

February 7, 2008

To: Gary R. Christensen, AICP
SEPA Responsible Official
Skagit County Planning and Development Services Dept.
1800 Continental Place
Mount Vernon, WA 98273

Re: Comments on The Environmental Assessment Process for the Proposed
Changes to the Guemes Island Ferry Schedule

From: Stephen D. Orsini
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The Environmental Assessment (EA): Background & Overview on page 2, paragraph 5 postulates three 'schedule alternatives' two of which involve extended service to 11:00 pm. The document goes on to make a number of statements about these alternatives and their impact such as the following:

“ . . . all of the alternatives also assure that the critical areas on Guemes Island, including critical aquifer recharge areas, will continue to be identified and protected through implementation of adopted polices and critical areas regulations. “

The problem with this statement is that the aquifer recharge areas on Guemes are not known and the current policies do nothing to protect critical areas.

According to the Skagit County Code (SCC) Critical Areas Ordinance. Guemes Island is designated a “Sole Source Aquifer Area” under the Federal Safe Drinking Water Act which qualifies it as a Category 1 aquifer recharge area per SCC 14.24.310 (1) (a). Category 1 areas are those “ . . . in need of special aquifer protection where a proposed land use may pose a potential risk which increases aquifer vulnerability.” Paragraph 2 of this section goes on to state “Category 1 areas are shown on the Aquifer Recharge Area map.” But the County has no Aquifer Recharge Area map. This difficulty is resolved by the convoluted language of Section 14.24.010, “Introduction to the Critical Areas Ordinance”:

“Critical areas are dynamic natural systems that are part of Skagit County’s changing landscape. While critical areas are present throughout the County, their exact location cannot be mapped accurately enough for regulatory purposes.”

Instead of mapping aquifer recharge areas, the County uses definitions:

“Critical areas will be designated by definition and then classified through site assessments so that they can be identified using scientifically based criteria and protected.”

The actual definition in use by the County for aquifer recharge areas is the 100 ft diameter area around a wellhead. The fact is that the County has no idea where the Guemes Island aquifer recharge areas are. Therefore the notion in the EA that the proposed ferry schedule alternatives “. . . assume the critical areas on Guemes Island, including critical aquifer recharge areas, will continue to be identified and protected through implementation of adopted policies and critical areas regulations.” is, to be polite, completely meaningless.

While the 1994 study, USGS Hydrogeology and Quality of Ground Water on Guemes Island, was of insufficient scope to locate the recharge areas on Guemes Island, the USGS does have the scientific capability to identify aquifer recharge areas as accomplished in other studies in Northwest Washington.

Here it must be noted that Skagit County has not sponsored any of the major scientific studies on Guemes contrary to the claims of their attorney, A.O Denny in the case of Friends of Guemes Island vs. The Skagit County Board of Commissioners in which he writes in the October 5, 2007 Decision:

“It cannot be argued that the county failed to consider the environmental impacts covered in this extensive list of studies and documents. After all, the county itself generated or commissioned 100 percent of the studies and documents itself.”

The request of USGS to do the initial hydrogeology study was made by a group of islanders in starting in 1990. On February 20, 1991, the Skagit Valley Herald ran an article titled *County wiggles off hook in funding for Guemes groundwater study*. To quote from that article;

“ The Skagit Conservation District Board of Supervisors relieved the County Commissioners of a difficult financial decision Tuesday.

District Supervisors agreed to apply for the \$101,000 grant from the state Department of Ecology to help pay for a comprehensive groundwater study on Guemes Island.

The district action means the county is not the lead agency and does not have to come up with a 25 percent match, or \$50,500, “ said Marianne Kooiman, a member of the Guemes Island Resource Committee.

'It sure looks like it's going to take us off the hook for spending any county money at this point,' Commission Chairman Bill Vaux said afterward. "

Another example of how the County has gotten itself "off the hook" for any meaningful action regarding the degradation of Guemes Island's Sole Source Aquifer is contained in SCC Critical Areas Ordinance, section 14.24.350 Aquifer Recharge Area Mitigation. Item (2) Seawater Intrusion Mitigation states: "Mitigation for a single-family residence shall be in conformance with the "Seawater Intrusion Policy" in effect under Skagit County Code 12.48." Skagit County has no Seawater Intrusion Policy in section 12.48 or anywhere else.

After the USGS 1994 study identified a number of seawater intrusion areas on Guemes Island, the Board of County Commissioners did convene a Seawater Intrusion Committee. In addition to a few islanders, the Committee had a healthy cross section of well drillers, real estate agents and developers. The Committee did produce the Interim Seawater Intrusion Resolution #15570 which was adopted on December 12, 1994 by the County Commissioners but never implemented.

The County has sponsored no science to define the capacity of the island's aquifers or locate its aquifer recharge areas. The unwritten policy is to continue business as usual. This has been done in the name of growth and justified through reference to property rights. This unwritten policy is best summed up in the order of priority set in the sentence from the current EA, page 3, Paragraph 1:

"The (schedule) alternatives will be considered in light of their ability to accomplish the objective of efficiently serving growth and development anticipated under the previous adopted land use pattern, as well as their environmental impacts."

In order to obtain a building permit today on Guemes you must have a well producing clean, potable water at the amount of 350 gallons per day per household. No alternate source of water collection is allowed. There is no requirement to determine impact on surrounding wells. There is no cumulative study of the impact of this new well on the carrying capacity of the aquifer, which was not postulated in the original USGS study. This approach ignores the water rights and thus the property rights of the existing well owners. What Skagit County favors then is developer rights not property rights.

