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BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF SKAGIT, WASHINGTON

**In the Matter of the Appeal of Special
Use Permit PL22-0603 for Young’s
Park Access and Material Stockpiling**

NO. PL22-0603
NOTICE OF APPEAL

INTRODUCTION AND DECISION BEING APPEALED

Appellant Guemes Island Planning Advisory Committee (“GIPAC”) respectfully requests that the Skagit County Board of Commissioners (“Board”) reverse the County Hearing Examiner’s decision (“Decision”) to approve Special Use Permit No. PL22-0603 (“Permit”) for the development of a parking lot and material stockpiling yard at Young’s Park on Guemes Island. The Decision legitimizes the unpermitted development of a forested park area that the County Public Works Department (“Public Works”) carried out in 2022 without community input or outreach, or without documented approval from the County’s Parks & Recreation Department (“Parks”). The Hearing Examiner erred when he interpreted the County’s Special Use Permit (“SUP”) criteria to allow this development for uses incompatible with its continued use as a rural, forested park, and when he authorized the County to disregard an express condition of the County’s acquisition of the property in 1978 – that it be used “solely for public park purposes.” Thus, the Board should reverse the Decision and direct Public Works to restore the forest to its undeveloped state so that it may be used solely for public park purposes.

A copy of the Decision is attached hereto as Attachment A.

1 **I. NAME, ADDRESS, AND INTEREST OF APPELLANT.**

2 1.1. Guemes Island Planning Advisory Committee can be reached as follows:

3 Michael Brown, Chair
4 4366 Clark Point Drive
5 Anacortes, WA 98221
6 360-299-2199
7 pinotmaster@msn.com

8 1.2. GIPAC is represented in this appeal by Kyle Loring, who can be reached as follows:

9 Kyle Loring
10 Loring Advising PLLC
11 PO Box 3356
12 Friday Harbor, WA 98250
13 360-622-8060
14 kyle@loringadvising.com

15 1.3. GIPAC has an interest in the Decision as a party of record because organizational
16 representatives provided written and oral testimony to the Hearing Examiner prior to the
17 Decision. The Code defines a “party of record” as “any person who has testified at a hearing or
18 has submitted a written statement related to a development action and who provides the County
19 with a complete address, or a person who has formally requested to receive information via a
20 written statement with a complete mailing address.” SCC 14.04.020. Consequently, because
21 GIPAC members testified at the hearing and submitted a written statement related to the after-
22 the-fact application for the Permit, it has standing to appeal the Decision. SCC 14.06.170(2).

23 1.4. In addition, GIPAC is a Washington nonprofit corporation formed exclusively
24 for charitable, scientific, or educational purposes. GIPAC’s mission is to sustain Guemes
25 Island’s rural character and natural environment. GIPAC members live near Young’s Park and
26 spend time there. They also travel along the same narrow roads that would be traversed by the
27 large hauling trucks if the Permit were to be upheld. GIPAC board members participated in the
28 proceedings before the Hearing Examiner by testifying at the hearing and submitting written

1 comments about the conversion of more than 2/3 of an acre of the park’s forest to a storage
2 depot and parking lot.

3 **II. HOW APPELLANT IS AGGRIEVED**

4 2.1. As users of Young’s Park, GIPAC members are aggrieved by the Permit’s
5 conversion of a portion of the forest to a parking lot and storage depot and the associated noise
6 and air quality impacts associated with the use of the site during road construction activities.
7 GIPAC members are also aggrieved by the new use of the roads in, and in the vicinity of, the
8 park by large trucks delivering the materials to be stockpiled there and later retrieving them.
9 The new development will adversely impact the health, welfare, and safety of the community
10 and of GIPAC’s members.

11 **III. SPECIFIC REASONS WHY THE DECISION IS WRONG**

12 This section should be read in conjunction with the citations to the Skagit County Code
13 (“Code” or “SCC”) in Section IV below. The following findings of fact and conclusions of law
14 in the Decision are clearly erroneous:
15

16 3.1. Finding No. 1 that the Skagit County Public Works Department is the Applicant
17 without a concurrent finding that the Parks Department authorized the application for the
18 Permit. As explained below, an application requires a verified statement by the applicant that all
19 of the property that is the subject of the application is either in the exclusive ownership of the
20 applicant or that the applicant has submitted the application with the consent of all owners of
21 the property. The application does not contain such a verification that the Parks Department is
22 either the applicant or consented to its submission, and there is no written or verbal information
23 in the record from the Parks Department to that effect.

24 3.2. While the record discloses that Forest Lane, the road that accesses the newly
25 developed, unpermitted parking lot and materials storage area, is a private road, it does not
26 demonstrate that either Skagit County agencies or members of the public have the right to use

1 that road.

2 3.3. The Hearing Examiner’s recitation from the staff report that the creation of a
3 stockpile at Young’s Park will “have a significantly less chance of impacting the public safety
4 and welfare,” and Conclusion of Law 1, that the new parking lot will make the park safer than it
5 has been by moving cars out of the right-of-way. The Permit authorizes the construction of the
6 stockpile at the far end of Guemes Island from the ferry terminal, necessitating that trucks
7 bringing the rock maximize their vehicle travel on narrow island roads. At the same time, the
8 Permit would create a parking lot intended for park visitors who would then have to walk along
9 the same narrow roads for some distance to access the shoreline portion of the park. The record
10 reflects that the roads are not designed to accommodate pedestrian traffic at the same time that
11 loaded and unloaded gravel trucks would be navigating them. Consequently, the Permit creates
12 a traffic conflict where none currently exists and thus adversely impacts public safety and
13 welfare. Moreover, the new operations at the storage yard, while not designed to occur on a
14 frequent basis, would occur during the summer months when the park is most likely to be
15 visited by members of the public, amplifying the risk. Those visitors who parked their cars in
16 the new lot during road construction activities would also be subjected to excessive noise and
17 dust from truck loading.

18 3.4. The implied finding in the Conclusion of Law at page 17 that a trailhead would
19 exist at the site. As acknowledged at page 12 of the Decision, a County official testified that
20 there are no trails at the new parking lot, and that members of the public will be forced to walk
21 along the road to reach the day-use area of the park. As explained below, the absence of a trail
22 precludes the existence of a trailhead.

23 3.5. The finding at Conclusion of Law 1 that the rock stockpile will be built atop new
24 parking. This statement overlooks the fact that the new stockpile was not built initially on a new
25 parking lot, but was instead developed out of a forested portion of a park. That forested portion
26 was cleared and graded to make space for the new parking lot and for the stockpile.

1 3.6. The finding at Conclusion of Law 1 that there will be a net gain of use for
2 Young’s Park. While the Permit authorizes two new uses within the park – a storage yard and a
3 parking lot – it does not increase the amount of park that can be used for park purposes. On the
4 contrary, it converts approximately 2/3 of an acre of previously forested land that could have
5 been used for trail purposes into hard-scaped parking and outdoor storage yard.

6 3.7. The implied finding in Conclusion of Law 2 that Schoolhouse Park is a sister
7 park to Young’s Park. As set forth in Skagit County’s 2020 Comprehensive Parks and
8 Recreation Plan (“Parks Plan”), these two parks are distinct types of parks within Skagit
9 County’s park system, with Schoolhouse Park categorized as a Community Park and Young’s
10 Park categorized as a regional park. Regional Parks are generally larger sites that offer a variety
11 of unique features or recreational experiences that serve the entire county population and
12 beyond, whereas a Community Park is generally a smaller, more developed park.

13 3.8. Conclusion of Law 2, that the proposal would be compatible with the existing
14 and planned land use and that the Parks Plan does not require all of a park to support park users.
15 As noted above, the Permit converts natural, forested parkland to a parking lot and outdoor
16 storage yard. As explained below, the Rural Reserve zoning designation does not authorize
17 parking lots, and thus a parking lot in the middle of the naturally forested portion of the park is
18 incompatible with its existing use. In addition, the storage yard directly displaces park uses, and
19 conflicts with those uses by introducing noise, dust and exhaust when it is operating and by
20 creating a visual blight when members of the public would otherwise seek natural recreation in
21 the upland portion of the park. In addition, none of the Parks Plan goals involve unrelated
22 materials storage, indicating that County policies do not consider materials storage consistent
23 with the use of County parks for parks.

