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Before Hearing Examiner
Gary N. McLean

**BEFORE THE HEARING EXAMINER
FOR SAN JUAN COUNTY**

S.J.C. DEPARTMENT OF

FEB 02 2018

COMMUNITY DEVELOPMENT

In the Matter of the joint Appeals)
filed by)

GRAHAM AND JENNIFER BLACK,)
DAVID AND LINDA MARSAUDON,)
LINDA LOSH,)
LYNNE MERCER, AND)
JULIE WEAVER,)

**Appeal Nos: PAPL00-17-0006 & -
0009**

Appellants,)

**DECISION DENYING APPEALS
AND CONFIRMING THE
CHALLENGED DNS and GRADING
PERMIT ISSUED FOR THE
CONNECTOR ROAD PROJECT**

of a SEPA DNS and Clearing and)
Grading Permit for the construction)
of new County Road No. 157)
(aka the "Turn Point/Pear Point)
Connector Road"), under DCD File)
No. PSEPA0-17-0005, issued by the)

SAN JUAN COUNTY DEPARTMENT OF)
COMMUNITY DEVELOPMENT,)

Respondent.)

I. SUMMARY OF DECISION.

The appellants failed to meet their burden of proof to demonstrate that either of the challenged actions was clearly erroneous. Therefore, the above-referenced appeals must be denied, and the challenged decisions are each affirmed.

II. APPLICABLE LAW.

In this matter, the appellants, Graham and Jennifer Black, et al, appeal a Clearing

**DECISION DENYING THE CONNECTOR ROAD
APPEALS AND CONFIRMING THE CHALLENGED
GRADING PERMIT AND SEPA DNS ISSUED FOR
THE PROJECT**

1 and Grading Permit and SEPA DNS issued for construction of a new County Road, No.
2 157, also known as the "Turn Point/Pear Point Connector Road." numbered PSEPAO-17-
3 0005.

3 ***Jurisdiction.***

4 Under SJCC 18.90.140(B)(9) and (11), the hearing examiner has authority to
5 conduct appeal hearings regarding SEPA threshold determinations (DNS and DS) of project
6 actions (see WAC 197-11-704); and Development permits issued or approved by the
7 director; and to affirm, reverse, modify, or remand any decision that is on appeal. The
8 Examiner's authority is further established by SJCC 18.10.030(D)(1), which explains that
9 appeals of Administrative Determinations¹ shall be decided by the Hearing Examiner.
10 SJCC 18.10.030(D)(1) provides that appeals from any code interpretation, administrative
11 determination or decision of the administrator shall be decided by the hearing examiner in
12 accordance with the provisions set forth in SJCC 18.80.140.

10 ***Challenged decisions are entitled to substantial weight and deference.***

11 SJCC 18.80.140(H)(1)(g) expressly provides that, in any appeal of a SEPA
12 DNS, *the determination of the responsible official shall carry substantial weight.* Such
13 deference is further mandated in SJCC 18.10.030(D)(3), which explains that a *challenged*
14 *interpretation of the administrator shall be entitled to substantial weight;* as well as
15 Washington caselaw, including *Anderson v. Pierce County*, 86 Wn. App. 290
16 (1997)(holding that substantial weight is accorded to agency threshold determinations).

16 In an appeal of administrative determinations, the Examiner must give considerable
17 deference to the interpretation and application of relevant regulations by those officials
18 charged with their enforcement (See *Eastlake Community Council v. Seattle*, 64 Wn. App.
19 273, 823 P.2d 1132 (1992); *Ford Motor Co. v. City of Seattle, Exec. Servs. Dep't*, 160
20 Wn.2d 32, at 42, 156 P.3d 185 (2007); *Gen. Motors Corp. v. City of Seattle, Fin. Dep't*, 107
21 Wn. App. 42, 47, 25 P.3d 1022 (2001)); provided, however, that deference to administrative
22 determinations does not extend to actions that are arbitrary, capricious, and contrary to law.

21 ¹ SJCC 18.10.030(B) provides that "administrative determinations" and decisions by the administrator
22 include determinations regarding the administration of the county's Unified Development Code (Chapter
23 18SJCC), and decisions approving or denying development or project permit applications, or imposing
24 conditions on such permit applications. SJCC 18.20.010(A) explains that the term "Administrator," "planning
25 director," and "director" each mean the San Juan County community development and planning department
26 director or a designated representative.

1 An agency action is arbitrary and capricious only if it was willful and unreasoning, and
2 taken without regard to attending facts and circumstances. An action is not arbitrary and
3 capricious if there is room for two opinions. *Skokomish Indian Tribe v. Tom Fitzsimmons*,
4 97 Wn. App. 84 (1999).

4 ***Burden of Proof.***

5 The party appealing a code interpretation or administrative determination or
6 decision shall have the burden of presenting the evidence necessary to prove to the hearing
7 examiner that the administrator's interpretation, determination, or decision was clearly
8 erroneous. SJCC 18.10.030(D)(4)². Under the "clearly erroneous" standard, the Examiner
9 asks – whether one is left with a definite and firm conviction that a mistake has been
10 committed. *Cingular Wireless, LLC v. Thurston County*, 131 Wn. App. 756, 768, 129 P.3d
11 300 (2006).

10 ***Standing, Parties.***

11 There is no dispute regarding the timeliness of the appeal or that the appellants have
12 standing. One of the appellants, Graham Black, served as the appellants' primary hearing
13 representative, calling witnesses, presenting evidence, and questioning county witnesses,
14 throughout the hearing process. County staff representing the respondent Community
15 Development Department, as well as Public Works Department staff coordinating the new
16 road project, participated in the hearing process, providing evidence and testimony
17 supporting the challenged actions.

16 Washington courts have long held that pro se appellants are held to the same
17 standard as attorneys and must comply with all procedural rules on appeal. The appellants
18 bear the burden of proof, and must establish that the Director made a mistake in issuing the
19 two challenged decisions at issue in this appeal, based on an error of law or erroneous
20 factual determination(s). Arguments and personal opinions are not sufficient. To be
21 successful, an appeal must be supported by credible evidence, references to the record,
22 meaningful analysis, and/or citation to pertinent authority. Unchallenged findings of fact
23 are verities in any appeal.

21 _____
22 ² The County's code is consistent with applicable Washington statutes and relevant caselaw, including the
23 following: "A SEPA threshold determination is reviewed under the "clearly erroneous" standard." *Chuckanut*
24 *Conservancy v. Dep't of Natural Res.*, 156 Wn. App. 274, 286, 232 P.3d 1154 (2010). A court will overturn a
25 DNS only when "the reviewing court on the entire evidence is left with the definite and firm conviction that a
26 mistake has been committed." *Norway Hill Pres. & Prot. Ass'n v. King County Council*, 87 Wn.2d 267, 274,
552 P.2d 674 (1976) (quoting *Ancheta v. Daly*, 77 Wn.2d 255, 259, 461 P.2d 531 (1969)). The agency's
threshold decision shall be given substantial weight. *RCW 43.21C.090*.

