



Friends *of the* San Juans

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March 29, 2022

San Juan County Council, Planning Commissioners, and staff
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Re: Friends of the San Juans comments on housing and ADUs

Dear Members of the San Juan County Council, Planning Commissioners, and staff:

As you consider various solutions to the housing crisis in our community, I wanted to take the opportunity to share some historical, legal background on Accessory Dwelling Units (ADUs) in San Juan County.

It's first worth noting that the County's ADU ordinance places no limit on ADUs in Urban Growth Areas (UGAs), and also that internal and attached ADUs are not limited anywhere in the county. Even though these opportunities to construct ADUs already exist, ADUs have not satisfied the County's housing needs. Opinions may differ as to why, but what is clear is that ADUs have proven not to be a practical solution to the County's housing crisis.

As you may know, a limited number of detached ADUs are currently permitted in the County's rural areas. This limitation relates to prior decisions of the Growth Management Hearings Board. The Growth Board addressed detached ADUs in rural areas of San Juan County in 2003¹ and 2007.² The following are some key points from that appeal process and the resulting decisions:

- **In 2003, the Growth Board issued a decision that unrestricted detached ADU development in rural areas created sprawl and urban growth in those areas, and violated the underlying densities.** The Board ruled that a detached ADU must be counted as a dwelling unit for the purpose of calculating density.
- The Board found the County's prior ADU ordinance noncompliant with the Growth Management Act (GMA), and invalid because it did not comply and substantially interfered with GMA's goals and requirements for preventing sprawl (Goal 2) and conserving natural resource industries (Goal 8).

¹ Friends Of The San Juans, Bahrych, and Symons, Et Al., V. San Juan County, before the Western Washington Growth Management Hearings Board, case No. 03-2-0003c, Corrected Final Decision And Order and Compliance Order, dated April 17, 2003.

² Friends Of The San Juans, Bahrych, and Symons, Et Al., V. San Juan County, before the Western Washington Growth Management Hearings Board, case No. 06-2-0024c, Final Decision And Order, dated February 12, 2007.

- In response to the 2003 decision, the County adopted regulations that: **(1) consider ADUs a separate dwelling for the purpose of calculating density; (2) permit the continued development of ADUs at the county's historic rate of 12% of building permits; and (3) established other limitations (e.g., size of structure, shared utilities and driveway, minimum lot sizes, prohibition in natural and conservancy lands) to ensure that the ADUs were accessory to the primary residence and did not negatively impact the rural character of the islands or the use of resource lands.** Friends supported these amendments.
- The 2007 Growth Board held that the new ADU regulations complied with the GMA in rural lands generally, but concluded that the authorization to permit detached ADUs on substandard rural lots (1-4 acres) established non-rural densities and thereby created urban growth and promoted sprawl.
- **Importantly, the Growth Board also found that there was no evidence that the County's ADU regulations would reduce the affordability of housing in San Juan County. The Growth Board found that in 2002, only 3% of residentially-developed parcels rented ADUs on a long-term basis.** The Board further recognized that the ADU regulations allowed an unlimited number of detached and internal ADUs in urban growth areas and limited areas of more intensive rural development and unlimited internal and attached ADUs in rural and resource lands.
- The Board concluded that the ADU regulations utilized ADUs as a potential source of affordable housing and found that “the likelihood of the limitations on County’s ADU regulations on detached ADUs in rural and resource lands impeding economic development are small and do not cause these regulations to be inconsistent with RCW 36.70A.020 (5), the Economic Development Goal of the GMA.”
- The Board ruled that the County’s balancing of Goals 4 and 5 with other goals and requirements of the GMA fits within the parameters set by the GMA. The Board further found that restrictions on detached ADUs imposed by Ordinance 7-2006 were not inconsistent with any other provision of law.

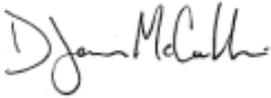
The Growth Board’s finding that only 3% of residential parcels rented ADUs on a long-term basis shows that ADUs really are not a practical tool to address housing needs. (An update of these data would be tremendously helpful, and we hope the County will undertake that.) **Moreover, in light of the binding precedent of these Growth Board decisions, the idea of solving San Juan County’s housing crisis by allowing the proliferation of detached ADUs in rural areas is simply not legally viable.**

I also note that there has not been any subsequent change in State law with regard to ADUs. Although Section 7 of HB 1220 (2021-22) would have addressed ADUs, the Governor exercised a line-item veto as to that section. As explained by Governor Inslee, “Section 7 of this bill can be read to encourage the siting and development of accessory dwelling units in areas of the state outside of urban growth areas.

This was a technical oversight that occurred during the legislative process. As passed, the bill inadvertently omitted a key reference limiting these policies to urban growth areas, which was not the intention of the bill's sponsor."³

Thank you for your hard work on these important issues, and for considering these comments. If I can provide any additional information about these decisions, please don't hesitate to reach out to me.

Sincerely,

A handwritten signature in black ink that reads "D. James McCubbin". The signature is written in a cursive, slightly slanted style.

D. James McCubbin

Friends of the San Juans, Legal Director & Staff Attorney

Attachments (2): 2003 and 2007 Growth Management Hearings Board decisions referenced herein.

³ The bill text and Governor Inslee's veto explanation may be found at:
<https://app.leg.wa.gov/billsummary?BillNumber=1220&Initiative=false&Year=2021>

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 FRIENDS OF SAN JUANS, LYNN BAHRYCH and JOE
4 SYMONS,

5 Petitioners,

6 v.

7
8 SAN JUAN COUNTY,

9 Respondent.

No. 03-2-0003c

COMPLIANCE ORDER

10
11 JAMES NELSON, ET AL

12 Petitioners,

13 v.

14
15 SAN JUAN COUNTY,

16 Respondent.

Case No. 06-2-0024c

FINAL DECISION AND ORDER

17
18
19 **I. SYNOPSIS**

20 San Juan County is an exceptionally beautiful rural county made up of islands with magnificent
21 vistas and miles of shoreline. The County is accessible only by ferry or air. Most of its land is
22 devoted to rural or resource uses. These unique characteristics have long made it a destination for
23 tourists and a location for seasonal second homes. For almost a decade, the County has struggled
24 with how to provide detached accessory dwelling units (ADU)¹ that are used as a source of income
25 for residents, accommodations for guest and caretakers, and as a source of affordable housing.
26 The length of this decision reflects the length of the struggle. During this time the Board of County
27 Commissioners form of government has been changed to a County Council, and the membership of
28 San Juan County's legislative body has changed as well.
29
30
31

32 ¹ The descriptor for these units has also evolved over time from guesthouse to freestanding ADU to now detached ADU.

1 The Friends of San Juan County (Friends) have long opposed the unrestricted allowance of
2 detached ADUs in rural and resource lands and have challenged the County's previous attempts to
3 adopt regulations to allow them. In our 2003 Final Decision and Order, we agreed with Friends that
4 unrestricted numbers of detached ADUs in rural and resource lands created sprawl and urban
5 growth in those areas, and violated the underlying residential densities. Now Friends supports the
6 County's latest effort at amending its regulations for detached ADUs established by Ordinance 7-
7 2006 (the Ordinance), amending SJCC 18.40.240 and other provisions of the County Code.
8 However, Ordinance 7-2006 has not settled the controversy, and nine petitions challenged this
9 ordinance.

10
11 In April 2003 the Board found noncompliant the County's regulations for detached ADUs (then called
12 freestanding ADUs) because they did not count a 1000 square foot detached ADU as a unit of
13 density in rural and resource lands, in violation of RCW 36.70A.060(1), RCW 36.70A.070(5), RCW
14 36.70A.110. The Board further found that the continued validity of those regulations for detached
15 ADUs in rural and resource lands substantially interfered with the fulfillment of Goals 2 and 8 of the
16 Growth Management Act (GMA) (RCW 36.70A. 020(2) and (8)).²

17
18 To remedy these noncompliance and invalidity findings, the County adopted amendments to its
19 regulations for detached ADUs. First, the new ADU regulations provide that a detached ADU is
20 considered as a separate residential unit for purposes of calculating residential density. This
21 amendment conforms to the Board's determination that a detached ADU should be counted as an
22 additional residence for purposes of calculating density. Second, the regulations create a program
23 for permitting a small number of detached ADUs in rural and resource lands in excess of the
24 underlying zoning density annually. Under the permitting program, a small number of detached ADU
25 permits will be issued with strict limitations on location, shared utilities, size, ownership, and impacts
26 on open space features of the property. The purpose of these restrictions is to ensure that the new
27 ADUs are accessory to the primary residence and do not negatively impact the rural character of the
28 Islands or the use of designated resource lands for agriculture or timber production. The County
29
30

31
32 ² The Board rescinded invalidity placed on the County's provisions regulating detached ADUs in Order Lifting
Invalidity issued on August 18, 2006 based on the amendments adopted by Ordinance 7-2006

1 projects that the number of rural and resource detached ADUs will not come to more than 15
2 annually.

3
4 In this decision, the Board considers whether this permitting program disturbs the densities of
5 existing compliant rural areas, creates urban growth in those areas or encourages sprawl. In rural
6 lands, the Board finds that the small number of detached ADU permits issued annually under the
7 conditions placed on them will not disturb the existing compliant scheme of rural densities. The
8 Board determines that because of the limitations described in the regulations and the historical
9 pattern of guesthouses, permitting a small number of such detached ADUs in rural lands will not
10 upset the traditional rural pattern of development in San Juan County and will not alter its rural
11 character. As a consequence, we also find that this limited exception to counting detached ADUs
12 as additional residential density does not allow urban growth in rural areas (RCW 36.70A.110(1)),
13 nor does it promote sprawl (RCW 36.70A.020(2)).
14

15
16 However, we find that where the regulations permit detached ADUs on substandard rural lots (of 1 to
17 4 acres) they establish non-rural densities, creating urban growth and promoting sprawl. SJCC
18 18.40.240(G)(4) allows detached ADUs on rural lots that are already of non-rural densities. By
19 allowing additional residences on those lots, that regulation contributes to even more intense uses
20 on nonconforming rural lots. With a second residence on a small rural lot, the regulations allow
21 residential uses to predominate over rural uses and rural levels of development. We find that this
22 amendment (SJCC 18.40.240(G)(4)) is not compliant with the County's own comprehensive plan
23 and the definitions of rural uses and rural development in the GMA. Further, the intensive residential
24 uses on substandard rural lots constitute urban growth in rural lands in violation of RCW
25 36.70A0110(1).
26

27 The problem of pre-existing substandard lots is not prevalent in designated resource lands.
28 However, the question in those lands is not so much one of compliant densities as one of
29 conservation of those lands for purposes of resource production. In resource lands, the Board finds
30 the size and location requirements will ensure that permitted detached ADUs do not convert
31 agricultural or timber land to other uses or create uses on resource lands that are incompatible with
32 the production of agriculture or timber. Further, the small number of ADU permits issued annually

1 will be spread out over both rural and resource lands resulting in very few detached ADUs in
2 resource lands.

3 Petitioners also challenge the public participation program followed by the County to adopt
4 Ordinance 7-2006. Petitioners challenge that the process was flawed, in part because the County
5 entered into settlement discussions with Friends which formed the basis for the first draft of the
6 Ordinance. Petitioners believe that public input was disregarded as a result.

7
8 Here, we find that the public process followed by the County in adopting Ordinance 7-2006 was well
9 publicized and extensive. While Friends made recommendations for the new ADU regulations, there
10 was extensive opportunity for the public as a whole to comment on proposals and to make their own
11 suggestions. Changes made to the draft ordinance over the course of the public process reflect
12 consideration of comments and alternative points of view.

13
14 Petitioners also argue that the changes to the ADU regulations exceeded the scope of the remand
15 from this Board and therefore should have been considered in the regular comprehensive plan
16 amendment cycle. In this regard, the Board finds that the County had discretion to address the
17 subject of the remand - regulation of ADUs – to resolve the appeal to the Board pursuant to RCW
18 36.70A.130(2)(b) and 36.70A.140 and chose to do so in the approach adopted in Ordinance 7-2006;
19 the County did not go beyond the scope of the remand such that it was required to adopt the
20 amendments to its ADU ordinance in its annual amendment cycle.

21
22
23 Petitioners assert a number of other challenges to the compliance of Ordinance 7-2006 with the
24 GMA. They also argue that Ordinance 7-2006 fails to comply with the State Environmental Policy
25 Act (SEPA) (Ch. 43.21C RCW), and the Shoreline Management Act (SMA) (Ch. 90.58 RCW), as
26 well as claiming that the County's requirement for one ERU per detached ADU violates the County
27 comprehensive plan, its development code, and state law. Several Petitioners also contend that the
28 Ordinance places limitations on the construction or conversion of ADUs that are too restrictive,
29 hinder the development of affordable housing, and interfere with economic development. One
30 Petitioner claims that the permitting process created under the Ordinance is inefficient and unfair.
31 The Board finds that Petitioners have not met their burden of proof that any of these violations have
32 occurred here. Further, the Board notes that the County strategy as to ADUs harmonizes the

1 Housing (Goal 4), Economic Development (Goal 5), and Permitting (Goal 7) goals of the Act with the
2 Sprawl Reduction (Goal 2) and Natural Resource Industries (Goal 8).

