BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

FRIENDS OF GUEMES ISLAND, Petitioner, v. SKAGIT COUNTY, Respondent.	Case No. 07-2-0023 **ORDER DISMISSING APPEAL**

THIS Matter comes before the Board following the Hearing on the Merits (HOM). In its Prehearing Brief and in oral argument at the HOM, Skagit County challenged the standing of the petitioner, Friends of Guemes Island (Petitioner or FOGI). The County seeks dismissal of the Petition for Review (PFR) on the grounds that the Petitioner lacks standing in accordance with RCW 36.70A.280(2)(b).[1]

Petitioner alleges that it has standing because it submitted written materials regarding the issues presented in this appeal prior to the adoption of Ordinance No. O20070009, the challenged action. [2]

In this Order, the Board finds that Petitioner did not raise any of the matters subject to the Board's jurisdiction in this appeal to the County during the comment period for the adoption of Ordinance No. O20070009. The Board concludes that Petitioner lacks standing to bring this Petition for Review in regard to all Legal Issues presented and, therefore, dismisses the appeal.

[1] Skagit County's Response at 2-4.
[2] Petition for Review at 5.

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I. PROCEDURAL BACKGROUND

The PFR for this matter was filed on November 13, 2007 and challenges the County's adoption of Ordinance No. O20070009 and Resolution No. R20060184. Issues presented include Limited Areas of More Intensive Rural Development (LAMIRDs); urban and rural water service; natural resource land designation; non-urban area land use needs and capacity analysis; regulations for Long CaRD developments; major and minor water utility developments; and mineral extraction operations.

On December 18, 2007, the Board, subsequent to a telephone prehearing conference, issued its Prehearing Order (PHO), noting that Legal Issues 1, 2, and 3 are coordinated with WWGMHB Case No. 07-2-0025c because identical issues are presented in that case.[3] The Board issued an Amended PHO on January 25, 2008 clarifying that these legal issues were not dismissed from Case No. 07-2-0023, only coordinated with Case No. 07-2-0025c in order to provide for efficiency in the matter.

On January 31, 2008, upon a motion of the County, the Board dismissed Issue 11 and all other claims in the issues as set forth in the Amended Prehearing Order which asserted that Resolution No. R20060184 failed to comply with the GMA[4].

On March 19, 2008, the Hearing on the Merits (HOM) was conducted in Mt. Vernon, Washington. Petitioner was represented by Gerald Steel. The County was represented by Deputy Prosecuting Attorney Arne Denny. Board members present were Holly Gadbaw and James McNamara. Mr. McNamara was the Presiding Officer.

<u>Preliminary Matters</u>

- *Motion to Strike Declaration of Steel*

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[3] WWGMHB Case No. 07-2-0025c *Friends of Skagit County, June Kite, and Evergreen Islands v. Skagit County; City of Anacortes, Intervenor.*

[4] Order on Motion to Dismiss,

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On March 17, 2008 the County filed a Motion to Strike the Declaration of Gerald Steel (Declaration).[5] That Declaration was submitted in support of Petitioner's contention in its reply brief that "[I]t has always been Skagit County's practice to accept, use, and generally include in its Index any public comment submitted at any time prior to the adoption of a GMA enactment."[6] The County objects to this submittal, asserting this Declaration violates RPC 3.7 "Lawyer as Witness," is self-serving hearsay, and would prejudice the County.[7]

The Board reserved a decision on this matter at the time of the HOM. At argument, in response to Board questions, the County responded through Kirk Johnson, Skagit County Planning and Development Services, to rebut statements contained in the Declaration as to the County's practice with regard to documents contained in the Index. Petitioner objected to this, claiming Mr. Johnson's statements amounted to testimony.

Given that the County was provided the opportunity to rebut the Steel Declaration, the Board will allow its admission. However, through this Declaration Petitioner has opened the door to rebuttal on the County's practices with regard to the use of the Index. Petitioner's objections to the statements of Mr. Johnson regarding how the County employs the Index are overruled and will be considered by the Board.