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III. RECORD.

The complete record on review includes all testimony received and exhibits entered into evidence as part of the record during the hearing process, as well as pre-hearing and post-hearing briefing submitted by the parties. Copies of all materials in the record and digital audio recordings of the open-record hearing conducted for this appeal are maintained by the County, and may be requested or reviewed by contacting the Community Development Department during regular business hours.

Hearing Process and Testimony: As noted above, one of the appellants, Graham Black, served as the appellants’ primary hearing representative, calling witnesses, presenting evidence, and questioning county witnesses, throughout the hearing process. County staff representing the respondent Community Development Department, as well as Public Works Department staff coordinating the new road project, participated in the hearing process, providing evidence and testimony supporting the challenged actions.

The appellants presented their evidence and testimony in the first portion of the hearing, followed by the County staff’s responsive testimony and evidence, with Appellants’ representative having the final opportunity for questions and presentation of evidence, as the party bearing the burden of proof in this matter. Below is a list of individuals who presented testimony under oath at the duly noticed open-record hearing for this appeal, held on November 9th and 30th 2017.

1. Julie Thompson, Planner III, for the San Juan County Department of Community Development, served as the primary staff member charged with reviewing application materials and drafting the challenged decisions and Staff Reports included in the record;
2. Graham Black, one of the appellants, served as the appellants’ designated hearing representative throughout the hearing, owns home across Pear Point Road from where the proposed new Connector Road would intersect with Pear Point Road;
3. Lynne Mercer, an appellant, Pear Point Road resident, lives between Jacksons Beach and Argyle;
4. David Marsaudon, an appellant, Pear Point Road resident, lives between Jacksons Beach and Argyle;
5. Lowell Jons, Pear Point Road resident, testified on behalf of appellants;
6. Cam Weaver, Pear Point area resident, testified on behalf of appellants;

1 7. Deborah Strosser, former Pear Point area resident, testified on behalf of appellants;

2 8. Kerry Newberry, testified on behalf of appellants, daughter of one of the appellants (Weaver?), walks on Pear Point Road;

3 9. Martin Lohr, an appellant, Pear Point Road resident, lives between Jacksons Beach and Argyle;

4 10. L.M. Carlson, former resident on Pear Point Road, testified on behalf of appellants;

5 11. Erika Shook, Director of the San Juan County Department of Community Development, serves as the County's SEPA Responsible Official, testified for the County, and served as the County's primary hearing representative;

6 12. Ross Tilghman, P.E., testified on behalf of appellants by telephone, prepared a report, included in the Record as Exhibit M;

7 13. Colin Huntmer, P.E., San Juan County Engineer, testified in support of the project (as the applicant-department representative), and his Professional Engineering stamp appears on the "Construction Plans" for the Connector Road, included in the Record as Exhibit 9 (13 pages); and

8 14. Jeff Sharp, P.E., Assistant County Engineer, prepared the Land Use Permit Application for County Road No. 157, the Connector Road, included in the Record as Exhibit 4.

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12 ***Exhibits.***

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14 Three Staff Reports and exhibits thereto generated in connection with this project are included as part of the Record, and are sometimes repeated as attachments or exhibits elsewhere in the Record. They are as follows:

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- Staff Report dated September 21, 2017, for File No. PSEPA0-17-0005, Approving Clearing and Grading Permit and SEPA Review for the construction of a new County Road, No. 157. (16 pages; with 26 Exhibits, as numbered and described on page 16 of the Report);
 - Staff Report dated October 27, 2017, for the SEPA Appeal, numbered PAPL00-17-0006, Black et al appeal of SEPA DNS for PSEPA0-17-0005. (4 pages; with Attachments, as numbered and described on page 4 of the Report);
 - Staff Report dated October 27, 2017, for the Grading Permit Appeal, numbered PAPL00-17-0009, Black et al appeal of Clearing and Grading Permit for PSEPA0-17-0005. (8 pages; with Attachments, as numbered and described on page 8 of the Report);

1 Exhibits presented in the course of the public hearing were marked and numbered
2 “A” through “S”, as listed and described on the chart distributed to the parties. A copy of
the chart and copies of all exhibits are maintained by the Department as part of the hearing
record.

3 The appellants and the County submitted timely post-hearing briefs supporting their
4 respective positions, received by the Examiner in the month following the public hearing.
Copies of the parties’ post-hearing materials are maintained by the Department as part of
5 the hearing record.

6 Upon consideration of all the evidence, testimony, codes, policies, regulations, and
7 other information contained in the file, including without limitation the summaries of
testimony and evidence, legal authority and arguments presented in the post-hearing briefs,
8 the undersigned Examiner issues the following findings, conclusions and Decision.

9
10 **III. FINDINGS OF FACT.**

11 1. Any statements of fact or findings set forth in previous or subsequent portions of
12 this Decision that are deemed to be findings of fact are hereby adopted and incorporated
herein as such.

13 2. On or about May 19, 2017, the San Juan County Public Works Department
14 submitted an application for land use permit approvals needed to construct new County
15 Road No. 157. The proposed project would construct approximately .4 miles of new county
16 roadway connecting Pear Point Road with Turn Point Road on the east side of San Juan
Island, running south of the Town of Friday Harbor. *Exhibit 4, Application dated May 19,*
17 *2017.* The new road is commonly known as the “Connector Road”, because it is designed
to connect an existing looped-roadway.

18 3. The application included a SEPA environmental checklist completed for the
19 proposed project. *Ex. 5, SEPA Checklist, signed by the Public Works Director on May 19,*
2017, listing Jeff Sharp, Assistant County Engineer, as the applicant’s contact person.

20 4. The application materials include a “Clearing & Grading Narrative”, which explains
21 that: *“The project will result in approximately 4000 cubic yards of earthwork with*
balanced cut and fill. There will be no material exported from the site. The only material to
be imported will be crushed gravel used to create the final roadway grade and bituminous
(chip seal) surface. Earthwork will be done by County PW [Public Works] forces using
standard heavy equipment such as bulldozers, loaders, dump trucks and road graders.”
22 *Ex. 4.*

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1 5. The SEPA Checklist expressly identifies existing environmental information related
2 to the Connector Road project, including without limitation a Draft EIS and a Supplemental
3 Draft EIS that were prepared in 1998 and 1999 respectively, generally regarding corridor
4 planning, ultimate land use and corresponding impacts to transportation. *Ex. 4, SEPA
5 Checklist, page 2, response to item 8.* There is no dispute that the San Juan County Board
6 of Commissioners approved the Connector Road route reflected in the Record in a previous
7 legislative action that was never appealed by any of the appellants. *See Ex. 20, San Juan
8 County Resolution No. 15-2017, "Intention to Establish a County Road and Declaration of
9 Public Necessity for County Road No. 157", dated July 31, 2017.*

6 6. The checklist correctly notes that two permits would be needed for the project,
7 including a Clearing and Grading permit (that is part of this appeal) and a Stormwater
8 permit (which is not part of this appeal). *Ex. 4, page 2, response to item 10.* Throughout
9 this Decision, the abbreviated term "Grading Permit" means the same as "Clearing and
10 Grading Permit".