24 3.9. Conclusion of Law 2, that the existence of a stockpile at Schoolhouse Park is
25 evidence of the compatibility between parks and stockpiles. On the contrary, the entire reason
26 that the County has applied for after-the-fact approval for its new, unpermitted stockpile and

1 parking lot in Young's Park is due to the incompatibility of its previous unpermitted stockpile
2 with park uses at Schoolhouse Park. In 2021, Skagit Planning and Development Services
3 approved a special use permit to render Schoolhouse Park as a Community Park and to allow
4 for temporary events. As a result of this change, and the presumed increased use of the park and
5 concomitant need for parking, the County determined that they needed to remove their
6 unpermitted stockpile there. Consequently, the stockpile's recent expulsion from Schoolhouse
7 Park conveys that stockpiles are incompatible with parks.

8 3.10. Conclusion of Law 2, that the Hearing Examiner can overlook the deed
9 restriction limiting the use of Young's Park solely to public park purposes and authorize a use
10 that breaches that covenant.

11 3.11. Conclusion of Law 3, that the proposed use would comply with the Skagit
12 County Code. The parking lot would conflict with the Code's zoning requirements because the
13 Rural Reserve zoning designation does not authorize standalone parking lots and the lack of
14 trails precludes the existence of a trailhead.

15 3.12. Conclusion of Law 4, that the proposed use would not create undue noise and air
16 pollution impacts on surrounding, existing, or potential dwelling units. The record indicates that
17 the County did not identify the number of trucks that would be accessing the site during road
18 construction operations, the duration of those projects, the frequency of the trips, the truck
19 routes, or their noise or air pollution emissions.

20 3.13. Conclusion of Law 6, that the proposed use would not cause potential adverse
21 effects on the general public health, safety, and welfare, and would not be in conflict with the
22 health and safety of the community. As discussed at paragraph 3.2 above, the Permit creates a
23 safety conflict by inviting park users to park at the same site that will be used by an excavator
24 and trucks delivering and loading road building materials, as well as the narrow roads that lead
25 to the site. In addition, the Permit approves the clearing of a portion of the natural environment
26 that park visitors seek for recreation and, during road construction activities, would impose high

1 noise and dust levels on park visitors, adversely affecting the public’s health, safety, and
2 welfare. By locating the stockpile at the far end of Guemes Island from the ferry terminal, the
3 Permit also authorizes excess carbon emissions that will contribute to climate change and sea
4 level rise that will directly impact island shorelines, including those in the park, and that
5 adversely affect the general public health and welfare.

6 3.14. The finding set forth in Conclusion of Law 6 that foot traffic is apparently
7 already happening on Forest Lane and that no injuries have been reported. This finding is not
8 supported by the record.

9 3.15. Conclusion of Law 8, that the proposed use would maintain the character,
10 landscape, and lifestyle of the rural area. While rural areas may not be wilderness areas, as
11 stated by the Hearing Examiner, rural areas contain a mix of uses on properties suitable for
12 those uses and it is important to consider the setting in which a use is proposed. The Young’s
13 Park parcel lies in a largely forested portion of northern Guemes Island and is a largely
14 naturally-vegetated park that has been dedicated to that use since Skagit County received it for
15 the sole purpose as a park in 1978, whereas other parcels on Guemes Island serve other rural
16 uses. Within the rural context of north Guemes, the stockpile would not maintain the character,
17 landscape, and lifestyle of that rural area.

18 **IV. RELEVANT SECTIONS OF SKAGIT COUNTY CODE**

19 Applicable sections of the Skagit County Code and related errors in the Permit approval
20 include the following:

21 4.1. SCC 14.02.010. The purposes of Title 14 of the Skagit County Code include the
22 conservation of Skagit County’s resources and the provision of economic and social advantages
23 that result from the orderly, planned use of land resources. Public Works’ opportunistic and
24 unpermitted development of a parking lot and stockpile on a parcel on Guemes Island that was
25 purchased solely for public park purposes conflicts with these purposes.

26 4.2. SCC 14.16.020(1). The Skagit County zoning code must be liberally construed

1 to secure and protect the public health, safety, and welfare of the people and the land.

2 4.3. SCC 14.06.090(1)(c). An application must contain a verified statement by the
3 applicant that all of the property that is the subject of the application is either in the exclusive
4 ownership of the applicant or that the applicant has submitted the application with the consent
5 of all owners of the property. The application materials do not contain signatures by an
6 applicant, or such verification. Nor is there evidence in the record that the Parks Department
7 approves of the use of the park for a stockpile/parking lot.

8 4.4. SCC 14.16.320. The Rural Reserve zoning designation does not include a
9 standalone parking lot as an authorized use. In addition, to the extent that it authorizes
10 trailheads, those facilities are defined at SCC 14.04.020 as:

11 4.4.1. "Trailheads, primary: a staging area provided for trail access including
12 trail orientation and information and that provides the necessary unloading features.

13 Primary trailheads should have restrooms and trash receptacles; and

14 4.4.2. "Trailheads, secondary: trail access points having limited development.
15 Supporting features might include a small unpaved parking area and signage."

16 Both of those definitions refer to trails, which will not exist in the vicinity of the parking lot, as
17 acknowledged by County staff during the application process. Consequently, the new parking
18 lot cannot qualify as a trailhead.

19 4.5. 14.16.900. Special Use permit (1)(b)(v). A special use permit must demonstrate
20 that the proposed activity will not adversely affect or prevent those uses normally allowed within
21 the respective district. The applicant bears the burden of proving through evidence in the
22 application that:

23 (A) The proposed use will be compatible with existing and planned land use.

24 (B) The proposed use complies with the Skagit County Code.

25 (C) The proposed use will not create undue noise, odor, heat, vibration, air and
26 water pollution impacts on surrounding, existing, or potential dwelling units,

1 based on the performance standards of SCC 14.16.840.

2 (D) The proposed use will not generate intrusions on privacy of surrounding
3 uses.

4 (E) The proposed use will not cause potential adverse effects on the general
5 public health, safety, and welfare.

6 (G) The proposed use is not in conflict with the health and safety of the
7 community.

8 (I) The proposed use will maintain the character, landscape and lifestyle of the
9 rural area. For new uses, proximity to existing businesses operating via special
10 use permit shall be reviewed and considered for cumulative impacts.

11 As discussed above in Section III, the Hearing Examiner erred in concluding that the Permit
12 meets these SUP criteria.

13 **V. DESIRED OUTCOME/RELIEF REQUESTED**

14 GIPAC respectfully requests the following relief:

15 5.1. that the Board of County Commissioners reverse the Hearing Examiner’s July
16 28, 2023 decision approving Special Use Permit PL22-0603 as clearly erroneous, vacate the
17 Permit, and adopt its own findings, conclusions, and decision based on the record before the
18 Hearing Examiner; or

19 5.2. that the Board reverse the Hearing Examiner Decision and remand the matter to
20 the Hearing Examiner to ascertain whether the County and the public have the right to use
21 Forest Lane, whether the Parks Department approves of the use of the property for non-park
22 purposes, and whether the County intentionally desires to breach the deed restriction; and

23 5.3. Such other and further relief as the Board deems just and equitable.

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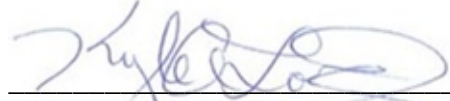
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1 Dated this 4th day of August, 2023.

2 Respectfully submitted,

3 LORING ADVISING PLLC

4
5 By



6 Kyle A. Loring, WSBA No. 34603
7 Attorney for Guemes Island Planning
8 Advisory Committee

ATTACHMENT A

**BEFORE THE HEARING EXAMINER
FOR SKAGIT COUNTY**

In the Matter of the Application of)	No. PL22-0603
)	
Devin Willard, on behalf of)	Young's Park Access and Material
County Public Works Department)	Stockpiling Special Use Permit
)	
)	FINDINGS, CONCLUSIONS,
<u>For a Special Use Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a Special Use Permit to construct a public overflow parking area for seven vehicles, a public hiking trailhead, and a lot for the stockpiling of materials related to road improvement and maintenance, all on the 12.79-acre parcel of Young's Park on the northeast side of Guemes Island, is **APPROVED**. Conditions are necessary to address specific impacts of the proposed project.

