



# SAN JUAN COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT

135 Rhone Street, PO Box 947, Friday Harbor, WA 98250  
(360) 378-2354 | (360) 378-2116  
dcd@sanjuanco.com | www.sanjuanco.com

## MEMO

**REPORT DATE:** July 27, 2020

**TO:** San Juan County Council

**CC:** Chad Yunge, Senior Regional Shoreline Planner, Department of Ecology  
Mike Thomas, County Manager  
Erika Shook, AICP, DCD Director

**FROM:** Adam Zack, Planner III 

**SUBJECT:** An Ordinance to update the Shoreline Master Program (SMP) regulations; amending San Juan County Code (SJCC) 18.20.020, 18.20.140, 18.20.190, 18.50.020, 18.50.030, 18.50.040, 18.50.050, 18.50.450, 18.50.540, 18.50.550, 18.50.600, 18.80.110 and 15.12.030

**PUBLIC HEARING:** July 28, 2020

**ATTACHMENT:** Public Comments Received by Noon, July 27, 2020.

**PURPOSE:** To provide the public comments on the draft Ordinance regarding the SMP periodic review that were received before the joint public hearing on July 28, 2020.

**COMMENTS:** Written public comments received at [smpcomments@sanjuanco.com](mailto:smpcomments@sanjuanco.com) before noon on July 27, 2020, are summarized in Table 1 below.

**Table 1. Shoreline Master Program Period Review Written Public Comments Received Between January 30 and July 27, 2020.**

Commenter	Date Received	Summary of Comment
Micaela Brostrom	01/30/2020	Ms. Bostrom has several questions regarding changes to SJCC 18.50.550(H) that allows existing nonconforming barge landing sites without 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.
Bruce Keithly	07/10/2020	Mr. Keithly suggest five actions to increase code enforcement for shoreline regulations.
Friends of the San Juans through Kyle Loring	07/21/2020	The Friends of the San Juans (Friends) raised 5 points regarding existing nonconforming barge landing sites.
Micaela Brostrom	07/26/2020	Ms. Brostrom is concerned about the proposed provisions for existing nonconforming barge landing sites. In her letter, she includes references to a recently permitted barge landing on Waldron Island.

## Linda Ann Kuller

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**From:** Ken/Miki Brostrom <xnw@att.net>  
**Sent:** Thursday, January 30, 2020 1:36 PM  
**To:** Rick Hughes; Bill Watson; Jamie Stephens; Ingrid Gabriel; Lynda Guernsey; SMP  
Comments; Erika Shook; Linda Ann Kuller; Colin Maycock  
**Subject:** Comments on the SMP Periodic Update Ordinance

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I am writing with concern regarding a proposed addition to San Juan County shoreline regulations. Specifically,

Draft Ordinance Section 9.1 (SJCC 18.50.550 Section H.1):

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. Here are my questions and concerns:

1. Why is this necessary? Where is the justification? Who proposed it and why? Where is the oversight? Who keeps track of the number of landings? Who monitors the impact on shorelines? The rolling 24-month period would allow perpetual use of a given site. This appears to be a free-pass, as if the county is saying, Do whatever you want, we don't care.
2. How is the proposed new section consistent with the SMA/ECY mandate to protect shoreline natural resources against adverse environmental effects and preserve the natural character and aesthetics of the shoreline?
3. How is this consistent with the SMA/ECY mandate to limit use of tidelands and shorelands, to maximize and protect the public's right to access? Are these sites for use only by the adjacent upland landowner or are they available to others? Many – if not most – of these nonconforming sites are on publicly-owned tidelands. Has this preemption of public use been considered?
4. How is this consistent with the current San Juan County code? A permit exemption application currently under consideration by the Planning Department for use of a nonconforming barge landing site as a log transfer (barge) site has been determined by the Planning Department to be a “temporary use” even though San Juan County Code has specific permit requirements for log transfer sites and this site has never been used as a log transfer site. In addition, the site is on shorelines designated “Natural” and this

use would be prohibited under current county regulations. This new language and its creative interpretations would make proposals such as this even more problematic.

5. What is the process for determining an “Exemption-Exemption”? Or is there one? How would it differ from the process for an “Exemption”? Or will it just be up to the landowner to decide the site’s previous allowed use, type of use and frequency of use? Or up to the constant (and often adversarial) vigilance of neighbors?

