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12 **IN THE SUPERIOR COURT FOR SNOHOMISH COUNTY, WASHINGTON**

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15 FRIENDS OF GUEMES ISLAND, a
16 Washington non-profit corporation,

17 Plaintiff,

18 vs.

19 SKAGIT COUNTY BOARD OF
20 COUNTY COMMISSIONERS and
21 SKAGIT COUNTY,

22 Defendants.
23

NO. 06-2-09088-6

SKAGIT COUNTY'S RESPONSE OPPOSING
FRIENDS' APPLICATION FOR A WRIT OF
PROHIBITION

24
25 COMES NOW the Skagit County Prosecuting Attorney, Thomas E. Seguine, or his
26 deputy, and hereby opposes the application for a writ of prohibition by Friends of Guemes Island
27 (Friends).

28 **ISSUE**

29 Does the court have jurisdiction to hear Friends' application for a writ of prohibition
30 where the county did not exceed its jurisdiction when it adopted a resolution expanding the

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1 Monday through Thursday operating hours of the Guemes Island ferry, a ferry that is owned and
2 operated by Skagit County?

3 Does Friends have an adequate remedy at law under any one of the numerous causes of
4 actions that it has initiated in its complaint such that a writ of prohibition should be denied?

5 FACTS

6 Skagit County owns and operates the Guemes Island ferry, which operates between
7 Anacortes and Guemes Island. See Resolution R20060184, exhibit 1 of Friends' Verified
8 Complaint. The county has historically set the ferry's schedule. See Resolution R20060184,
9 exhibit 1 of Friends' Verified Complaint.

10 On May 30, 2006, the Skagit County Board of County Commissioners adopted
11 Resolution R20060184 to amend the ferry's schedule effective July 1, 2006. The resolution
12 extended the ferry operating hours to add five additional runs (at 6:30 p.m., 7:00 p.m., 8:30 p.m.,
13 9:00 p.m. and 10:00 p.m.) on Monday through Thursday. The pre-existing Monday through
14 Thursday (from 6:30 a.m. to 5:45 p.m.), the Friday and Saturday ferry runs (from 6:30 a.m. to
15 12:00 midnight), and the Sunday and holiday runs (from 7:00 a.m. to 10:00 p.m.) remained
16 unchanged.

17 The county determined that an environmental checklist was not required for changes and
18 did not complete one.

19 ANALYSIS

20 **A. The trial court lacks jurisdiction under RCW 7.16.190 because the county did not**
21 **exceed its jurisdiction when it extended the operating hours of the Guemes Island Ferry.**

22 The writ of prohibition is the counterpart of the writ of mandate. It arrests
23 the proceedings of any tribunal, corporation, board or person, when such
24 proceedings are without or in excess of the jurisdiction of such tribunal,
25 corporation, board or person.

26 RCW 14.16.290.

27 A writ of prohibition "may be invoked to prohibit judicial, legislative, executive, or
28 administrative acts if the official or body to whom it is directed is acting in excess of its power.
29 *City of Bellevue v. East Bellevue Community Municipal Corp.*, 119 Wn. App. 405, 407-08, 81
30 P.3d 148 (2003).

1 However, prohibition is not favored and a court has no authority to issue a writ of
2 prohibition unless (1) a state actor is about to act in excess of its jurisdiction, and (2) the
3 petitioner does not have a plain, speedy, and adequate legal remedy. RCW 14.16.300; *Brower v.*
4 *Charles*, 82 Wn. App. 53, 57, 914 P.2d 1202 (1996). A court cannot issue a writ of prohibition
5 unless both of these factors are met. *Id.* at 57-58.

6 1. Friends' application for a writ of prohibition should be denied because Skagit County has
7 statutory authority to set a schedule for its county operated ferry.

8 The statutory writ of prohibition is not a proper remedy where a board is exercising its
9 jurisdiction in an allegedly erroneous manner. *Coughlin v. Seattle School Dist. No. 1*, 27 Wn.
10 App. 888, 892, 621 P.2d 183 (1980) overruled on other grounds *Haynes v. Seattle School Dist.*
11 *No. 1*, 111 Wn.2d 250, 254, 758 P.2d 7, 48 Ed. Law Rep. 671 (1988).