10 7. The checklist fully discloses that a portion of the new roadway will be built along a
11 portion of the jurisdictional boundary shared by the Town of Friday Harbor and San Juan
12 County, on the north end of what was once known as the "Lafarge Gravel Pit", now
13 sometimes called "Island Rec." for San Juan Island Parks and Recreation District, the
14 current owner of the former gravel pit site; and that several surrounding parcels have been
15 zoned for residential development, including some multi-family residential uses. *Ex. 4,
16 SEPA Checklist, various portions, including without limitation page 9, item 8(b) and (e).*

14 8. The checklist expressly references a "Pear Point to Turn Point Route Study"
15 prepared by Lervik Engineering, dated May 2010, in response to questions regarding
16 vehicular trips per day that would be generated by the project, fully disclosing that the study
17 reviewed the *proposed* route and "was based on the assumption of full residential buildout
18 on the property adjacent to this project (Parcel #351392516000) that is in the Town of
19 Friday Harbor." *Ex. 4, page 12, item 14(f).*

18 9. The Lervik Study was expressly reviewed by County Staff, and is referenced as an
19 Exhibit included as part of the challenged Clearing and Grading Permit and SEPA DNS
20 issued for this project. *Staff Report, dated September 21, 2017, Approving grading permit
21 with conditions, Ex. 6, Lervik Engineering route study, dated May 2010; Testimony of Ms.
22 Shook and County Engineers, Mr. Huntemer and Mr. Sharp.*

22 10. Throughout the hearing process, none of the appellants provided any testimony or
23 evidence that would rebut or question the fact that the County's review of the challenged
24 DNS and Grading Permit was based on the assumption of full residential buildout, in other
25 words, a "worst case scenario", for traffic impacts on surrounding streets. Appellants'
26 arguments and insinuations that the review was not good enough, because it may have

1 ignored future development, are completely contradicted by evidence in the record,
2 including the unrebutted Lervik Study, and the SEPA Checklist's reference to the fact that
traffic volumes were based upon "full residential buildout" assumptions.

3 11. Following review of environmental information submitted by the applicant-Public
4 Works Department, including the SEPA Checklist and copies of prior studies and reports
5 referenced therein, the County's SEPA Responsible Official determined that the proposal
6 will not have any probable, significant, adverse environmental impacts. Accordingly, she
7 issued a SEPA Determination of Non-Significance for the application, which was issued on
8 June 14, 2017. *Ex. 3, SEPA DNS, dated June 14, 2017; Testimony of Ms. Thompson and
Ms. Shook.* Exhibit 3 also includes an attached email note dated June 7, 2017, from Mike
Bertrand, the Land Use Administrator for the Town of Friday Harbor, which confirms that
the Town formally agrees to allow San Juan County to serve as Lead Agency for the
Connector Road Project.

9 12. There is no dispute that the County complied with applicable notice and posting
10 requirements, for the grading permit application or the DNS. *Staff Report for Clearing and
Grading Permit, dated Sept. 21, 2017; Exhibits 21 and 22.*

11 13. The appellants, Graham Black, et al., submitted written comments regarding the
12 county's SEPA review, and a timely written appeal of the DNS on or about July 11, 2017.
13 *Ex. 12, Appeal of DNS, stamped received July 11, 2017, assigned Appeal File No. PAPL00-
17-0006.*

14 14. Because appeals of a SEPA DNS are required to be consolidated with any appeals
15 of a related project permit decision (*See Finding 17, below*), the County continued its
16 review regarding the grading permit application, considered all comments, including those
17 submitted by the appellants, and issued its approval in the form of a Staff Report dated
18 September 21, 2017, which is included in the Record, along with the 26 Exhibits referenced
19 therein. The Grading Permit did not revise the previously issued DNS, but it included
20 specific written responses to comments received by the appellants, as well as conditions of
21 approval drawn from various County codes on particular subjects, including without
22 limitation: stormwater control measures; construction dust control requirements; and
23 erosion and sediment control measures. *See Staff Report, dated Sept. 21, 2017, approving
Grading Permit, Conditions of Approval on pages 15 and 16.* The responses to appellants'
24 comments included, without limitation, the following: 1. A short explanation that the
method proposed for building the road falls within the express definition of the term
"grading", found at SJCC 18.20.070; 2. A summary of 'revegetation' aspects that are
included as part of the lengthy Stormwater Plans approved for the project; 3. A reference to
portions of the Construction Drawings, in Exhibits 9 and 10, which clearly illustrate the
'Walking Trail' for pedestrians roughly parallel to the road, which will be visibly separated
from the new road by a ditch; 4. Confirmation that the new road is not a private road, but is

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26 **DECISION DENYING THE CONNECTOR ROAD
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1 a public, new County Road; 5. Short explanation of public benefits provided by new
2 Connector Road, including reduction of conflicts with ferry traffic queues; and 6. A
3 reference to the County's definition of Concurrency, noting how it could apply to future
development projects, and confirmation that the road has been designed to meet County
standards with adequate sight distances.

4 15. The appellants, Graham Black, et al., who submitted written comments regarding
5 the Clearing and Grading Permit application, filed a timely written appeal of the Clearing
6 and Grading Permit on or about October 10, 2017. *Appeal of Grading Permit, stamped
received October 10, 2017, assigned Appeal File No. PAPL00-17-0009.*

7 16. In response to the appeals, and to prepare for the appeal hearing, the Department of
8 Community Development prepared and issued two additional Staff Reports, both dated
9 October 27, 2017, regarding each appeal. These reports were prepared by Julie Thompson,
the Department's primary planner assigned to review the Connector Road project.

10 17. Consistent with state SEPA codes and regulations, the County's code provides that
11 appeals of SEPA threshold determinations, such as a DNS, are to be consolidated into a
12 single open-record hearing process with any related appeal of the underlying project permit
application before the Hearing Examiner. *See SJCC 18.80.140(G)(2), captioned
"Consolidated Appeal Hearings".*

13 18. The public hearing for this matter was noticed in accord with applicable law,
14 including publication in the Journal and Sounder, on or about October 18, 2017.
15 *Attachment A to Staff Report of SEPA Appeal, public hearing notice, published on Oct. 18,
2017, with hearing for both appeals shown as 11/9/17.*

16 19. As noted above, the consolidated appeal hearing commenced on November 9th,
17 when Mr. Black testified on behalf of the appellants, and called other appellants and
18 witnesses to support their claims raised in the appeals. The hearing continued on
19 November 30th, when Ms. Shook testified and called other County staff members, to
20 present the County's response to the pending appeals. The appellants called several other
21 witnesses on November 30th, and concluded their appeal late in the afternoon. All witness
testimony was received under oath, and all witnesses were subject to cross-examination and
appropriate follow-up questioning. The parties were given the opportunity to make closing
arguments, and to submit post-hearing briefs supporting their respective positions.

