

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 FRIENDS OF GUEMES ISLAND,

4
5 Petitioner,

6 v.

7
8 SKAGIT COUNTY,

9 Respondent.

Case No. 07-2-0023

ORDER DISMISSING APPEAL

10
11
12 THIS Matter comes before the Board following the Hearing on the Merits (HOM). In its
13 Prehearing Brief and in oral argument at the HOM, Skagit County challenged the standing
14 of the petitioner, Friends of Guemes Island (Petitioner or FOGI). The County seeks
15 dismissal of the Petition for Review (PFR) on the grounds that the Petitioner lacks standing
16 in accordance with RCW 36.70A.280(2)(b).¹

17
18 Petitioner alleges that it has standing because it submitted written materials regarding the
19 issues presented in this appeal prior to the adoption of Ordinance No. O20070009, the
20 challenged action.²

21
22 In this Order, the Board finds that Petitioner did not raise any of the matters subject to the
23 Board's jurisdiction in this appeal to the County during the comment period for the adoption
24 of Ordinance No. O20070009. The Board concludes that Petitioner lacks standing to bring
25 this Petition for Review in regard to all Legal Issues presented and, therefore, dismisses the
26 appeal.
27
28
29
30
31
32

¹Skagit County's Response at 2-4.

² Petition for Review at 5.

1 **I. PROCEDURAL BACKGROUND**

2 The PFR for this matter was filed on November 13, 2007 and challenges the County's
3 adoption of Ordinance No. O20070009 and Resolution No. R20060184. Issues presented
4 include Limited Areas of More Intensive Rural Development (LAMIRDs); urban and rural
5 water service; natural resource land designation; non-urban area land use needs and
6 capacity analysis; regulations for Long CaRD developments; major and minor water utility
7 developments; and mineral extraction operations.
8

9
10 On December 18, 2007, the Board, subsequent to a telephone prehearing conference,
11 issued its Prehearing Order (PHO), noting that Legal Issues 1, 2, and 3 are coordinated with
12 WWGMHB Case No. 07-2-0025c because identical issues are presented in that case.³

13 The Board issued an Amended PHO on January 25, 2008 clarifying that these legal issues
14 were not dismissed from Case No. 07-2-0023, only coordinated with Case No. 07-2-0025c
15 in order to provide for efficiency in the matter.
16

17
18 On January 31, 2008, upon a motion of the County, the Board dismissed Issue 11 and all
19 other claims in the issues as set forth in the Amended Prehearing Order which asserted that
20 Resolution No. R20060184 failed to comply with the GMA⁴.
21

22 On March 19, 2008, the Hearing on the Merits (HOM) was conducted in Mt. Vernon,
23 Washington. Petitioner was represented by Gerald Steel. The County was represented by
24 Deputy Prosecuting Attorney Arne Denny. Board members present were Holly Gadbow and
25 James McNamara. Mr. McNamara was the Presiding Officer.
26

27 Preliminary Matters

- 28
 - *Motion to Strike Declaration of Steel*
29
30
31

32 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,
ORDER DISMISSING APPEAL
Case No. 07-2-0023
May 12, 2008
Page 2 of 19

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

8 The Board reserved a decision on this matter at the time of the HOM. At argument, in
9 response to Board questions, the County responded through Kirk Johnson, Skagit County
10 Planning and Development Services, to rebut statements contained in the Declaration as to
11 the County’s practice with regard to documents contained in the Index. Petitioner objected
12 to this, claiming Mr. Johnson’s statements amounted to testimony.
13
14

15 Given that the County was provided the opportunity to rebut the Steel Declaration, the
16 Board will allow its admission. However, through this Declaration Petitioner has opened the
17 door to rebuttal on the County’s practices with regard to the use of the Index. Petitioner’s
18 objections to the statements of Mr. Johnson regarding how the County employs the Index
19 are overruled and will be considered by the Board.
20

21 • *Motion to Dismiss – Lack of Standing*
22

23 The County raised the issue of Petitioner’s standing in its Response Brief.⁸ The County
24 noted that the comment period for the County’s 2005 update fell on and between February
25 17 and April 18, 2006.⁹ The County asserts that documents received after the comment
26 period were not considered by the Planning Commission. It points out Petitioner’s
27 comment, a letter from Friends of Guemes Island with attachments, was received by the
28
29

30 _____
31 ⁵ Skagit County’s Motion to Strike.

32 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.