3 II. PROCEDURAL HISTORY

4 See Appendix A.

6 III. ISSUES TO BE DISCUSSED

7 COMPLIANCE ISSUE (CASE NO. 03-2-0003c)

8 Does the action that the County has taken to achieve compliance with the Board's April 17, 2003
9 Final Decision and Order/Compliance Order that found the County's regulations that allow for a
10 freestanding accessory dwelling unit (ADU) on single-family lots with a principal residence in rural
11 lands and resource lands, without counting it as a unit of density for the purpose of calculating the
12 underlying density, cause the County's regulations for regulating freestanding accessory dwelling
13 units to no longer substantially interfere with the goals of the Growth Management Act and to comply
14 with the goals and requirements of the Growth Management Act. See Corrected Final Decision and
15 Order (April 17, 2003)?³

15 ISSUES IN CASE NO. 06-2-0024c

16 SPRAWL

17 Issue 1: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) fail to comply with Growth Board
18 orders dated April 17, 2003 and July 21, 2005 and RCW 36.70A.020(2) and (8) by allowing
19 freestanding ADUs in rural and resource lands subject to an annual quota system? (Manning et al.,
20 06-15c, Nelson, 06-20, and Wanda Evans, 06-17)

21 Issue 2: Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant with RCW 36.70A.020,
22 Planning Goals 1 and 2, by allowing densities of greater than one unit per five acres in rural lands
23 and Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

23 AFFORDABLE HOUSING

24 Issue 3: Does the Ordinance 7-2006, Sections 18.40.240 A, C, G (1), G(4)(b), and G(4c) fail to
25 encourage the availability of affordable housing to all economic segments of the population, promote
26 a variety of residential densities and housing types, and encourage affordable housing in violation of
27 RCW 36.70A.020(4)? (Manning et al., 06-15C)

28 Issue 4: Does the Ordinance 7-2006, Sections 6,7, 8, and 9 fail to encourage the availability of
29 affordable housing to all economic segments of the population in violation of RCW 36.70A.020(4)
30 and RCW 36.70A.540? (Gutschmidt, 06-20)

31 ³ This description of the April 19, 2003 Final Decision and Order reflects the January 9, 2004, Thurston
32 County Superior Court decision that upheld the Board in regard to density requirements for accessory dwelling
units in resource and rural lands, but overturned the Board's decision on requirements for location and
occupancy requirements in resource lands.

1
2 Issue 5: Does Ordinance 7-2006, Section 8, SJCC 18.40.270 C violate RCW 36.70A.011 by not
3 allowing short-term rentals? (Wanda Evans, 06-17)

4 **PROPERTY RIGHTS**

5 Issue 6: Does the Ordinance 7-2006 as a whole fail to ensure that private property shall not be
6 taken from public use without just compensation having been made and that the property rights of
7 landowners shall be protected from arbitrary and discriminatory actions in violation of RCW
8 36.70A.020(6)? (Manning et al., 06-15c)

9 **PERMITTING**

10 Issue 7: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3, 5 fail to further the
11 goal of having applications for permits processed in a timely and fair manner to ensure predictability
12 in violation of RCW 36.70A.020(7)? (Gutschmidt, 06-20, Manning et al., 06-15c)

13 **CITIZEN PARTICIPATION AND COORDINATION**

14 Issue 8: Did the County fail to develop Ordinance 7-2006 by not involving citizens in the planning
15 process and ensuring coordination between communities and jurisdictions to reconcile conflicts as
16 required by RCW 36.70A.020(11)? (Manning et al., 06-15c)

17 Issue 9: Did San Juan County violate the public participation requirements of RCW 36.70A. 130 and
18 RCW 36.70A.140 by entering into the non-public development of a ‘Settlement Agreement’ with the
19 Friends of the San Juans, and then enacting the substance of that Agreement against the advice
20 from the Planning Commission and the Prosecuting Attorney, and without considering the potential
21 improvements to the settlement draft that were offered by Petitioners and other public participants?
22 (Baldwin et al., 06-16, Wiese 06-19)

23 Issue 10: Did the County’s actions in adopting Ordinance 7-2006 violate RCW 36.70A.
24 035(2)(a)(ii)? (John Evans, 06-18, Wanda Evans, 06-17, Wiese 06-19)

25 Issue 11: Did the Ordinance 7-2006 violate RCW 36.70A. 035(1) (c) by not notifying Class A and
26 Class B water systems of the legislation affecting private water systems established by Ordinance 7-
27 2006? (Wanda Evans, 06-17)

28 Issue 12: Did Ordinance 07-2006 violate the San Juan County Code, by inserting “Lot Coverage”
29 legislation in an ordinance that is advertised as an Accessory Dwelling Unit Ordinance without
30 proper public process and without using the annual docket process? (Wanda Evans, 06-17)

31 Issue 13 : Did the County fail to use good faith to ensure public participation and consider public
32 input in developing Ordinance 7-2006 in violation of RCW 36.70A.020(11) and RCW 36.70A.140?
(Gutschmidt, 06-20)

Issue 14: Does the requirement for one equivalent residential unit (ERU) of water for any detached
ADU contained on Ordinance 7-2006, Section 9, mislead the public process and is it contrary to the
County’s stated goals, as stated in the Ordinance’s recitals, in violation of RCW 36.70A.020 (4) and
(7), RCW 36.70A.540, and RCW 36.70A.011? (Gutschmidt, 06-20)

1 Issue 15: Does Ordinance 7-2006 violate the GMA public process requirements contained in RCW
2 36.70A.130(2)(a) which allow amendments “no more frequently than once per year”? (Nelson, 6-20,
3 Manning et al., 06-15c)

4 Issue 16: Does the public participation plan adopted for Ordinance 7-2006 comply with RCW
5 36.70A.140 and does it substantially interfere with RCW 36.70A.020(11)? (Nelson, 06-20)

6 Issue 17: Did the “back door” negotiations with the Friends of the San Juans before and during the
7 process that led to the adoption of Ordinance 7-2006 corrupt the public process to the point that the
8 County failed to comply with the requirements of RCW 36.70A.020(11) and RCW 36.70A.140?
9 (Nelson, 06-20)

10 Issue 18: Did the County’s failure to follow through with its representation to the Board that it would
11 seek an Appeals Court decision before attempting to amend the Development Code corrupt the
12 public process contrary to RCW 36.70A.020(11) and RCW 36.70A. 140 and therefore substantially
13 interfere with the GMA? (Nelson, 06-20)

14 **PROCEDURAL ISSUES**

15 Issue 19: Did the County violate RCW 36.70A.106 by not properly notifying the Department of
16 Community Trade and Economic Development of its intent to adopt Ordinance 7-2006 at least 60
17 days prior to final adoption? (Manning et al., 06-15c)

18 Issue 20: Does Ordinance 7-2006 impermissibly address issues which were adequately addressed
19 in the prior code provisions, and were not part of the Board’s earlier finding of noncompliance and
20 invalidity in violation of RCW 36.70A.130 (1), (2)(a)(b) and (7)? (Baldwin et al 06-16)

21 Issue 21: Did the failure of Ordinance 7-2006 to set forth the goals and provisions of the GMA that
22 were considered violate RCW 36.70A.130 and RCW 36.70A.140 by failing to afford the public an
23 opportunity to comment at a public hearing on the rationale being considered? (Baldwin et al., 06-
24 16)

25 Issue 22: Did the County violate RCW 36.70A.305, RCW 36.70A.330, and RCW 36.70A.140 by
26 going well beyond the issues of noncompliance? (John Evans, 06-18)

27 Issue 23: Does Ordinance 7-2006 that includes provisions which were neither challenged or found
28 by this Board to be noncompliant in the previous ordinance (21-2002), which the present Ordinance
29 seeks to remedy, and which are unrelated to the issues of structural density, violate RCW
30 36.70A.130(2)(b), RCW 36.70A.040, RCW 36.70A.040, and RCW 36.70A.100? (Wiese, 06-19)

31 Issue 24: Does Ordinance 7-2006 violate GMA procedural requirements contained in RCW
32 36.70A.130 (1)(d) and (2)(a) and (b) by adopting new regulations which are unrelated to the
compliance issues raised in the July 21, 2005 Order, and therefore should have been considered
under the County’s annual docket process? (Nelson, 06-20)

Issue 25: Did the County’s failure to make the entire public record that was developed during the
adoption process available by including it in the index provided to the Growth Board constitute a

1 violation of their duty to comply with RCW 36.70A.290(4) and therefore substantially interfere with
2 RCW 36.70A.020(11). (Nelson, 06-20)

3 Issue 26: Did the County through the adoption of Ordinance 7-2006, Section 6, violate RCW
4 36.70A.370 and RCW 36.70A.140, by failing to show in the record why 12 percent was chosen as
5 the number of detached accessory dwelling units allowed in a given year, why there are no detached
6 ADUs allowed on lots less than one acre, why there are no detached ADUs allowed on lots less than
7 five acres in the shoreline, why there are limitations on proximity of ADUs to a principal residence,
and why there is a prohibition of rentals of ADUs? (John Evans, 06-18)

8 Issue 27: Does Ordinance 7-2006 (at Sections. 6.F.3, 6.G.1.b, 6.G.2, and 8 and 9) establish new
9 restrictions limiting construction and use of a main house after a guest house has been constructed,
10 violate RCW 36.70A.302 (3-b-i) and substantially interfere with RCW 36.70A.020(6) and RCW
11 36.70A.370(2) by depriving property owners who have complied with previously existing County
12 regulations, and who have built guest houses in anticipation of later building a main dwelling, of their
vested rights which were established when they lawfully secured a permit to build their guest
house? (Wiese, 06-19)

13 **ACCESSORY DWELLING UNITS (ADUs)**

14 Issue 28: Do the restrictions placed on ADUs in rural and resource lands by Ordinance 7-2006
15 violate 43.63A.215, as well as RCW 36.70A.020, RCW 36.70A.540, and RCW 36.70A.400 by
16 allowing ADUs attached to the principal residence while restricting ADUs attached to either an
17 otherwise allowed or existing accessory structure when neither location of an ADU contributes to
additional structural density on rural or resource lands? (John Evans, 06-18)

18 Issue 29: Does Ordinance 7-2006, Sections 1 and 2, violate RCW 36.70A.400 and RCW
19 43.63A.215, by limiting the permitting of detached ADUs to 12 percent of the building permits from
20 the previous year and allowing only two percent of these permits to be conversions of existing
21 buildings and by not allowing ADUs to be attached to a garage or other accessory building? (Wanda
Evans, 06-18)

22 **SHORELINE MANAGEMENT ACT**

23 Issue 30: Did the passing of Ordinance 7-2006 violate the Shoreline Management Act, RCW
24 90.58.130 and RCW 36.70A.480(1) by amending the County's Shoreline Master Program without
25 proper notification and adoption process? (Wanda Evans, 06-17, Manning et al., 06-15c)

26 Issue 31: Did the passing of Ordinance 7-2006, Section 18.40.240 G(4)(c) violate WAC 173-26-100
27 (1) and (2), RCW 90.58.090 because no notice was given that Ordinance 7-2006 amended
28 Shoreline Density? (Wanda Evans, 06-17)

29 Issue 32: Did the County fail to adhere to the requirements of RCW 36.70A.480 (1) by adopting
30 changes to the shoreline regulations in the Uniform Development Code without following the
31 required public process and adoptions procedures and without considering the impact of the new
32 regulations on shoreline properties and consistency with the regulations of the Shorelines Element
of the CP? (Nelson, 6-20)

1 **STATE ENVIRONMENTAL POLICY ACT (SEPA)**

2 Issue 33: Did the County violate SEPA, RCW 42.21C, and WAC 197-11-560 when it adopted the
3 Ordinance without SEPA review? (Manning et al.06-15c).

4 Issue 34: Did the County violate WAC 197-11-230 by conducting a SEPA process for the Ordinance
5 that was reviewed by the Planning Commission, and by not conducting a new SEPA process for the
6 new ordinance that was adopted by the County Council? (John Evans, 06-17, Wanda Evans, 06-18
7 John Evans)

8 Issue 35: Did the County's adoption process for Ordinance 7-2006 fail to comply with the
9 requirements of the SEPA and therefore violate RCW 43.21 C and WAC 197-11-080, -210, -330, -
060, -158, -230, and -235 which requires SEPA compliance and consistency with the County's
10 comprehensive plan, including its Shoreline Element? (Nelson, 06-20)

11 Issue 36: Is the SEPA Threshold Determination of DNS noncompliant with RCW 43.21C and the
12 SEPA Rules, Chapter 197-11-060, -080, and -330 WAC? (Ludwig, 06-24)

13 Issue 37: Was the environmental evaluation and analysis required by the SEPA rules adequate and
14 compliant with RCW 43.21C and Chapter 197-11 -030 and -031 WAC? (Ludwig, 06-24)

15 **HOUSING POLICY ACT**

16 Issue 38: Is the Ordinance consistent with the State's Housing Policy Act, RCW 43.185B.0009?
17 (Manning et al, 06-15c).