22 ***Issues raised in SEPA Appeal.***

23 20. In their written appeal, stamped received by the County on July 11, 2017,
24 Appellants raised 6 specific "Grounds for Appeal" challenging the DNS issued on June 14,
2017 for the Connector Road grading permit, PSEPA0-17-0005. They are rephrased as the

1 following questions, with short answers as findings, that are addressed in this Decision:

- 2 i. Whether the DNS improperly failed to consider impacts that will directly result from the
project?; *Short Answer:* No.
- 3 ii. Whether the DNS improperly failed to consider the impacts of reopening the gravel mine?
4 *Short Answer:* No, the project is not surface mining, but grading as defined in applicable
state and county codes;
- 5 iii. Whether the DNS improperly failed to utilize existing environmental documents?
6 *Short Answer:* No.;
- 7 iv. Whether the DNS improperly failed to consider serious health and safety concerns at the
proposed new road's southern terminus at Pear Point Road? *Short Answer:* No.;
- 8 v. Whether the DNS improperly failed to consider possible impacts to cyclists and pedestrians
on Pear Point Road? *Short Answer:* No.; and
- 9 vi. Other, unnamed, issues to be brought forward at the open record appeal hearing.
10 NOTE: There were no additional grounds for the appeal raised or supported at the appeal
hearing.

11 ***Issues raised in Grading Permit Appeal.***

12 21. In their October 12, 2017 written appeal of the Grading Permit for the Connector
13 Road, PSEPA0-17-0005, Appellants raised 6 specific "Ground for Appeal", although one
14 was formally withdrawn during the public hearing. *Testimony of Mr. Black, withdrawing
15 allegation that 'Statement of Need' for Connector Road was inadequate, during his
16 questioning of Ms. Shook.* Issues raised in Appellants' Grading Permit Appeal are
rephrased as the following questions, with short answers as findings, that are addressed in
this Decision:

- 17 i. Whether the cut and fill method proposed for the road construction requires 'illegal
18 mining'? *Short Answer:* No.;
- 19 ii. Whether the provisions to revegetate comply with SJCC 18.60.060(B)(4)? *Short Answer:*
The project complies with all applicable development regulations;
- 20 iii. Whether pedestrian paths are inadequate? *Short Answer:* No.;
- 21 iv. Whether the County Engineer's 'Statement of Need' is inadequate? (apparently, withdrawn
22 at the hearing) *Short Answer:* This challenge is unfounded, *See Ex. 20, San Juan County
Resolution No. 15-2017, "Intention to Establish a County Road and Declaration of Public
23 Necessity for County Road No. 157", dated July 31, 2017.;*
- 24 v. Whether the Connector Road fails the concurrency test? *Short Answer:* No.; and
- 25 vi. Whether the sight distances at the Connector Road's southern terminus are inadequate?

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1 *Short Answer:* No. Substantial evidence established that the Connector Road has been
2 designed to meet all applicable state and county road standards, including those regarding
3 sight distance. *See P.E. Stamp placed upon all 13 pages of Construction Plans for the*
4 *Connector Road, Ex. 9; Testimony of County Engineers.*

5 ***Summary of evidence and testimony presented.***

6 22. Much of the evidence and testimony presented on behalf of the appellants
7 overlapped, with issues raised in the SEPA appeal carrying over to the Grading Permit
8 appeal. To afford the appellants the greatest opportunity possible to meet their burden of
9 proof, the Examiner reviewed and considered all testimony and evidence presented
10 throughout the open-record hearing with an eye towards supporting *any* of their specific
11 grounds for appealing the SEPA DNS or the Grading Permit. In any event, the appellants'
12 testimony and evidence was presented thoughtfully and, for the most part, respectfully.

13 23. The Examiner finds that the understandable, although very personal, self-interests
14 underlying the testimony of virtually all of the appellants' witnesses who live along or
15 enjoy walking, biking, or rolling along on Pear Point Road tends to diminish the weight a
16 fact-finder can or should attribute to their testimony. The testimony, while well-organized,
17 understandable and entirely admissible during an open-record hearing, is not of sufficient
18 weight or demonstrated expertise that would rebut facts and analysis used by County staff
19 to support the two challenged decisions at issue in this appeal.

20 24. Unlike public roads in more urbanized parts of the state, or even in the Town of
21 Friday Harbor, most San Juan County roads are lightly travelled, and do not include
22 sidewalks or designated pedestrian pathways or bicycle lanes. Several witnesses' personal
23 preferences for a pedestrian pathway or bicycle lane on portions of Pear Point Road is not a
24 sufficient basis for reversing the DNS or denying the Grading Permit. The appellants
25 offered no qualified expert testimony or data that would establish that the new Connector
26 Road will result in adverse impacts to pedestrians and cyclists.

 25. On the other hand, County Engineers produced data, showing no history of serious
accidents along Pear Point Road, and credibly explained their professional engineering
opinions and judgment, which do not support appellants' allegations that the Connector
Road will cause probable, significant, adverse safety and health impacts, i.e. unacceptable
hazards, for pedestrians and cyclists using Pear Point Road.

 26. The County engineers are like most engineers in hearings the Examiner has
observed throughout the State over the past decade or so – they reflected their caution and
genuine concern for the public that they serve, as they fairly acknowledged and accepted
the legitimate statements of several witnesses who expressed concerns about their personal
safety when walking or biking along Pear Point Road while a car might speed by from time

1 to time. No applicant is held responsible for the bad driving habits of others, who may
2 drive faster than posted speed limits. Instead, road designers, and hearing examiners, must
3 rely on the best evidence, adopted public standards, and professional traffic reports
generated using data that is based upon actual accident reports, trip generation forecasts and
the like – which is what the County did in this instance.

4 27. The previous reports, while they were not prepared within months of the
5 application, were shown to be credible in their forecasts of potential future traffic, because
6 they were based on full-buildout projections for currently undeveloped parcels that may
someday result in traffic on area streets.

7 28. The County is under no legal obligation to design a plat or multi-unit residential
8 project for a private party with the level of detail apparently demanded by the appellants at
9 this point. The taxpayers of San Juan County do not expect to subsidize private
10 development projects by generating speculative reports that are the responsibility of a
11 private developer, as part of any land-development application. The appellants requests for
12 more precise studies are better directed at any subsequent development application process
13 for vacant parcels that might seek approval to connect with the new county road. More
significantly, the appellants failed to identify any substantive SEPA authority in County
development regulations or elsewhere that could serve as a basis for studying or imposing
mitigation requirements for speculative pedestrian impacts on county roads that do not have
sidewalks or other pedestrian designated pathways.