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

4
5 Petitioner responds by asserting the Record demonstrates the County used and considered
6 Petitioner's comments in enacting the Ordinance under appeal. Petitioner notes that under
7 WAC 242-02-502, the County was obligated to submit an "index of all material used in
8 taking the action which is the subject of the petition for review." Petitioner further notes this
9 index includes public comments received after the "formal" comment period ended on April
10 18, 2006, but before the September 10, 2007 adoption date of Ordinance No. O20070009.¹¹
11 Petitioner offered the Declaration of Gerald Steel to support its contention that "[I]t has
12 always been Skagit County's practice to accept, use, and generally include in its Index any
13 public comment submitted at any time prior to the adoption of a GMA enactment."¹²

14 Therefore, Petitioner argues it can base participation standing for matters raised in
15 documents submitted after the formal comment period because inclusion of these
16 documents in the Index demonstrates they were "materials used in taking the action".¹³
17
18

19 Petitioner also notes, in accordance with the Notice of Hearing and Preliminary Schedule
20 issued in this case, it submitted Additions to the Index.¹⁴ Therefore, as the County did not
21 object to the additions of these documents to the Record, Petitioner argues the comments in
22 these documents should be allowed as a basis for Petitioner's participation standing if the
23 proper nexus between the comments and the "matter on which review is being requested" is
24 established.¹⁵ Petitioner cites to its comments in Exhibits 501, 502, 507, 509, and 531,
25
26

27
28 ¹⁰ Id. at 3, citing to Petitioner's letter dated April 22, 2006, stamped received April 25, 2006, IR 507.

29 ¹¹ FOGI Reply Brief at 4.

30 ¹² Declaration of Gerald Steel, dated March 14, 2008.

31 ¹³ FOGI Reply Brief at 4-5.

32 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.

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

3 4 II. BOARD DISCUSSION

5 The County has challenged the Petitioner's standing to bring the PFR in this case. The
6 Growth Management Act (GMA) provides several ways in which standing may be achieved:
7

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

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

18 The *Wells* Court held participation standing is not issue-specific, stating "[O]ur conclusion
19 [is] that the Legislature did not intend petitioners to raise specific legal issues during the
20 local government planning process."¹⁸ The Court held a "matter," as intended by RCW
21 36.70A.280(2)(b), is not the equivalent of an "issue" and "all three growth management
22 hearings boards have consistently rejected a requirement of issue-specific standing."¹⁹ The
23 Court noted that the 1996 Legislature rejected a proposed amendment that would have
24 required petitioners to raise "issues" rather than "matters" before the local government. The
25 *Wells* Court concluded that "matter" in RCW 36.70A.280(2)(b) refers to a broad "subject or
26 topic of concern or controversy."²⁰ The Court went on to say: "[I]t would be unrealistic given
27 the time and resource constraints inherent in the planning process to require each individual
28
29
30

31 ¹⁶ *Id.* at 6.

32 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.

1 petitioner to demonstrate to the growth management hearings board that he or she raised a
2 specific legal issue before the board can consider it.”²¹ The enactment of RCW
3 36.70A.280(4) incorporated the *Wells* holding into the GMA.²²
4

5 Petitioner asserts that under *Wells* it has participation standing if the proper nexus between
6 the comments and the matter on which review is being requested is established.²³ It further
7 argues that, under *Wells*, this nexus may be established by relationships to geographic
8 areas or subjects of interest, and because each of the public comments documents relied
9 upon to establish standing expresses Petitioner’s interest in protecting the geographic area
10 of Guemes Island. Petitioner concludes this alone should be found to provide sufficient
11 nexus to raise issues that are related to the Guemes Island geographic area.²⁴
12

13
14 The Petitioner misunderstands the Court’s statement in *Wells* when the Court noted:
15 “[P]ersons who wish to raise issues before a growth management hearings board should
16 participate actively in the planning process for the geographic areas or subject of interests
17 to them.”²⁵ The Board does not read this statement as allowing standing based solely on
18 the expression of an interest in a particular geographical area. The Court was addressing
19 the *planning process* for the geographic areas or subject of concern and specifically defined
20 the term “matter” when it stated the word “*matter*” refers to “*a subject or topic of concern or*
21 *controversy.*” When setting forth this definition, the Court made no reference to
22 geographical areas.
23

24
25 Therefore, in order to determine participation standing, the Board reviews the issue(s) as set
26 forth in the Prehearing Order, the Petition for Review, the briefing, and the Record to
27

28
29 _____
29 ²¹ *Id.* at 674.