Favoritism of developer or new building rights has resulted in a series of failed wells on Guemes Island which continues to this day. Since the USGS Study was completed in 1994, the largest system failure involved the two wells serving the Potlach Development on West Beach. As it was a Category A system, it was monitored by the State Department of Ecology. Only the County has jurisdiction

over individual wells. By 1991, the two wells serving the 30 lot Potlach Development had reached chloride levels of 397 mg/l and 704 mg/l respectively. The maximum contaminate level for chloride set by the Federal EPA and adopted by Washington State and Skagit County is 250 mg/l. These high chloride levels were caused by seawater intrusion due to heavy pumping on the aquifer.

Overuse of island aquifers has dramatic effects. The reason is that the aquifer, in permeable ground, naturally forms a domed lens of fresh water, that floats on the seawater. These naturally occurring lenses are higher in the center of the island and lower toward its periphery where about 80 % of the homes and wells on Guemes are located. Due to the difference in density of heavier seawater and lighter fresh water, for each 1 foot of head height reduction of the aquifer the seawater moves upward about forty feet. What this science meant for Potlach was that the State EPA gave notice in 1995 that they had to shut their two wells down and seek another source of potable water.

After much work, under the threat of loss of water and the concomitant loss in value of their homes, Potlach achieved installation of a complex and expensive Reverse Osmosis system which takes water from the sea and yields fresh water. Of interest is that Skagit County runs this system as a PUD. What was lost and never compensated was the owners' original water rights. In the face of this inequity, Potlach pleaded for the County to do something about all the individual wells going in on the island that were not then, and are not today, regulated for impact on the aquifer. The following are quotes from a letter from the Potlach Beach Water Association Board to the Board of County Commissioners dated April 17, 1995:

“As you know, Guemes Island has seawater intruding into many wells, particularly on the north end of the island. “

“The Department of Ecology has been enforcing their responsibility to protect the state's aquifers by placing deadlines for our water association to reduce the chloride level from our wells. As of our last meeting with the DOE, we have until May 1st to present a plan to reduce the chloride levels or we will have to shut down our system from May to October of every year.”

“We are now faced with some sobering and expensive alternatives to meet the state requirements.”

“The irony in this situation is that we represent only a tiny fraction of the households drawing from the aquifer and yet because of the vagaries of regulation we fall under the state ax. Individual wells and small community water systems are exempt from state regulations, although

they represent more than 90% of the household water supplies on the island.”

“The Department of Ecology, recognizing the evidence of increasing seawater intrusion and the uneven management of the aquifer, wrote Mr. John Thayer of the Skagit County Health Department on May 27, 1994, strongly asking the county to limit new well construction on the north end of the island. Only the county has the power to control new individual wells and small community systems.”

“We feel that one positive action to give us a chance to reduce our wells’ chloride would be for the county to declare a moratorium on new well development on Guemes, at least on the north end of the island, in compliance with DOE’s request.”

The letter from Potlatch as well as from the State DOE, (both attached), were ignored except that the County did impose the toothless requirement of having the well drillers notify the Health Department before they drill a well on the island’s north end. Then they drill the well.

If one defines a well’s failure as the point at which the owner succeeds in moving the well inland or installs some alternate system like reverse osmosis, seven wells or well systems have failed on North Beach due to seawater intrusion since the completion of the USGS study. They are The Alverson Tract Owners Association Well, the Tucker Well, the McCracken Well, the Knudsen Well, the Orsini Well and the Petersen Well; this last only about three months ago.

For some 17 years then the County has pursued a policy that ignores protection of the island’s fresh water aquifer resource. In 2006 the County extended the hours of operation of the Guemes Island Ferry denying any relationship between growth and transportation, a stance contrary to all planning literature and the State’s Growth Management Act. The County has neglected its fiduciary responsibility to the residents of Guemes Island causing those that have failed wells threat to their health and substantial economic hardship. The loss of a well is a taking of the owner’s water rights. The continued failure of wells is prima fascia evidence that the County continues policies, including extension of the ferry schedule, designed solely to accommodate growth while disregarding environmental impact. The EA states on page 3:

“ . . .the (schedule) alternatives assume that the adopted rural and resource land use designations and zoning applied to Guemes Island will remain essentially unchanged, giving the island a capacity for approximately 1,584 dwelling units (i.e. 957 future dwelling units , in addition to the 627 existing units.)”

The County's growth projections, potentially more than doubling the number of wells, ignores the questions of the carrying capacity of the island aquifers, where they recharge and the fact of their continued degradation.

It is time for the County to abide by the law and discontinue policies that degrade a designated Sole Source Aquifer. It is time for the County to do the study that defines the island's aquifer recharge areas as recommended in the recently completed, but not yet adopted, Guemes Island Sub-Area Plan. It is time for the County to abandon the superficial EA process which, through its very act of proposing two new alternative extended schedules, subverts the referenced Court Decision, which states on page 14:

“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 pm 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.”

In summary, it is time for the County to do a full Environmental Impact Statement that ensures the development of policies that protect the rights and health of the existing Guemes Island property owners.

Verbally added at the end but not included in the letter is the reference to WAC 197-11-926(2) in reference to the fact that Gary Christensen's department is sponsoring the EA process and he has designated himself the SEPA Responsible Official to make the determination of significance, or non-significance, relative to the need for a full EIS. That WAC states: "Whenever possible people carrying out SEPA procedures should be different from agency people making the proposal." Our situation here is like asking the barber if you need a hair cut.