14 29. While some of the appellants expressed concern that new residential development
15 will generate traffic and safety problems without any review or consideration by the Town
16 of Friday Harbor, if it serves as the SEPA lead agency for a project located within its
17 jurisdiction, there is no evidence in the record to find that the Town would not comply with
18 state subdivision statutes and require any plat-applicant to submit specific traffic reports or
19 similar related professional analyses needed to properly determine impacts on the street
network that will be used by new residents. The Town's Municipal Code includes
provisions in FHMC 16.04.050(C) that are substantially similar to state subdivision
requirements, and read in relevant part:

- 20 A proposed subdivision shall not be approved unless the council makes written findings that:
- 21 1. Appropriate provisions are made for the public health, safety, and general welfare and for such
22 open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water
supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds and all
23 other relevant facts, including sidewalks and other planning features that assure safe walking
conditions for students who only walk to and from school; and
 - 24 2. The public use and interest will be served by the platting of such subdivision.

25 30. With any subdivision, traffic impacts are obviously affected by the location and
26 design of any internal streets built in the new plat, and the number of access points provided

1 to/from surrounding streets – including the new Connector Road. At this point, the best
2 evidence possibly available would be traffic reports that are based upon full-buildout
3 forecasts – that is precisely what County staff considered in this matter. The Concurrency
4 review undertaken for this project reflects that full-buildout data was the basis of such
5 determination. If anyone comes forward with a development application for a project on
6 one of the adjacent undeveloped parcels, then, the current information should be refined,
7 based on more than just maximum residential density, based on proposed driveway
8 locations, i.e. road-access connection-locations, traffic calming measures at such points, the
9 number of units given access to such point, and the like.

10 31. The San Juan County Code recognizes that proposed connections to existing county
11 roads might generate impacts that should be addressed as part of such future development
12 applications – just like the kind addressed by the appellants. Specifically, SJCC 18.60.090
13 mandates that “*permits are required for access to County roads,*” and that applications will
14 be reviewed for compliance with SEPA, among other things. The County’s road-access
15 permit process reads in part as follows:

16 **18.60.090 Roads – Public roads.**

17 **A. General. [...]**

18 4. Driveway permits are required for access to County roads. Applications will be reviewed
19 by the administrator for the requirements of the environmentally sensitive areas overlay
20 district (see SJCC 18.35.020 through 18.35.050) and of the State Environmental Policy Act
21 (SJCC 18.80.050) prior to being forwarded to the County engineer. Such permits shall be
22 limited as follows:

- 23 a. The number of access points along roads shall be limited to one per parcel, except:
- 24 i. For agricultural access;
 - 25 ii. When the parcel topography makes a single access point impractical for the
26 entire parcel;
 - 27 iii. When access is being provided for parking lots with 20 or more parking spaces;
28 or
 - 29 iv. When additional access points are approved by the County engineer.
- 30 b. New access points to collector roads shall not be allowed if reasonable access from
31 any other road is available.
- 32 c. Clear unobstructed sight distance in both directions from the driveway shall be the
33 distance measured in feet which is a minimum of 10 times the posted speed limit, unless
34 otherwise approved by the County engineer.
- 35 d. Storm drainage and culvert sizing shall be based upon engineering analysis and the
36 standards of SJCC 18.60.060(B) and 18.60.070. Maximum length of surface drainage
37 for roadside ditches before discharging onto adjacent property or into natural
38 drainageway shall be 1,000 feet. When a culvert is required, the minimum diameter shall
39 be 12 inches.
- 40 e. All driveway approaches shall be constructed in accordance with the construction
41 standards for driveway access permits (see Figure 6.1).
- 42 f. The permits shall be conditioned to address impacts to environmentally sensitive areas
43 or as indicated by SEPA analysis, if applicable.

1 g. The County engineer shall have the authority to approve or deny all driveway permits,
which decision is final and not subject to administrative appeal.

2 [...]

3 6. A traffic study based on the most current edition of the Highway Capacity Manual shall
4 be performed for any proposed development that will result in an increase of 100 or more
5 one-way trips per day onto a County road, inside or outside of an activity center or urban
6 growth area. Inside of an activity center or urban growth area, all intersections that may be
affected by the proposed development must be included in the traffic study. The number of
one-way trips to be generated by the development shall be as is defined in the most current
edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

7 32. In the unlikely event the two jurisdictions cannot work together to address potential
8 impacts associated with new development projects that might have probable, significant
9 impacts of County roads, including the new Connector Road, the County may elect to
10 exercise authority granted in State SEPA regulations, at WAC 197-11-600(3)(a) or
elsewhere, to assume lead agency status – perhaps limited to analysis needed to determine
conditions, if any, that should be included as part of any County permit access to County
roads.

11 33. Having said this, just as this SEPA appeal must fail because the appellants have not
12 identified any adopted SEPA policy or county regulation could serve as a basis to mitigate
13 appellants' speculative impacts, to use SEPA substantive authority, an agency must have
adopted SEPA policies.

14 34. In this appeal, the appellants have expressed their general concern that the new
15 roadway will make their pedestrian or non-motorized use of Pear Point Road more
16 unpleasant. There is no professional report or credible data in the record to support their
17 position. Even if the Examiner accepts the appellants' testimony on the subject of potential
18 pedestrian/non-motorized user impacts, the fact remains – the appellants failed to direct
19 attention to a single passage in the County's Code or Comprehensive Plan that would serve
20 as a basis for exercising SEPA substantive authority to 'mitigate' alleged impacts described
21 by the appellants. With respect to transportation concurrency requirements, the appellants
failed to rebut substantial evidence in the record considered by County staff when issuing
the two challenged decisions – including without limitation that the new Connector Road
will not cause any reduction in the Level of Service standards mandated for county roads in
the area. This is true even using the "full-buildout" scenario, as discussed elsewhere.

22 35. Based on the Record, the Examiner finds that there is no credible, authoritative,
23 professional, unbiased testimony on which to base a finding that the proposed Connector
24 Road might result in probable, significant, adverse environmental impacts. And, to the
disappointment of neighborhoods and residents living near new projects throughout the

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1 state, generally speaking, land use permits cannot be denied based solely on
2 the opposition of adjacent landowners or recreational enthusiasts.

3 36. Although neighborhood sentiment may be taken into consideration in an
4 environmental and permit review process, standing alone, it may not constitute the sole
5 basis for granting or denying a given permit, or for requiring an environmental impact
6 statement. The accumulated sum of all appellants' testimony and evidence amounts to
7 sincere, but inadequately supported expressions of general public safety concerns for
8 pedestrians and cyclists. Here, the record includes substantial evidence that the County
9 Engineers have designed the new Corridor Road to comply with all applicable WSDOT and
10 other relevant road design standards, including those regarding sight-distance.

11 37. Mr. Tilghman's testimony did not rebut the County Engineer's design, or
12 conclusions that, in his professional judgment, the road design complies with all applicable
13 design safety standards. A difference of opinion between two engineers is to be taken
14 seriously, and here, looking at the record, Mr. Tilghman conceded that trip generation data
15 was used in analyzing the proposed road, although he feels that the study should be more
16 recent. No one presented any testimony or evidence to show that conditions along the new
17 Connector Road have changed in the last few years, or that zoning and assigned densities
18 have changed. While there was some testimony to the effect that more people seem to be
19 visiting Jackson's Beach near the southern terminus of the new Connector Road, it was not
20 conclusive on the subject, and was not of sufficient weight to establish that the new road
21 would cause any adverse impacts.