30 ²² RCW 36.70A.280(4) provides:

31 To establish participation standing under subsection (2)(b) of this section, a person must show
32 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.

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

5
6 However, in addition to Petitioner's participation being reasonably related to their issues as
7 presented to the Board, the participation must also be timely. The Board notes that in
8 *Wells*, the Court reasoned:

9
10 Persons who wish to raise issues before a growth management hearings
11 board should participate actively in the planning process for the geographic
12 areas or subjects of interest to them. *The GMA assumes the local government*
13 *will have an opportunity to address those concerns before an appeal to the*
14 *growth management hearings board.* This facilitates the county's ultimate
planning responsibility and avoids unnecessary appeals.²⁶

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

19
20 The Board has previously stated this in a similar situation concerning the timeliness of
21 comments and limits on a County's comment period:

22
23 The Board does not agree with Petitioner's argument that the County lacks
24 authority to set a comment period. However, a comment period must be well-
25 publicized and calculated to encourage public comment in order to achieve the
26 public participation goal and requirements of the GMA. The public
27 participation goal and requirements impose a duty on local government to
28 provide effective notice and opportunities for early and continuous public
participation.²⁷

29 The Board notes that here Skagit County's notice for public comment clearly denoted a
30 deadline for the filing of comments which seeks to ensure that comments are filed in a
31

32 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.

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

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

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

8 "Tuesday April 18, 2006 – 4:30 p.m. Close of Public Comment Period"²⁹
9

10 Compliance with these timelines ensure that County Staff and Commissioners have a point
11 in time when public comment is deemed complete, allowing them to proceed on determining
12 the actions to be taken in response to these comments.³⁰ Submitting comments during this
13 timeframe also allows the local government a reasonable opportunity to address the
14 concerns raised by the public in timely-submitted comment letters so as to respond to
15 and/or incorporate those concerns in the legislative action under consideration, thereby
16 potentially eliminating an appeal to this Board.
17

18
19 Petitioner argues that standing may be established by documents submitted outside of the
20 formal public comment period but contained in the County's Index or documents that were
21 subsequently added to the Record.³¹ Petitioner also argues, by extension, documents in
22 the Index reflecting comments made any time prior to the adoption of the ordinance
23 establish standing.³²
24
25
26
27

28 ²⁸ IR 442.

29 ²⁹ IR 462.

30 ³⁰ In contrast, the Board notes that comments received *prior* to the formal comment period potentially may
31 demonstrate standing so long as the comments relate to the topic or subject matter of the challenged
32 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.

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

10
11 Petitioner's argument that it may establish standing based on any document in the Index, no
12 matter when the document was submitted to the County, is premised on the assertion
13 contained in the declaration of its attorney that "[I]t has always been Skagit County's
14 practice to accept, use, and generally include in its Index any public comment submitted at
15 any time prior to the adoption of a GMA enactment."³⁴ The Steel Declaration contains
16 nothing else save the preliminary statements that he is over 21, competent to testify and the
17 attorney for FOGI. That is, the Declaration contains nothing to establish the basis for this
18 assertion or to lend credence to it.

20
21 Petitioner has argued that "the record shows that the County used and considered
22 Petitioner comments enacting the Ordinance under review."³⁵ However, Petitioner fails to
23 cite to those portions of the Record that support this argument. Petitioner further argues
24 that "[A]ll of these documents [Additions 500 to 531] are *to be considered used* by the
25 County in making its '2005 GMA Update'".³⁶ (Emphasis added)

27 In contrast, the rebuttal statements offered at the HOM by Kirk Johnson, the County official
28 responsible for overseeing the creation of the County's Index, disputes this very assertion.
29

30
31
32 _____
³³ Wells, at 674.

³⁴ Id.

³⁵ Id. at 3-4.

³⁶ Id. at 5.