SUMMARY OF RECORD

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 28, 2023, using virtual access technology.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Brandon Black, County Planning Manager
Joey Amaro, Public Works Development Reviewer, Applicant Representative
Ben Clark, Road Supervisor for Public Works District One
Tom Weller, Assistant County Engineer and Engineering Division Manager
Yadi Young
Doug Partington
Gabriel Murphy
Walter Garland
Robert Steele
Joe Farina
Mark Linnemann

Exhibits:

The following exhibits were admitted into the record:

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1. Staff Report, dated June 21, 2023
2. Special Use Permit Application, received December 22, 2022, including Wetland Site Assessment prepared by GeoEngineers and dated September 22, 2022, and County Approval Letter, dated September 29, 2022.
3. Notice of Development Application and Optional SEPA Comment Period, published January 26, 2023
4. Public comments received during the “*Notice of Development Application*” comment period:
 - Website comment received on February 3, 2023, from Charmaine Johannes
 - Website comment received on February 4, 2023, from Peter R. Knutson
 - Letter received on February 3, 2023, from Frederick C. Partington and Patricia Anderson
 - Website comment received on February 6, 2023, from Henry Rose
 - Website comment received on February 6, 2023, from Joe Farina
 - Letter received February 6, 2023, from Mark Linnemann
 - Letter received February 7, 2023, from Jan Neel
 - Letter received February 8, 2023, from MPB Townsend
 - Letter received February 8, 2023, from Virginia Orsini
 - Letter received February 8, 2023, from Stephen Orsini
 - Letter received February 8, 2023, from Stuart and Arden Charles
 - Website comment received on February 8, 2023, from Jayne Mardesich
 - Letter received February 10, 2023, from Lowell Ashbach, Jr.
 - Letter received February 10, 2023, from The GIPAC Board
 - Letter received February 10, 2023, from Gabriel V. Murphy
 - Website comment received on February 10, 2023, from William McWatters
 - Website comment received on February 10, 2023, from Jaime Diamond
5. Letter to the Applicant Requesting Additional Information/Response to Public Comments, dated February 14, 2023
6. Response from Applicant Addressing Public Comments, dated March 13, 2023
7. SEPA Checklist, dated December 22, 2023
8. SEPA Mitigated Determination of Nonsignificance (MDNS), issued March 21, 2023
9. Comment Letter Received April 10, 2023, from Fred Partington, 804 S. 12th Street, Mount Vernon WA 98274.
10. October 20, 2021, Administrative Special Use Permit Decision #PL21-0180 for Guemes Island Community Center Association (GICCA) for the Community Park and Temporary Events Use at the Schoolhouse Park Site, dated October 20, 2021
11. Young’s Park Access Project Stormwater Plan and Civil Plan Set, received February 15, 2023
12. Young’s Park Drainage Report, dated January 31, 2023
13. Assessors Map, plotted June 8, 2022
14. Site Plan, received December 22, 2022

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15. Aerial Photos and Assessor Photos of the Lower Beachfront Park Area, undated
16. Notice of Public Hearing, published June 8, 2023
17. List of Neighbors and Parties of Record Who Were Mailed the Notice of Public Hearing, dated June 6, 2023
18. Additional Public Comments, dated June 22 and June 27, 2023
19. Materials Provided During June 28 Hearing by Yadi Young, various dates

Following the June 28 hearing, the Hearing Examiner left the record open until July 14, 2023 for a written response by the County to the testimony and materials provided by Yadi Young (Exhibit 19). The County provided the following exhibit, which the Hearing Examiner admitted into the record:

20. Addendum to Staff Report, dated July 14, 2023

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony at the open record hearing and the admitted exhibits:

FINDINGS

Application and Notice

1. Devin Willard, on behalf of the Skagit County Public Works Department (Applicant), requests a Special Use Permit (SUP) to construct the following improvements at Young's Park, a 12.79-acre site¹ on the northeast side of Guemes Island: a clearly defined overflow parking area for seven vehicles; a hiking trailhead to allow users of the new parking area to walk down the County road to the main part of the park; and the setting aside of a portion of the new parking lot area to be used for the stockpiling of materials related to road improvement and maintenance, such as re-surfacing and chip-sealing. The parking area will be some 12,343 square feet in area. A bioretention swale is proposed. The total area of clearing and grading will be approximately 30,053 square feet. *Exhibit 1, Staff Report, pages 1, 2, and 4; Exhibit 2; Exhibit 11; Exhibit 14.*
2. Skagit County (County) determined that the application was complete on January 19, 2023. The County published a Notice of Development Application (with SEPA comment period) on January 26, 2023, and was that same day published in the *Skagit Valley Herald* newspaper and mailed notice to all adjacent property owners within 300 feet of the subject property. The Notice of Application included a 15-day comment period, ending February 10, 2023. On June 8, 2023, the County published a Notice of Public Hearing for the application and mailed that notice to parties of record. *Exhibit 1, Staff Report, page 6; Exhibit 3; Exhibit 16.*
3. The County received 17 public comments during the comment period, as well as three more comments outside the comment period. Most of the public comments expressed

¹ Skagit County Tax Parcel No. P46558. *Exhibit 2.*

disapproval of the proposal on the grounds that: the stockpiling of road materials would lead to excessive dump truck traffic and polluted stormwater runoff; the parking lot would lead to increased traffic along Guemes Island Road; users of the parking lot would illegally abandon vehicles and trailers there and illegal camp overnight; the unsightly stockpile would be visible from adjacent lots; an unspecified wetland exists nearby; the additional public parking is unnecessary; users of the public parking would trespass on their way to the beach portion of the park; the road material stockpiling is fine at its current location and should not be moved to Young's Park; the County should not be encouraging increased use of Young's Park because the tidelands in front of the park are private; rumble strips should be installed on the public road; the County has already made unlawful, unpermitted improvements and should not be allowed to obtain a permit. Two comments expressed support for the public parking aspect of the proposal, but one of those two comments questioned what would prevent the nearby Guemes Island Resort from using the parking for its own guests. *Exhibit 1, Staff Report, page 6. Exhibit 9; Exhibit 18.*

4. In its capacity as Applicant for the project, Skagit County Public Works responded to the first 17 comments as follows:
- The relocation of the stockpile from its current location at Schoolhouse Park to the proposed location at Young's Park is necessary because there is not enough room at Schoolhouse Park. A Special Use Permit approved in 2021 for Schoolhouse Park required increased parking for the park, all of it to be located on-site. As a result, there is no longer room for the stockpile at the Schoolhouse Park. It must be relocated.
 - Stockpiling is necessary because, in the absence of a stockpile, materials needed for a road project must be brought in aboard the ferry all at once. The ferry lacks capacity to accommodate all materials at once, which forces Public Works to make frequent runs on the ferry, incurring overtime hours and compelling the use of nighttime ferry trips to avoid peak summer public use of the ferry (which, in turn, forces the ferry to incur overtime hours).
 - Public Works began using Young's Park as a stockpile without a permit owing to the sudden and unexpected loss of the Schoolhouse Park stockpile. Now Public Works is seeking a permit for the stockpile at Young's Park.
 - Young's Park may not be a tidelands park, but its waterfront location still makes it an important park for day users.
 - The increase in dump truck traffic hauling chip rock into the stockpile will occur over a period of three to four years, so there will be no measurable impact on daily traffic counts. The hauling out of the stockpile will occur only when a chip-sealing project is underway, which will occur, on average, every three to four years (hence the reason for a three-to-four-year period for the buildup of materials). Even during haul-out, the level of service on Guemes Island Road will remain the same, and the road is adequate for use by dump trucks.