- *Motion to Dismiss – Lack of Standing*

The County raised the issue of Petitioner's standing in its Response Brief.[8] The County noted that the comment period for the County's 2005 update fell on and between February 17 and April 18, 2006.[9] The County asserts that documents received after the comment period were not considered by the Planning Commission. It points out Petitioner's comment, a letter from Friends of Guemes Island with attachments, was received by the

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[5] Skagit County's Motion to Strike.
[6] FOGI Reply Brief at 3
[7] Skagit County's Motion to Strike at 2-3.
[8] Skagit County's Response at 2-4; See also Case No. 07-2-0025c; Skagit County's Response, at 4.
[9] Id. at 3, citing to Notice of Availability, IR 442.

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County on April 25, 2006, one week after the comment period closed.[10] Based on receipt of this comment letter after the close of the comment period, the County alleges that Petitioner lacks standing to address any of the issues in this case.

Petitioner responds by asserting the Record demonstrates the County used and considered Petitioner's comments in enacting the Ordinance under appeal. Petitioner notes that under WAC 242-02-502, the County was obligated to submit an "index of all material used in taking the action which is the subject of the petition for review." Petitioner further notes this index includes public comments received after the "formal" comment period ended on April 18, 2006, but before the September 10, 2007 adoption date of Ordinance No. O20070009.[11] Petitioner offered the Declaration of Gerald Steel to support its contention that "[I]t has always been Skagit County's practice to accept, use, and generally include in its Index any public comment submitted at any time prior to the adoption of a GMA enactment."[12] Therefore, Petitioner argues it can base participation standing for matters raised in documents submitted after the formal comment period because inclusion of these documents in the Index demonstrates they were "materials used in taking the action".[13]

Petitioner also notes, in accordance with the Notice of Hearing and Preliminary Schedule issued in this case, it submitted Additions to the Index.[14] Therefore, as the County did not object to the additions of these documents to the Record, Petitioner argues the comments in these documents should be allowed as a basis for Petitioner's participation standing if the proper nexus between the comments and the "matter on which review is being requested" is established.[15] Petitioner cites to its comments in Exhibits 501, 502, 507, 509, and 531,

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[10] Id. at 3, citing to Petitioner's letter dated April 22, 2206, stamped received April 25, 2006, IR 507.
[11] FOGI Reply Brief at 4.
[12] Declaration of Gerald Steel, dated March 14, 2008.
[13] FOGI Reply Brief at 4-5.
[14] Id. at 5. The Board notes that the Index numbers to which Petitioner refers (i.e. 500 -531) were mis-numbered by Petitioner. The original Index already used numbers 1 – 797 and 500-531 in that Index refer to different documents. To avoid confusion, when referring to Index 500-531 the Board generally refers to those numbers assigned to documents submitted by Petitioner in its Additions to the Index, as these are the documents its relies upon to establish standing.
[15] Id. at 5-6.

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which were submitted over the two year period the County was processing the 2005 GMA update, as basis for participation standing.[16]

II. BOARD DISCUSSION

The County has challenged the Petitioner's standing to bring the PFR in this case. The Growth Management Act (GMA) provides several ways in which standing may be achieved:

> A petition may filed only by: (a) The state, or a county or city that plans under this chapter; (b) *a person who has participated orally or in writing before the county or city regarding the matter on which a review is being requested;* (c) a person who is certified by the governor within sixty days of filing the request with the board; or (d) a person qualified pursuant to RCW 34.05.530. RCW 36.70A.280(2). (Emphasis added)

In *Wells v. Western Washington Growth Management Hearings Board,*[17] the Court of Appeals clarified that, to establish participation standing under the GMA, a person must show his or her participation before the jurisdiction was reasonably related to the person's issue as presented to the Board.

The *Wells* Court held participation standing is not issue-specific, stating "[O]ur conclusion [is] that the Legislature did not intend petitioners to raise specific legal issues during the local government planning process."[18] The Court held a "matter," as intended by RCW 36.70A.280(2)(b), is not the equivalent of an "issue" and "all three growth management hearings boards have consistently rejected a requirement of issue-specific standing."[19] The Court noted that the 1996 Legislature rejected a proposed amendment that would have required petitioners to raise "issues" rather than "matters" before the local government. The *Wells* Court concluded that "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or topic of concern or controversy."[20] The Court went on to say: "[I]t would be unrealistic given the time and resource constraints inherent in the planning process to require each individual

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[16] Id. at 6.
[17] 100 Wn. App. 657, 999 P.2d 405 (2000)
[18] *Wells*, 100 Wn. App. at 672.
[19] *Id.* at 671.
[20] *Id*. at 672-73.