22 38. To reverse the DNS, the appellants needed something more concrete than general
23 neighborhood opposition and expressions of concern for public safety and welfare. County
24 witnesses conveyed their genuine, professional, concern for public safety and welfare, and
25 credibly testified that they believe the new Connector Road has been designed in a manner
26 to provide an appropriate factor of safety for users and the surrounding area. They fairly
and candidly described planning and public discussions of future pedestrian-friendly
projects under consideration for the Pear Point Road area, because they are diligent and
responsive public servants – not because this project will cause any adverse impacts.

39. The County Engineers are entitled to deference and substantial weight on issues
regarding the road design. Even without such deference, the record includes credible,
substantial, and professionally certified evidence that the new Connector Road has been
designed in conformance with applicable WSDOT and traffic safety design standards. *See*
Exhibit 9, Construction Plans for County Road 157, the "Connector Road", stamped with
the Washington Professional Engineering Stamp of Colin F. Huntmer, the San Juan
County Engineer (with 'preliminary' watermark, given the pendency of this appeal), 13
pages.

1 40. Mr. Black testified on his own behalf, as an appellant, and presented testimony that
2 was, for the most part, argument, relying on various exhibits to tell a story. *See Hearing*
3 *Exhibits E, F, G, and H*. In Mr. Black's story, the County is part of a plan to build a road
4 that is needed to develop a parcel of property located along the north end of the new
5 Connector Road. He believes that the DNS is in error, because it fails to study the impacts
6 of the new road.

7 41. Ms. Shook, and County witnesses countered this argument, noting that the
8 environmental information included as part of their review included traffic reports
9 regarding a proposed roadway that is substantially similar to the current Connector Road
10 route, and that such studies relied on projections that were based on full-buildout of the
11 undeveloped parcels that cause Mr. Black and other appellants concern about future growth
12 in the area.

13 42. Mr. Black argued that the road-approval process has been piecemealed, in violation
14 of SEPA and the Washington Supreme Court decision in *King County v. Boundary Review*
15 *Board*, 122 Wn.2d 648, and that the county failed to study impacts on pedestrians and
16 cyclists. He conceded that he is not an engineer, and has had no training in the field.

17 43. In sum, Mr. Black, Ms. Mercer, Mr. Marsaudon, Mr. Jons, Mr. Weaver, Ms.
18 Strosser, Ms. Newberry, Mr. Lohr, and Mr. Carlson, all indicated general opposition to the
19 road project, until or unless it includes additional pedestrian, bicycle and non-motorized
20 user amenities, like pedestrian corridors, paths, or other safety enhancements to help
21 prevent conflicts between vehicle traffic and pedestrian/cyclists who use roads in the
22 vicinity, particularly Pear Point Road.

23 44. Mr. Black offered his opinion that the Grading Permit was in error, because it would
24 authorize 'strip-mining' and mining is not permitted in the zone.

25 45. The appellants offered no expert testimony or other credible evidence that would
26 rebut the County staff's determination that the Grading Permit application met all
applicable criteria for approval, and that the proposed use of on-site materials to construct
the new road would not constitute illegal mining on the site, based on a code definition of
the term "grading".

Ms. Shook credibly testified regarding the review process undertaken by County
staff, to issue the DNS for the requested Grading Permit, and for the permit itself. She
noted that the reason SEPA review was conducted for the requested permit is because the
application explained that the onsite activity would involve grading of more than 100 yards
of material. She explained how the Staff determined that the construction process would
make use of on-site materials, and achieve an appropriate fill and grade balance, similar to a

1 process successfully used by County crews building the Cattle Point Road relocation
2 project.

3 47. SEPA regulations mandate attention to impacts that are likely, not merely
4 speculative. Here, the alleged failure to consider development on surrounding parcels is
5 baseless. The Lervic study, and all of the SEPA Checklist comments and other materials
6 reviewed by the county's staff recognized that full-buildout conditions were assumed. So,
7 if the undeveloped parcels are never developed, or if they are developed in a manner that
8 generates fewer trips than the numbers used in the Lervic study (i.e. fewer units; restrictions
9 on numbers of cars per unit; pedestrian/bicycle incentives included to motivate new
10 residents to forgo motorized transportation, etc.), then the current analysis would have been
11 more robust than necessary.

12 48. The SEPA Checklist used by the County does not call for a listing of pedestrian or
13 non-motorized / bicycle impacts. State and County codes regarding subdivisions mandate
14 consideration of sidewalks and safe travel for students who walk to school. That is not the
15 case here. Similarly, the appellants could direct attention to no provisions of the county
16 code or comprehensive plan that could serve as a substantive basis to impose pedestrian
17 safety enhancements requested by local residents as a condition of approval. The evidence
18 presented by the appellants did not comprise a preponderance of proof needed to
19 demonstrate that the Connector Road will cause any adverse impacts. County staff
20 designed the road to comply with applicable road design standards. The Geotechnical
21 stamp from the county's Geotech engineer attests to the fact that there are no concerns with
22 respect to Geotech issues. Nothing in the record credibly challenges the stormwater plan
23 for the project, which includes multiple best management practice measures.

24 49. Failure to include pedestrian or bicycle impacts on the SEPA checklist is not fatal,
25 and does not violate any SEPA regulation. Even more, the appellants comments provided
26 after issuance of the DNS were considered by county staff before the Grading Permit was
issued, and the DNS was not modified because none of the county's environmental review
team found that the new road would result in any adverse impacts.

19 50. Appellants argue that the County should have required an EIS or exercised its
20 substantive authority to incorporate pedestrian-friendly design features as part of the new
21 County Road project. However, SEPA is essentially a procedural statute to ensure that
22 environmental impacts and alternatives are properly considered by the decision-makers. It
23 was not designed to usurp local decision-making or to dictate a particular substantive result.
24 *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 371, 662 P.2d 816 (1983).
25 Here, there is no policy or regulatory basis upon which the County can impose conditions
26 of the type requested by the appellants.

1 51. Although the County could have adopted policies or taken action to mandate special
2 truck routes and truck route design standards, sidewalks, pathways, or pedestrian/cyclist
3 friendly features as part of all new road projects (as in many heavily urbanized jurisdictions
4 with much greater densities and population throughout the State of Washington), it has not
5 done so. Instead, the new Connector Road has been designed to meet County standards,
6 with due consideration given to the traffic impacts of full-buildout on adjoining
7 undeveloped parcels of land. Without clear guidance in the County Code or adopted SEPA
8 policies related to sidewalks and pedestrian/cyclist friendly features along new county
9 roadways, there is no legal basis under the County's SEPA substantive authority upon
10 which to base such development conditions. Accordingly, the Hearing Examiner concludes
11 that this appeal must fail.

12 52. The appellants challenges to the grading permit were not supported by any credible
13 or authoritative evidence that would establish that the permit was issued in error. Instead,
14 the findings, explanations, and conditions included as part of the grading permit, were all
15 fully supported by evidence in the record.