- No critical areas are onsite. Stormwater will be managed by the proposed stormwater infiltration facility.
- Any ditch spoils stored in the stockpile will only be stored temporarily until they can be hauled off-island.
- The County currently received complaints about insufficient parking, which this project will alleviate.
- If any illegal dumping or camping occurs, neighbors should call Public Works or the sheriff.
- The lot itself will be a trailhead. There will not be a trail between the lot and the main park area. Users will have to walk down the road to the park without the benefit of a hiking trail.

Exhibit 1, Staff Report, page 6; Exhibit 5; Exhibit 6; Exhibit 10.

State Environmental Policy Act

5. The County Planning and Development Services Department acted as lead agency and analyzed the environmental impact of the proposal, as required by the State Environmental Policy Act (SEPA), chapter 43.21C RCW. The County consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a SEPA comment deadline of February 10, 2023. Other than the public comments received on the proposal (summarized above), the County did not receive comments specific to its SEPA review. The County reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation conditions, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Mitigated Determination of Nonsignificance (MDNS) with seven mitigation measures on March 21, 2023, with an appeal deadline of April 6, 2023. The MDNS was not appealed. *Exhibit 1, Staff Report, pages 6 and 7; Exhibit 3; Exhibit 7; Exhibit 8.*
6. The seven mitigation measures required by the MDNS are:
 - Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to the placement of any fill material. The Applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures shall remain in place until the completion of the project.
 - The Applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements.
 - The Applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code [SCC], the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces. Best Management practices shall be utilized

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throughout the life of the project.

- The Applicant shall comply with Fire Code Standards.
- The Applicant must comply with all relevant provisions of SCC 14.22 (Land Disturbance) and SCC 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).
- The proposal, and site development, must comply with all applicable requirements of SCC 14.16, and specifically SCC 14.16.320 (RR), SCC 14.16.810 (Setbacks, specifically for any proposed fences exceeding 6 feet in height), SCC 14.16.830 (Landscaping - Type III and Type VI as discretionary, meeting the purpose and intent), and SCC 14.16.840 (Performance standards).
- Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff's office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall only continue when in conformance with applicable state and federal laws.

Exhibit 8.

Comprehensive Plan, Zoning, and Surrounding Uses

7. The subject property is owned by Skagit County and operated as a park. The Skagit County Parks and Recreation Comprehensive Plan identifies Young's Park as a Regional Park. County staff noted that the Parks and Recreation Plan includes a Trail Development Goal. Staff also identified the following goals and policies from the overall Skagit County Comprehensive Plan as relevant to the proposal:
- Recognize the important functions served by private and public open space, designate and map public open space of regional importance, and designate open space corridors within and between urban growth areas. [Goal 2B]
 - Provide a safe and efficient network of trails and bikeways, including both on- and off-road facilities that link populated areas of the County with important travel destinations. Achieve high standards in meeting the needs of non-motorized users, through appropriate planning, design, construction and maintenance of user-friendly facilities. Increase education, information and traffic enforcement efforts associated with

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non-motorized transportation as a means of lowering collision and injury rates associated with these modes. [Goal 8A-6]

- Access and trailhead facilities should include adequate parking and sanitation. [Policy 8A-6.8]
- Promote the county's excellent regional location, lodging and retail opportunities and local public transportation options as attractions for tourism. [Goal 11C-2]
- Through adopted parks, transportation, and community plans, implement strategic efforts to develop and maintain scenic open space and cultural and heritage resources that are attractive to residents and visitors alike. [Policy 11C-2.2]

Exhibit 1, Staff Report, pages 10 and 11.

8. Reviewing these goals and policies, staff determined that the project would be compatible with the Comprehensive Plan:

- The project will allow for more public use by increasing trail access and overflow parking for parks recreation uses.
- Having a permitted area available to stockpile road maintenance material frees up the previous, unpermitted, material storage area at Schoolhouse Park allowing for more parking out of the road right-of-way at that location during the busy summer months.
- This proposal also allows for material to be gradually stockpiled on the island in advance of road chip sealing projects instead of overburdening the ferry and island road system during the busy summer months when those maintenance activities take place.

Exhibit 1, Staff Report, page 11.

9. The subject property is zoned Rural Reserve (RRv). Within the RRv zone, the following uses are allowed with either an Administrative Special Use Permit or a Hearing Examiner Special Use Permit:

- Minor public uses. This term is defined in SCC 14.04.020 to mean: “government or quasi-government owned and operated facilities which are not unclassified uses or utilities ... [and] include less than 3,000 square feet of gross floor area and that utilize two or fewer full-time employees.”
- Trails and primary and secondary trailheads. The latter term is defined in SCC 14.04.020 to mean: “trail access points having limited development. Supporting features might include a small unpaved parking area and signage.”
- Outdoor storage of processed and unprocessed natural materials in quantities greater than 500 cubic yards that do not have a potential health hazard.
- Regional parks.

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On the basis of these zoning rules, County staff concluded that each of the three aspects of the project (a parking lot, a trailhead, and a stockpile yard for road materials) was allowed under a special use permit. *Exhibit 1, Staff Report, pages 11 and 12 (citing SCC 14.16.320).*

10. Young’s Park is a 12.79-acre parcel bisected by Guemes Island Road (a County road) and Forest Lane (a private road). The park consists of a western, upland area west of the roads, and a lower, day-use area east of Guemes Island Road, which provides the only access to the day-use area. The day-use area is an open field that is extremely close to the saltwater of Padilla Bay. As commenters noted, above, the tidelands fronting Young’s Park are a private lot, so the Park is not technically a waterfront park. The proposed parking lot/stockpile would be located in the western, upland portion of the park, west of the roads, and well outside the 200-foot shoreline jurisdiction. The upland portion of the park is undeveloped and heavily forested, with a maximum slope of 15 percent. Despite the steepness, the site remains stable due to its gravelly soils and heavily forested, well-established surroundings. There is little to no erosion because the site is partially gravelled and the bare soils are covered with grass and shrubbery. A 2022 Critical Areas Site Assessment prepared by GeoEngineers indicated that there were no wetlands identified on the site. *Exhibit 1, Staff Report, pages 2, 4, and 6; Exhibit 2; Exhibit 13; Exhibit 15.*
11. The surrounding properties are zoned Rural Reserve (RRv) and Rural Intermediate (RI). To the north is the Guemes Island Resort Property, a Small-Scale Recreation and Tourism (SRT) use. Some of the properties to the west and south are developed with single-family houses, while others are undeveloped. To the east is Padilla Bay. As noted above, access to the park is via Guemes Island Road to the day-use area, and via Forest Lane to the upland area. The Guemes Island Resort uses Forest Lane as its access to the County road system. *Exhibit 1, Staff Report, pages 5 and 6; Exhibit 2; Exhibit 13; Exhibit 15.*

Proposed Use

12. The County describes the proposal as follows:
 - First, the project intends to recognize the site as a “Public use” and clearly define a public overflow parking area with the capacity for approximately seven vehicles to allow for improved access to the Skagit County owned park property for recreational use by the public.
 - Second, the site will be used by the public as a trailhead access to the public property along the Padilla Bay shoreline.
 - Third, the proposal involves setting aside a portion of the graded parking lot area to allow for the stockpiling of material primarily intended to be used for road improvement and maintenance projects, such as re-

surfacing/chip sealing, to prevent excessive ferry trips and to reduce traffic disruptions during the scheduled project activities. Temporary equipment staging will also occur at this site in advance of mobilization and during active maintenance activities.

In greater detail, the County adds:

The project clearing limits include approximately 30,053 square feet (S.F.) of area and will include the construction of a bioretention swale. The graveled parking area will be approximately 12,343 square feet, resulting in approximately 3.6% of the property consisting of impervious surfaces. The estimated total fill for the construction of the bioswale is 113 cubic yards and the estimated total cut will be 237 cubic yards. The total quantities of the stockpiled material will be approximately 430 cubic yards at maximum capacity and will consist primarily of half-inch chip rock.