1 At argument, in response to Board questions, Mr. Johnson stated that when compiling the
2 documents for a matter, County Staff includes all items that are relevant to the proceedings
3 in the Index. These documents include County mailings, e-mail correspondence, mailing
4 listings, returned/non-deliverable mail, public comments, and public hearing notices. Mr.
5 Johnson further stated that all public comments received are listed in the Index but if these
6 comments and/or related documents are received outside of the comment period they are
7 not forwarded to the Planning Commission or Board of County Commissioners and,
8 therefore, are not "considered" by the County when adopting the challenged action.
9

10
11 Petitioner's argue that the Board should consider all documents in the Index as having been
12 considered in the 2005 update appears based on WAC 242-02-502's requirement because
13 the documents it relies on to establish standing must have been relied on by the County or
14 else they would not have been included within the Index. It is noteworthy, that Petitioner
15 relies not on the Index prepared by the County, but instead on documents added to the
16 Index by Petitioner, to which the County did not timely object.³⁷ This is a slim reed upon
17 which to base standing. Further, it would premise this Board's jurisdiction in this matter not
18 on Petitioner's demonstrated participation in the County's 2005 GMA Update, but on the
19 County's failure to object to additions to the Index.
20

21
22 Once GMA participation standing has been challenged by Respondent, the Petitioner has
23 the duty to come forward with evidence to demonstrate their participation. This evidence
24 must demonstrate compliance with the GMA's standing requirements and cannot rely on the
25 mere failure of the County to object to additions of documents to the record. The
26 documents mere presence in the Index is not sufficient, particularly where the record
27 demonstrates that the documents were submitted *after the close* of the public comment
28 period.
29

30
31
32 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.

1 Therefore, the Board holds comments submitted after the close of the comment period
2 cannot now be used as a basis for a petitioner's standing except, for those presented orally,
3 or if permitted in writing, at a subsequently-held public hearing pertaining to the topic or
4 subject matter of the challenged enactment.³⁸ Petitioner has not asserted that it participated
5 orally during the public hearing process; therefore its standing must be based on its written
6 submittals.
7

8 Petitioner claims participation standing through its comments in Exhibits 501, 502, 507 and
9 531. The Board will consider each of those documents in turn.
10

11 Exhibit 501

12 Exhibit 501 is a June 20, 2005 letter from Petitioner's attorney Gerald Steel to the County
13 Commissioners entitled: "*Please Stay the Course – Follow the Guemes Task Force*
14 *Recommendations*". Petitioner notes this was submitted prior to the public comment period
15 for the 2005 Comprehensive Plan update. The Board finds nothing in the letter suggesting
16 that it was sent as comment on the 2005 update; instead the letter appears to have been
17 sent as comment on the Guemes Subarea Planning process as the letter states:
18

19 "The adopted Guemes Task Force Recommendation directs that hours of ferry
20 service not be expanded at this time. Friends urges that the BOCC rely on
21 this adopted policy until this issue can be more fully addressed in the Guemes
22 Subarea Planning process."
23

24 The letter continues:

25 Friends of Guemes Island requests that the BOCC continue to rely on this
26 adopted Task Force Recommendation that the demand be met using 'the
27 currently defined schedule day', at least until the BOCC adopts the Guemes
28 Island Subarea Plan."
29

30 And further comments and concludes:

31 "Friends suggest that the Roundtable develop scheduling options as
32 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).

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

6 In contrast to numerous mentions of the Guemes Subarea Plan, there is not a single
7 mention of the 2005 Plan Update. In light of this letter, the Board finds *no basis* for
8 establishing standing to challenge the 2005 Comprehensive Plan Update based on a letter
9 sent in relation to a separate and distinct planning process.
10

11 Exhibit 502

12 Exhibit 502 is a May 23, 2006 letter from Gerald Steel to Skagit County BOCC entitled
13 “*Proposed Resolution Amending the Guemes Island Ferry Departure Schedule*” with an
14 attached e-mail. Petitioner, in its Reply Brief addressing standing, does not discuss this
15 document in detail except to assert participation standing based on it.³⁹
16

17
18 As to this letter, the Board notes first it was submitted *after* the close of the comment period
19 on the 2005 Comprehensive Plan Update which closed on April 18, 2006. Next, nothing in
20 the letter or the attached e-mail references the 2005 Comprehensive Plan Update. Instead,
21 the letter clearly refers instead to a resolution under review “amending the Guemes Island
22 Ferry Departure Schedule”. This seems a clear reference to Resolution R20060184, which
23 amends the Guemes Island Ferry departure schedule, and was dismissed from this appeal
24 as a matter for which this Board has no jurisdiction⁴⁰.
25

26
27 Therefore, the Board holds this letter, sent *after* the close of the comment period on the
28 2005 Comprehensive Plan Update, which *makes no reference* to that update, and which
29 instead was sent as comment on Resolution R20060184 is *not a basis* for Petitioner’s
30 standing in this appeal.
31

32

³⁹ FOGI Reply Brief at 6.