18 **WATER SYSTEMS**

19 Issue 39: Does the requirement contained in Ordinance 7-2006 for one additional Equivalent
20 Residential Unit (ERU) of water for an detached ADU violate RCW 36.70A.130(1)(d), RCW
21 36.70A.070 and 36.70A.040(5) because it is inconsistent with the goals and policies of the
22 Comprehensive Plan Section 4.2.B.1.6 and Development Regulations (UDC Section 18.60.020)
23 contrary to state policy and water regulations that are regulated by WAC 246-290-100-4 and WAC
24 246-290-100-4(b)(i) and (ii)? (Nelson, 06-20, Wanda Evans, 06-17).

25 **CONSISTENCY**

26 Issue 40: Is all or part of Ordinance 7-2006 inconsistent or internally inconsistent with elements of
27 the County's Comprehensive Plan and Development Code and does it therefore violate RCW
28 36.70A.070, RCW 36.70A.040(4), RCW 36.70A.130(1)(a) –(d) and (2)(b), RCW 36.70A.060(3),
29 WAC 365-195-630 and WAC 365-195-500 which require comprehensive plans and development
30 regulations to be consistent and internally consistent? (Nelson, 06-20)

31 **IV. BURDEN OF PROOF**

32 For purposes of board review of the comprehensive plans and development regulations adopted by
local government, the GMA establishes three major precepts: a presumption of validity; a "clearly
erroneous" standard of review; and a requirement of deference to the decisions of local government.

1 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments
2 to them are presumed valid upon adoption:

3 Except as provided in subsection (5) of this section, comprehensive plans and development
4 regulations, and amendments thereto, adopted under this chapter are presumed valid upon
5 adoption.

6 RCW 36.70A.320(1).

7 This same presumption of validity applies when a local jurisdiction takes legislative action in
8 response to a noncompliance finding, that legislative action is presumed valid.

9 The statute further provides that the standard of review shall be whether the challenged enactments
10 are clearly erroneous:

11 The board shall find compliance unless it determines that the action by the state agency,
12 county, or city is clearly erroneous in view of the entire record before the board and in light of
13 the goals and requirements of this chapter.

14 RCW 36.70A.320(3)

15 In order to find the County's action clearly erroneous, the Board must be "left with the firm and
16 definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d
17 179, 201, 849 P.2d 646 (1993).

18 Within the framework of state goals and requirements, the boards must grant deference to local
19 government in how they plan for growth:

20 In recognition of the broad range of discretion that may be exercised by counties and cities in
21 how they plan for growth, consistent with the requirements and goals of this chapter, the
22 legislature intends for the boards to grant deference to the counties and cities in how they plan
23 for growth, consistent with the requirements and goals of this chapter. Local comprehensive
24 plans and development regulations require counties and cities to balance priorities and options
25 for action in full consideration of local circumstances. The legislature finds that while this chapter
26 requires local planning to take place within a framework of state goals and requirements, the
27 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter,
28 and implementing a county's or city's future rests with that community.

29 RCW 36.70A.3201 (in part).

30 In sum, the burden is on the Petitioner to overcome the presumption of validity and demonstrate that
31 any action taken by the County is clearly erroneous in light of the goals and requirements of Ch.
32 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous
and thus within the framework of state goals and requirements, the planning choices of local
government must be granted deference.

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V. DISCUSSION OF COMPLIANCE ISSUE IN 03-02-0003c

COMPLIANCE – WWGMHB CASE NO. 03-2-0003C

Positions of the Parties

Participants’ Positions

Petitioners Ludwig and Austin contend that the amendments made to the County’s ADU regulations by Ordinance 7-2006 still do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) because they allow a detached ADU on less than 10 acres in rural areas.⁴

Petitioners Manning, Blanchard, Marshall, Baldwin, and Ziegler argue that the Ordinance allows for a detached ADU in rural and resource lands in direct contravention to the Board’s April 17, 2003 order.⁵

Petitioner James Nelson asserts that contrary to the Board’s order the County continues to allow freestanding ADUs in rural and resource lands. He says that the allowance of an unlimited but unknown number of freestanding (detached) ADUs subject to an annual quota system in Ordinance 7-2006 allows for higher than rural densities, does not conserve resource lands and does not comply with RCW 36.70A.110(1), RCW 36.70A. 070 (5)(b)(c), and RCW 36.70A.060.⁶

Mr. Nelson claims that these amendments attempt to cloud the distinction between a freestanding ADU and one that is attached to an outbuilding by describing freestanding ADUs now as detached. He declares that this change was made to prohibit combining a garage and an ADU in many cases, when in a number of cases property owners will be allowed a garage, a house, and an ADU. He says the approach allowed by the amendments is a greater assault on structural density than was allowed under the prior ordinance.⁷ He claims that the ADU amendments, particularly those requiring the ADU to be within a 100 feet of the primary residence will have unintended negative

⁴ Ludwig, Participants’ Objections to a Finding of Compliance at 1 and 2; Austin, Participant’s Objections to a Finding of Compliance at 1 and 2.

⁵ Manning and Blanchard, Opposition to Compliance Report and Motion to Lift Invalidity Filed by San Juan County and Objection to a Finding of Compliance at 2; Marshall, Baldwin, and Ziegler , Objection to Finding of Compliance and Motion to Supplement the Record at 3.

⁶ Nelson, Participant’s Objection to a Finding of Compliance and Motion to Supplement the Record at 3, 8.

⁷ Ibid at 7.

1 impacts on the shoreline and will cause a “cookie cutter” approach to development that does not
2 protect the rural character of San Juan County.⁸

3 He claims that the Board should only find compliance if the Board reverses its April 17, 2003 order
4 and that the County has not met its burden of proof that Ordinance 7-2006 is compliant with the
5 Growth Board orders of April 17, 2003 and July 21, 2005.⁹

6 7 **County’s Position**

8 San Juan County asks that the Board find compliance because the amendments adopted by
9 Ordinance 7-2006 now count detached ADUs as a unit of density in rural and resource lands with a
10 limited exception. The exception is the allowance of a small number of ADUs located in close
11 proximity to a primary residence subject to an annual cap. That cap is 12 percent of the number of
12 building permits for new principal residences issued for the previous year, with two of the twelve
13 percent reserved for conversion of existing accessory buildings. The County projects that this will
14 result in about 15 detached ADUs annually in rural and resource lands.¹⁰

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17 The County points out that this limitation on the number of detached ADUs in rural and resource
18 lands is combined with strict environmental and visual protections, including a sharing of utilities and
19 driveways between the ADU and principal residence, requiring a full ERU for water, prohibition of
20 detached ADUs in natural or conservancy lands, and required minimum lot sizes.¹¹

21 The County maintains that detached guesthouses have been part of the historic character of the San
22 Juan Islands and are consistent with its present rural landscape, where the natural environment
23 predominates over the man made, and is compatible the GMA’s requirements to preserve rural
24 character.¹²

25
26 Petitioner Friends of the San Juans supports a finding of compliance because Ordinance 7-2006
27 allows only a very limited number of detached ADUs in the manner of historic guest houses to
28 continue being developed while tightly restricting the environmental and structural impacts of those
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30 ⁸ Ibid at 9 and 10.

31 ⁹ Ibid at 3 and 6.

32 ¹⁰ Compliance Report and Motion to Rescind Invalidity at 3-4.

¹¹ Ibid at 5.

¹² Ibid at 5

1 detached ADUs. Friends says that adding 15 new detached ADUs a year will have a de minimus
2 impact on the character of the County's rural lands and the effective use of the county's resource
3 lands.¹³

4
5 Board Discussion

6 The situation presented to the Board at this time is markedly different from that presented in 2003.
7 The chief petitioner in the underlying case, Friends of San Juans (Friends), no longer challenges the
8 compliance of the County's ADU development regulations with the goals or requirements of the
9 Growth Management Act (GMA). In fact, Friends now supports a finding of compliance as to the
10 new ADU adoptions in Ordinance 7-2006.

11
12 The Board rescinded its determination of invalidity as to the ADU development regulations pertaining
13 to detached ADUs on June 30, 2006. At that time, the Board determined that the County's new
14 development regulations did not pose a significant risk that inconsistent development would occur
15 during the compliance remand period such that proper GMA planning could not ultimately take
16 place. Contrary to the arguments of Petitioner W. Evans, this ruling was not a determination of
17 compliance but a determination that the County had reduced the scope of its detached ADU
18 regulations so that their continued validity would not substantially interfere with the ultimate
19 fulfillment of the goals of the GMA during the pendency of the compliance determinations.

20
21
22 On compliance, different but related issues are before the Board: whether the County's adoption of
23 Ordinance 7-2006 fails to comply with Goal 2 (reduction of sprawl) (RCW 36.70A.020(2)), Goal 8
24 (natural resource industries) (RCW 36.70A.020(8)), the requirements for rural densities (RCW
25 36.70A.070(5)), and the prohibition against allowing new urban development outside of urban
26 growth areas (RCW 36.70A.110(1)). The challenge to compliance with Goal 2, Goal 8 and RCW
27 36.70A.110(1) was also raised in the new petitions for review by two remaining petitioners (Ludwig
28 and Wanda Evans).¹⁴ None of the new petitions challenge compliance with RCW 36.70A.070(5)
29 (the rural element requirements). Therefore, we will decide the rural densities issue as part of the
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32 ¹³ Petitioners' Response to Objections and Brief in Support of Lifting Invalidity at 7

¹⁴ By "remaining petitioners", we mean those petitioners who briefed and argued their issues at the hearing on the merits. Those who did not brief and argue their issues are deemed to have abandoned them.

1 compliance case only. The challenges in the new petitions to compliance with Goal 2, Goal 8 and
2 RCW 36.70A.110(1) will be decided together with those same challenges in the compliance case.

3
4 A. Rural densities and rural character. RCW 36.70A.070(5)(b) discusses the requirements for rural
5 development:

6 Rural development. The rural element shall permit rural development, forestry, and
7 agriculture in rural areas. The rural element shall provide for a variety of rural densities,
8 uses, essential public facilities, and rural governmental services needed to serve the
9 permitted densities and uses. To achieve a variety of rural densities and uses, counties may
10 provide for clustering, density transfer, design guidelines, conservation easements, and other
11 innovative techniques that will accommodate appropriate rural densities and uses that are
12 not characterized by urban growth and that are consistent with rural character.

13 RCW 36.70A.070(5)(c) sets requirements for rural development and protection of rural character:
14 Measures governing rural development. The rural element shall include measures that apply
15 to rural development and protect the rural character of the area, as established by the
16 county, by:

- 17 (i) Containing or otherwise controlling rural development;
- 18 (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- 19 (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-
20 density development in the rural area;
- 21 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and
22 ground water resources; and
- 23 (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource
24 lands designated under RCW 36.70A.170.

25 In finding the prior detached ADU development regulations non-compliant with rural densities, the
26 Board determined that the regulations essentially permitted a doubling of residential densities
27 throughout the rural zones. This failed to comply with RCW 36.70A.070(5)(b) and (c). The present
28 detached ADU regulations, however, allow a limited number (approximately 15) of rural and
29 resource lot owners to add a new or converted detached ADU to the principal residence in those
30 zones annually. The Board must consider whether the addition of approximately 15 detached
31 ADUs¹⁵, under the restrictions placed upon them by County Code, will violate the requirement for
32 rural densities in the rural zones.

¹⁵ Although the development regulations limit the number of detached ADU permits to 12% of building permits issued in rural and resource lands the previous year, the unique circumstances and history of land development in the San Juans demonstrates that the absolute number of such building permits is and will remain extremely small.

1 Petitioners argue that the County has not addressed the Board's finding that its detached ADU
2 regulations increased the structural density on rural lots.¹⁶ It is true that the County did not amend
3 its regulations to prohibit all detached ADUs unless they are counted as additional residences for
4 purposes of conforming to the underlying densities. Instead, the County has provided that a
5 detached ADU will count as additional residential density unless constructed pursuant to an ADU
6 permit. The detached ADU permit requirements include regulations to strictly limit the number of
7 detached ADUs that may be constructed in rural and resource zones, requirements that they share
8 major utilities with the primary residence, locates them in proximity to the primary residence in ways
9 that minimize intrusions on critical areas and open-space features such as orchards and pastures,
10 and requires that a full ERU of water is available for use of the detached ADU. The Board must
11 determine whether this alternative approach complies with the requirements for rural densities in
12 RCW 36.70A.070(5).
13

14 The County asks the Board to find compliance, arguing that the Board was wrong in its earlier
15 determination that a detached ADU increases the structural density on a lot and that the Board
16 should have focused on population density instead¹⁷. Whatever the merits of this argument, it is too
17 late to bring it now. The Board's determination that the County's detached ADU regulations created
18 noncompliant structural densities in the rural lands was decided, appealed to the superior court
19 where it was affirmed, and then appealed to the court of appeals where it was dismissed by
20 agreement of the parties. There was no reversal of the Board's determination and the Board, as
21 well as the parties, is bound by it. Compliance in this case must be assessed, therefore, in light of
22 the changes made to the prior noncompliant provisions of the ADU regulations.
23

24
25 In examining Ordinance 7-2006, the Board finds that first, that it now provides that "each detached
26 accessory dwelling unit shall be counted as a separate dwelling unit for density calculations..."¹⁸
27 This provision comports with the Board's 2003 decision. Ordinance 7-2006 then provides a program
28 for exceptions to this principle:"...except when allowed pursuant to and ADU permit"¹⁹
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31 ¹⁶ Nelson, Participant's Objection to Finding of Compliance at 8.