6. Where in the code is there a list of the “existing nonconforming barge landing sites” and their “historic transport of cargo ... and frequency of the historic use.”? There is a 2004 Public Works list of 96 identified barge landing sites, but it is out-of-date, inaccurate, and lacks specific description and detail as to historic use and frequency. For the pending exemption application referenced above, the Planning Department is not using the 2004 inventory, but a list from 2002, which is even more incomplete, inaccurate and lacking in specificity.

7. Where is there a definition of “barge”? Is use of these nonconforming sites limited in type and size of barge to self-powered landing craft like the *Pintail*? 23-feet wide by 48-feet in length? Does it include non-powered barges like the *Heavyweight*? some 33-feet in width and 110 to 130-feet long, requiring a tugboat to maneuver and hold in place on the beach, and which I have seen used on nonconforming barge landing sites?

I am not a land-use attorney, nor a land-use planner. I am an interested and concerned citizen who has been involved in both SEPA and SMA since their inception in the early 1970’s. I have been a shoreland owner in San Juan County since 1973. I know that the original and primary purpose of SEPA and SMA (which seems to be largely forgotten over the past nearly 50 years) is to thoughtfully and thoroughly understand the environmental impacts of our land-use actions and to consider cumulative impacts of these actions.

Allowing “exemption-exemptions” to 96 – or more – already nonconforming shoreline barge landing sites throughout San Juan County without a finite list, without detail as to type and frequency of use, without thoughtful and thorough consideration of environmental impacts of individual sites and cumulative impacts of multiple sites is antithetical to the purpose and intent of both SEPA and the SMA.

Please withdraw this newly proposed “exemption-exemption” provision from this SMP Update until there is a discrete list of all “existing nonconforming temporary barge landing site” and a complete and detailed description for each site of the historic transport of cargo, type of cargo, and frequency of use.

And, please reconsider the use and purpose of shoreline “temporary uses” and “shoreline permit exemptions” to more clearly reflect their purpose, procedures and protections, and not simply codify artificial means of avoiding mandated and necessary regulations.

Respectfully submitted,

Miki Brostrom

Bruce Keithly  
195 Marine Lane  
Stuart Island, WA.  
July 6, 2020

Adam Zack  
San Juan County  
Department of Community Development  
P.O. Box 947  
Friday Harbor, WA 98250

SJC DEPARTMENT OF  
JUL 10 2020  
COMMUNITY DEVELOPMENT

Attention: Public Comment re Shoreline Master Program Amendments

Dear San Juan County Council and Dept. of Community Development,

**AN UNENFORCED CODE IS AN EXPENSIVE EXERCISE IN WISHFUL THINKING**

Since 1976 my wife and I have been waterfront land owners and part-time residents of Stuart Island.

San Juan County has, in general, done an impressive job of protecting the natural beauty and natural function of its shorelines. We love the islands and hope that our family can continue to enjoy Stuart Island for many generations.

However, the peaceful beauty and natural functions of the shorelines, especially in the “outer islands” are being put at serious risk by a material lack of code enforcement.

Only one code enforcement official is funded in the budget of the Dept. of Community Development.

The consequence is that the only code enforcement on islands like Stuart Island is via citizen complaint. Often residents of small islands are reluctant to report possible code violations.

I suggest the following actions to bring code enforcement to a realistic level:

1. Budget increases to afford at least 3 enforcement officers.
2. Make transportation of code enforcement officers to outer islands available either via the Sheriff's boats or by a boat for the use of the Dept. of Community Development.
3. Increase the fines set out in the code for code violations. Current fines are so small that risking a fine would often be cheaper than obtaining the required permits.
4. Make it easier and more secure for citizens to anonymously report possible code violations.
5. Greatly increase fines for contractors who do work on projects that are unpermitted and violate the Shoreline Master Program. Publicize the identity of contractors that facilitate code violations.

Thank you for your attention to these concerns.



*Bruce Keithly*

Bruce Keithly (retired attorney. Chairman, in 1973 of Citizens Committee which created the first Snohomish Count Shorelines Management Code. Worked code enforcement at a deputy prosecutor. 40 years of legal work which often involved land use matters.)