Although the current anticipated amount of road maintenance material is stated to be approximately 430 cubic yards (for resurfacing projects), the actual quantities of materials on site at any one time could exceed 500 cubic yards at certain times (i.e., temporary ditch spoils storage, sand piles associated with inclement weather road maintenance, material stockpile for chip seal projects, etc.). In that event, it was determined best to review the stockpiling as a Hearing Examiner Special Use Permit and package all three uses in to one permit request.

Exhibit 1, Staff Report, pages 4 and 5.

Access and Parking

13. The County describes access and parking as follows:

The property's access and frontage are on Forest Lane (private road) which is accessed off Guemes Island Road (County Road). Routing to and from the site will also require use of the Guemes Island Ferry which is operated by Skagit County Public Works. A traffic study has not been performed. This site will solely be an occasional stockpile yard and overflow lot. The increase in truck traffic hauling chip rock into the stockpiling yard will occur during a period of three to four years resulting in no measurable impact on the average daily traffic counts. The hauling out of material from the stockpile yard will only take place when chip sealing occurs, which the County currently has a maintenance schedule of chip-sealing half of the island's roads every seven to eight years. During the busy summer months, the County receives multiple complaints regarding the lack of parking. County staff have personally witnessed the shortage of parking during the summer. The additional overflow lot will

serve to alleviate the lack of parking during the Island's peak recreational season. There is no public transit to the site.

Exhibit 1, Staff Report, page 5.

Special Use Permit

14. As noted above, each of the components of the proposal requires a special use permit. Only the stockpile requires that it be a Hearing Examiner Special Use Permit as opposed to an Administrative Special Use Permit, but in this instance, the County has consolidated all aspects into a single special use permit application. County staff reviewed the entirety of the project against the special use approval criteria and made the following relevant observations:

- This project accomplishes several tasks for the benefit of the island residents and the general public. It allows for additional parking to access the public property portion of the shoreline along Padilla Bay and it allows for a permitted stockpile site to help with the road maintenance projects on the island. It additionally alleviates burdening the Ferry and island road system all at once during the times of the year that the island experiences its highest population and traffic increases. Having the material readily available on the island in anticipation of road re-surfacing projects will allow the Public Works crews to mobilize quicker, free up the ferry for island residents, and complete the projects in a timelier manner.
- Material had been stored on the island periodically over the years for past projects; however, no special use permits had been approved to formally establish a stockpile location. The previous stockpile site was located at Schoolhouse Park, in the park's parking lot. Road resurfacing projects take place in the summer months which coincide with the times that the park experiences heavier usage. In 2021, Planning and Development Services approved a special use permit (Exhibit 10) to formally designate the pre-existing Guemes Island Park as a "Community Park" and to allow for "Temporary Events" (concerts, public commercial uses, etc.). In granting approval of the "Community Park" it was recognized that parking at that location had become a problem. As a result, the permit approval included a permit condition requested by Skagit County Public Works that stated: "A. Event and emergency vehicle parking shall not be located in the Skagit County Right of Way. B. Parking that requires a vehicle(s) to back out onto the Skagit County Right of Way is prohibited." The unpermitted stockpiling of material at this location reduced the amount of on-site parking available during peak usage times and thus needed to be relocated to an approved, permitted, location.
- The proposal is not anticipated to affect current land uses on nearby or adjacent properties. The existing vegetation will reduce any perceived aesthetic impacts to adjacent properties. Based on the site location on Guemes Island, the large acreage, and the existing heavy vegetation, the project will not generate an

intrusion on the privacy of existing surrounding uses. If necessary, additional landscaping will be provided if further clearing is determined to be needed.

- The proposal will not create undue impacts on the performance standards outlined within SCC 14.16.840. The site and surrounding areas are designated RRv, RI, and SRT. During proposed stockpiling there may be typical noise generated from trucks; however, this activity will not be long term and is not expected to impact surrounding residences or adjacent properties. The typical equipment that will be used on-site will include an excavator and dump truck, both of which receive routine maintenance and are equipped with the appropriate exhaust and noise suppression that fall within the performance guidelines of SCC 14.16.840.
- The type of work that is being proposed will not create any type of disturbance to the surrounding area. Occasionally, trucks will drop off material, but they will not create noise or vibrations to the surrounding area. During construction, exhaust from construction equipment and light dust from the project site is possible. Approximate quantities are unknown. Post construction, sporadic vehicle/equipment emissions during occasional stockpiling and parking may occur. Construction impacts will be of limited duration and will be controlled by vehicle emission controls and erosion control.
- Stormwater runoff will sheet flow to the bioretention swale. From there, the water will be treated and infiltrate into the native soils. Stormwater will not enter other waters under normal operating conditions.
- There will be no negative effects on the general public health, safety or general welfare from the proposed project provided the site is appropriately maintained and all local, state, and federal guidelines are adhered to. By locating the stockpile at the proposed location, it will free up parking at the previous location, have considerably less chance of conflicting with summer activities taking place at the other unpermitted Schoolhouse Park site, and have a significantly less chance of impacting the public safety and welfare.
- The site will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding area. By adding seven additional parking spaces available to the public, parking in the County Road right-of-way should be reduced, or preferably eliminated, at this location as well as at Schoolhouse Park. The additional parking spaces at Young's Park are intended to serve as overflow spaces for the park. The lower site currently contains picnic tables, a large lawn area, restroom facilities, and garbage cans. If it is determined that additional restroom facilities are needed at the upper parking area, portable restroom facilities will be added.
- The proposed use will maintain the character, landscape, and lifestyle of the rural area. The area is rural in nature and will remain so after the initial construction is completed.

Exhibit 1, Staff Report, pages 11 to 15; Exhibit 2.

Testimony

15. Brandon Black, County Planning Manager, testified generally about the application and SUP criteria. He confirmed that 12.79 acres was the size for the entire park, not just that portion of the park affected by this proposal. He explained that the stockpiling of road materials was meant to support resurfacing and chip sealing every four to six or seven years. In addition, there would occasionally be ditch spoils stored in the stockpile, or storage of sand in case of snow or ice. He said it would likely be only 430 cubic yards of material stored on-site (below the 500-cubic-yard threshold for a Hearing Examiner Special Use Permit as opposed to an Administrative Special Use Permit), but it was better to be safe than sorry and obtain the Hearing Examiner permit. He testified that none of the materials stockpiled would pose a public health hazard.

Mr. Black testified that stockpiling would alleviate the burden on the ferry. Road work generally occurs during the summer months, when traffic on the island and the ferry is at its highest, so stockpiling material in advance of the road-work season would alleviate conflicts. Mr. Black acknowledged that the County was already sometimes using the site for stockpiling without a permit and now wishes to correct that use by obtaining a permit. He said the previous stockpile site at Schoolhouse Park was no longer available for stockpiling uses owing to the special use permit approved in Exhibit 10, which requires additional parking that would be in conflict with continued stockpiling.

Mr. Black testified that notice of the SEPA MDNS had been published in the newspaper, in addition to being mailed to the parties of record and agencies with jurisdiction, including the Department of Ecology. He also said that all public notices had gone out to all properties within 300 feet of the park. He said all notices were posted on-site, as well as in the newspaper.

Mr. Black denied that a stockpile would be stored year-round on an indefinite basis. He anticipated that a stockpile would be a regularly recurring but not permanent feature of the lot. He did not want to restrict the flexibility of Public Works, however, by imposing seasonal or other limits on stockpiling.

Mr. Black testified that members of the public using the new parking lot would have to walk down Guemes Island Road to reach the day-use area of the park down by the water. There would be no trail for them. He said traffic along Guemes Island Road (at least in this location) was light. He believed traffic safety would be improved by the parking lot, because, without it, visitors would simply park in the right-of-way—and would still have to walk down Guemes Island Road anyway. He said that congestion on the roads was not a big issue, because it is not on a busy part of the island.

