



October 14, 2009

Shireene Hale, Senior Planner  
San Juan County Community Development and Planning Department  
P.O. Box 947  
Friday Harbor, WA 98250

Re: SEPA Comments -- Application for Site-Specific Redesignation for North Bay Barge Landing Facility, Tax Parcel No. 352412001

Dear Ms. Hale:

Friends of the San Juans ("Friends") respectfully submits the following comments in response to the State Environmental Policy Act ("SEPA") Determination of Nonsignificance ("DNS") that San Juan County ("County") issued for the County's Application for Site Specific Redesignation for North Bay Barge Landing Facility. Friends understands that the County intends to withdraw that Application in favor of the identification/redesignation of the proposed barge landing facility in the County's proposed Shoreline Essential Public Facilities ordinance. However, in the absence of public notice to that effect, Friends lodges these SEPA comments to identify certain omissions in the barge landing siting process that render the SEPA review fatally flawed.

Friends urges the County to withdraw the DNS because the Applicant's Environmental Checklist does not offer information sufficient to reach a threshold decision, and because the scope of impacts associated with the proposed barge landing likely demands the creation of an Environmental Impact Statement ("EIS"). To the extent that the County alters course and expressly designates the North Bay area as a barge landing site in its Essential Public Facilities Ordinance, Friends asks that this comment letter apply to that process with the additional request to publish notice of that substantially-revised ordinance so that it can receive informed public comment.

**A. Background.**

The San Juan County Department of Public Works ("Public Works") applied during the summer of 2009 for a zoning redesignation of a parcel of land that the County owns along the northern shore of Griffin Bay, San Juan Island, Tax Parcel No. 352412001. The County subsequently issued a DNS for the barge landing redesignation.

The redesignation would change the zoning designation for that parcel from rural farm forest to essential public facility. The purpose of the redesignation is to allow for the use of that site as a barge landing and to permit expansion in the scope and quantity of the use of the site. The Application indicates that the barge landing could expand to accommodate increased

shipments of aggregate, houses, asphalt, propane, diesel, and vehicles. Friends understands that the County currently uses the barge landing for three or fewer aggregate shipments each year, and the storage of such aggregate. It is not clear that the County obtained all of the required permits before it commenced use of the property in that manner.

Historically, the proposed barge landing site was used by Friday Harbor Sand and Gravel Company and LaFarge North America, Inc. to load barges with aggregate via a pier that extended into Griffin Bay. At some point, the shoreline of the property was altered with the addition of rock material on the beach. Another barge landing facility purportedly operated at the west end of Jackson Beach, of which the parcel in question forms the eastern portion, and accommodated storage and transportation of materials such as houses, asphalt, and large equipment.

The parcel proposed for the barge landing currently serves recreational purposes along with the adjacent parcel, commonly referred to as Jackson Beach. Dog owners meet with each other on the beach and walk their dogs along the beach. Residents and visitors also beachcomb along the shoreline of the parcel.

The barge landing site and vicinity is also home to several environmentally-sensitive areas, including eelgrass, potential surf smelt spawning habitat, and Pacific sand lance spawning habitat. Although the County's Environmental Checklist identifies a possible smelt spawning area nearby, it does not note that eelgrass exists in the nearshore area of the proposed barge landing site, that documented surf smelt spawning habitat exists to the west of the site, that the site itself may constitute surf smelt spawning habitat, and that documented Pacific sand lance spawning habitat exists some distance to the west of the parcel.

**B. The DNS is not supported by the record, and should be withdrawn.**

The County must withdraw the DNS and consider the environmental impacts that would result from an approved Application. The DNS does not meet the requirements promulgated under SEPA because: (1) the Environmental Checklist is incomplete and thus cannot support a threshold determination; and (2) the project information that is available indicates that it warrants an EIS.

The State legislature enacted SEPA with a basic purpose to "require local government agencies, including counties, to consider total environmental and ecological factors to the fullest extent when taking 'major actions significantly affecting the quality of the environment.'" *Sisley v. San Juan County*, 89 Wn.2d 78, 82, 569 P.2d 712 (1977) (citing RCW 43.21C.030(2)(c)). To determine whether an environmental impact statement will be required, the government must perform a two-step analysis that asks whether: (1) legislation or other major action has been proposed; (2) that will significantly affect the quality of the environment. *Id.*; WAC 197-11-330. The proposed barge landing designation is legislation that would also qualify as a major action.

Where the details of a project are sufficiently certain to allow review of its environmental impacts, the County cannot postpone that review merely because future environmental

approvals may be required, and the County's threshold determination must thus evaluate environmental impacts known at the time it issues. WAC 197-11-055. SEPA demands that an agency prepare its threshold determination and environmental impact state, if required, "at the earliest possible point in the planning and decision-making process, when the principal features of a proposal and its environmental impacts can be reasonably identified." WAC 197-11-055(2). Thus, SEPA mandates comprehensive environmental review as early in the process as possible to avoid the risk that a project's momentum, rather than its merit, will lead to its approval.

The Environmental Checklist fails to offer sufficient information, and the DNS therefore fails an adequate evaluation, to address impacts of the barge landing site. The Environmental Checklist justifies these omissions on the grounds that future environmental review will occur in conjunction with additional permitting. However, SEPA expressly rejects this approach, "[t]he fact that proposals may require future agency approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts." WAC 197-11-055(2)(a)(i). This is exactly what has occurred here--the County has selected the North Bay site for its barge landing operations without a comprehensive analysis of its impacts or feasible alternatives.

