

Adam Zack

From: Ken/Miki Brostrom <xnw@att.net>
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To: Rick Hughes; Jamie Stephens; Bill Watson; Adam Zack; SMP Comments
Subject: 7-28-2020 Joint Public Hearing
Attachments: SMP Update Hearing 7-28-2020.docx

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Attached are my comments:

For the Official Record

July 28, 2020, Joint Public Hearing on the Proposed Amendments
to the San Juan County Shoreline Master Program Regulations
SJCC 18.20.020, SJCC 18.50.050, SJCC 18.50.550, SJCC 18.80.110

Respectfully submitted,

Micaela Brostrom

July 28, 2020

San Juan County Council
Washington Department of Ecology
San Juan County Department of Community Development

FOR THE OFFICIAL RECORD

***July 28, 2020, Joint Public Hearing on the Proposed Amendments
to the San Juan County Shoreline Master Program Regulations
SJCC 18.20.020, SJCC 18.50.050, SJCC 18.50.550, SJCC 18.80.110***

Please consider the following comments:

Section 1. SJCC 18.20.020 “B” definitions Page 3, Lines 6-12:

“Barge landing site, permanent” and “Barge landing site, temporary”

Both definitions should specifically exclude “log barge landing sites” which are covered elsewhere in the code (SJCC 18.20.120 “L” definitions: “Log storage or transfer site”). I am familiar with log barging in the county, and log barging is significantly and substantially different from any other barge use. Log barges are huge, at least 110-120 feet in length, 30+ feet wide; they are not self-powered but require a tugboat to maneuver and to hold in place in contact with the shore for 4 or more hours as logs are transported onto the barge and unloaded. Log barging is usually not limited to a single load, but to multiple loads, multiple landings, and involving large, noisy equipment for many hours at a time, adversely affecting tidelands, shore lands and neighbors.

Section 4. SJCC 18.50.010 E.1.a. Page 16, Lines 26-28, and Section 12. SJCC 18.80.110 H.2. and 3., Page 50, Lines 2-8:

When environmental and shoreline laws were adopted nearly 50 years ago, the overriding premise was that *everyone* needed to understand the consequences of land-use actions, and consider the cumulative impacts of similar actions. Public knowledge and participation is essential in the decision-making process and in determining effective and enforceable mitigating conditions if needed. Eliminating the public from the decision-making process is antithetical to the intent and purpose of the laws.

Administrative determinations allow the San Juan County Department of Community Development (DCD) staff to interpret regulations, not just apply them. With no public process or notification, DCD is dependent on input only from the applicant not from other interested and affected parties, effectively allowing DCD staff to act as judge and jury without the assured objectivity of a third party judge.

Increasing opportunity for administrative approvals and determination of mitigating conditions with no procedure for enforcement and without public knowledge and participation is antithetical to the purpose and intent of the SMP and SMA. If the intent is to eliminate the Hearing Examiner, public notification and participation must be retained.

Section 7. SJCC 18.50.050 B.2.i, Page 26, Lines 1-3:

New temporary barge landing sites. Existing nonconforming temporary barge landing sites do not require a certificate of exemption if the proposed use is consistent with the historic transport of cargo at the site and frequency of the historic use; and...

This section should specifically exclude log transport sites. Logging is not a temporary activity, but periodic, and log barge site is defined elsewhere in the county code. Per the above, log barging is significantly different from any other type of barge activity adversely affecting tidelands, shore lands and neighbors.

Section 10. SJCC 18.550 Section 10.H.1, Page 35, Lines 4-10:

The Department of Ecology has stated the obvious, that barge landings are an appropriate use of shorelines. This should not be a revelation to the County (where else would you land a barge?!), nor should it mean that all shorelines are appropriate for use by all types and sizes of barges. Nor does it justify the addition to the San Juan County Shoreline Master Program proposed in this section:

Temporary barge landing sites require a certificate of exemption but are exempt from a shoreline substantial development permit. These sites shall not exceed 12 landings in any 24-month period and must be operated in a manner that will result in no net loss of shoreline ecological functions. Existing nonconforming temporary barge landing sites do not require a certificate of exemption if the proposed use is consistent with the historic transport of cargo at the site and frequency of the historic use.

The added new language, underlined above, would constitute an “exemption-exemption” to an already-codified exemption process, and is dependent upon their being a codified list of existing nonconforming temporary barge landing sites and a detailed and explicit description of the historic cargo transported at the site and the frequency of the historic use. **Such a list does not exist.** The only list is a 2004 Inventory of Barge and Landing Site Craft which is vague, incomplete, and in some cases wrong. For instance, one site is shown as having a CUP. A CUP was assigned to the owner of the parcel years ago, not to the parcel itself, for use as a “log transshipment port” and for a specific period of time (15 years). Both have expired and the CUP no longer exists.

The proposed language in SJCC 18.550.Section 10.H.1 should not be adopted until there is a codified list of existing nonconforming barge sites together with a definitive description of type and frequency of use for each site. Additionally, the limitation of 12 landings in any 24-month period means allowing landings averaging every 2 months, *ad infinitum*. The time limit should be reworded so that perpetual open-ended unregulated approval is not allowed.