12 The facts in *Coughlin* are instructive. Prior to making a decision on the closure of several
13 schools, the Seattle School District prepared an environmental impact statement (EIS). *Coughlin*
14 criticized the draft EIS. Despite some objections, the school district closed five schools.
15 *Coughlin* appealed, citing, among other things, defects in the EIS. She also sought writs of
16 certiorari, mandamus and prohibition. *Coughlin*, 27 Wn. App. at 185. *Coughlin* claimed that the
17 school board's decision to close the five schools was made in an erroneous manner because of
18 the alleged failure's to comply with SEPA. There is no evidence that *Coughlin* claimed that the
19 school board lacked the power to close schools, and the court implicitly determined that the
20 school board had such power. The court then determined that a writ of prohibition was not a
21 proper remedy for a claim alleging that an erroneous procedure was followed to do something
22 that the school board had jurisdiction to do. *Coughlin*, 27 Wn. App. at 892.

23 Here, as in *Coughlin*, the county has jurisdiction to make the decision that is being
24 opposed. As school boards may decide to close schools, Skagit County has jurisdiction to change
25 the schedules of its county owned and operated ferry.

26 Any county may construct, condemn, or purchase, operate and maintain
27 ferries or wharves at any unfordable stream, lake, estuary or bay within or
28 bordering on said county, or between portions of the county, or between
29 such county and other counties, together with all the necessary boats,
30 grounds, roads, approaches, and landings appertaining thereto under the
direction and control of the board of county commissioners free or for toll
and as the board shall by resolution determine.

1 RCW 36.54.010. Also see *State ex rel. King County v. Murrow*, 199 Wash. 685, 93 P.2d 304
2 (1939) (Public ferries operated or maintained by county are part of county's road system.)

3 The statutory authority to operate a ferry necessarily includes the power to set its
4 operating hours. See *Litz v. Pierce County*, 44 Wn. App. 674, 723 P.2d 475 (1986) (“County was
5 not estopped from curtailing ferry service to island.”) If a county may curtail ferry service, it may
6 also expand the service.

7 Friends erred when it claimed as grounds for its application that the county is “without
8 authority to adopt and implement Resolution #20060184.” This allegation was not alleged as a
9 fact, but it is still in direct conflict with the facts contained in Resolution R20040184, which
10 Friends attached to its Verified Complaint. Further, Friends provided no evidence to indicate that
11 RCW 36.54.010 does not apply. In its Verified Complaint, Friends did not allege¹ that the county
12 lacks jurisdiction to set the schedules of its own county owned and operated ferry. Instead,
13 Friends alleges:

14 10.5 As set forth in Section 2, the Board of County Commissioners and
15 Skagit County are proceeding without or in excess of the jurisdiction of
16 this board and municipal corporation by taking actions to adopt Resolution
17 #R20060184 and implement an extended weekday operating schedule for
18 the Guemes ferry in violation [of] SEPA as implemented by statewide
SEPA rules and local SEPA regulations.

19 Verified Complaint at 13. Friends continued:

20 10.7 Here, the Board of County Commissioners and Skagit County have
21 taken actions in excess of their authority under WAC 197-11-070(1) and
22 SCC 14.12.020 (adopting WAC 197-11-070 by reference). Unless an
23 alternative writ of prohibition is issued . . . Plaintiff and its members will
schedule will be implemented through an unlawful process.

24 Verified Complaint at 14.

25 Obviously, given RCW 36.54.010, Friends cannot – and did not – allege as fact that the
26 county cannot set the schedule of its county owned and operated ferry. Friends’ inability to
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29 ¹ A writ of prohibition must be supported by facts supplied in an affidavit. RCW 14.16.300. Friends’ Application for
30 Alternative Writ of Prohibition is not supported by an affidavit. Instead, Friends refers the court to its “Verified
Application.” See Application for Alternative Writ at 2. The county assumes that Friends intended to refer the court
to its Verified Complaint since it did not attach a “Verified Application”.