32 ¹⁷ San Juan County's Pre-Hearing Brief

¹⁸ SJCC 18 40.240(A)

¹⁹ Ibid

1 The program for detached ADU permits contains four major changes to the prior ADU regulations for
2 detached ADUs: first, there has been a cap placed on the number of detached ADUs that may be
3 constructed or converted in any year outside of an urban growth area or designated limited area of
4 more intensive rural development (in San Juan County these are called activity centers)²⁰; second,
5 the detached ADU must be located within 100 feet of the principal residence (up to 150 feet away if
6 “impact” would be greater); third, the detached ADU must now share its septic/sewer system with
7 the principal residence (in addition to sharing a driveway and water system); and fourth, a detached
8 ADU must obtain a full equivalent residential unit of water available for use for the detached ADU in
9 addition to the water required for the principal residence.

10 1) The cap. New SJCC18.40.240(G)(1)(b) provides:

11 Outside of the boundaries of activity centers and urban growth areas, the number of
12 detached ADU permits in any calendar year shall not exceed 12 percent of the total number
13 of building permits for new principal residences issued for the previous calendar year outside
14 the boundaries of activity centers and urban growth areas. Two of that 12 percent (10
15 percent new, 2 percent conversions) of the permits released in any one year shall be
16 restricted for the conversion of existing accessory structures that have legally existed for no
17 less than five years. ADU permits shall be issued on a first come/first served basis under
18 procedures established by the administrator. No unassigned ADU permits shall carry
19 forward to the next year.

20 The County avers that the absolute number of ADU permits, based on historical numbers of building
21 permits issued outside of activity centers and urban growth areas, is estimated to be about 15 per
22 year. Of that amount, 1/6th of the ADU permits are allocated to conversions of existing structures
23 that have been legal for at least 5 years.

24 2) Location of the detached ADU. Unlike the prior development regulations, Ordinance 7-
25 2006 now expressly limits the location of the detached ADU to within 100 feet of the main residence:

26 Distance. The maximum distance between the closest vertical walls of the main house and
27 any detached accessory dwelling unit shall be no more than 100 feet. If the 100 feet
28 dimension would result in a greater impact, the administrator may allow up to 150 feet
29 separation.

30 SJCC 18.40.240(G)(2).

31 _____
32 ²⁰ ADUs are prohibited in Rural Industrial, Rural Commercial, Natural, and Conservancy Land Districts, as well
as in the Island Centers District.

1 The question of “greater impact” that authorizes the administrator to allow up to 150 feet is described
2 in the subsequent section. The location impacts are to “avoid or minimize intrusion on the most
3 sensitive open-space features of the site”:

4 Location. Locate every new detached ADU and its utilities and driveway to avoid or minimize
5 intrusion on the most sensitive open-space features of the site, including but not limited to:

- 6 a. Existing orchard, meadows an pasture areas;
- 7 b. Ridgelines and contrasting edges between landscape types unbroken by structures;
- 8 c. Rolling, open or steep open slopes;
- 9 d. Critical areas.

10 SJCC 18.40.240(G)(3).

11 3) Shared utilities. Ordinance 7-2006 amends SJCC 18.40.240 to provide:

12 Driveway and Utilities. An accessory dwelling unit shall use the same driveway,
13 septage[sic]/sewer system, and water system as the principal residence.

14 SJCC 18.40.240(F)(3).

15 The requirement for a shared septic system is new to this version of the ADU development
16 regulations.

17 4) Water availability. Ordinance 7-2006 further amends SJCC 8.06.070 regarding water
18 required for a new detached ADU:

19 A detached accessory dwelling unit shall include evidence of the availability on site of one
20 equivalent residential unit [ERU] of water in addition to the water required for the principal
21 residence.

22 SJCC 8.06.070 (definition of “Connection”, in pertinent part).

23 The requirement for a full ERU of water for a detached ADU is distinguished from the amount of
24 water availability required for an attached ADU. An attached ADU requires one-half of an ERU
25 unless the owner can demonstrate that water use in the attached ADU will be less (up to 1/3 of an
26 ERU)²¹ Petitioners Marshall, Zeigler and Baldwin argue that this distinction was a last minute
27 addition to the ordinance and did not reflect meaningful consideration of the arguments against it.²²

28 Friends argues that the water requirement is a further limitation on the number of detached ADUs
29 that may be constructed.²³

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31
32 ²¹ SJCC 8.06.070

²² Baldwin/Marshall/Ziegler Prehearing Brief at 6.

²³ Friends’ response to Board questions at the hearing on the merits.

1 With these changes, the County has altered its course of doubling the density potential in rural and
2 resource lands and acknowledged that detached ADUs should count as additional density. The
3 amendments enacted by Ordinance 7-2006 count a detached ADU as a unit of density with a limited
4 exception.²⁴ This exception allows some detached ADUs on a permit basis.²⁵ In rural and resource
5 lands, the number of detached ADUs which may be permitted in any year is limited to 12 per cent of
6 the total number of building permits for new permanent residences issued outside of UGAs and
7 LAMIRDs the prior year. This is estimated, by reference to the past history of building permits
8 issued for single-family home construction in the rural and resource lands, to be about 15 per year.²⁶

9
10 In order to assess the impact of this exception to the density limitation for detached ADUs, we turn
11 first to the County's Final Report on Accessory Dwelling Units.²⁷ According to this analysis, the total
12 of "non-urban" parcels (excluding state and federal lands) is 13,991. The average parcels size in the
13 rural and resource lands (excluding state and federal lands) is 7 acres.²⁸ The official land use maps
14 for San Juan County show a majority of the lots on all of the islands as designated as rural or
15 resource lands.²⁹ According to the official land use maps, rural densities vary from 1 dwelling unit
16 per 5 acres (1du/5 acres) to 1 du/10 acres. While there are preexisting smaller lots in the rural
17 zones, the general rule is that the maximum rural density is 1du/5 acres. This comports with general
18 density guidelines articulated by the growth boards and this rural density scheme has been found
19 compliant.³⁰

20
21
22 Under Ordinance 7-2006, detached ADUs are permitted in the RFF (rural farm forest), RR (rural
23 residential) and RGU (rural general use) zones.³¹ Based on the history of building permits in the
24 rural and resource zones, the County estimates that 12% of the building permits issued in those
25 zones will be only 15 a year. Given the number of potential parcels upon which detached ADUs

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27 ²⁴ SJCC 18.40.240(A)

28 ²⁵ *Ibid.*

29 ²⁶ SJCC18.40.240 (G)(1)(b).

30 ²⁷ Exhibit 4, at 3

31 ²⁸ *Ibid* at 21.

32 ²⁹ Land Use Maps, Comprehensive Plan (San Juan County)

³⁰ *Michael Durland et al v. San Juan County*, Case No. 00-2-0062c and *Town of Friday Harbor, et al v. San Juan County*, Final Decision and Order/Compliance Order (May 7, 2001) at 20; *Michael Durland v. San Juan County*, Case No. 00-2-0062c, Order Finding Compliance and Rescinding Invalidity (October 11, 2001) at 2.

³¹ SJCC 18.40.240(C).

1 may be constructed or converted, an annual limit of approximately 15 of such permits is unlikely to
2 disturb the existing, compliant scheme of rural densities.

3
4 However, it is also important to examine the nature and scope of the detached ADUs in determining
5 their potential impact upon rural densities. Detached ADUs are limited to no more than 1,000
6 square feet in size.³² They must share water and septic/sewer with the principal residence.³³ They
7 must also share a driveway and be located within 100 feet of the principal residence.³⁴ Further
8 restrictions include only minimal intrusion in critical areas and open spaces.³⁵

9
10 In addition, detached ADUs under the San Juan County scheme are not separate residences in that
11 they cannot be sold separately from the primary residence.³⁶ They may be rented but the rental
12 term must be at least 30 days.³⁷

13
14 Another important aspect of rural densities is that they conform to the rural character of the specific
15 county. The GMA recognizes rural character is not the same among counties and regions and
16 requires each county to define its specific rural character:

17
18 Because circumstances vary from county to county, in establishing patterns of rural densities
19 and uses, a county may consider local circumstances, but shall develop a written record
20 explaining how the rural element harmonizes the planning goals of RCW 36.70A.020 and
21 meet the requirements of this chapter.

RCW 36.70A.070(5)(a).

22 *The San Juan County Accessory Dwelling Units Final Report* (Final Report)³⁸ describes the special
23 conditions that make San Juan County's situation with respect to detached ADUs different from
24 other counties:

25 The specific conditions of San Juan County, including transportation limitations of the island
26 environment, and the long history of the islands as a vacation and retirement location, have
27

28
29 ³² SJCC 18.40.240(F)(1)

30 ³³ SJCC 18.40.240(F)(3)

31 ³⁴ *Ibid*; SJCC18.40.240(G)(2)

32 ³⁵ SJCC 18.40.240(G)(3)

³⁶ SJCC 18.40.240(F)(4)

³⁷ SJCC 18.40.270 (L)

³⁸ Exhibit 4.

1 resulted in a rural environment with characteristics that are different from those of many rural
2 counties in the state.³⁹

3 San Juan County's comprehensive plan's describes its rural character:

4 ...Rural lands are intended to retain the pastoral, forested, and natural landscape qualities of
5 the islands while providing people with choices for living environments at lower densities or
6 use intensities than those in Activity Centers.⁴⁰

7 San Juan County's development code further describes rural character as:

8 ...a quality of landscape dominated by pastoral, agricultural, forested and natural areas
9 interspersed with single-family homes and farm structures.⁴¹

10 San Juan County's isolation, recognition as a tourist destination, historic use of ADUs for vacationing
11 family members or as a vacation residence before a main house is built, and rural lot development
12 pattern are unique characteristics. A process which maintains the ability to develop a small number
13 of detached ADUs, constructed in proximity to the main residence and situated to maintain the open
14 space features central to the rural areas, is in keeping with San Juan County's rural character.

15
16 Taken together, the Board finds that the small number of detached ADU permits in rural lands, the
17 shared utilities and driveway, the requirement that the detached ADU be relatively close to the
18 primary residence, the size limitation and the location restrictions within the lot will have a minimal
19 physical impact on rural densities. The fact that the detached ADUs are also attached to the primary
20 residence as part of common ownership also reduces the risk that the detached ADUs will become
21 simply another house on the same lot. In sum, the new detached ADU regulations do not act to
22 upset the existing compliant rural densities in San Juan County. Where the challenged regulations
23 allow such a limited number of detached ADUs to be constructed or converted on rural lands of 5 or
24 more acres per parcel, we find that they do not create non-compliant rural densities. However, San
25 Juan County has gone beyond allowing a limited number of detached ADUs on rural lands with
26 compliant rural densities. The County also allows detached ADUs to be constructed or converted on
27 rural lots as small as one acre.⁴² These small rural lots were established before the GMA was
28 adopted and would not ordinarily reflect an appropriate rural density. The County Comprehensive
29

30
31 ³⁹ Exhibit 4, *San Juan County Accessory Dwelling Units Final Report* (August 14, 2002) at 7

32 ⁴⁰ Section 2.3C of Land Use Element

⁴¹ San Juan County, Unified Development Code at SJCC 18.20, page 20.

⁴² SJCC18.40.240(G)(4)(b)

1 Plan acknowledges the existence of lots in the RR (rural residential) zone that are below 5 acres in
2 size but notes that this is because they were established in the 1979 comprehensive plan:

3 Existing parcels which were established under the greater densities of the 1979 plan may still
4 be developed for residential use, but any further subdivision in these areas must meet the
5 newly established density limits. Plan policies encourage the combination of existing lots in
6 order to reduce the number of dwelling units that may be developed in rural areas where the
7 existing parcel pattern would permit development at a density greater than that established
8 by this Plan and the Official Maps.

9 San Juan County Comprehensive Plan, Land Use Element at 2.

10 Allowing an additional detached residence on a nonconforming rural lot is not consistent with the
11 County's own plan for rural densities and preservation of rural character. In addition, the County's
12 regulations allow an additional footprint of up to 2,000 square feet on a nonconforming rural lot if the
13 ADU is combined with a garage.⁴³ Such structural intensity does not conform to policies on rural
14 densities under either the County's comprehensive plan or the GMA.