16 53. There is no factual or legal basis to support appellants' claim that the proposed on-
17 site grading for the Connector Road project is somehow 'illegal mining'. To the contrary,
18 the Examiner finds and concludes that the clearing and grading process described in the
19 application materials constitutes "grading" as defined in SJCC 18.20.070 "G", which reads:
20 " 'Grading' means stripping, cutting, filling, or stockpiling land including the land in its
21 cut or filled condition to create new grade." More significantly, the term 'Surface Mining'
22 is defined in state law to exclude on-site construction, like that proposed in this matter, and
23 on-site road maintenance: "Surface mining shall exclude excavations or grading used: (i)
24 Primarily for on-site construction, on-site road maintenance, or on-site landfill
25 construction". RCW 78.44.031(17)(d).

26 54. The Director's determinations and interpretations of county codes is entitled to
deference, including those made in the course of issuing the challenged Grading Permit.
Given such deference, and the appellants' failure to produce evidence sufficient to meet
their burden of proof, all of their challenges to the Grading Permit must fail. Differences
and preferences regarding plant materials proposed for the area were not sufficient to deny
the permit. Again, an action is not arbitrary and capricious if there is room for two
opinions. The County officials are entitled to deference on the matter. There was
insufficient evidence to show any aspect of the Grading Permit was defective.

55. Given the extensive record available to the Community Development Department
staff before they issued the challenged DNS and Grading Permit for the Connector Road
project, the Examiner finds that staff was adequately advised and informed on materials,
records, and arguments that each side deemed crucial to supporting their respective
positions. The appellants' comments were all given fair consideration, but they did not

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1 establish that any adverse impacts would result from the new county road, or that the
2 Grading Permit should not be issued.

3 56. The Examiner finds that the Connector Road project was properly reviewed under
4 SEPA and other applicable regulations, and that it is not the result of improper
5 piecemealing. Unlike the primary case emphasized by the appellants, the densities on
6 properties adjacent to the Connector Road were determined long ago, and have not
7 changed. Those densities were used in analyzing this project. Given the extensive review
8 and analysis conducted for this Grading Permit, which included lengthy traffic reports
9 about the affected area, all of which were based on full buildout projections, the appellants'
10 piecemealing claims are baseless. Instead, the open-record hearing process undertaken in
11 this appeal provided the appellants with a full and fair opportunity to bring forward
12 evidence and environmental information that could demonstrate how the challenged DNS
13 and/or Grading Permit were issued in error. They did not satisfy their burden of proof.
14

15 IV. CONCLUSIONS OF LAW.

16 1. Based on testimony and evidence in the Record, including without limitation all
17 findings set forth above, the Examiner concludes that the challenged DNS and Grading
18 Permit are both fully supported by substantial and credible evidence. Neither decision was a
19 mistake. The decisions were not clearly erroneous, but were instead reasonable and
20 accurate applications of facts to the codes, conditions, policies and legislative history at
21 hand.

22 2. The appellants failed to satisfy their burden of proof to prevail in this appeal.

23 3. The Hearing Examiner has considered all of the evidence in the record and
24 concludes that the Applicant-Public Works Department submitted the full scope of
25 information necessary for the County's SEPA Responsible Official to make a proper SEPA
26 threshold determination, and that the Responsible Official based the SEPA threshold
determination on substantial evidence in the record. Accordingly, the SEPA appeal must
fail, and the DNS issued for the project is affirmed.

4. Giving substantial weight to the County's SEPA threshold determination, the
Hearing Examiner is not left with the definite and firm conviction that a mistake has been
committed when reviewed against all of the evidence in the record in light of the public
policy contained in the legislation authorizing the decision. The Hearing Examiner
concludes that the appellants have failed to show that either the threshold determination or
the Grading Permit was clearly erroneous. The appeal should be denied and both challenged
decisions should be affirmed.

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1 5. The Examiner finds and concludes that the appellants failed to exhaust their
2 available legal or other remedies years ago, when governmental decisions were made to
3 annex the “Buck Property”, to rezone it, and to select a preferred route for the new
4 Connector Road at issue herein. Years have passed. Some new people have moved into
5 homes in the area, and now take issue with these previous decisions. Others seek to
6 leverage the situation to promote pedestrian-friendly amenities along their preferred
walking route. The Examiner does not have jurisdiction or equitable authority to consider
appellants’ arguments raised in this appeal that essentially seek to reverse these previous
decisions or condition them well after they were approved.

7 6. The Hearing Examiner must decline the implied invitation presented by the
8 appellants, which would essentially unwind policy decisions made by the County’s Board
9 of Commissioners and the Town of Friday Harbor’s City Council – which resulted in the
10 Town’s decision to annex the “Buck Property” into its jurisdiction at some point almost 10
11 years ago and zone the property for residential development, and the County
Commissioners’ decision to select a preferred route and declare the public need for a new
county road alignment connecting Turn Point Road and Pear Point Road.

12 7. It is well established by Washington caselaw that the Hearing Examiner can only
13 hear and decide appeals and make recommendations on matters and issues where
14 ordinances or other appropriate authority grants the Hearing Examiner the authority to do
15 so. RCW 35A.63.170; *Chausee v. Snohomish County Council*, 38 Wn. App. 630, 636, 689
16 P.2d 1084 (1984). And, a collateral attack on previous land use decisions, masked as a
17 SEPA appeal, grading permit appeal, or otherwise, cannot stand. See lengthy discussion
18 and summary of relevant caselaw in *Twin Bridge Marine Park, LLC v. Dep’t of Ecology*,
19 162 Wn.2d 825, 175 P.3d 1050 (2008)(summarizes the well established principle of
20 Washington law that prohibits collateral attacks of prior government decisions to give
21 closure and clarity to interested citizens where agencies and public had sufficient notice to
22 resolve any dispute in court but did not do so); See, e.g., *Wenatchee Sportsmen Ass’n v.*
Chelan County, 141 Wn.2d 169, 4 P.3d 123 (2000) (a challenge to a Chelan County
decision concerning residential development permits under the Growth Management Act,
chapter 36.70A RCW, must be brought under LUPA); *Skamania County v. Columbia River*
Gorge Comm’n, 144 Wn.2d 30, 26 P.3d 241 (2001) (construing a federal act, 16 U.S.C. §
544m(a), no collateral attack on a local final land use decision can be made when no
timely appeal is filed); and *Chelan County v. Nykriem*, 146 Wn.2d 904, 931-33, 52 P.3rd 1
(2002)(holding that land use decisions are final after 21 days and cannot be collaterally
attacked).

