SEPA official for said action was not clearly erroneous. It is hereby AFFIRMED subject to the following condition:

At the end of the two-year trial period, on June 30, 2008, the ferry schedule change will automatically revert to its former 6:00 p.m. cut-off, and no weekday evening extension will again be considered unless and until there is a new, thorough, and SEPA compliant environmental review, including, among other issues, the probability of induced growth, and the direct and indirect adverse environmental impacts resulting from the same.

This condition, however, is to be narrowly construed, and does not relate to other routine ferry schedule changes which have no arguable growth inducing

1 features.

2 5.3 The plaintiffs' request for injunctive relief  
3 against the County is denied without prejudice.  
4

5 That concludes the Court's decision in this case.  
6 If there are questions or a need for clarification, you  
7 may now bring those to my attention.

8 MS. STEEL: Would you agree to retain jurisdiction  
9 in this case if they extend the ferry service after the  
10 two-year period without appropriate SEPA analysis in our  
11 view?

12 THE COURT: Which would be another year from now,  
13 you mean?

14 MS. STEEL: A year from now, yeah.

15 THE COURT: Do you have any comments on that, Mr.  
16 Denny?

17 MR. DENNY: Yes, Your Honor. I don't think that's  
18 appropriate. Should the County take a new action, it  
19 will be a new action. I think what the Court has done  
20 is set up a framework that establishes a finding that  
21 can be used later on. From what I've told the Court,  
22 and the way the Court has framed what I said to the  
23 Court I think is accurate, and I think the County's  
24 going to abide by that. So there's probably -- and,  
25 also, you've made it -- again, made an effort to make

1 that binding on the County, which I appreciate. I don't  
2 think there's a need to retain jurisdiction. If we take  
3 another SEPA action, that's another action subject to  
4 another appeal, that action should be -- and we would  
5 look forward to whether or not we've done the things  
6 that the Court set out here.

7 MS. STEEL: I'm not suggesting that you retain  
8 jurisdiction in the sense that we just come back here  
9 when they adopt something. I'm asking that if we file a  
10 new appeal on the new DNS, can we bring it back to this  
11 Court. Because of the knowledge that this Court has, it  
12 would be judicially efficient for this Court to look to  
13 see if the criteria that it set had been met.

14 THE COURT: All right. You're correct, you would  
15 have to file a new lawsuit.

16 MS. STEEL: Yes.

17 THE COURT: And that would challenge whatever the  
18 County does in June of 2008. So it's hard for me to  
19 retain jurisdiction over a new lawsuit that hasn't even  
20 been filed yet. So I won't use that terminology, but I  
21 will say that if a new lawsuit is filed raising these  
22 same issues next year, that case should be preassigned  
23 to me because of my background on the issues.

24 MS. STEEL: Thank you, Your Honor.

25 THE COURT: All right. I would like the attorneys

1 to put together my decision in written format so that I  
2 may sign the same and make this a final order of the  
3 court. Can the two of you work on that and present it  
4 ex parte, hopefully, with both of your signatures  
5 affixed?

6 MR. DENNY: What I'm going to do, Your Honor, that  
7 was very detailed, and my handwriting is probably not  
8 even legible. Of course, I will talk with Bill and get  
9 a transcript, and I will prepare that and have it sent  
10 down to Mr. Steel for review.

11 THE COURT: That's fine.

12 MR. DENNY: It's going to take me a little bit of  
13 time.

14 THE COURT: Very well. Anything further?

15 Thank you for a well-presented case. Court is in  
16 recess.

17 (The proceedings were concluded.)  
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