15 **Conclusion:** Ordinance 7-2006, as it applies to detached ADUs in existing, compliant rural zones,
16 does not alter the existing compliant residential densities in those zones to an extent that violates
17 RCW 36.70A.070(5). The development regulations limit the number of detached ADU permits to
18 12% of building permits issued in rural and resource lands the previous year; the unique
19 circumstances and history of land development in the San Juans demonstrates that the absolute
20 number of such building permits is and will remain extremely small. However, the regulations that
21 permit a detached ADU to be constructed or converted on a nonconforming rural lot of less than 5
22 acres fail to comply with RCW 36.70A.070(5) because they expand the structural intensity in rural
23 zones beyond that which is set out in the County comprehensive plan and do not conform to rural
24 densities as defined by the GMA.
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⁴³ SJCC 18.40.240(G)(4)(b)(ii)
COMPLIANCE ORDER AND FINAL DECISION AND ORDER
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1 **VI. ISSUES IN O6-2-0024c**

2 **A. Abandoned Issues**

3 No petitioner in WWGMHB 06-2-0024c briefed the following issues: 3, 6, 8, 15, 16, 17, 18, 19, 23,
4 24, 25 27, 32, 33, 35, 38, and 40. "An issue not addressed in petitioner's brief is considered
5 abandoned".⁴⁴

6
7 Conclusion: Petitioners have not carried their burden of proof pursuant to RCW 36.70A. 320(2)
8 regarding Issues: 3, 6, 8, 15, 16, 17, 18, 19, 23, 24, 25 27, 32, 33, 35, 38, and 40.

9
10 **B. Sprawl Issues**

11 Issue 1: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) fail to comply with Growth Board
12 orders dated April 17, 2003 and July 21, 2005 and RCW 36.70A.020(2) and (8) by allowing
13 freestanding ADUs in rural and resource lands subject to an annual quota system? (Manning et al.,
14 06-15c, Nelson, 06-20, and Wanda Evans, 06-17)

15 Issue 2: Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant with RCW 36.70A.020,
16 Planning Goals 1 and 2, by allowing densities of greater than one unit per five acres in rural lands
17 and Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

18 Under this heading, we will discuss the challenges to compliance with Goal 2, Goal 8 and RCW
19 36.70A.110(1). We will discuss Goal 4 in the Affordable Housing Section of this order.

20 Positions of the Parties

21 **Petitioners' Positions**

22 Petitioner Ludwig states that Ordinance 7-2006 allows freestanding ADUs on lots of less than 10
23 acres.⁴⁵ Petitioner Ludwig cites Western Washington Growth Management Hearing Board cases,
24 including the April 17, 2003 Corrected Final Decision and Order and decisions from the Central
25 Growth Management Hearings Board that have held that allowing an ADU with a principal residence
26 on a lot of less than 10 acres constitutes impermissible sprawl.⁴⁶ This Petitioner also declares that
27 all three Boards have affirmed that one dwelling unit per five acres is the maximum permissible
28

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31 ⁴⁴ *WEC v. Whatcom County*, WWGMHB Case No. 95-2-0007. Also see *OEC v. Jefferson County*, WWGMHB
32 Case No. 94-2-0017.

⁴⁵ Petitioners' Objections to a Finding of Compliance (June 27, 2006) at 1.

⁴⁶ Petitioner's Prehearing Brief (November 8, 2006) at 2 citing *1000Friends IV*, CPSGMHB Case No. 04-3-
0012 (Final Decision and Order, Date) at 13, and *PNA II*, CPSGMHB Case No. 95-3-0071.

1 density in rural areas.⁴⁷ Petitioner says that the official San Juan County maps show a large
2 percentage of rural land platted on lots of five acres or smaller, and Ordinance 7-2006 would double
3 the density on rural lots. ⁴⁸ Petitioner argues that a study done as a part of the review of County's
4 critical areas ordinance shows that all of San Juan County is a critical aquifer recharge area, and
5 therefore no more density than one unit per five should be allowed until the critical areas ordinance
6 is updated. ⁴⁹ Because the County can't predict where new detached ADUs will be built, Petitioner
7 Ludwig contends these new ADUs constitute unplanned and uncoordinated growth which the
8 Growth Management Act (GMA) seeks to discourage.⁵⁰

9
10 Petitioner Austin makes many of the same arguments as Petitioner Ludwig.⁵¹ Petitioners Manning
11 and Blanchard and Marshall, Baldwin and Ziegler contend that the Ordinance still violates the
12 Board's order that a detached ADU shall conform to the underlying density in rural and resource
13 areas.⁵²

14
15
16 Petitioner Wanda Evans alleges that because the Board has overturned its April 17, 2003 order, that
17 it should now find Ordinance 21-2002, the ordinance that the Board's April 17, 2003 order found
18 noncompliant and invalid, compliant. She argues that this ordinance is not much different than
19 Ordinance 7-2006 except the County's regulations for detached ADUs now contains a 12 percent
20 limit based on annual single-family development permits, rather than being based on the assumption
21 that the number of residential lots containing ADUs would never exceed more than 16 percent. She
22 contends that Ordinance 21-2002 is a better alternative because it was adopted with fairer public
23 process and allowed for conversions of outbuildings to detached ADUs. ⁵³

24
25 _____
26 ⁴⁷ Ibid at 3 citing *City of Moses Lake v. Grant County*, EWGMHB 99-1-0016 (Order on Remand, 4/17/02),
27 *Bremerton/Port Gamble*, CPSGMHB 95-3-39c and 97-3-24c(9/8/97), *Butler v. Lewis County*, WWGMHB 99-2-
28 27c (Final Decision and Order, 6/30/00), *Better Brinnon v. Jefferson County*, WWGMHB Case No. 03-2-0007
(Compliance Order, 6-23-04), and *Dawes v. Mason County*, WWGMHB Case No. 96-2-23c(Compliance
29 Order, 3-2-01)

30 ⁴⁸ Ibid at 4.

31 ⁴⁹ Ibid at 4.

32 ⁵⁰ Ibid at 4.

⁵¹ Austin, Participant's Objection to Finding of Compliance at 1-2

⁵² Manning and Blanchard, Opposition to Compliance Report and Motion to Lift Invalidity Filed by San Juan
County and Objection to a Finding of Compliance (July, 2006) at 2. Marshall et al, Objection to a Finding of
Compliance and Motion to Supplement the Record (July 5, 2006) at 2.

⁵³ Petitioner's Prehearing Brief (November 14, 2006) at 1

1 **County's Position**

2 The County maintains that detached ADUs are counted as a dwelling unit for the purposes of
3 complying with underlying density in rural and resource zones with a limited exception. The County
4 argues that Ordinance 7-2006 only allows a small number of detached ADUs in close proximity to a
5 primary residence that can only be rented long-term to provide a source of affordable housing. The
6 County states that the primary limitation on detached ADUs is only allowing permits for only 12
7 percent of the residential building permits per year with two percent of the 12 percent reserved for
8 conversion of existing buildings to detached ADUs.⁵⁴ The County also asserts that Ordinance 7-
9 2006 contains strict visual and environmental limitations on the construction of detached ADUs
10 including provisions for the sharing of all utilities, an obligation for one equivalent residential unit
11 (ERU) of water, prohibition of detached ADUs in natural or conservancy designations, and a
12 minimum lot size .⁵⁵
13

14 The County argues that detached ADUs are part of the historic character of San Juan County and
15 consistent with the present rural landscape. The County contends the manner in which the County
16 has chosen to permit detached ADUs assures that the natural environment with continue to
17 predominate over the man made and is compatible the GMA's requirements to protect rural
18 character.⁵⁶
19

20 Board Discussion

21 **Sprawl**

22 Goal 2 of the GMA calls for reduction of sprawling, low-density development:
23 Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-
24 density development.
25 RCW 36.70A.020(2)

26 In the Corrected Final Decision and Order of April 17, 2003, this Board found that the regulations for
27 detached ADUs violated Goal 2 by converting rural and resource lands to sprawling, low-density
28 development.
29

30
31
32 ⁵⁴ Compliance Report and Motion to Rescind Invalidity (June 21, 2006) at 3 and 4.

⁵⁵ Ibid at 5

⁵⁶ Ibid at 5.

1 For the same reasons that we find that Ordinance 7-2006 does not alter the existing compliant
2 residential rural densities, the Board finds that the new ADU regulations do not create sprawling,
3 low-density development in the rural zones. The limited number of detached ADU permits coupled
4 with the limitations on location, ownership, utilities and impact on the open-space features of the lot
5 prevent the detached ADU regulations from creating sprawl in those rural zones.

6
7 While we find that the provisions of SJCC 18.40.240(G)(4) fail to comply with the requirements for
8 rural densities and rural character of RCW 36.70A.070(5)(b) and (c) by allowing expansion of the
9 structural intensity in substandard rural lots, the Board does not find that they create sprawl at this
10 time. The new ADU regulations allow the construction and conversion of detached ADUs in the rural
11 residential zone on small rural lots of less than 5 acres. However, due to the limited number of such
12 detached ADUs that may be permitted and the limitations on size, location and utilities, the
13 Petitioners/Participants have not shown that this will create sprawl during the remand period. Since
14 SJCC 18.40.240(G)(4) is remanded for compliance with RCW 36.70A.070(5)(b) and (c) and RCW
15 36.70A0110(1), prompt compliance with those provisions will also cure the risk for sprawl.

16
17 **Conclusion:** Ordinance 7-2006 adds only a limited number of detached ADUs in rural and resource
18 lands every year. These detached ADUs are subject to strict controls and maintain close
19 connections with the primary residence. They are not divisible from the primary residence and must
20 share major utilities. Petitioners have not shown that this will create sprawl during the remand
21 period. Therefore, Ordinance 7-2006 complies with Goal 2, RCW 36.70A.020(2), subject to a
22 determination that continued validity of SJCC 18.40.240 may, if not made compliant during the
23 remand period set in this order, substantially interfere with fulfillment of Goal 2..

24
25 **Natural Resource Industries (RCW 36.70A.020(8))**

26 Goal 8 of the GMA is the natural resource industries goal:

27 Maintain and enhance natural resource-based industries, including productive timber,
28 agricultural, and fisheries industries. Encourage the conservation of productive forest lands
29 and productive agricultural lands, and discourage incompatible uses.
30 RCW 36.70A.020(8).

31 Mr. Nelson argues that the new regulations concerning detached ADUs continue to allow an
32 unlimited number of freestanding ADUs on lots of 10 acres in resource lands and therefore fail to

1 conserve resource lands.⁵⁷ However, the number of detached ADUs that may be constructed or
2 converted annually in resource lands is extremely limited. All detached ADUs, whether in rural or in
3 resource lands, are limited to an average of 15 per year. This is not an unlimited number; on the
4 contrary, it is a very small absolute number. While it is true that the actual cap is a percentage of
5 building permits issued in the rural and resource land zones, the configuration and development of
6 land in San Juan County does not offer a significant likelihood that this will ever be significantly
7 greater than 15.⁵⁸ That is, 15 detached ADUs in all rural and resource lands annually, not just in
8 resource lands.

9
10 Goal 8 pertains to the conservation and enhancement of natural resource lands so that they may be
11 used for productive purposes. It also requires discouragement of incompatible uses. With the
12 location requirements of Ordinance 7-2006, a detached ADU in resource lands must be located in
13 the 100 foot vicinity of the main residence, with shared utilities and driveway. It also may not disturb
14 orchards, meadows, and pastures, and may not interfere with the natural slopes and ridgelines of
15 the property. The size of the detached ADU is limited to 1,000 square feet. Overall, there is no
16 showing that a very small number of such detached ADUs would convert resource land to non-
17 resource purposes, or would create an incompatible use.

18
19 **Conclusion:** Petitioners/Participants have not met their burden of showing that the new detached
20 ADU regulations will violate the natural resources industries goal by converting resource lands to
21 non-resource purposes. Further, they have also failed to show that the limited number of detached
22 ADUs located in close proximity to the main residence and situated to reduce any impact on the
23 natural open space features of the property will constitute an incompatible use. The Board finds that
24 no violation of Goal 8 has been proven.

25
26 **Urban growth outside of urban growth areas (RCW 36.70A.110(1)).**

27 This provision of the GMA limits urban growth to urban growth areas:

28 Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an
29 **urban growth area or areas within which urban growth shall be encouraged and**
30 **outside of which urban growth can occur only if it is not urban in nature.** Each city that
31 is located in such a county shall be included within an urban growth area. An urban growth

32
⁵⁷ Nelson, Objection to Finding of Compliance and Motion To Supplement the Record at 6.