23 8. The appellants allege that the county’s environmental review does not comply with
24 SEPA procedural requirements. “SEPA is primarily a procedural statute that requires the
25 disclosure of environmental information.” “SEPA does not demand a particular

1 substantive result in government decision-making;’ rather, it ensures that environmental
2 values are given appropriate consideration.” *Glasser v. City of Seattle*, 139 Wn. App. 728,
3 742, 162 P.3d 1134 (2007)(citations omitted). A threshold determination is the decision by
4 the county’s SEPA official as to whether or not an EIS is required for a proposal that is not
5 otherwise categorically exempt from SEPA requirements. WAC 197-11-797. SEPA
6 requires that the threshold determination be made on “information reasonably sufficient to
7 evaluate the environmental impact of the proposal.” WAC 197-11-355. In making a
8 threshold determination, the SEPA official reviews the environmental checklist and
9 applicable development regulations adopted to systematically avoid or mitigate adverse
10 impacts related to development or redevelopment or to designate as acceptable
11 development standards in spite of their impacts. SEPA allows the SEPA official to rely as
12 much as possible on existing plans, rules, and regulations to fill gaps and impose mitigation
13 measures under the County’s SEPA authority. WAC 197-11-158. SEPA also allows the
14 SEPA official to use existing environmental documents, and, non-project environmental
15 documents have no expiration date. WAC 197-11-600; SEPA Handbook, Washington State
16 Department of Ecology, Publication No. 98-114, p. 33 Sec. 2.7 (2003).

17
18 9. After reviewing the environmental checklist, other supporting project
19 documentation, and applicable regulations, the SEPA Official makes a threshold
20 determination and issues either a determination of significance, which requires the applicant
21 to prepare an EIS, or issues a DNS. WAC 197-11-330. If the SEPA Official determines
22 there will be no probable significant adverse environmental impacts from a proposal, the
23 SEPA official SHALL prepare and issue a DNS. WAC 197-11-034(1). By state law, this is
24 not optional.

25
26 10. Here, although there was gap in years from when the initial idea of a Connector
Road was publicly discussed and several environmental/traffic reports were prepared, the
SEPA official credibly determined that there were no substantial changes to the proposal or
the zoning assigned to surrounding properties in the intervening years. There was no basis
in fact or law to order an environmental impact statement for the project.

11. An agency is not required to adopt existing environmental documents and may,
instead, choose to simply incorporate the document by reference. *Moss v. City of*
Bellingham, 109 Wn. App. 6, 28, 31 P.3d 703 (2001). Moreover, a harmless procedural
error may not serve as a basis for the reversal of a land use decision. RCW
36.70C.130(1)(a). Further, the failure to formally incorporate a prior environmental
document is harmless error. *Concerned Taxpayers Opposed to Modified Mid-South Sequim*
Bypass v. Dep’t of Transp., 90 Wn. App. 225, 233, 951 P.2d 812 (1998). See *Ellensburg*
Cement Prods., Inc v. Kittitas County, 171 Wn. App. 691, 287 P.3d 718 (Div. III, 2012),
Affirmed by *Ellensburg Cement Prods. v. Kittitas County*, 179 Wn.2d 737, 317 P.3d 1037
(2014). The appellants challenges on this basis are without merit. Here, County witnesses
all confirmed that they considered the previous environmental reports and traffic data as

1 part of the DNS decision, the road design, and the grading permit review. There was no
2 error that would serve to reverse either decision.

3 12. Land use decisions may not be based solely upon community
4 displeasure. *Maranatha Mining v. Pierce County*, 59 Wn. App. 795, at 804 (Div. II,
5 1990). In *Maranatha*, the court overturned denial of a permit, because the local agency
6 disregarded the record before it, basing its decision instead "on community displeasure and
7 not on reasons backed by policies and standards as the law requires." *Maranatha*, 59 Wn.
8 App. at 805. The only opposing evidence was generalized complaints from concerned
9 citizens, who speculated that increased car traffic on county streets would present an
10 unacceptable danger to pedestrians, cyclists, and other non-motorized users of Pear Point
11 Road and Turn Point Road. Community displeasure cannot be the basis of a permit
12 denial. *Kenart & Assocs. v. Skagit Cy.*, 37 Wn. App. 295, 303, 680 P.2d 439, *review*
13 *denied*, 101 Wn.2d 1021 (1984).

14 13. Expert testimony in the record shows that the Connector Road has been designed to
15 comply with applicable state and County road design requirements. *Testimony of County*
16 *Engineers, both P.E. 's*. The two professional traffic engineering reports that are included in
17 the record analyzed the impacts of a roadway route that is substantially similar to the
18 proposed Connector Road design, using "full-buildout" projections, based on densities
19 permitted on undeveloped parcels that might utilize the new road and other county roads in
20 the vicinity.

21 14. None of the appellant's witnesses or exhibits even attempted to rebut the key fact
22 established in the traffic consultant reports reviewed and considered by County staff – that
23 the new Connector Road will not cause any County streets to drop below Level of Service
24 standards for such roadways, even factoring in "full-buildout" traffic figures that assume
25 the undeveloped parcels in the Town of Friday Harbor are fully developed. The record
26 establishes that no significant traffic accidents involving pedestrians or bicycles have
occurred on the county roadways that were the focus of the appellants' testimony. The
Connector Road would allow for safe and comfortable travel on affected roads, and could
reduce traffic on some segments of county roads, as traffic patterns change over time.

15 15. For the specific reasons articulated in the challenged DNS and Grading Permit Staff
16 Report, dated September 21, 2017, and all exhibits thereto, and for the additional reasons
17 set forth herein, all as thoroughly supported by the record established in this appeal, the San
18 Juan County Department of Community Development DNS and Grading Permit issued for
19 File No. PSEPA0-17-0005, should be and are each hereby affirmed in their entirety.

20 16. Any legal conclusions or other statements made in previous or following sections of
21 this document that are deemed conclusions of law are hereby adopted as such, and are
22 incorporated herein by this reference

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V. DECISION.

Based on evidence included in the record for this appeal, the appellants failed to meet their burden of proof. Accordingly, the pending appeals are respectfully denied and the challenged DNS and Grading Permit are affirmed.

ISSUED this 2nd Day of February, 2018



Gary N. McLean
Hearing Examiner

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Effective Date, Appeals, Valuation Notices

Hearing Examiner decisions become effective when mailed or such later date in accordance with the laws and ordinance requirements governing the matter under consideration. SJCC 2.22.170. Before becoming effective, shoreline permits may be subject to review and approval by the Washington Department of Ecology, pursuant to RCW 90.58.140, WAC 173-27-130 and/or SJCC 18.80.110.

Decisions of the Hearing Examiner are final and not subject to administrative appeal to the San Juan County Council, unless the County council has adopted, by ordinance, written procedures for the discretionary review of such decisions. See Section 4.50 of the San Juan County Home Rule Charter and SJCC 2.22.100.

Depending on the subject matter, this decision may be appealable to the San Juan County Superior Court or to the Washington State Shorelines Hearings Board. State law provides short deadlines and strict procedures for appeals and failure to timely comply with filing and service requirements may result in dismissal of any appeal. See RCW 36.70C and RCW 90.58. Persons seeking to file an appeal are encouraged to promptly review appeal deadlines and procedural requirements and confer with advisors of their choosing, possibly including a private attorney.

Affected property owners may request a change in valuation for property tax purposes, notwithstanding any program of revaluation.