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petitioner to demonstrate to the growth management hearings board that he or she raised a specific legal issue before the board can consider it."[21] The enactment of RCW 36.70A.280(4) incorporated the *Wells* holding into the GMA.[22]

Petitioner asserts that under *Wells* it has participation standing if the proper nexus between the comments and the matter on which review is being requested is established.[23] It further argues that, under *Wells*, this nexus may be established by relationships to geographic areas or subjects of interest, and because each of the public comments documents relied upon to establish standing expresses Petitioner's interest in protecting the geographic area of Guemes Island. Petitioner concludes this alone should be found to provide sufficient nexus to raise issues that are related to the Guemes Island geographic area.[24]

The Petitioner misunderstands the Court's statement in *Wells* when the Court noted: "[*P]ersons who wish to raise issues before a growth management hearings board should participate actively in the planning process for the geographic areas or subject of interests to them."*[25] The Board does not read this statement as allowing standing based solely on the expression of an interest in a particular geographical area. The Court was addressing the *planning process* for the geographic areas or subject of concern and specifically defined the term "matter" when it stated the word "*matter*" refers to "*a subject or topic of concern or controversy*." When setting forth this definition, the Court made no reference to geographical areas.

Therefore, in order to determine participation standing, the Board reviews the issue(s) as set forth in the Prehearing Order, the Petition for Review, the briefing, and the Record to

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[21] *Id.* at 674.
[22] RCW 36.70A.280(4) provides:

> To establish participation standing under subsection (2)(b) of this section, a person must show that his or her participation before the county or city was reasonably related to the person's issue as presented to the board.

[23] FOGI Reply brief at 5-6.
[24] Id. at 7.
[25] Wells, at 674.

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ascertain the nature of FOGI's participation. If Petitioner's participation is reasonably related to their issues as presented to the Board, then Petitioner has standing to raise and argue that issue. If Petitioner's participation is not reasonably related to their issue as presented to the Board, then Petitioner will not have standing to raise and argue that issue.

However, in addition to Petitioner's participation being reasonably related to their issues as presented to the Board, the participation must also be timely. The Board notes that in *Wells*, the Court reasoned:

> Persons who wish to raise issues before a growth management hearings board should participate actively in the planning process for the geographic areas or subjects of interest to them. *The GMA assumes the local government will have an opportunity to address those concerns before an appeal to the growth management hearings board.* This facilitates the county's ultimate planning responsibility and avoids unnecessary appeals.[26]

While the question facing the Court in *Wells* was the degree of specificity on an issue required of a petitioner in their participation before the local government, the Board believes that the concerns expressed by the Court apply equally well to the issue of the timeliness of participation.

The Board has previously stated this in a similar situation concerning the timeliness of comments and limits on a County's comment period:

> The Board does not agree with Petitioner's argument that the County lacks authority to set a comment period. However, a comment period must be well-publicized and calculated to encourage public comment in order to achieve the public participation goal and requirements of the GMA. The public participation goal and requirements impose a duty on local government to provide effective notice and opportunities for early and continuous public participation.[27]

The Board notes that here Skagit County's notice for public comment clearly denoted a deadline for the filing of comments which seeks to ensure that comments are filed in a

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[26] *Wells*, 100 Wn. App. at 674 (Emphasis added)

[27] *Advocates for Responsible Government and John Diehl v. Mason County*, WWGMHB Case No. 07-06 (Order on Standing, May 7, 2007) at 4.

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timely manner. The County's Notice of Availability of Public Comment and Public Hearings stated that:

> A 60-day public review and comment period on the Proposal will officially begin on February 17, 2006. Comments may be submitted in writing to Skagit County Planning and Development Services at the address below through Tuesday, April 18, 2006, 4:30 p.m. [28]

The County's Public Notice, mailed to County residents, noted:

> "Tuesday April 18, 2006 – 4:30 p.m. Close of Public Comment Period" [29]

Compliance with these timelines ensure that County Staff and Commissioners have a point in time when public comment is deemed complete, allowing them to proceed on determining the actions to be taken in response to these comments.[30] Submitting comments during this timeframe also allows the local government a reasonable opportunity to address the concerns raised by the public in timely-submitted comment letters so as to respond to and/or incorporate those concerns in the legislative action under consideration, thereby potentially eliminating an appeal to this Board.