⁵⁸Exhibit 4, *San Juan County Accessory Dwelling Units Final Report* (August 14, 2002)

1 area may include territory that is located outside of a city only if such territory is characterized
2 by urban growth whether or not the urban growth area includes a city, or is adjacent to
3 territory already characterized by urban growth, or is a designated new fully contained
4 community as defined by RCW 36.70A.350.
RCW 36.70A.110(1) (emphasis added)

5
6 In our 2003 Corrected Final Decision and Order and Compliance Order in this case, the Board found
7 that the sections of Ordinance 21-2002 “allowing a freestanding accessory dwelling unit on every
8 single-family lot without regard to the underlying density in rural residential districts, including
9 shoreline rural residential districts, fail to prevent urban sprawl, contain rural development, and,
10 instead, allow growth which is urban in nature outside of an urban growth area.⁵⁹

11 As discussed in the sections on rural densities and sprawl above, the new ADU regulations no
12 longer allow a detached ADU on every single family lot. The question remains whether the
13 exception for permitted detached ADUs in rural and resource lands allows growth which is “urban in
14 nature” outside of urban growth areas.

15
16 “Urban growth” is defined in the GMA as:

17 Growth that makes intensive use of land for the location of buildings, structures, and
18 impermeable surfaces to such a degree as to be incompatible with the primary use of land
19 for the production of food, other agricultural products, or fiber, or the extraction of mineral
20 resources, rural uses, rural development, and natural resource lands designated pursuant to
RCW 36.70A.170.

21 RCW 36.70A.030(17)(in pertinent part).

22
23 In the *Quadrant* decision⁶⁰, the Washington Supreme Court agreed with a King County
24 determination that densities of one dwelling unit per acre constitute growth that is urban in nature. In
25 general, residential densities of one dwelling unit per acre or per two acres are not rural densities.
26 They are “incompatible with the primary use of land for the production of food, other agricultural
27 products, or fiber, or the extraction of mineral resources, rural uses, rural development” because the
28 residential uses dominate the parcel.

29
30
31
32 ⁵⁹ Corrected Final Decision and Order and Compliance Order, April 17, 2003 at 26.

⁶⁰ *Quadrant v. Central Puget Sound Growth Management Board*, 154 Wn. 2d 224 (2005)

1 As described in Ordinance 7-2006, the addition of a detached ADU on rural residential parcels less
2 than 5 acres in size is inconsistent with rural development and rural uses.⁶¹ The predominance of
3 residential structures on a rural parcel makes it inconsistent with” ...a quality of landscape
4 dominated by pastoral, agricultural, forested and natural areas interspersed with single-family homes
5 and farm structures.”⁶² It therefore creates growth that is “urban in nature”, contrary to RCW
6 36.70A.110(1).

7
8 Finding compliance in instances where the detached ADU is permitted on a rural parcel of a
9 compliant rural density of 5 acres in size is a much closer call for the Board. Allowance of a
10 detached ADU on five acre rural parcels actually creates a structural density that is neither rural nor
11 urban. All three boards have considered that a rural density is generally at least one dwelling unit
12 per five acres.⁶³ However, local circumstances must be considered in determining whether that
13 general principle should apply. In determining whether a detached ADU on a rural parcel of 5 acres
14 creates urban growth here, the Board has looked carefully at the historical pattern of guesthouses in
15 the rural areas on the San Juan Islands. Because of that historical pattern, a detached ADU may
16 not create urban growth in San Juan County, that is, it may not impinge upon rural uses and rural
17 character. Where the residential structures are not “incompatible with the primary use of land for the
18 production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural
19 uses, rural development” in the rural areas, urban growth is not created. Giving due deference to
20 the County Commissioners’ determination of the importance of detached ADUs in the rural areas,
21 the Board finds that the size and location restrictions on detached ADUs through the permit process
22 limit residential uses from dominating over the rural uses of the property where the parcel is 5 acres
23 or greater in size. The small number of such permits restrains the extent of such development in
24

25
26
27 ⁶¹ We distinguish between “urban growth” and “urban densities”. “Urban growth” exceeds rural and resource
28 land intensities. However, urban growth is not necessarily an appropriate urban density as a result. As in the
29 *Quadrant* case, urban growth may be at only suburban levels of density.

30 ⁶² San Juan County, Unified Development Code, SJCC at 18.20, page 20.

31 ⁶³ See *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7,
32 2001); *Sky Valley v. King County*, CPSGMHB Case No. 95-3-0068c (Final Decision and Order, March 12,
1996); *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c (Final Decision and Order, December 11,
2002); but see *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c (Final Decision and Order,
October 23, 1995); and *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 (Final Decision
and Order, May 23, 2000) (holding that rural densities should be no greater than one dwelling unit per *ten*
acres).

1 any one area so it is most likely that detached ADU permits will be issued in different locations,
2 rather than establishing a pattern of growth. Along with San Juan County's unique rural character
3 and historical pattern of guesthouse development, these limitations help guard against creating
4 growth that is urban in nature. While the Board has concerns about the potential for the creation of
5 urban growth with detached ADUs on 5-acre rural parcels, we find that the ordinance has addressed
6 many of them and is not clearly erroneous on the grounds of RCW 36.70A.110(1).
7

8 **Conclusion:** SJCC 18.40.240(G)(4) allows the creation of urban growth in rural areas by permitting
9 detached ADUs in parcels of substandard rural density. On such nonconforming lots, two
10 residences predominate over the rural character and use of the land. This fails to comply with RCW
11 36.70A.110(1).
12

13 Where the parcels in question are 10 acres in size, the addition of a detached ADU does not create
14 the specter of urban growth. Adding a detached ADU on a 5-acre parcel in rural lands is a much
15 closer question. However, in light of the County's historical pattern of guesthouse construction, the
16 limited number of detached ADUs that may be placed on rural lands of compliant 5-acre rural
17 densities, and the restrictions on size and location, we find that the County's decision to allow
18 permits for detached ADUs on some 5 acre rural parcels is not clearly erroneous as prohibited by
19 RCW 36.70A.110(1)
20

21 **C. ADUs and Affordable Housing**

22 Issue 2 (in part): Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant
23 Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

24 Issue 4: Does the Ordinance 7-2006, Sections 6,7, 8, and 9 fail to encourage the availability of
25 affordable housing to all economic segments of the population in violation of RCW 36.70A.020(4)
26 and RCW 36.70A.540? (Gutschmidt, 06-20)

27 Issue 5: Does Ordinance 7-2006, Section 8, SJCC 18.40.270 C violate RCW 36.70A.011 by not
28 allowing short-term rentals? (Wanda Evans, 06-17) Issue 28: Do the restrictions placed on ADUs in
29 rural and resource lands by Ordinance 7-2006 violate 43.63A.215, as well as RCW 36.70A.020,
30 RCW 36.70A.540, and RCW 36.70A.400 by allowing ADUs attached to the principal residence while
31 restricting ADUs attached to either an otherwise allowed or existing accessory structure when
32 neither location of an ADU contributes to additional structural density on rural or resource lands?
(John Evans, 06-18)

1 Issue 29: Does Ordinance 7-2006, Sections 1 and 2, violate RCW 36.70A.400 and RCW
2 43.63A.215, by limiting the permitting of detached ADUs to 12 percent of the building permits from
3 the previous year and allowing only two percent of these permits to be conversions of existing
4 buildings and by not allowing ADUs to be attached to a garage or other accessory building? (Wanda
Evans, 06-18)

5 We will discuss these issues together, but not necessarily in the order above.

6 Position of the Parties

7 **Petitioners Positions**

8 Most of these parties object to the conditions placed on detached ADUs and argue that they are
9 excessive restrictions on ADUs. They claim that the restrictions do not comply with the GMA's
10 Housing Goal or requirements to allow for ADUs, as well as various other statutes. In contrast,
11 Petitioner Ludwig contends that allowing detached ADUs on rural and resource lands without
12 counting them as additional density should not be allowed since it works to increase rental rates and
13 raise property values.
14

15
16 Petitioner Gutschmidt charges that the restrictions on detached ADUs imposed by Ordinance 7-2006
17 that limits their development and adds to the expense of development. This, he claims, is in
18 violation of the GMA's Housing Goal.⁶⁴
19

20
21 Petitioner John Evans states that San Juan County has focused on structural density to protect rural
22 character. For this reason, he argues that it makes no sense to place restrictions on ADUs attached
23 to an existing structure, as the County has done. Since these types of ADUs do not increase
24 existing structural densities, he argues that they unnecessarily impinge upon the rights of property
25 owners to create additional affordable housing stock, housing for returning children, and
26 opportunities for additional income.⁶⁵ He also argues that the limitations will have the effect of
27 deterring the County's economic development since they contribute to the lack of affordable housing
28 for workers in conflict with the GMA's economic development goal. He further contends that RCW
29 36.70A.400 serves as recognition by the State and the GMA that ADUs separate from the main
30

31
32 ⁶⁴ Brief (November 14, 2006) at 1-3.

⁶⁵ Petitioner's [J. Evans] Prehearing Brief at 3.
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1 residence play an important role in providing affordable housing. Finally, he argues that the
2 limitations placed on ADUs have no basis in the record.⁶⁶

3
4 Petitioner Wanda Evans makes many of the same arguments as Mr. Evans about ADUs attached to
5 accessory buildings, and asserts that the Central Puget Sound Growth Management Hearings
6 Board's (Central Board) March 19, 1996 Final Decision and Order in *Peninsula Neighborhood*
7 *Association v. Pierce County*, CPSGMHB Case No. 95-2-007(PNII) supports allowing ADUs to be
8 attached to existing buildings.⁶⁷

9
10 The argument of Petitioner Wanda Evans suggests that by not allowing ADUs to be attached to
11 accessory buildings without counting that as a detached ADU, the County is curtailing its ability to
12 provide for tourist activities. She says that San Juan County has in the past allowed for "farm stays".
13 She states that this activity has provided property owners with extra income to keep property in
14 agriculture. She says that these activities should not be made illegal and by citing RCW 36.70A.011
15 she seems to imply that not allowing short-term rentals of all detached ADUs for this tourist business
16 violates this statute.⁶⁸

17
18
19 Petitioner Ludwig, on the other hand, claims that the additional detached ADUs to be permitted
20 pursuant to Ordinance 7-2006 will make San Juan County's affordable housing stock less affordable
21 and inconsistent with the GMA's Housing Goal for two reasons. First, because ADUs can be rented
22 for as little as 30 days, this rental timeframe will make market rate and vacation rentals cost more
23 than 30 percent of a certain income, thus tending to make ADUs unaffordable. Secondly,
24 Ordinance 7-2006's allowance for a detached ADU on a parcel with another residence will create
25 greater density and make these properties 50 to 75 percent more expensive. He says that these are
26 notorious facts that the Board can consider pursuant to WAC 242-02-670 (2) and (3) and also cites
27 an article by Peter Wolf called "Land In America: Its Value, Use, and Control".⁶⁹

28
29
30
31 ⁶⁶ Ibid at 4.

32 ⁶⁷ Petitioner's [W. Evans] Prehearing Brief at 3.

⁶⁸ Petitioners Prehearing Brief at 2.

⁶⁹ Petitioner's Prehearing Brief at 5

1 **County's Position**

2 Ordinance 7-2006 expands the base of affordable housing. Ordinance 21-2002 was found
3 compliant with the GMA's affordable housing requirements, the County points out, and Ordinance 7-
4 2006 expands the allowable development of ADUs as compared to the noncompliant and invalid
5 provisions of Ordinance 21-2002.⁷⁰ The County maintains that a wide range of regulatory options
6 exist and the County has the final choice among the options. The County asserts that all of the
7 issues raised by the Petitioners John and Wanda Evans were discussed throughout the public
8 process, staff reports, and studies.⁷¹

9
10 The County explains that attached and internal ADUs can be rented without restriction, as can
11 primary residences with an associated detached ADU. The County states that its only prohibition on
12 the rental of detached ADUs is the rental of a detached ADU for less than 30 days without the rental
13 of the primary residence. The County says its reason for this rental limitation is short-term rentals of
14 detached ADUs would move away from the County's concept that detached ADUs are part of the
15 primary residence. The County argues that this provision is necessary to curtail "development
16 abuse" so that property owners cannot construct detached ADUs as separate structures to create
17 free standing rental units.⁷² At argument, Friends contended that this regulation was also instituted
18 to preserve detached ADUs for permanent residents of the islands, who have in the past been
19 evicted from such units during the tourist season, when higher rents could be charged to tourists
20 who are visiting the islands on a short-term basis.

21
22
23 Board Discussion

24 **Background and Applicable Laws**

25 Petitioners challenge the compliance of the Ordinance with RCW 36.70A.011; Goal 4 (affordable
26 housing) (RCW 36.70A.020(4); Goal 5 (economic development), (RCW 36.70A.020(5)); RCW
27 36.70A.400 (which requires compliance with RCW 43.63A.215(3)); and RCW 36.70A.540.

31
32 ⁷⁰ San Juan county's Prehearing Brief at 11

⁷¹ Ibid at 21.

⁷² San Juan County's Prehearing Brief at 11 and 12.

1 The Housing Element of the comprehensive plan must address the need for housing at various
2 income levels but it was not amended with the adoption of Ordinance 7-2006 and therefore there
3 can be no challenge to it in this case.

4
5 RCW 36.70A.540 authorizes a local jurisdiction to create an optional “affordable housing incentive
6 program”:

7 Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing
8 incentive programs providing for the development of low-income housing units through
9 development regulations.