Mr. Black emphasized that a bioswale would be constructed, which would fully address all stormwater issues. No stormwater will drain to Padilla Bay until it has had a chance

to pass through the swale. He said staff had reviewed the stormwater plan and had no qualms about water quality whatsoever. He said passing stormwater through the bioswale would lead to less contamination than if ditch spoils were left in the ditch to drain untreated into the bay. *Testimony of Brandon Black.*

16. Joey Amaro, Public Works Development Reviewer, testified as the Applicant Representative. Mr. Amaro testified that the main purpose was to decrease the burden on the ferry by stockpiling needed material. He said the County could no longer use Schoolhouse Park, and this location at Young's Park is one of the few lots owned by the County on Guemes Island. *Testimony of Joey Amaro.*
17. Ben Clark, Road Supervisor for Public Works District One, testified that the stockpile would be large enough to surface half the island's roads every six or seven years on a schedule of half the island one year, and the other half the next year. He testified that, typically, in a work year, the materials would be stockpiled in early spring, and then used in July or August. After that, there would be no stockpile until the next round of road surfacing. He testified that, without a stockpile, Public Works would have to use so many car spots on the ferry that complaints would be generated.

Mr. Clark testified that the stockpile would not be visible from Guemes Island Road but would be visible to users of Forest Lane as they drove past, but it would mostly be hidden by trees on the park property as well as trees on surrounding properties.

Mr. Clark testified that chip rock would be 95 percent of the stockpile's use. There would be occasional ditch spoils. Sometimes, ditching spoils could be given away to island residents, but other times it had to be hauled away. The vast majority of the time, however, there would be nothing at all stored in the parking lot. Ditch spoils had never been stockpiled on the site. The only reason ditch spoils were stockpiled now was because Mr. Clark had received a stop-work order due to the unpermitted use of the property. Once the permit is issued, the ditch spoils will be gone. *Testimony of Ben Clark.*

18. Tom Weller, Assistant County Engineer and Engineering Division Manager, testified that there would be 50 feet of County-owned trees between Guemes Island Road and the stockpile area, and the nearest residence would be 250 feet away, also buffered by forest. Half of that distance would be trees on County-owned land; the other half would be trees on privately-owned land. As a result of all this buffering by forest, the stockpile would only be visible from Forest Lane. *Testimony of Tom Weller.*
19. Yadi Young testified that she is the widow of Gerald O. Young, United States Air Force veteran, Medal of Honor recipient, and namesake of Young's Park. She testified that she and her late husband have lived on Guemes Island since 1980, just three lots from the

park. She said she had seen gravel stored at the park for months on end. She said the people involved in the proposal want it to go their way, but she wanted them to consider the thoughts of the people who live nearby.

Ms. Young testified that the park parcel had always been used for a park, not for stockpiling materials. In 1925, the City of Anacortes acquired 11 acres from the estate of William Payne to be used for park purposes. In 1968, Anacortes City Council named the park for Gerald Young and held a ceremony to honor him. In 1977, citing the expense of maintaining a park on another island, the City voted to transfer the park to Skagit County with Resolution 480, with the stipulation that it be used solely for public park purposes. Skagit County made a token payment of \$1.

Ms. Young testified that the Medal of Honor is a rare honor. She said the late Mr. Young never considered the medal his; he considered it the property of all veterans. He used to suffer from PTSD and used the park as a place to restore his soul. Community members raised funds to improve the park, including a hiking trail and an artist circle of stones. The stones were donated by the different tribes of the Salish Sea, among other tribes.

Ms. Young testified that the proposed use of a portion of the park was incompatible with its history, its honored place in the community, and the promises Skagit County made in acquiring it for park purposes. She wondered why she, a relative of the park's namesake, was not notified about the proposal. She said that the County's public notice materials were not prominently placed. She said the County should have asked for permission before cutting trees and leveling the ground. She said the taxpayers own the park, at least as much as the County does. She offered documents obtained from the Anacortes Museum to substantiate her testimony.² *Testimony of Yadi Young.*

20. Doug Partington testified that his family owns the tidelands in front of Young's Park as well as property adjacent to the park, including property west of the uplands portion of the park. He testified that the County had not obtained permits prior to clearing the property and doing some of the work preparatory to the proposal. He said the County had compacted the earth and laid down tar paper, which was causing stormwater runoff into the park. He said he and some of his neighbors had done water testing and discovered heavy hydrocarbons that had not previously existed. He also stated that there is a wetland area nearby.

Mr. Partington testified that the Schoolhouse Park property had maintained a stockpile for years. He believed that the portion of Schoolhouse Park property where the stockpile was located was specifically designated for a stockpile. He said that the Schoolhouse Park was much better sited than Young's Park for a stockpile and that the truck traffic would lead to congestion and danger near Young's Park, because the road is narrow. He

² These documents, Exhibit 19, are discussed below, as is the County's response thereto, Exhibit 20.

said more people use Young's Park than Schoolhouse Park. He also said it would be possible to coordinate truck trips with the ferry schedule such that stockpiling might not be necessary after all.

Mr. Partington disputed that stockpiling would be temporary. He testified that ditch spoils had been deposited a year and a half ago and yet were still there. He doubted that the County would be able to deal with unlawful dumping, since they couldn't even deal with the ditch spoils that were supposed to be temporary. *Testimony of Doug Partington.*

21. Gabriel Murphy thanked County staff for their work and for their maintenance of the roads. He said, however, that the County was failing to take account of the locals' opinions. He said that the County was acting wrongly because it had already cleared and graded part of the land without a permit. He did not think stockpiling material on the island would have any benefit to the ferry schedule. He did think that hauling material all the way to Young's Park would increase County costs, because it is farther away from the ferry terminal than the current stockpile. *Testimony of Gabriel Murphy.*
22. Walter Garland testified that he is a veterans' service officer in Anacortes. He testified that he and his wife, also a veterans' service officer, use parks all over Fidalgo and Guemes Islands to provide services for veterans to deal with emotional issues. He said the commotion of dump trucks coming and going would ruin the peaceful environment in a way that could be harmful to the veterans' mental health. *Testimony of Walter Garland.*
23. Robert Steele testified that he is the commander of VFW Post 12220, the Young-McCool Post, in Anacortes. He said he was here in support of Yadi Young, the widow of Gerald Young, the park's namesake. Mr. Steele testified that the County's statements were inconsistent—sometimes they said they would stockpile materials in a portion of the parking lot, other times that the stockpile area would not be in the parking lot. Mr. Steele agreed with Ms. Young that the property had been transferred to the County for park purposes only. *Testimony of Robert Steele.*
24. Joe Farina testified that he believed there is a wetland on the property. He had seen skunk cabbage on the property, but it had been covered up by ditch spoils. He said two hillsides come together in a "Vee" at that point, so a large amount of water comes through, including a creek during the rainy season. Hydrocarbons from the stockpile would flow into the bay, where people crab and clam. He also said the ditch spoils would contribute pollution to the stormwater runoff, because ditches are the dirtiest part of the roads, due to oils and sprays and other pollutants.

Mr. Farina said the site is impractically far from the ferry terminal and will require trucks to go down a one-lane road. He believed the trucks would lead to traffic conflicts with cars and with dogs and peafowl that loiter in the road. *Testimony of Joe Farina.*

25. Mark Linnemann testified that he is the owner and operator of the Guemes Island Resort, adjacent to the park. He objected to the conversion of park land to what he called an industrial staging zone. He said hundreds, if not thousands, of his guests who come each year have been able to see the stockpile as they drive in. He said the 50-foot barrier of trees was not dense enough to screen the trees, because there is a canopy of trees overhead, but that is not the same thing as screening at ground level.

Mr. Linnemann testified that the ditch spoils were going to be permanently stored there, not removed. He agreed with Mr. Partington that the ditch spoils are full of hydrocarbons that run off into the bay. The ditch spoils are also full of noxious weeds. Mr. Linnemann expected that weeds would spread from the ditch spoils to the surrounding parklands and beyond to the surrounding private properties.