In addition, to reach a threshold determination that a proposal will not significantly affect the quality of the environment, the County "must consider the various environmental factors even if it concludes that the action does not significantly affect the environment and therefore does not require an EIS." *Sisley*, 89 Wn.2d at 83. An incorrect threshold determination, made in the absence of complete information, thwarts the SEPA purpose to ensure that the full disclosure of environmental information informs the government's decision-making process. *See id.* at 84. Consequently, an agency that issues a DNS must demonstrate "that environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA." *Juanita Bay Valley Cmty. Ass'n v. Kirkland*, 9 Wn. App. 59, 73, 510 P.2d 1140 (1973). Thus, the County Planning Department's failure in *Sisley* to conduct a field investigation or gather information concerning impacts of a proposed marina on water pollution, shellfish and bird life, traffic, and aesthetics demonstrated that it had incorrectly issued a DNS. *Sisley*, 89 Wn.2d at 87.

As explained below, the County's DNS here was similarly inconsistent with SEPA because the County did not consider the environmental impacts of the barge landing site. Furthermore, a careful review of available information about the sensitive nearshore environment in the area of the bulkhead indicates that the bulkhead is likely to significantly impact the environment, warranting the preparation of an EIS.

1. The Environmental Checklist and Environmental Review Omit Substantial Information and analysis necessary to support a DNS.

Public Works suggests that many of the omissions in the Environmental Checklist are justified on the grounds that the redesignation for a barge landing is a nonproject action. The Checklist does not identify statutory support for that position. In addition, SEPA regulations indicate

that the proposal likely does not qualify as a nonproject action. WAC 197-11-774. The regulations define “nonproject” as “actions which are different or broader than a single site specific project, such as plans, policies, and programs.” WAC 197-11-774. Yet the Application explicitly identifies itself as one for “Site Specific Redesignation for Norther Bay Barge Landing Facility.” Consequently, it is site specific and not a nonproject action.

Although Public Works’ Application expressly identifies the proposal as a barge landing site and describes the potential use that will occur there, the Environmental Checklist omits any reference to the impacts that are likely to occur there. For example, a barge landing might require dredging and filling within the shoreline, yet the Checklist states merely that no dredging or filling is proposed, and thus does not identify impacts of such activity on potential surf smelt spawning habitat or eelgrass in the nearshore area. Environmental Checklist, at 3. The Checklist likewise omits a discussion of the impacts of operating a barge at the site or installing a pier, though the Application materials suggest the installation of steel pilings to replace existing creosote pilings.

2. The County did not describe the proposal in a manner that encouraged consideration of alternatives.

Agencies must define proposals so that they lead to appropriate environmental review. WAC 197-11-060(3). To achieve this goal, proposals should be described in a manner that encourages the consideration and comparison of alternatives. WAC 197-11-060(3)(a)(iii). For example, the County should describe nonproject proposals in terms of their objectives, rather than their preferred solutions. *Id.*

3. The County did not fully consider the range of impacts of the barge landing, and such consideration may indicate that an EIS is required.

SEPA requires the consideration of likely environmental impacts, and where those impacts are likely to be significant, the preparation of an EIS. RCW 43.21C.031; WAC 197-11-060(4). These impacts include both short-term and long-term impacts and both direct and indirect impacts. WAC 197-11-060(4)(c), (d). An EIS must also address cumulative impacts. WAC 197-11-060(4)(e).

As demonstrated above at subsection 1, the Environmental Checklist does not adequately identify the environmental impacts associated with the proposed barge landing, and the environmental analysis thus does not comply with the SEPA requirement to consider all likely environmental impacts. For example, the Checklist did not identify eelgrass, an environmentally-sensitive area, in the nearshore, and the DNS thus could not have evaluated the significance of impacts to eelgrass. Neither did the checklist explore construction or operation impacts of the barge landing on traffic, noise, or surf smelt. Instead, it inappropriately deferred to future approvals and the reviews that would occur at that time.

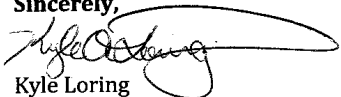
However, the proposal indicates a substantial amount of activity at the proposed barge landing site, including the transport of vehicles, houses, toxic and flammable materials, and aggregate. All of these materials would navigate through an eelgrass bed and land at a pier or

beach that, at least in a natural condition, might host spawning surf smelt. Both of eelgrass habitat and surf smelt are essential natural resources connected to salmonids and orca, and barge landing impacts to them on the scale proposed are likely to significantly impact the environment. Consequently, this project warrants preparation of an EIS.

**C. Conclusion.**

If the County does not withdraw its application for a site-specific barge landing redesignation, it should withdraw the DNS that it issued and perform a new threshold determination under SEPA that evaluates all of the environmental impacts of the proposed barge landing. Because those impacts are likely to be significant, the County should further prepare an EIS that explores those impacts in greater detail and evaluates alternatives that will assist the County in achieving its goal of shoreline access alternative to Washington State Ferries.

**Sincerely,**



Kyle Loring  
Staff Attorney, Friends of the San Juans