10 RCW 36.70A.540.

11 However, there is no evidence that San Juan County has elected to create such a program and
12 therefore this provision does not apply here.

13
14 RCW 36.70A.011 does not create any requirements for counties but provides guidance for
15 developing their rural elements. San Juan County has a compliant Rural Element and it is not the
16 subject of this challenge. Therefore, Petitioner Wanda Evans’ challenge that rental limitations on
17 detached ADUs cannot be inconsistent with this statute.

18
19 The three challenges related to affordable housing properly before the Board, therefore, are the
20 challenge to compliance with Goal 4, Goal 5 and RCW 36.70A.400. We will discuss them in reverse
21 order.

22
23 Through RCW 36.70A.400, the County has an obligation to comply with RCW 43.63A.215(3). It
24 provides:

25 Unless provided otherwise by the legislature, by December 31, 1994, local governments
26 shall incorporate in their development regulations, zoning regulations or official controls the
27 recommendations contained in subsection (1) of this section. The accessory apartment
28 provisions shall be part of the local government’s development regulations, zoning
29 regulation, or official control. To allow local flexibility, the recommendations shall be subject
30 to such regulations, conditions, procedures, and limitations as determined by the local
legislative authority.

31 The recommendations referred to in subsection (1) of RCW 43.63A.215 are those developed by the
32 Department of Community, Trade and Economic Development (CTED):

1 ...designed to encourage the development and placement of accessory apartments in areas
2 zoned for single-family residential use.
3 RCW 43.63A.215(1)(b) (in pertinent part).

4 No Petitioner cites to any portion of the CTED recommendations that the County is alleged to have
5 violated. The Board cannot consider an argument that has not actually been made Further, RCW
6 43.63A.215(3) expressly provides that the County may place conditions, procedures and limitations
7 upon accessory dwelling units to allow "local flexibility". No evidence in the record is presented that
8 the County's limitations on attaching ADUs to accessory buildings or limiting detached ADUs in rural
9 and resource lands nor limiting building permits to 12 percent of the annual residential permits in
10 rural and resource lands show that the County's new ADU regulations exceed the scope of such
11 local flexibility. The Board finds that no violation of RCW 43.63A.215(3) and RCW 36.70A.400 has
12 been shown.

13
14 Mr. Evans challenges compliance with Goal 5. Goal 5 of the GMA encourages economic
15 development:

16 Encourage economic development throughout the state that is consistent with adopted
17 comprehensive plans, promote economic opportunity for all citizens of this state, especially
18 for unemployed and for disadvantaged persons, promote the retention and expansion of
19 existing businesses and recruitment of new businesses, recognize regional differences
20 impacting economic development opportunities, and encourage growth in areas experiencing
21 insufficient economic growth, all within the capacities of the state's natural resources, public
22 services, and public facilities.

23 Many factors are needed for successful economic development and the County allows various kinds
24 of ADUs as source of some of its affordable housing. Therefore, the likelihood of the limitations on
25 County's ADU regulations on detached ADUs in rural and resource lands impeding economic
26 development are small and do not cause these regulations to be inconsistent with RCW 36.70A.020
27 (5), the Economic Development Goal of the GMA.

28
29 Finally, there are two sets of challenges to compliance with Goal 4. On the one hand, Mr. Evans,
30 Ms. Evans and Mr. Gutschmidt argue that the restrictions placed on ADUs will restrict the supply of
31 affordable housing. On the other hand, Mr. Ludwig argues that the provisions for new detached
32 ADUs will simply increase the value of existing housing and drive up housing prices further.

1 Goal 4 of the GMA seeks to:

2 Encourage the availability of affordable housing to all economic segments of the population
3 of this state, promote a variety of residential densities and housing types, and encourage
4 preservation of existing housing stock.

5 RCW 36.70A.020(4)

6 Absent an order of invalidity, now rescinded in this case, the burden of proof is upon Petitioners to
7 show that Ordinance 7-2006 is not in compliance with the GMA.⁷³

8
9 Petitioners have not cited to any evidence that the County's ADU regulatory scheme will reduce the
10 affordability of housing in San Juan County. Instead, Petitioner Ludwig refers us to the text "Land
11 In America: Its Value, Use, and Control". However, that contains nothing relevant to the specifics of
12 ADUs in San Juan County, but instead reaches the not surprising conclusion that rezoning property
13 can increase its value.

14
15 Nor is it sufficient to allege that we can take official notice of notorious facts pursuant to WAC 242-
16 02-670 (2) to conclude that Ordinance 7-2006's rather modest allowance of ADU's will "result in all
17 land in SJC becoming 50-75 percent more expensive."⁷⁴ Such a conclusion is well outside those
18 facts "so generally and widely known to all well-informed persons as not to be subject to reasonable
19 dispute or specific facts which are capable of immediate and accurate demonstration by resort to
20 accessible sources of generally accepted authority".⁷⁵

21
22 Encouraging affordable housing is one of the thorniest problems facing local jurisdictions today. The
23 factors affecting the cost of housing are numerous and there is no certainty that any one policy
24 choice will result in more market-based affordable housing. For example, there is nothing to assure
25 that developers will not respond to market forces by providing high-end housing for which there is
26 substantial demand, whether on five acre rural lots or on high-density urban lots.

27
28 Here, the County has studied the situation in which it finds itself and determined that ADUs can be a
29 source of more affordable housing. In 2002, only 3 percent of residentially developed parcels rented
30

31
32 ⁷³ RCW 36.70A.320

⁷⁴ Petitioner Ludwig's Prehearing Brief at 5.

⁷⁵ WAC 242-02-670(2).

1 ADUs on a long-term basis.⁷⁶ The Housing Element of the comprehensive plan estimates that over
2 time ADUs will provide about 20 percent of the County's low and moderate income population
3 affordable housing.⁷⁷ The Housing Element does not distinguish how many of these affordable
4 ADUs will be internal, detached, or detached. The County allows unlimited numbers of ADUs in
5 Activity Centers (LAMIRDs) and urban growth areas; unlimited numbers of internal and attached
6 ADUs in rural and resource areas; and, with the adoption of Ordinance 7-2006, a limited number of
7 detached ADUs in rural and resource lands. The County's development regulations clearly utilize
8 ADUs as a potential source of affordable housing.

9
10 Moreover, Goals 4 and 5 do not apply in isolation. The County also has an obligation to harmonize
11 the GMA's Housing Goal and Economic Development Goal with the Sprawl Prevention and Natural
12 Resource Industry Goals of the GMA. While Ordinance 21-2002, allowed for unlimited detached
13 ADUs with fewer restrictions, the Board found this ordinance noncompliant and invalid because it did
14 not comply and substantially interfered with GMA's goals and requirements for preventing sprawl
15 (Goal 2) and conserving natural resource industries (Goal 8). Ordinance 7-2006 addresses these
16 concerns and balances all four goals.

17
18 **Conclusion:** Based on the foregoing, we find that the limitations placed on detached ADUs in rural
19 and resource lands adopted by Ordinance 7-2006 are within the County's discretion pursuant to
20 RCW 43.63A.215. We also find that the County's balancing of Goals 4 and 5 with other goals and
21 requirements of the GMA fits within the parameters set by the GMA. The Board further finds that
22 Ordinance 7-2006 is not inconsistent with RCW 36.70A.020(4), RCW 36.70A.020(5), RCW
23 36.70A.400, RCW 43.63A.215, RCW 36.70A.011 and RCW 36.70A. 540.

24 25 **D. Permitting**

26 Issue 7: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3, 5 fail to further the
27 goal of having applications for permits processed in a timely and fair manner to ensure predictability
28 in violation of RCW 36.70A.020(7)? (Gutschmidt, 06-20, Manning et al., 06-15c)

29
30
31
32 ⁷⁶Gutschmidt, Exhibit 4, San Juan County Accessory Dwelling Units Analysis, Final Report at 20.

⁷⁷ Comprehensive Plan's Housing Element at 5.

1 Positions of the Parties

2 Petitioner Gutschmidt argues that the restrictions on detached ADUs imposed by Ordinance 7-2006
3 that include compelling the use of the same driveway and utilities, the 12 percent annual limitation
4 on the number of ADUs outside of urban growth areas, avoiding or minimizing intrusion in sensitive
5 open space areas, requiring one equivalent residential unit (ERU) for a detached ADU limit the
6 development of ADUs and adds to the expense of their development. These costly expenses and
7 limitations, he argues, reduce opportunities for affordable housing and make the permit process time
8 consuming, unpredictable and unfair. ⁷⁸
9

10
11 The County maintains that Ordinance 7-2006 does not interfere with the fair and timely processing of
12 permits. The County says it requires a new type of "ADU permit" and a site plan so that the
13 Administrator can determine if the applicant can meet the requirements for detached ADUs. The
14 County maintains that issuing permits on a "first come, first served" basis is a universally accepted
15 method of allocating a limited supply, certainly fairer than skill or chance, and another method has
16 not been proposed. The County points out that it has provided written procedures for applications
17 for ADU permits, allowance for telephone reservations, and ministerial review to ensure fairness and
18 efficiency in the permit process. Additionally, the County states that it does not require engineering
19 drawings for showing the location of detached ADUs avoidance of sensitive open space features,
20 but simply requires a site plan so the County can evaluate this requirement. Finally, the County
21 contends that the requirement for additional ADU of water is within the discretion of the County
22 Council and consistent with state law. ⁷⁹
23

24 Board Discussion

25 Petitioner Gutschmidt also contends that many of the same provisions that make detached ADUs
26 unaffordable also make the permitting process unpredictable and unfair. Petitioner Gutschmidt does
27 not give evidence to support his claim that these requirements are inequitable, nor do we find that
28 requiring an application for the limited number of detached ADUs permits available in a calendar
29 year gives an advantage to any applicant. The County has taken steps to make the permit process
30

31
32 ⁷⁸ Brief (November 14, 2006) at 1-3.

⁷⁹ Ibid at 12 and 13.

1 more efficient and equitable by promptly publishing guidelines on how to apply for an ADU permit
2 and for allowing for telephone reservations for ADUs to help make the permit system more
3 accessible for those who must travel long distances to the permit office and nonresident applicants.

4 ⁸⁰

5
6 Our examination of SJCC 18.40. 240 (G)(3) shows that the code provides criteria to use when
7 issuing a building permit, which are issued on a case by case basis. ADUs on lands with critical
8 areas also would have to meet San Juan County's critical area protection measures, Further, our
9 examination of this code provision with regard to local conditions shows that the County is
10 harmonizing its obligations for predictable and efficient permitting with its obligation to protect its
11 rural character, defined in the San Juan County Code as "a quality of landscape dominated by
12 pastoral, agricultural, forested and natural areas interspersed with single-family homes and farm
13 structures".

14
15 **Conclusion:** Based on the foregoing, that Ordinance 7-2006, Section 18.40.240 G(1)(b) and
16 Sections 1, 3,5 comply with RCW 36.70A.020 (7).

17 18 **E. Citizen Participation and Coordination**

19 **1. Public Process Challenges**

20 Issue 9: Did San Juan County violate the public participation requirements of RCW 36.70A.130 and
21 RCW 36.70A.140 by entering into the non-public development of a "Settlement Agreement" with the
22 Friends of San Juans, and then enacting the substance of that Agreement against the advice from
23 the Planning Commission and the Prosecuting Attorney, and without considering the potential
24 improvements to the settlement draft that were offered by Petitioners and other public participants?
(Baldwin et al, 06-16, Wiese 06-19)

25 Issue 10: Did the County's actions in adopting Ordinance 7-2006 violate RCW 36.70A.
26 035(2)(a)(ii)? (John Evans, 06-18, Wanda Evans, 06-17, Wiese 06-19)

27 Issue 13 : Did the County fail to use good faith to ensure public participation and consider public
28 input in developing Ordinance 7-2006 in violation of RCW 36.70A.020(11) and RCW 36.70A.140?
29 (Gutschmidt, 06-20)

30 We discuss these issues together.
31
32

⁸⁰ Exhibit 24.

1
2 Positions of the Parties

3 **Petitioners' Positions**

4 Petitioners Marshall, Baldwin and Ziegler in their Reply Brief abandoned the argument put forth in
5 their opening brief that asked the Board to apply the procedural requirements in *Smith v. Skagit*
6 *County*⁸¹ to encourage greater concern for the appearance of fairness in public hearings. They
7 acknowledge Friends' response that the appearance of fairness doctrine as codified in RCW
8 43.36.010 does not apply to legislative decisions on comprehensive plan and development
9 regulations.⁸² Even so, these Petitioners argue that the GMA demands a meaningful and fair public
10 process. They contend that the San Juan County Council did not have an open mind when
11 considering amendments to comply with the Board decisions after the County Council had entered
12 into a settlement agreement with Friends. Also, these Petitioners say that ignoring the advice of the
13 County Prosecutor, as well as the Planning Commission show that County Council was not open to
14 public comments.⁸³ They assert that allowing two minutes per participant did not allow for
15 meaningful public discussion and that the County Council members appeared to have their minds
16 made up.⁸⁴

17
18
19 Petitioner Wanda Evans' statement for Issue 10 appears to address a failure of the County to
20 discuss Friends' proposal with the Planning Commission before presenting it to the public.⁸⁵
21 However, her argument does not address how this violated RCW 36.70A.035(2)(a)(ii) as alleged.