## Adam Zack

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**From:** Kyle Loring <kyle@loringadvising.com>  
**Sent:** Tuesday, July 21, 2020 12:57 PM  
**To:** SMP Comments  
**Cc:** Rick Hughes; Jamie Stephens; Bill Watson; Tina Whitman; Jennifer Barcelos  
**Subject:** SMP comments from Friends of the San Juans  
**Attachments:** 2020 SMP update -- FSJ cmt ltr.pdf

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Dear Mr. Zack,

Please find attached a comment letter on behalf of Friends of the San Juans that addresses two of the proposed Shoreline Master Program amendments. We look forward to the hearing scheduled for July 28.

Sincerely,  
Kyle Loring

Kyle A Loring  
LORING ADVISING PLLC  
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*he / him / his*

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VIA E-MAIL

July 21, 2020

Adam Zack  
SJC Department of Community Development  
PO Box 947  
Friday Harbor, WA 98250  
smpcomments@sanjuanco.com

**Re: Friends of the San Juans Comments on Update to Shoreline Master Program regulations**

Dear Mr. Zack,

The following comments, submitted on behalf of Friends of the San Juans (“Friends”), address two of the elements of the Shoreline Master Program update (“SMP Update”) proposed for hearing on July 28, 2020—barge landing authorization and the permit review process. Friends requests that San Juan County (“County”): (1) decline the draft language for barge landings and continue to receive information about barge landings; and (2) ensure that members of the public continue to receive the required notice and opportunity for comment on projects reviewed by either the Hearing Examiner or Department of Community Development Administrator (“Administrator”). Section E below describes these changes, both of which would be consistent with our community’s rich tradition of public participation and environmental heritage, with the Shoreline Management Act’s (“SMA”) primary purpose to protect shorelines as fully as possible, and with the need to track cumulative impacts.

**A. Friends’ History.**

Friends has been advocating to conserve the beauty, rural character, and ecological richness of the San Juans for more than forty years. Friends’ mission is to protect and restore the San Juan Islands and the Salish Sea for people and nature. To achieve that mission, Friends and its approximately 2,000 members, seek to foster wild and healthy shorelines by campaigning for science-based regulatory protections and permit decisions and by carrying out substantial shoreline restoration and conservation efforts.

## **B. The Shoreline Management Act Protects Shorelines from Ecological Harm.**

In 1971, the Washington legislature enacted the SMA, finding that “the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation.”<sup>1</sup> The SMA therefore establishes a policy that “contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally the public right of navigation and corollary rights incidental thereto.”<sup>2</sup> In addition, “uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline.”<sup>3</sup> And the SMA clarifies that alterations of the natural condition of the shorelines of the state are to be authorized only in limited instances.<sup>4</sup> Thus, contrary to the general rule of strict construction for laws, and to achieve its primary purpose, the SMA “is to be broadly construed in order to protect the state shorelines as fully as possible.”<sup>5</sup>

## **C. SMA Regulations Require the Protection and Restoration of Shorelines.**

The SMA regulations that govern the adoption of Shoreline Master Program updates incorporate the SMA’s shoreline preservation priorities and its emphasis on “maintenance, protection, restoration, and preservation.”<sup>6</sup> An SMP must therefore not only conserve the ecological functions that remain along a community’s shorelines, but promote the restoration of impaired ecological functions.<sup>7</sup> Counties must manage shorelines to safeguard their functioning at both of the ecosystem scale and the localized scale featuring shoreline

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<sup>1</sup> *Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hearings Bd.* 199 Wn. App. 668, 399 P.3d 562 (2017) (emphasis in original).

<sup>2</sup> *Buechel v. Dep’t of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994) (citing RCW 90.58.020; *Caminiti v. Boyle*, 107 Wn.2d 662, 732 P.2d 989 (1987)).

<sup>3</sup> RCW 90.58.020.

<sup>4</sup> *Id.* (emphasis added).

<sup>5</sup> *Buechel*, 125 Wn.2d at 203 (citing RCW 90.58.900 for broad interpretation); *Lund v. Dep’t of Ecology*, 93 Wn. App. 329, 336-37, 969 P.2d 1072 (1998).