1 allege that the county did not have statutory authority – jurisdiction – to set a ferry schedule
2 should cause the court to summarily deny its application.

3 Further, Friend’s failure to allege that the county did not have jurisdiction to set the
4 ferry’s schedule reveals their complaint to be a complaint about compliance with the State
5 Environmental Protection Act (SEPA). As in *Coughlin*, the writ of prohibition is not a remedy
6 for claims of alleged errors concerning compliance with SEPA when the county has jurisdiction
7 to make the decision that it did.

8 2. Friends’ application for a writ of prohibition should be denied because it has plain,
9 speedy, and adequate legal remedies.

10 Friends’ allegation that “[a] Writ of Prohibition may be issued when there is no adequate
11 remedy at law,” Verified Complaint at 13, is not a claim that Friends does not have an adequate
12 remedy at law. This allegation merely recites the law.

13 Actually, Friends never claims that they do not have an adequate remedy at law. The
14 closest that Friends comes to such a claim is the allegation that “its members will be deprived of
15 meaningful relief because the extended weekday ferry schedule will be implemented through an
16 unlawful process.” Verified Complaint at 14. Correctly, Friends does not claim that it does not
17 have an adequate remedy at law that would support it application for a writ or prohibition:

18 What constitutes a plain, speedy, and adequate remedy depends on the
19 facts of the case and rests within the sound discretion of the court in which
20 the writ is sought. A remedy may be adequate even if attended with delay,
21 expense, annoyance, or some hardship. There must be something in the
22 nature of the action that makes it apparent that the rights of the litigants
23 will not be protected or full redress afforded without issuance of the writ.
24 An appeal is an adequate remedy if: (1) the error was so clear that reversal
would be "unquestioned" if the case were already before the superior court
on a post-judgment appeal; and (2) the litigation will terminate once the
error is corrected.

25 *City of Olympia v. Thurston County Board of Commissioners*, 131 Wn. App. 85, 96, 125 P.3d
26 997 (2005) (citations omitted.) A writ of prohibition generally will not lie when the aggrieved
27 party has an adequate appellate remedy. *See Mutual of Enumclaw Ins. Co. v. Human Rights*
28 *Comm'n*, 39 Wn. App. 213, 217, 692 P.2d 882 (1984) (citing *Barnes v. Thomas*, 96 Wn.2d 316,
29 319, 635 P.2d 135 (1981).)

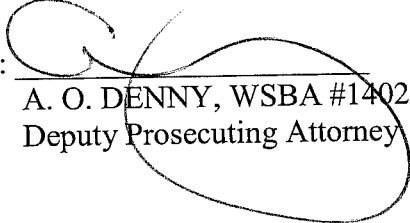
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Friends seem to ignore the fact that they have also sought relief under a statutory writ of review, a constitutional writ of review, an appeal under RCW 43.21C.075, and a stay. Friends' appeal under RCW 43.21C.075 is exactly the adequate appellate remedy contemplated by the legislature for Friends' keystone claims alleging noncompliance with SEPA. See RCW 43.21C.075(1) ("The State Environmental Policy Act provides a basis for challenging whether governmental action is in compliance with the substantive and procedural provisions of this chapter.") In addition to the appellate remedy under SEPA, any one of Friends' several causes of action may provide meaningful relief.²

CONCLUSION

The Court should deny Friends' application for a writ of prohibition.
RESPECTFULLY SUBMITTED this 19th day of June, 2006.

THOMAS E. SEGUINE
PROSECUTING ATTORNEY

By: 
A. O. DENNY, WSBA #14021
Deputy Prosecuting Attorney

² The county disagrees that any of Friends' causes of action has merit and will so state once it files an answer; however, at this point, the mere fact that Friends has made claims under these several causes of action must indicate that Friends believes each is capable of providing a plain, speedy, and adequate remedy. See CR 11, RCW 4.84.185, RCW 43.21C.075(9) (costs may be awarded for unfounded and frivolous actions.)