Mr. Linnemann did not think this was a suitable place for a trailhead, because there is no room for a trail. The only way to get down to the rest of the park was to walk on the road. It is not an appropriate place to operate trucks. *Testimony of Mark Linnemann.*

Staff Recommendation

26. Mr. Brandon testified that the County staff recommends approval of the SUP request, with conditions, including a new condition that the Applicant comply with the mitigation measures specified in the MDNS. The Applicant Representative testified that he had not reviewed the proposed conditions but did not raise any objection. *Testimony of Brandon Black; Testimony of Joey Amaro.*

Additional Materials Provided by Yadi Young

27. Following the hearing, County staff scanned the materials passed forward by Ms. Young during her testimony. The materials consist of newspaper reports from the 1920s, 1960s, and 1970s detailing the history of Young's Park. According to the newspaper reports, the people of Guemes Island bought the land from the estate of William Payne in or about 1925 "for a public camping park," to be used by the Boy Scouts. The City of Anacortes bought the land, which apparently was already in use as a Boy Scout camp and as a "summer camp home" at the time of the purchase. The people of Guemes Island raised the money for the purchase of the land which "would be held in perpetuity for park purposes." The idea was to make the park a "permanent summer camp for the Boy Scouts of Skagit County."

In 1968, the City of Anacortes adopted Resolution 234, which acknowledged that the land had been acquired "for park purposes" and named the park "Gerald Young Park" for the Medal of Honor winner who lived in Anacortes at the time. A ceremony in his honor was held.

In 1977, the Anacortes City Council suggested transferring the park to Skagit County, because the County had the manpower and equipment on-island to maintain it and could use the ferry for free. The Anacortes (City) parks and recreation director Steve Colby said the City could not maintain the park, but he believed the County intended to upgrade the area and make it more accessible to the public. The City proposed to transfer the property for a token payment of \$1 with the stipulation that it be used “solely for public park purposes.”

Anacortes Resolution 480 transferred the property to Skagit County “on the following terms and conditions: This conveyance is made solely for public park purposes to be used as a public park.”

Exhibit 19.

Addendum to Staff Report

28. In response to Ms. Young’s materials, which neither the Hearing Examiner nor County staff had seen in advance of the hearing, the Hearing Examiner requested further analysis by the County. On July 14, 2023, the County supplied an addendum to the staff report, containing additional historic documents and the County’s legal argument. *Exhibit 20.*
29. The County included both Anacortes Resolution 480, transferring the park to the County, and Skagit County Resolution 7241, accepting the transfer from the City. Both the City and County resolutions recite “the following terms and conditions: This conveyance is made solely for public park purposes to be used as a public park.” The statutory warranty deed memorializing the transfer from the City to the County also recites this language. *Exhibit 20.*
30. The County’s legal argument was as follows:

It is the Department’s position that the agreement between the City and the County that the property was transferred for use as a park is, at most, a deed restriction. Enforcement of deed restrictions is outside the jurisdiction of the Hearing Examiner and the existence and extent of a deed restriction is not part of the analysis of whether the use is allowed pursuant to a special use permit under chapter 14.16 SCC. For example, the hearing examiner would not consider an HOA’s CC&Rs in determining whether a development is permitted under the Code.

Exhibit 20.

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for non-administrative Special Use Permits (SUPs) as a Level II permit. The Hearing Examiner’s decision may be to grant or deny an application. Here, the trigger for a non-administrative Special Use Permit is the

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“outdoor storage of processed and unprocessed natural materials in quantities greater than 500 cubic yards that do not pose a health hazard,” that is to say, the stockpile. The other uses, namely, the parking lot and trailhead, are administrative special uses. When a single proposal combines multiple uses, however, the procedure used to evaluate the proposal is that of the highest use, in this case, the Hearing Examiner Special Use Permit triggered by the stockpile. Although the County does not expect to use more than 500 cubic yards of outdoor storage in the stockpile, it wants the flexibility to do so. Therefore, a Hearing Examiner Special Use Permit is required, and the Hearing Examiner has jurisdiction over the other proposed uses, as well. *Chapter 14.06 SCC; SCC 14.06.060; SCC 14.16.320(3) and (4); SCC 14.16.900(1)(b)(ii).*

Criteria for Review

Applications for Special Use Permits must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective district. *SCC 14.16.900(1)(a).*

The burden of proof shall be on the applicant to provide evidence in support of the application. The criteria for approval or denial shall include the following:

- (A) The proposed use will be compatible with existing and planned land use.
- (B) The proposed use complies with the Skagit County Code.
- (C) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (D) The proposed use will not generate intrusions on privacy of surrounding uses.
- (E) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—Natural Resource Lands, the impacts on long-term natural resource management and production will be minimized.
- (G) The proposed use is not in conflict with the health and safety of the community.
- (H) The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

SCC 14.16.900(1)(b)(v).

The criteria for review adopted by the Skagit County Board of County Commissioners are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

Conclusions Based on Findings

- 1. With conditions, the proposed use would not adversely affect or prevent those uses normally allowed within the Rural Reserve district.** There is a multiplicity of uses allowed in the Rural Reserve district. *SCC 14.16.320* (listing some 15 uses allowed outright; 16 administrative special uses; and 32 non-administrative special uses). There is no reason to believe the proposal will adversely affect or prevent any of them. There is already a park with a parking lot in the lower portion of Young's Park. Vehicles already park in the upper portion of Young's Park along the County right-of-way. Adding new parking and encouraging people to walk from the new parking to the lower portion of the park may intensify the use, but it will likely make the use safer than it has been by moving cars out of the right-of-way and into the parking lot. The stockpile, while potentially unsightly, will not prevent or adversely affect nearby uses, any more than the longstanding stockpile at Schoolhouse Park has prevented or adversely affected nearby uses—except that the Schoolhouse Park stockpile *occupies* existing parking, whereas the Young's Park stockpile will be built atop *new* parking. There will thus be a net gain of use for Young's Park. Conditions are necessary to ensure the environmental impact of the proposal is minimized. *Findings 1 – 30.*
- 2. With conditions, the proposal would be compatible with existing and planned land use.** The proposed use would be compatible with existing and planned land use. The existing use is an undeveloped portion of a public park. The proposed use would add an overflow parking lot and trailhead to support users of the park, which already has a parking lot in its lower portion. The portion of the parking lot devoted to stockpiling would not be inconsistent with the use of the property as a park. There is no evidence that users of the park currently use the area of the park proposed for stockpiling. There are no hiking trails or other amenities that would attract them to that area or that would be displaced by the stockpiling. The portion of the parking lot devoted to stockpiling will no longer provide wildlife habitat, but that would be true even if it were left as a parking lot. Aesthetically, a stockpile would detract from the enjoyment of the park, but the Hearing Examiner accepts the testimony of Mr. Black and the Public Works witnesses who testified that, for the majority of the time, the stockpile portion of the parking lot would not actually have anything stockpiled on it. The temporary intrusion of materials into one portion of a new parking lot sited well uphill of the day-use area is not enough of an intrusion to conclude that the proposal is incompatible with the existing use of the land.

The Hearing Examiner has reviewed the Skagit County Comprehensive Parks and Recreation Plan in both its December 2013 and January 2020 iterations and has found nothing in it that would preclude the use of a portion of the new parking lot for stockpiling purposes. Nothing in the Parks and Recreation Plan requires every square foot of every park to remain in either a natural condition or a condition that directly supports park users. The Hearing Examiner concludes that limited incursions, such as the stockpile proposed here, are consistent with the planned land use set forth in the Skagit County Comprehensive Parks and Recreation Plan. The longstanding existence of the stockpile at the Schoolhouse Park, a sister park on Guemes Island, is further evidence of the compatibility between parks and stockpiles, at least for purposes of the Parks and Recreation Plan.

The materials put forth by Ms. Young do give the Hearing Examiner pause. It is evident from the newspaper articles that, both at the time of transfer of the park land from the William Payne estate to the City of Anacortes in 1925, and at the time of the transfer of the park land from the City of Anacortes to Skagit County in 1977, the intended land use was for a park. The citizens of Guemes Island in the 1920s raised money for a park, not for a stockpile. The Hearing Examiner agrees with the County's argument in the Staff Report Addendum (Exhibit 20) that there is a deed restriction on the property that restricts its use to a park. The Hearing Examiner also agrees that enforcement of deed restrictions is outside the Hearing Examiner's jurisdiction. The Hearing Examiner's jurisdiction is limited to issues assigned to his review by the County Code, in this case, the issue of whether the historic materials related to the property indicate a "planned land use" pursuant to SCC 14.16.900(1)(b)(v)(A).