<sup>6</sup> WAC 173-26-181, -186(8).

<sup>7</sup> WAC 173-26-181, -186(8), -201(2)(c), -201(2)(f), -221(2), -221(5), -221(6).

vegetation.<sup>8</sup>

The SMP must also include policies and regulations that protect and restore **critical habitats**, including wetlands, critical freshwater habitats, and critical saltwater habitats like kelp and eelgrass beds, spawning and holding areas for forage fish, subsistence, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association.<sup>9</sup>

**D. The County Must Gather Information about Shoreline Activity Impacts to Meet Its Obligation to Identify and Compensate for County-wide Cumulative Impacts.**

In a June 13, 2018 Final Decision and Order, the Washington Growth Management Hearings Board (“Board”) concluded that San Juan County had failed to include a mechanism for documenting all project review actions and to include a process for periodically evaluating cumulative impacts of authorized development.<sup>10</sup> The Board noted in that decision that the Shoreline Master Program Guidelines (“Guidelines”) direct local governments to “‘evaluate and consider cumulative impacts of reasonably foreseeable future shoreline development.’”<sup>11</sup> This decision is consistent with the Guidelines’ mandate that SMPs ensure that the aggregated impacts of exempt development will not cause a net loss of ecological functions.<sup>12</sup>

In response to that decision, the County established a cumulative impacts review process to “document all project review actions in the shoreline jurisdiction and evaluate the cumulative effects of such development on shoreline conditions.”<sup>13</sup> Hence, every four years, the County will review information like: (1) permit applications, decisions, environmental reports, and other data from authorized shoreline exemptions and permits and GIS maps; (2) aerial and

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<sup>8</sup> WAC 173-26-201(2)(c).

<sup>9</sup> WAC 173-26-221(2)(b)(iii), 221(2)(c)(i), 221(c)(ii), and 221(c)(iii).

<sup>10</sup> *Friends of the San Juans v. San Juan County, et al.*, GHMB No. 17-2-0009, Final Decision and Order, 34 (June 13, 2018)

<sup>11</sup> *Id.* at 31.

<sup>12</sup> WAC 173-26-186(8)(b)(ii).

<sup>13</sup> SJCC 18.50.020.E.e.

LIDAR photographs; (3) other observable data; and (4) field observations.<sup>14</sup>

For the cumulative effects review to be effective, the County must gather as much information as simply as possible. To date, it has experienced significant challenges in identifying, much less addressing, the cumulative impacts of shoreline development it authorizes. Even today, nearly a decade after it initially promised to begin tabulating those impacts, it does not appear to have created or implemented a clear way to do so. When updating the SMP, the County should ensure that it doesn't miss opportunities to gather information necessary for that effort.

**E. The SMP Update Should Be Revised to Continue to Require Information about Barge Landings and to Provide Suitable Public Notice and Transparency.**

Against the above backdrop, Friends requests that the County make the following revisions to the SMP Update:

- 1. Existing nonconforming temporary barge land sites (SJCC 18.50.550, Ordinance at 34) – revise to decline proposed language and require the submission of a certificate of exemption. Also, update barge landing inventory commenced during 2000s and clarify that log transfer activities would be governed by the SMP's existing log transfer facility rules rather than temporary barge landing regulations.**

The use of a shoreline for a barge landing can cause substantial neighborhood and ecological impacts. Those impacts must be tracked so that the County can meet its obligation to address cumulative impacts countywide every four years. Thus, some documentation must be submitted to the County with details about the proposed use, particularly if it is part of an ongoing project. A certificate of exemption would provide that tracking mechanism.

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<sup>14</sup> *Id.*

As of a November 18, 2004 San Juan County Public Works inventory<sup>15</sup> of existing barge and landing craft sites, ninety-six (96) locations exist throughout the county. This means that nearly two hundred adjacent property owners are directly impacted by this policy. In addition, as can be seen on the map attached to these comments and prepared by Tina Whitman, Friends' Science Director, barge landing sites naturally find their way to soft, or non-bedrock shores of the county, places that are known to have high ecological importance and many critical habitats. Ms. Whitman oversaw a parcel-scale GIS analysis of the 2004 inventory and found that a full 72 of the 96 barge landing sites are located at sites with eelgrass and that many are also located at documented forage fish spawning habitats (13 forage fish spawning beaches and 4 Pacific herring spawning grounds). Five (5) sites are even located in places identified as having the highest likelihood of rearing wild juvenile chinook salmon.