Petitioner argues that standing may be established by documents submitted outside of the formal public comment period but contained in the County's Index or documents that were subsequently added to the Record.[31] Petitioner also argues, by extension, documents in the Index reflecting comments made any time prior to the adoption of the ordinance establish standing.[32]

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[28] IR 442.
[29] IR 462.
[30] In contrast, the Board notes that comments received *prior* to the formal comment period potentially may demonstrate standing so long as the comments relate to the topic or subject matter of the challenged enactment – here, the 2005 Comprehensive Plan Update. This ensures that a petitioner may not assert participation standing in regards to a concern it raised before the County years in the past, with no direct reference to the action he or she now seeks to challenge.
[31] FOGI Reply Brief at 4.
[32] Id. at 3.

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The Board disagrees. Allowing standing to be based on documents submitted past the public comment period or after the public hearing process, even up to the last day before the County adopts the ordinance, as Petitioner urges, would not serve the judicially-recognized interests of facilitating the County's ultimate planning responsibility or avoiding unnecessary appeals. Nor would it, as the court in *Wells* said with regard to the "reasonably related" standing standard: "further[s] the GMA's goals of encouraging meaningful public participation in the local government planning process and achieving local government compliance with the GMA."[33]

Petitioner's argument that it may establish standing based on any document in the Index, no matter when the document was submitted to the County, is premised on the assertion contained in the declaration of its attorney that "[I]t has always been Skagit County's practice to accept, use, and generally include in its Index any public comment submitted at any time prior to the adoption of a GMA enactment."[34] The Steel Declaration contains nothing else save the preliminary statements that he is over 21, competent to testify and the attorney for FOGI. That is, the Declaration contains nothing to establish the basis for this assertion or to lend credence to it.

Petitioner has argued that "the record shows that the County used and considered Petitioner comments enacting the Ordinance under review."[35] However, Petitioner fails to cite to those portions of the Record that support this argument. Petitioner further argues that "[A]ll of these documents [Additions 500 to 531] are *to be considered used* by the County in making its '2005 GMA Update'".[36] (Emphasis added)

In contrast, the rebuttal statements offered at the HOM by Kirk Johnson, the County official responsible for overseeing the creation of the County's Index, disputes this very assertion.

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[33] Wells, at 674.
[34] Id.
[35] Id. at 3-4.
[36] Id. at 5.

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At argument, in response to Board questions, Mr. Johnson stated that when compiling the documents for a matter, County Staff includes all items that are relevant to the proceedings in the Index. These documents include County mailings, e-mail correspondence, mailing listings, returned/non-deliverable mail, public comments, and public hearing notices. Mr. Johnson further stated that all public comments received are listed in the Index but if these comments and/or related documents are received outside of the comment period they are not forwarded to the Planning Commission or Board of County Commissioners and, therefore, are not "considered" by the County when adopting the challenged action.

Petitioner's argue that the Board should consider all documents in the Index as having been considered in the 2005 update appears based on WAC 242-02-502's requirement because the documents it relies on to establish standing must have been relied on by the County or else they would not have been included within the Index. It is noteworthy, that Petitioner relies not on the Index prepared by the County, but instead on documents added to the Index by Petitioner, to which the County did not timely object.[37] This is a slim reed upon which to base standing. Further, it would premise this Board's jurisdiction in this matter not on Petitioner's demonstrated participation in the County's 2005 GMA Update, but on the County's failure to object to additions to the Index.

Once GMA participation standing has been challenged by Respondent, the Petitioner has the duty to come forward with evidence to demonstrate their participation. This evidence must demonstrate compliance with the GMA's standing requirements and cannot rely on the mere failure of the County to object to additions of documents to the record. The documents mere presence in the Index is not sufficient, particularly where the record demonstrates that the documents were submitted *after the close* of the public comment period.

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[37] The Notice of Hearing and Preliminary Schedule provided that additions may be offered until December 27, 2007 and that additions would not be allowed if the County objects to the additions within 5 days of receiving notice of proposed additions. It was not until March 21, 2008 that the County filed its Motion to Limit Use of Petitioner Exhibits 500 through 535.

