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Judge James H. Allendoerfer

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

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

Plaintiff,

v.

SKAGIT COUNTY BOARD OF
COMMISSIONERS, and SKAGIT
COUNTY,

Defendants.

NO. 06-2-09088-6

ORDER RE: FRIENDS' SUMMARY
JUDGMENT MOTION

This matter comes before this Court on Friends of Guemes Islands' ("Friends")
Verified Complaint for Writ of Prohibition, Writ of Review, Constitutional Writ of
Certiorari, Appeal under RCW 43.21C.075, and Stay (with attachments) ("Verified
Complaint") and Friends' Summary Judgment Motion Re: Noncompliance with SEPA
("Motion"). The Court has considered Friends' Verified Complaint, Friends' Motion,
Friends' Memorandum in Support of its Summary Judgment Motion (with attachments),
Skagit County's Response Opposing Friends' Motion for Summary Judgment, Declaration

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in Support of Skagit County’s Response Opposing Friends Motion for Summary Judgment, Supplemental Verified Complaint for Writ of Prohibition, Writ of Review, Constitutional Writ of Certiorari, Appeal under RCW 43.21C.075, and Stay (“Supplemental Verified Complaint”), Friends Reply in Support of Its Summary Judgment Motion, Second Declaration of Gerald Steel (Declaration of Glen Veal attached), and Declaration of Barbara Rudge.

This Court has heard oral argument from Gerald Steel, counsel for Plaintiff Friends of Guemes Island and from A.O. Denny, counsel for Skagit County. Being thus and otherwise fully advised of the premises hereof, this Court now:

ORDERS, ADJUDGES, AND DECREES:

The Friends of Guemes Island’s Motion is granted in part and this Court finds that Skagit County violated WAC 197-11-070(1) when Skagit County adopted Resolution #R20060184 and implemented scheduled weeknight commuter-hour ferry service for the Guemes Island Ferry without a final Determination of Non-Significance (“DNS”) or a final Environmental Impact Statement (“EIS”). This Court finds that Resolution #R20060184 is a non-project action that is subject to the threshold determination requirements of the State Environmental Policy Act (“SEPA”) and it is not categorically exempt from these requirements.

During the pendency of these proceedings, Skagit County prepared an environmental checklist and the Responsible Official issued a DNS. Friends timely-filed its Supplemental Verified Complaint challenging this DNS (and the checklist upon which it relies). This

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Court has separately entered an agreed Order to authorize this Supplemental Verified Complaint.

This Court heard conflicting views from the parties as to whether or not there are any administrative remedies that Friends must exhaust before this Court can further review Skagit County's compliance with SEPA regarding the subject non-project action. This Court has determined that an administrative appeal filed by Friends by August 21, 2006 will be timely-filed. If Friends files such an appeal and if the Examiner determines that he does not have jurisdiction to hold an evidentiary hearing on the adequacy of the subject DNS, then this Court will proceed with such an evidentiary hearing itself. If the Examiner determines that he has jurisdiction and holds an evidentiary hearing on the adequacy of this non-project DNS then, at Friends request, I will order the County to provide a copy of the record to this Court, and I will review the Examiner's final decision.

In order to void Resolution #R20060184 and stay the scheduled weeknight commuter-hour ferry service for the Guemes Island Ferry, I must find that it is likely that the scheduled weeknight commuter-hour ferry service will have more than a moderate adverse impact on the environment and that an EIS is required. King County v. Boundary Review Board, 122 Wn.2d 648, 667, 860 P.2d 1024 (1993). I am not prepared to consider such an finding until after I have reviewed the evidence presented at an evidentiary hearing. The portion of Friends' motion that requests that Resolution #R20060184 be voided and the scheduled weeknight commuter-hour ferry service for the Guemes Island Ferry be stayed is denied at this time without prejudice. This Court retains jurisdiction regarding further review

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of scheduled weeknight commuter-hour ferry service for the Guemes Island Ferry.

Signed this _____ day of _____, 2006.

Judge James H. Allendoerfer

Presented by:

GERALD STEEL, PE

Gerald Steel, WSBA #31084
Attorneys for Friends of Guemes Island

APPROVED FOR ENTRY; COPY RECEIVED

SKAGIT COUNTY PROS. ATTY.

Attorneys for Board of Skagit County
Commissioners and Skagit County

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