Landing a barge amidst these sensitive marine habitats and species can directly damage lower intertidal and subtidal eelgrass beds and associated spawning herring, rearing juvenile fish, shellfish and invertebrates. These impacts result from the barge physically grounding out on habitat, propeller scouring vegetation and substrates, and water quality impacts (sedimentation, oils). The equipment typically associated with barge use of shorelines also causes significant impacts. Large equipment or ramps on the beach bury mid and upper beach forage fish spawning habitats and interfere with coastal processes like sediment transport. Juvenile salmon (as well as other rearing fish) are sensitive to noise impacts from the barge itself and may leave

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<sup>15</sup> It should be noted that Friends' staff encountered significant difficulties in obtaining barge landing information. Friends' staff received three different, inconsistent sets of information—from DCD, Table 3.1 of the San Juan County comprehensive land use plan (Section B, Element 3, subsection 3.4.E); from the County's mapping staff, nothing (in response to a request for spatial data layers); and finally, from a formal public records request, a scanned copy of a November 18, 2004 Department of Public Works Inventory of Existing Barge and Landing Craft Site table. The inconsistency in information gathered from different County sources further underscores the need for a tracking mechanism for all barge landings.

the sheltered nearshore habitats to deeper waters while barges are present, where predation risks are much higher.

**Consequently, some documentation, even a minimal certificate of exemption, must be submitted at least annually to confirm that the use is consistent with historic use and to be able to track the cumulative impacts associated with those landings.** This would also allow neighbors who would be impacted by that shoreline use to track it through the County's improved permit tracking system.

In addition, due to the high number of parcels, neighbors, communities, and critical habitats affected by the barge landings, **Friends requests that the County update the inventory of barge landing sites.** We understand that an effort to complete such a review occurred in the early 2000s but that the process did not reach completion and that the current list used by managers contains outdated and inaccurate information

**Last, Friends requests that the County tidy up its regulations to clarify that logging activities that require transport via marine shorelines are addressed by the SMP's log storage and transfer site provisions rather than barge landing regulations. This would be accomplished by removing the cross-references between the definitions for "log storage or transfer site" and "barge landing site, permanent."** The operative provisions of the SMP would not need revision because they do not include cross-references--the SMP independently addresses "log transfer sites, facilities and storage" at SJCC 18.50.480, and barge landings at SJCC 18.50.550.H. This change would also decrease potential confusion about which provisions apply to logging operations by observing the rule of statutory interpretation that, in the event of conflicting language, the more specific provision applies. Here, that provision is the SMP's existing directions for log transfer sites, facilities and storage.

2. **Decisionmaker for substantial development permits (SJCC 18.50.020, 18.80.110.H.3, Ordinance at 16)** – either withdraw the proposal to carve out trail and accessory structure permit decisions for the Administrator, or revise notice and hearing procedures to ensure that members of the public receive notice of applications for shoreline substantial development permits for public pedestrian trails and residential accessory structures that do not meet exemption thresholds and that they have an opportunity to deliver public comment.<sup>16</sup> At present, provisions of Chapter 18.80 SJCC continue to identify the hearing examiner as the decisionmaker for these permits and identify public notice and comment procedures associated with the hearing examiner. If the Administrator becomes the decisionmaker on these topics, the SMP update should revise those provisions to avoid conflicting language that would identify both of the hearing examiner and the development director as decisionmakers for the same permits.

**F. Conclusion**

We appreciate your consideration of these recommendations.