⁴⁰ See, January 31, 2008 Order on Motion to Dismiss, at 5.

1 Exhibit 507

2 Exhibit 507 is a letter from Gary Davis, President of Friends of Guemes Island to the Board
3 of County Commissioners, dated April 22, 2006, and stamped received April 25, 2006.

4 Petitioner notes this letter endorsed and adopted the comments submitted to the County by
5 Friends of Guemes Island member Roz Glasser on the last day of the comment period.

6 That letter from Glasser is Exhibit 235 of the 2005 GMA Update Index. The Board notes
7 there is nothing in the April 18, 2006 letter that identifies Glasser as a member of Friends of
8 Guemes Island, and more importantly nothing in the letter claims Glasser has the authority
9 to speak on behalf of that group. Instead, Petitioner relies upon the fact that Roz Glasser is
10 a now a member of FOGI and Petitioner adopted the Glasser letter in its untimely comment
11 letter.
12

13
14 At the HOM, following the County's presentation of its case, Petitioner offered the
15 Declaration of Gary Davis, President of Friends of Guemes Island. In the Declaration, Mr.
16 Davis asserts that Roz Glasser is a member of Friends of Guemes Island. The Board notes
17 the Declaration was not provided to the County in a timely manner and denied its admission
18 into evidence at the HOM. Petitioner's argument that the Declaration was not signed until
19 late in the hearing is not sufficient justification for failing to apprise the County of its
20 existence until *after* the County had made its arguments on standing, and could no longer
21 respond to it.
22

23
24 However, even if the Board had allowed the Davis Declaration, neither the letter from
25 Glasser submitted on April 18, 2006, nor the letter from Davis dated April 22, 2006,
26 establish standing on behalf of Petitioner. As noted, the original letter was on its face
27 submitted by Glasser on that individual's own behalf and makes no mention of Friends of
28 Guemes Island. Next, the letter from Davis which adopts it was submitted outside the
29 comment period. Petitioner cannot reach back in time and make a timely letter submitted by
30 an individual, on that individual's own behalf, a timely letter on behalf of some other entity.
31
32 It makes no difference that Glasser is a member of Friends of Guemes Island if Friends of

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

3
4 Therefore, the Board holds that this letter is *not a basis* for Petitioner's standing in this
5 appeal.

6
7 Exhibit 509

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

14
15
16 For the reasons stated above regarding the necessity of filing timely comment letters, the
17 Board determines that this document *does not establish* participation standing.

18
19 Exhibit 531

20 Exhibit 531 is an April 20, 2007 letter from Gerald Steel to Corrine Story, Environmental
21 Health Supervisor with the Skagit County Health Department entitled "*Comments on*
22 *Chapter 12.48 SCC Revisions*". There is no indication on the face of the letter that a copy
23 was provided to the County Planning Department or the Board of County Commissioners.
24 Petitioner, in its Reply Brief addressing standing, does not discuss this document in detail
25 except to assert participation standing based on it.⁴² The Board notes this document was
26 sent *after* the end of the public comment period on April 18, 2006, that it makes no mention
27 of the 2005 Comprehensive Plan Update, and it was sent to the County Health Department.
28 At the HOM, the County noted that the County Health Department is a separate department
29
30
31
32

⁴¹ FOGI Reply Brief at 8.

⁴² *Id.* at 6.

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

3
4 Each of these reasons are sufficient to deny standing based on this letter – untimely filing,
5 no indication that it was submitted for the 2005 Update, and not sent to the County officials
6 responsible for the 2005 update – therefore, the Board holds that this comment letter is *not*
7 *a basis* for Petitioner’s standing in this appeal.
8

9 **Conclusion:** Applying the standards for participation standing found in the GMA and
10 articulated by the *Wells* Court, in relation to the points made above, the Board finds that with
11 the exception of the June 20, 2005 comment letter from Gerald Steel which was submitted
12 to the County prior to the comment period (Exhibit 501), all other communication Petitioner
13 relies on to establish participation standing was submitted *after the close of the comment*
14 *period and is not sufficient to establish participation standing.* As to the June 20, 2005
15 letter, the Board has concluded above that this letter is not related to the matters properly
16 before the Board in this appeal, and therefore does not establish participation standing
17 under the *Wells* test or RCW 36.70A.280(4).
18

19
20 Petitioner Friends of Guemes Island has failed to establish participatory standing in this
21 case. Because the Board decides that the Petitioner lacks standing to raise the issues in
22 this matter, the Board does not make a determination on the merits of those issues.
23

24 III. FINDINGS OF FACT

25
26 1. Skagit County is a county located west of the crest of the Cascade Mountains that
27 is required to plan pursuant to RCW 36.70A.040.