The Hearing Examiner has scrutinized Skagit County Resolution 7241 to determine whether the resolution might contain something *more* than a deed restriction—whether it might also constitute a freestanding land use commitment outside the boundaries of a conveyance, something that could be called a "planned land use." The Hearing Examiner has reached the conclusion that Resolution 7241 does not establish a freestanding commitment to a planned land use. The resolution's recital of the restriction "solely for public park purposes" is given only in the context of terms and conditions that attach to the conveyance of the land. Nowhere in the resolution does Skagit County make a separate, freestanding commitment to use the land only for park purposes regardless of the terms and conditions of the conveyance. Therefore, the Hearing Examiner concludes that the language in Resolution 7241 (and the identical language in Anacortes Resolution 480 and the statutory warranty deed for the park) creates, at most, a deed restriction that falls outside the Hearing Examiner's jurisdiction. It does not constitute a "planned land use" for the park that would fall within the Hearing Examiner's jurisdiction pursuant to SCC 14.16.900(1)(b)(v)(A). If the restriction in the conveyance is enforceable at all, it is not enforceable by the Hearing Examiner. *Findings 1 – 30.*

3. **The proposed use would comply with the Skagit County Code.** Reasonable public notice of the project was provided. All three proposed aspects of the project—the parking lot, trailhead, and stockpile—are allowed as special uses in the Rural Reserve zone. *SCC 14.16.320*. The park itself is also allowed as a special use. *Id.* The zoning code does not set forth any particular standards that any of these three proposed uses must meet, other than the requirement to obtain an SUP. The County performed the environmental review required by SEPA and determined that there would be no significant, adverse environmental impacts. The County did identify measures to mitigate the nonsignificant impacts that would occur, and the Hearing Examiner concludes these mitigation measures should be made conditions of approval. *Findings 1 – 30*.
4. **The proposed use would not create undue noise, odor, heat, vibration, air, and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.** The Hearing Examiner accepts County staff’s analysis that the trucks will not create undue noise, odor, heat, vibration, or air pollution. The Hearing Examiner accepts the testimony of County staff that water pollution from the parking lot and stockpile will be fully mitigated by means of the Applicant’s stormwater plan, including the bioswale. The Hearing Examiner agrees that treated runoff ditch spoils will likely be better for the environment than untreated runoff in the ditches. The Hearing Examiner agrees that ongoing compliance with the performance standards of SCC 14.16.840 should be made a condition of approval. *Findings 1 – 30*.
5. **The proposed use would not generate intrusions on privacy of surrounding uses.** The Hearing Examiner is persuaded that the substantial County-owned tree buffer between the proposed lot and the surrounding property lines—and the still-larger buffers of privately-owned trees between the property lines and the nearest private structures—are sufficient to prevent any intrusion on privacy caused by seven parking spaces and the occasional stockpiling of materials. *Findings 1 – 30*.
6. **The proposed use would not cause potential adverse effects on the general public health, safety, and welfare, and would not be in conflict with the health and safety of the community.** Although it is true that dump trucks will have to travel farther from the ferry to the Young’s Park stockpile than they do to the Schoolhouse Park stockpile, the Hearing Examiner accepts that the existing roads are adequate to support this additional movement without any degradation of service and without any additional hazard to public health, safety, and welfare. The roads near Young’s Park are undoubtedly narrow roads, but the Hearing Examiner does not accept that their narrowness means they are *per se* unsafe for dump trucks, much less privately owned cars. And, while it may not be ideal for users of the parking lot to walk down Guemes Island Road to reach the day-use area,

that foot traffic is, apparently, already happening and no injuries have been reported. Given that the public is determined to park *somewhere* near the park and then walk down Guemes Island Road, the Hearing Examiner believes it will be safer to have them park in a designated parking lot than along the County right-of-way as they currently do.

Findings 1 – 30.

7. **The proposed use would be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.** As noted above, existing roads are adequate to support the traffic this proposal is anticipated to generate. If it is determined that additional restroom facilities are needed at the upper parking area, portable restroom facilities may be added. *Findings 1 – 30.*

8. **The proposed use would maintain the character, landscape, and lifestyle of the rural area. For new uses, proximity to existing businesses operation via special use permit shall be reviewed and considered for cumulative impacts.** A large portion of the public comments and testimony argue that the proposal will not maintain the character, landscape, and lifestyle of the rural area. The Hearing Examiner wholly rejects any argument that the parking lot and trailhead aspects of the project would degrade the character, landscape, and lifestyle of the rural area, because parking and hiking have been occurring at this location for many decades without any impact whatsoever to the character, landscape, and lifestyle. The Hearing Examiner is more sympathetic to the argument that the stockpile aspect of the project will adversely affect the character, landscape, and lifestyle of the rural area. In the end, however, the Hearing Examiner concludes it will not. A minimum of 50 feet of existing trees will shield the stockpile from surrounding properties. The stockpile will be visible only from Forest Lane. Forest Lane is used, heavily, by the guests of Guemes Island Resort, which has its own decades-long history in the neighborhood. The resort's guests will now be exposed to the sight of the stockpile (and parking lot) as they drive past on their way to the resort. They will also see the stockpile whenever they walk down Forest Lane from the resort to the public park. However, the stockpile site will not lie directly alongside Forest Lane, and the Hearing Examiner accepts the testimony of the Public Works witnesses that the stockpile site will be empty the vast majority of the time.

The Hearing Examiner cannot accept the argument that having to glimpse a stockpile of rock chips and ditch spoils while driving or walking down a country road will constitute a breach of the character, landscape, and lifestyle of the rural area. A rural area is not a wilderness area. The Skagit County Comprehensive Plan describes the County's rural area characteristics as follows:

The Skagit County rural landscape is characterized by open spaces with natural vegetation; a variety of rural residential densities; farms, forests, mining, and aquatic resource areas; small unincorporated rural

communities; small, isolated rural commercial and industrial developments; and regionally important recreation areas.

Comprehensive Plan, page 72.

Similarly, the Growth Management Act defines *rural character* as being characterized by areas:

- (a) In which open space, the natural landscape, and vegetation predominate over the built environment;
- (b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;
- (c) That provide visual landscapes that are traditionally found in rural areas and communities;
- (d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;
- (e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;
- (f) That generally do not require the extension of urban governmental services; and
- (g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

RCW 36.70A.030 (23).

The glimpsing of a stockpile of rocks and spoils in passing is not incompatible with a “rural character” that already includes uses such as mining and “isolated rural commercial and industrial developments,” per the Comprehensive Plan, nor will it result in a landscape in which vegetation fails to predominate over the built environment or a visual landscape not traditionally found in rural areas, per the GMA. Neither the proposal here, nor its cumulative impacts when taken into consideration with those of the adjacent Guemes Island Resort, will result in a failure to maintain a rural landscape, lifestyle, and character in the neighborhood. *Findings 1 – 30.*

DECISION


Based on the preceding findings and conclusions, the request for a Special Use Permit to construct a public overflow parking area for seven vehicles, a public hiking trailhead, and a lot for the stockpiling of materials related to road improvement and maintenance, all on the 12.79-acre parcel of Young’s Park on the northeast side of Guemes Island, is **APPROVED**, with the following conditions:³

1. The Applicant shall obtain all necessary permits and approvals.

³ This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County code.

2. The Applicant shall comply with all relevant provisions of Skagit County Code 14.16 the Zoning Ordinance.
3. The Applicant shall comply with SCC 14.16.840, Performance Standards.
4. The Applicant shall comply with WAC 173-60 and SCC 14.16.840 for noise, vibration, and light conditions.
5. Public/Directional signage shall be provided identifying the public parking and directions to the lower grassy area.
6. If it is determined necessary, based on usage, additional portable restroom facilities will need to be provided at the parking lot.
7. All outstanding planning review fees shall be paid prior to final approval.
8. The mitigation measures identified in the SEPA Mitigated Determination of Nonsignificance issued for the proposal on March 21, 2023, are hereby made conditions of approval for this Special Use Permit.

DECIDED this 28th day of July 2023.


ALEX SIDLES
Hearing Examiner