Sincerely,

LORING ADVISING PLLC



Kyle A. Loring

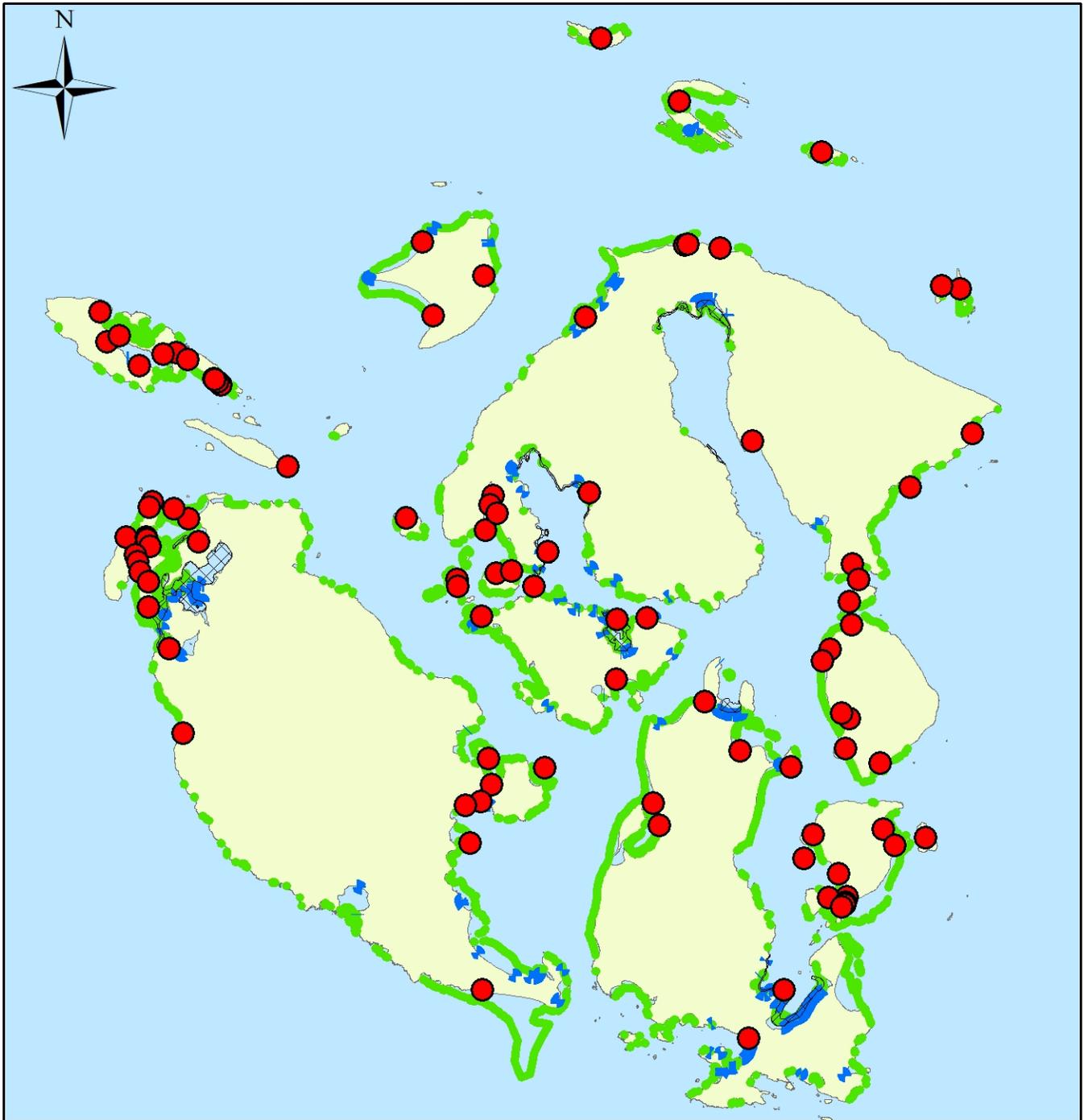
cc: Rick Hughes, County Council Dist. 2  
Jamie Stephens, County Council Dist. 3  
Bill Watson, County Council Dist. 1  
Tina Whitman, Friends Science Director  
Jennifer Barcelos, Friends Staff Attorney

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<sup>16</sup> WAC 173-26-140(4) states that “[e]xcept as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section.... The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection.”

**ATTACHMENT**

# Barge Landing Sites and Nearshore Habitat



## Legend

-  Barge Landing Site
-  Herring Spawn Area
-  Forage Fish Spawn
-  Eelgrass, Outer Line of Surveyed Beds
-  SJC Shoreline



## Adam Zack

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**From:** Ken/Miki Brostrom <xnw@att.net>  
**Sent:** Sunday, July 26, 2020 9:30 AM  
**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

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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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