PLEASE CONSIDER THE FOLLOWING EXAMPLE OF ADMINISTRATIVE PROCESS GONE AWRY:

On April 9, 2020, the San Juan County Department of Community Development (DCD) issued an administrative approval of exemption from a Shoreline Substantial Development Permit for the use of an existing nonconforming barge landing site on Waldron Island, a 3,000-acre non-ferry-served island, for use as a log barge, storage and transfer site. The applicant is a resident of Friday Harbor. A 2004 Inventory of Barge and Landing Craft Sites lists this site as used “2/yr”, cargo types “Res.Supply, Passengers”, and its Land Use Designation “Natural”. It has never been used for the barging, storage or transfer of logs. This proposed use as a log barge log storage and transfer site constitutes a new use, an expansion, escalation and intensification of use.

San Juan County Code makes a distinction between a “barge landing site” and a “log storage or transfer site”. *In addition, SJCC Chapter 18.50.480.A.10 states: “On non-ferry-served islands, proposals for timber harvest must identify all sites on that island that are proposed for the transfer of logs. A shoreline conditional use permit is required for each log transfer site.” Table 18.50.600 in the SMP says that log transfer sites, facilities and storage are not allowed in the Natural environment.*

Instead of considering the proposed new use of this site as a log transfer site for the purpose of barging logs off of the island, The Department of Community Development decided that logging is a “temporary activity”, and therefore this use is a temporary use; at the same time, DCD stated that this was the only viable log barge site on the island. How this was determined and by whom is unknown. This is all in spite of the fact that there are numerous land owners on Waldron whose land is in DFL or CUTL and are required to have a harvest element in their forest management plans for periodic harvest which requires log transport off of the island.

Here is what this administrative approval of exemption allows and which apparently was not considered:

1. There are currently 8 approved FPAs for the logging of 15 parcels on Waldron Island listing the same operator. All of these FPAs were approved when the project was proposed to DCD.
2. The total acreage to be logged is 202 Ac., to occur on 252 Ac. or roughly 8.4% of the island. Parcels to be logged extend from one end of the island to the other.
3. Approved FPAs specify a total volume of 2 million board feet of timber to be logged. The operator of the Waldron project is currently soliciting other land owners to log their land so the number of parcels, acreage and volume will undoubtedly increase. And the operator is talking about a third year of operation.
4. FPAs indicate that a road to be used as a haul road is the county road. While logging trucks have every right to use the road, so does everyone else on the island. The road is a narrow dirt road, tree- and ditch-lined, and is the only access to the county dock, boat transportation and moorages in Cowlitz Bay, the Post Office, school, cemetery and airstrip, and every home on the island. There are no alternative routes. The county road is used by everyone on the island and every mode of transportation and persons of all ages, and includes pedestrians, motorized and unmotorized vehicles, bicycles, and especially children – including small children on foot, with their dogs, and on bicycles.
5. This project will affect the daily activities of every person on Waldron Island. For instance, without enforceable mitigating conditions governing use of the county road, is the county willing to accept responsibility and liability for an accident if, for instance, a child on a bicycle is injured - or worse?

If, indeed, this is the only viable log barge site on the island, there may be persuasive and overriding reasons for the county to ignore or override its own regulations. But because the county determined unilaterally that this was a temporary use and exempt from a shoreline conditional use permit without any public knowledge or input, there was no public process where the public could be informed and understand the reasons for the county to violate its own laws, and where information from other than the applicant could be considered. Nor could there be consideration of enforceable mitigating conditions. If the county doesn’t abide by its own regulations, how can it expect voluntary compliance from its citizens? While I acknowledge the county is an enabling agency not an

enforcement agency, when the county violates its own regulations, the result is insidious erosion not only of environmental protections, but of respect for the law.

Here is where the administrative process failed in the above example:

Over the nearly year that this project was under consideration, numerous individuals expressed questions to DCD which were not answered and concerns which were not addressed. With the applicant a resident of Friday Harbor and the project on an outer, non-ferry-served island, people on Waldron were at a distinct disadvantage when communicating with DCD. The Waldron community asked for a site visit and meeting. The county declined. To my knowledge no site visit was ever made, nor has DCD staff ever visited Waldron.

Individuals checked with DCD numerous times to see when a decision would be made regarding requirement for a shoreline substantial development permit. The answer always was, we are waiting for more information, a decision will be made "soon". One inquiry did result in an electronic reply consisting of 263 pages, much of which appeared to be duplication and parts of which were not legible, an obfuscation and a disincentive for any citizen to inquire further.

Most individuals were under the impression that a decision regarding a permit was pending, and that this decision would be made public. Instead of a decision regarding a SCUP, the administrative determination to approve the project was made in the middle of the pandemic and while everyone was under mandatory quarantine and meetings were banned, so people on Waldron could not meet to discuss the issue.

Even though DCD had contact information for all interested parties, they were not informed of the decision or of the 21-day appeal period. No one had been told that anyone wanting notification of the decision has to notify DCD in writing prior to the decision, which DCD revealed after-the-fact. Word of the approval did not reach Waldron until after the appeal period had expired.

Were the new language proposed in SJCC 18.50.550 Section 10.H.1. currently in effect, the DCD would not even have required an exemption for this Waldron project, which, as approved, sets a precedent for every other existing nonconforming barge landing site in the county. Since there is no codified list of existing nonconforming barge sites with a definitive description of type and frequency of use, every shoreline owner in the county could do whatever they want, whenever they want, even use as a "log transshipment port", simply claim it is historic use and exempt from exemption.

Please reconsider the new language proposed in all of the above, SJCC 18.20.020, SJCC 18.50.050.B.2.i, SJCC 18.50.550.H.1., and SJCC 18.80.110.H.3.

Respectfully submitted,

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