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Therefore, the Board holds comments submitted after the close of the comment period cannot now be used as a basis for a petitioner's standing except, for those presented orally, or if permitted in writing, at a subsequently-held public hearing pertaining to the topic or subject matter of the challenged enactment.[38] Petitioner has not asserted that it participated orally during the public hearing process; therefore its standing must be based on its written submittals.

Petitioner claims participation standing through its comments in Exhibits 501, 502, 507 and 531. The Board will consider each of those documents in turn.

Exhibit 501

Exhibit 501 is a June 20, 2005 letter from Petitioner's attorney Gerald Steel to the County Commissioners entitled: "*Please Stay the Course – Follow the Guemes Task Force Recommendations*". Petitioner notes this was submitted prior to the public comment period for the 2005 Comprehensive Plan update. The Board finds nothing in the letter suggesting that it was sent as comment on the 2005 update; instead the letter appears to have been sent as comment on the Guemes Subarea Planning process as the letter states:

> "The adopted Guemes Task Force Recommendation directs that hours of ferry service not be expanded at this time. Friends urges that the BOCC rely on this adopted policy until this issue can be more fully addressed in the Guemes Subarea Planning process."

The letter continues:

> Friends of Guemes Island requests that the BOCC continue to rely on this adopted Task Force Recommendation that the demand be met using 'the currently defined schedule day', at least until the BOCC adopts the Guemes Island Subarea Plan."

And further comments and concludes:

> "Friends suggest that the Roundtable develop scheduling options as consistent as possible with the adopted Task Force Recommendations and

[38] *See e.g. 1000 Friends v. Spokane County,* EWGMHB Case No. 02-1-0006, Order on Motion at 2 (June 7, 2002)(holding comments submitted after comment period was closed did not establish standing).

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> submit these options to the Guemes Advisory Committee in the Subarea Planning Process. This will allow for a broad level of review on all ferry schedule issues by the public, staff, and planning commission before the BOCC makes a decision on these issues and adopts a Subarea Plan." "Please allow the Guemes Subarea Planning process to resolve the issue of expanding hours of ferry service."

In contrast to numerous mentions of the Guemes Subarea Plan, there is not a single mention of the 2005 Plan Update. In light of this letter, the Board finds *no basis* for establishing standing to challenge the 2005 Comprehensive Plan Update based on a letter sent in relation to a separate and distinct planning process.

Exhibit 502

Exhibit 502 is a May 23, 2006 letter from Gerald Steel to Skagit County BOCC entitled "*Proposed Resolution Amending the Guemes Island Ferry Departure Schedule*" with an attached e-mail. Petitioner, in its Reply Brief addressing standing, does not discuss this document in detail except to assert participation standing based on it.[39]

As to this letter, the Board notes first it was submitted *after* the close of the comment period on the 2005 Comprehensive Plan Update which closed on April 18, 2006. Next, nothing in the letter or the attached e-mail references the 2005 Comprehensive Plan Update. Instead, the letter clearly refers instead to a resolution under review "amending the Guemes Island Ferry Departure Schedule". This seems a clear reference to Resolution R20060184, which amends the Guemes Island Ferry departure schedule, and was dismissed from this appeal as a matter for which this Board has no jurisdiction[40].

Therefore, the Board holds this letter, sent *after* the close of the comment period on the 2005 Comprehensive Plan Update, which *makes no reference* to that update, and which instead was sent as comment on Resolution R20060184 is *not a basis* for Petitioner's standing in this appeal.

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[39] FOGI Reply Brief at 6.
[40] See, January 31, 2008 Order on Motion to Dismiss, at 5.

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Exhibit 507

Exhibit 507 is a letter from Gary Davis, President of Friends of Guemes Island to the Board of County Commissioners, dated April 22, 2006, and stamped received April 25, 2006. Petitioner notes this letter endorsed and adopted the comments submitted to the County by Friends of Guemes Island member Roz Glasser on the last day of the comment period. That letter from Glasser is Exhibit 235 of the 2005 GMA Update Index. The Board notes there is nothing in the April 18, 2006 letter that identifies Glasser as a member of Friends of Guemes Island, and more importantly nothing in the letter claims Glasser has the authority to speak on behalf of that group. Instead, Petitioner relies upon the fact that Roz Glasser is a now a member of FOGI and Petitioner adopted the Glasser letter in its untimely comment letter.