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

29 3. The petition challenges Skagit County’s compliance with GMA provisions
30 regarding LAMIRD land use designations on Guemes Island, and County Comprehensive
31 Plan policies.
32

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

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

6 6. The County's Notice of Availability of Public Comment and Public Hearings mailed
7 to County residents, stated: "A 60-day public review and comment period on the Proposal
8 will officially begin on February 17, 2006. Comments may be submitted in writing to Skagit
9 County Planning and Development Services at the address below through Tuesday, April
10 18, 2006, 4:30 p.m.

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

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

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

23 10. Exhibit 502 is a May 23, 2006 letter from Gerald Steel to Skagit County BOCC
24 entitled "*Proposed Resolution Amending the Guemes Island Ferry Departure Schedule*" with
25 an attached e-mail. This letter was submitted after the close of the comment period on the
26 2005 Comprehensive Plan Update which closed on April 18, 2006. Nothing in the letter or
27 the attached e-mail references the 2005 Comprehensive Plan Update. The letter refers
28 instead to a resolution under review "amending the Guemes Island Ferry Departure
29 Schedule", a reference to Resolution R20060184, which amends the Guemes Island Ferry
30
31
32

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

3 11. Exhibit 507 is a letter from Gary Davis, President of Friends of Guemes Island to
4 the Board of County Commissioners, dated April 22, 2006, and stamped received April 25,
5 2006, after the comment period had closed. The letter endorsed and adopted the
6 comments submitted to the County by Friends of Guemes Island member Roz Glasser on
7 the last day of the comment period. Nothing in the letter identifies Glasser as a member of
8 Friends of Guemes Island, nor does that letter claim that Glasser has the authority to speak
9 on behalf of that group.

10
11 12. Exhibit 509 is a May 2007 report on land use impacts of the Guemes Island Ferry
12 Schedule Extension. This report was prepared four months before the ordinance under
13 appeal was adopted. There is no evidence as to when this document was submitted, but if
14 submitted in May of 2007, at the earliest, it was submitted after the close of the public
15 comment period on April 18, 2006.

16
17 13. Exhibit 531 is an April 20, 2007 letter from Gerald Steel to Corrine Story,
18 Environmental Health Supervisor with the Skagit County Health Department entitled
19 "*Comments on Chapter 12.48 SCC Revisions*". There is no indication on the face of the
20 letter that a copy was provided to the County Planning Department or the Board of County
21 Commissioners. This document was sent *after* the end of the public comment period on
22 April 18, 2006, it makes no mention of the 2005 Comprehensive Plan Update.

23
24 14. With the exception of the June 20, 2005 comment letter from Gerald Steel
25 (Exhibit 501) which was submitted to the County prior to the comment period, all other
26 communication Petitioners rely on to establish participation standing was submitted after the
27 close of the comment period.

28
29 15. As to the June 20, 2005 letter (Exhibit 501), the content of this letter is not
30 related to the matters before the Board in this appeal.

31
32 16. Any Finding of Fact later determined to be a Conclusion of Law is adopted as
such.

1 **IV. CONCLUSIONS OF LAW**

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

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

5 C. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.
6

7 **V. ORDER**

8 The County having challenged the Petitioner’s standing and the Petitioner having failed to
9 offer evidence to support their claims of standing, this petition is hereby DISMISSED.
10

11 Entered this 12th day of May 2008.
12

13
14 _____
15 James McNamara, Board Member

16
17 _____
18 Holly Gadbow, Board Member
19

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

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

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

30 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
31 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
32 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

1 parties within thirty days after service of the final order, as provided in RCW
2 34.05.542. Service on the Board may be accomplished in person or by mail, but
3 service on the Board means actual receipt of the document at the Board office within
4 thirty days after service of the final order. A petition for judicial review may not be
5 served on the Board by fax or by electronic mail.

6 Service. This Order was served on you the day it was deposited in the United States
7 mail. RCW 34.05.010(19)
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975