At the HOM, following the County's presentation of its case, Petitioner offered the Declaration of Gary Davis, President of Friends of Guemes Island. In the Declaration, Mr. Davis asserts that Roz Glasser is a member of Friends of Guemes Island. The Board notes the Declaration was not provided to the County in a timely manner and denied its admission into evidence at the HOM. Petitioner's argument that the Declaration was not signed until late in the hearing is not sufficient justification for failing to apprise the County of its existence until *after* the County had made its arguments on standing, and could no longer respond to it.

However, even if the Board had allowed the Davis Declaration, neither the letter from Glasser submitted on April 18, 2006, nor the letter from Davis dated April 22, 2006, establish standing on behalf of Petitioner. As noted, the original letter was on its face submitted by Glasser on that individual's own behalf and makes no mention of Friends of Guemes Island. Next, the letter from Davis which adopts it was submitted outside the comment period. Petitioner cannot reach back in time and make a timely letter submitted by an individual, on that individual's own behalf, a timely letter on behalf of some other entity. It makes no difference that Glasser is a member of Friends of Guemes Island if Friends of

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Guemes Island's letter, adopting this organization member's comments, was not submitted on Friends of Guemes Island's behalf in a timely manner.

Therefore, the Board holds that this letter is *not a basis* for Petitioner's standing in this appeal.

Exhibit 509

Exhibit 509 is a May 2007 report on land use impacts of the Guemes Island Ferry Schedule Extension. Petitioner notes this report was submitted four months before the ordinance under appeal was adopted.[41] Petitioner does not state precisely when this document was submitted, but the Board notes that if submitted in May of 2007, at the earliest, it was submitted well after the close of the public comment period, which occurred a year earlier on April 18, 2006.

For the reasons stated above regarding the necessity of filing timely comment letters, the Board determines that this document *does not establish* participation standing.

Exhibit 531

Exhibit 531 is an April 20, 2007 letter from Gerald Steel to Corrine Story, Environmental Health Supervisor with the Skagit County Health Department entitled "*Comments on Chapter 12.48 SCC Revisions*". There is no indication on the face of the letter that a copy was provided to the County Planning Department or the Board of County Commissioners. Petitioner, in its Reply Brief addressing standing, does not discuss this document in detail except to assert participation standing based on it.[42] The Board notes this document was sent *after* the end of the public comment period on April 18, 2006, that it makes no mention of the 2005 Comprehensive Plan Update, and it was sent to the County Health Department. At the HOM, the County noted that the County Health Department is a separate department

[41] FOGI Reply Brief at 8.
[42] Id. at 6.

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from the Community Planning and Development Services Department, the County department responsible for managing the review of the 2005 update.

Each of these reasons are sufficient to deny standing based on this letter – untimely filing, no indication that it was submitted for the 2005 Update, and not sent to the County officials responsible for the 2005 update – therefore, the Board holds that this comment letter is *not a basis* for Petitioner's standing in this appeal.

Conclusion: Applying the standards for participation standing found in the GMA and articulated by the *Wells* Court, in relation to the points made above, the Board finds that with the exception of the June 20, 2005 comment letter from Gerald Steel which was submitted to the County prior to the comment period (Exhibit 501), all other communication Petitioner relies on to establish participation standing was submitted *after the close of the comment period and is not sufficient to establish participation standing*. As to the June 20, 2005 letter, the Board has concluded above that this letter is not related to the matters properly before the Board in this appeal, and therefore does not establish participation standing under the *Wells* test or RCW 36.70A.280(4).

Petitioner Friends of Guemes Island has failed to establish participatory standing in this case. Because the Board decides that the Petitioner lacks standing to raise the issues in this matter, the Board does not make a determination on the merits of those issues.

III. FINDINGS OF FACT

1. Skagit County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.70A.040.

2. The petition for review was filed in this case by petitioner on November 13, 2007.

3. The petition challenges Skagit County's compliance with GMA provisions regarding LAMIRD land use designations on Guemes Island, and County Comprehensive Plan policies.

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4. The Board consolidated argument and briefing on Legal Issues 1, 2, and 3 with WWGMHB Case No. 07-2-0025c, but those issues remain as part of the instant matter.

5. On January 31, 2008 the Board dismissed Legal Issue 11, as stated in the Amended Prehearing Order, and all other claims which assert that Resolution R20060184 fails to comply with the GMA.

6. The County's Notice of Availability of Public Comment and Public Hearings mailed to County residents, stated: "A 60-day public review and comment period on the Proposal will officially begin on February 17, 2006. Comments may be submitted in writing to Skagit County Planning and Development Services at the address below through Tuesday, April 18, 2006, 4:30 p.m.

7. The County asserts that Friends of Guemes Island did not raise any of the matters alleged in the petition for review to during the public comment period on the County's comprehensive plan update.

8. No evidence has been presented that Friends of Guemes Island raised any of the matters subject to the Board's jurisdiction in this appeal to the County during the comment period for the adoption of Ordinance No. O20070009.

9. Exhibit 501 is a June 20, 2005 letter from Petitioner's attorney Gerald Steel to the County Commissioners entitled: "*Please Stay the Course – Follow the Guemes Task Force Recommendations*". This letter was submitted prior to the public comment period for the 2005 Comprehensive Plan update however nothing in the letter indicates that it was sent as comment on the 2005 update; instead the letter appears to have been sent as comment on the Guemes Subarea Planning process.

10. Exhibit 502 is a May 23, 2006 letter from Gerald Steel to Skagit County BOCC entitled "*Proposed Resolution Amending the Guemes Island Ferry Departure Schedule*" with an attached e-mail. This letter was submitted after the close of the comment period on the 2005 Comprehensive Plan Update which closed on April 18, 2006. Nothing in the letter or the attached e-mail references the 2005 Comprehensive Plan Update. The letter refers instead to a resolution under review "amending the Guemes Island Ferry Departure Schedule", a reference to Resolution R20060184, which amends the Guemes Island Ferry

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departure schedule, and which was dismissed from this appeal as a matter for which this Board has no jurisdiction.

11. Exhibit 507 is a letter from Gary Davis, President of Friends of Guemes Island to the Board of County Commissioners, dated April 22, 2006, and stamped received April 25, 2006, after the comment period had closed. The letter endorsed and adopted the comments submitted to the County by Friends of Guemes Island member Roz Glasser on the last day of the comment period. Nothing in the letter identifies Glasser as a member of Friends of Guemes Island, nor does that letter claim that Glasser has the authority to speak on behalf of that group.

12. Exhibit 509 is a May 2007 report on land use impacts of the Guemes Island Ferry Schedule Extension. This report was prepared four months before the ordinance under appeal was adopted. There is no evidence as to when this document was submitted, but if submitted in May of 2007, at the earliest, it was submitted after the close of the public comment period on April 18, 2006.

13. Exhibit 531 is an April 20, 2007 letter from Gerald Steel to Corrine Story, Environmental Health Supervisor with the Skagit County Health Department entitled "*Comments on Chapter 12.48 SCC Revisions*". There is no indication on the face of the letter that a copy was provided to the County Planning Department or the Board of County Commissioners. This document was sent *after* the end of the public comment period on April 18, 2006, it makes no mention of the 2005 Comprehensive Plan Update.

14. With the exception of the June 20, 2005 comment letter from Gerald Steel (Exhibit 501) which was submitted to the County prior to the comment period, all other communication Petitioners rely on to establish participation standing was submitted after the close of the comment period.

15. As to the June 20, 2005 letter (Exhibit 501), the content of this letter is not related to the matters before the Board in this appeal.

16. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

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IV. CONCLUSIONS OF LAW

A. This Board has jurisdiction over the parties to this case.

B. The Petitioner lacks standing to bring this Petition for Review in regard to all Legal Issues presented pursuant to RCW 36.70A.280(2).

C. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.

V. ORDER

The County having challenged the Petitioner's standing and the Petitioner having failed to offer evidence to support their claims of standing, this petition is hereby DISMISSED.

Entered this 12th day of May 2008.

_____
James McNamara, Board Member

_____
Holly Gadbaw, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the date of mailing of this Order to file a petition for reconsideration. The original and three copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and three copies of the motion for reconsideration directly to the Board, with a copy to all other parties of record.

Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all

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parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order. A petition for judicial review may not be served on the Board by fax or by electronic mail.

Service. This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19)

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