22
23 Petitioner Gutschmidt contends that Ordinance 7-2006 was a result of "back door" negotiations with
24 Friends and the County Council did not act in good faith when it ignored the public outcry over the
25 far reaching land use restrictions and the negative effect these restrictions would have on rural
26 lifestyles, encouraging economic prosperity, and opportunities for small scale, rural based
27 employment.⁸⁶

28
29
30 ⁸¹ *Smith v. Skagit County*, 75 Wn.2a.715(1969)

31 ⁸² Petitioner' Reply to Intervenor's Response Brief at 1 -2

32 ⁸³ Ibid at 3

⁸⁴ Prehearing Brief of Baldwin, Marshall, and Ziegler at 4.

⁸⁵ Petitioner's Prehearing Brief at 2.

⁸⁶ Brief at 5.

1
2 Petitioner John Evans did not brief the issue that he raised in Issue 10.

3 **County's and Friends' Position**

4 The County and Friends argue that the circumstances surrounding the adoption of Ordinance 7-
5 2006 is similar to the situation discussed in the August 8, 1998 Final Decision and Order in *City of*
6 *SeaTac v. City of Burien*, CPSGMHB Case No. 98-2-0010 (*Burien*). There, appellants argued that
7 the City of SeaTac adopted comprehensive plan and zoning ordinance amendments in conjunction
8 with an interlocal agreement between the City of SeaTac and the Port of Seattle for expansion of the
9 airport. Friends points out that the Court of Appeals, Division 2, upheld the City and found the
10 amendments were influenced by, but were not the result of, a settlement.⁸⁷

11
12 The County and Friends acknowledge that County met with Friends to receive recommendations
13 that the County agreed to review, but declare there was no formal agreement on the
14 recommendations.⁸⁸ The County asserts that meeting with litigants does not violate the public
15 participation requirements of the GMA. Friends insists that the settlement discussions were not a
16 "done deal" and point out that the County adopted Ordinance 7-2006 after following a public
17 participation plan that included three public workshops and hearings before the Planning
18 Commission and the County Council.⁸⁹ Friends states that it submitted comments during this public
19 process, just as every other participant. Both the County and Friends maintain that the amendments
20 changed various times in response to public comments, and were adopted after extensive public
21 participation.⁹⁰

22
23
24 Friends interprets Wanda Evans' issue as a challenge to the County Council considering a proposed
25 amendment to ADU ordinance that were different from Planning Commission's without having the
26 Planning Commission consider it again.⁹¹ At argument, Friends maintained that the amendments
27 that the County Council made were among the alternatives considered by the Planning Commission
28 before it made its recommendation to the County Council. Therefore, Friends asserts the County
29

30 _____
31 ⁸⁷ Ibid at 15 and Response Brief of Intervenor Friends of San Juans at 6.

32 ⁸⁸ Ibid at 4 and San Juan County's Prehearing Brief at 14.

⁸⁹ Response Brief of Intervenor Friends of San Juans at 4.

⁹⁰ Ibid at 6 and San Juan County's Prehearing Brief at 14.

⁹¹ Response Brief of Intervenor Friends of San Juans at 6-7.

1 was not even obligated by RCW 36.70A.035(2)(ii) to hold the June 6, 2006 hearing, let alone to refer
2 the amendments back to Planning Commission before considering them.

3
4 Board Discussion

5 The public oarticipation requirements for cities and counties planning pursuant to RCW 36.70A.040
6 are contained in RCW 36.70A.130(2)(a) . That subsection requires that counties and cities establish
7 public participation program for annual amendments to comprehensive plans and periodic review of
8 comprehensive plans. This subsection does not apply to actions taken to resolve an appeal brought
9 to the growth hearings boards. RCW 36.70A.130(2)(b) provides an exception to the regular public
10 participation program under those circumstances, so long as there is “appropriate public
11 participation”. Petitioners argue that many of the amendments the County made to its ADU
12 regulations should have been considered as annual amendments; we discuss that challenge under
13 Procedural Issues. However, we consider whether there was “appropriate public participation”
14 here.

15
16 The provision of the GMA that does apply to Petitioners’ public participation challenge is RCW
17 36.70A.140, which requires counties and cities “to establish and broadly disseminate to the public a
18 public participation program for early and continuous public participation in the development of
19 comprehensive plans and development regulations”. This provision also delineates what types of
20 measures the public participation program needs to include. In cases where a jurisdiction is acting
21 in response to a remand from the Board, this provision states that the County “shall provide for
22 public participation appropriate and effective under the circumstances presented by the board’s
23 order”. San Juan County has outlined its public participation program in its comprehensive plan.⁹²
24 Moreover, the County adopted a public participation program specifically for consideration of the
25 amendments to its ADU regulations. This program included workshops, hearings before the
26 planning commission, and opportunities for written comment.⁹³
27

28
29 **Friends’ Involvement in the Public Process**

30
31
32 ⁹² San Juan County Comprehensive Plan, Section D, Administration, at 6.

⁹³ Record at 00268 – 000272.

1 Evidence in the record shows that Friends communicated with the County Commissioners and made
2 recommendations for amendments to the ADU Ordinance before the County proposed
3 recommendations to its ADU regulations. We agree with the County and Friends that meeting with
4 challengers to settle a GMA dispute is not a violation of the GMA. In fact, the Board is authorized to
5 extend its deadline for issuing a decision for specifically this purpose (RCW 36.70A.300(2)(b)), and
6 has done so several times in this case.

7
8 The record shows that there was full public participation here and that it was not an abbreviated
9 process. The Commissioners sent the Planning Commission a September 1, 2005 draft version of
10 amendments that allowed for a limited number of detached ADUs subject to restrictions. This draft
11 was the subject of several workshops, as well as hearings before the Planning Commission and
12 June 6, 2006 County Council public hearing.⁹⁴ During this time the amendments changed several
13 times. The Planning Commission rejected the September 1, 2005 draft and recommended that
14 detached ADUs be allowed only if the lot contained the underlying density for a second dwelling unit.
15 The letters in the record from Friends indicate that it supported the September 1, 2005 draft
16 recommended amendments and gave qualified support to the County Council's proposed
17 amendments with suggested changes to the Planning Commission's recommendations, which
18 became the subject of the County Council June 6, 2006 public hearing.⁹⁵ However, Friends also
19 supported the Planning Commission's recommendations.⁹⁶ The evidence shows nothing more than
20 that Friends participated in the public process to ensure their views were heard.
21

22 **Enactment Against the Advice of the Planning Commission and Prosecuting Attorney**

23 In regard to the claim that the County Council did not follow the advice of the County Prosecutor or
24 the Planning Commission, public participation does not dictate a particular outcome or that the
25 County Commissioners must accept the views of staff. As we said in an earlier decision:

26 The mere fact that the BOCC reached a different decision than one recommended by staff,
27 the planning commission, and the citizens advisory committee did not ipso facto show a
28 violation of public participation.⁹⁷

29
30
31 ⁹⁴ Record at 00312, 000349, 000351, 000497, 0000664, Legal Advertisement for the June 6,, 2006 public
32 hearing

⁹⁵ Record 000383 -000388 and 00082

⁹⁶ Record at 000820

⁹⁷ *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September 20, 1995).
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1
2 **Violation of Public Process Requirements of RCW 36.70A.035**

3 Petitioner Wanda Evans' challenge to the County's adherence to the public participation
4 requirements of RCW 36.70A and the timing of the Planning Commission's involvement is not
5 supported by evidence, citation to authority or by argument. While she alleges that Ordinance 7-
6 2006 "did not come before the public through the proper process"⁹⁸ she does not identify any
7 particular deficiency in that process. If her argument is that the County Council was required to
8 send its draft amendments back to the Planning Commission for additional review, this is not what
9 RCW 36.7A.035(2) requires. The statute provides only that if the legislative body chooses to
10 consider a change that is proposed after the opportunity for review and comment has passed, then
11 an opportunity for review and comment on the change shall be provided before the body votes.
12 Here, it is clear that the changes made by County Council were before the public from the onset of
13 the process.⁹⁹ The Council did hold a public hearing on its changes.¹⁰⁰
14
15

16 **Predetermination of the Issues**

17 In regard to Petitioners Marshall, Baldwin, and Ziegler's allegation that the County Council had made
18 up its mind and added requirements without discussing them with the public at the hearing, the GMA
19 does not require the County to demonstrate how the County Commissioners were thinking. We
20 have said:

21 However, the GMA does not give the boards authority to probe the internal thought
22 processes of a local decision-maker. It is not the task of the Board to judge how open a
23 legislative body or individual member of that body is to an advisory committee's or a staff
24 member's recommendation. The Board has the authority to decide whether the County
25 follows their established public process, whether their decision is within the alternatives
26 considered by the public, and whether their decision is consistent with the GMA. ...¹⁰¹

27 Thus, we will review the process by which an ordinance is adopted, as well as the ordinance itself,
28 for consistency with the GMA, but we will not second guess the motivations of the legislative body.
29

30 ⁹⁸ Petitioner W. Evans Brief at 2.

31 ⁹⁹ 0000312, 000349, 000351, 000497.

32 ¹⁰⁰ 000664, Legal advertisement for the June 6, 2006 public hearing.

¹⁰¹ *Diehl v. Mason County*, WWGMHB Case No. 95-2-0023 (Order Denying Petitioner's Request to Supplement the Record, April 2, 2003)-

1 Unless Petitioners can demonstrate that the process or product are in in violation of the GMA, our
2 inquiry ends.

3 4 **Adequate Opportunity to Testify**

5 At argument, the County responded to Petitioners' assertion that two minutes per participant did not
6 provide enough time for meaningful public comment at the June 6, 2006 public hearing. The County
7 pointed out that after the initial public comment period was finished, participants were invited to add
8 comments. The County also invited written comments¹⁰². Additionally, staff reports and the Planning
9 Commission findings indicate extensive public participation throughout the entire public participation
10 process on the alternative that was eventually adopted.¹⁰³ We find that, in light of the entire record,
11 and the fact that the County also allowed written comments in conjunction with the June 6, 2006
12 public hearing, the County's limitation on the length of testimony did not violate RCW 36.70A.140.
13 See *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September
14 20, 1995)

15 16 **Adequate Consideration of Public Comments**

17 Finally, as to Petitioner Gutschmidt's charge that the County Council ignored residents' views on the
18 limitations on the location and size of parcel and the dwelling unit requirements for detached ADUs,
19 the GMA does not require the legislative body to agree with those who testify. This Board's
20 previous ruling applies here:

21 The GMA requires that a public participation process be provided, but does not require the
22 decision-maker to agree with the positions urged by its citizens.¹⁰⁴

23 **Conclusion:** Based on the foregoing, Petitioners have not carried their burden of proof that the
24 County's public participation process was clearly erroneous and in violation of RCW 36.70A.140,
25 RCW 36.70A.130, RCW 36.70A.035, or RCW 36.70A.020(11).
26

27 28 **2. Notice Challenges**

29
30
31

32 ¹⁰² Record at 00064, Legal Advertisement for June 6, 2006 Public Hearing

¹⁰³ Record at 000495 and 000579

¹⁰⁴ *Wells v. Whatcom County*, WWGMHB Case No. 97-2-0030(Final Decision and Order, January 15, 1998).
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1 Issue 11: Did the Ordinance 7-2006 violate RCW 36.70A. 035(1) (c) by not notifying Class A and
2 Class B water systems of the legislation affecting private water systems established by Ordinance 7-
3 2006? (Wanda Evans, 06-17)

4 **Petitioner's Position**

5 Petitioner Evans argues that the more than 300 private Class A and Class B water systems were not
6 notified of the provision in the Ordinance 7-2006 that would affect their plans, policies and bylaws
7 and this lack of notice violates RCW 36.70A.035(1)(c).¹⁰⁵

8
9 **County's Position**

10 The County replies that the amendment that requires one ERU of water for a detached ADU did not
11 affect water plans, their policies or bylaws, and only impacts persons who want to apply for an ADU
12 permit, a generalized group. The County says that this change does not affect whether the water
13 system has enough water to provide an ERU, but sets the requirement that a detached ADU needs
14 one ERU of water. The County points out that notifying public or private groups is only one possible
15 notification method recommended by RCW 36.70A.035(1) and that is not required by the GMA. For
16 these reasons, the County maintains that newspaper notification was adequate notice for water
17 system members.¹⁰⁶

18
19 Board Discussion

20 RCW 36.70A.035(c) lists as an example of reasonable notice methods the notification of public or
21 private groups with a known interest in a certain proposal or the type of proposal being considered.
22 RCW 36.70A.035(1) does not require that every example be utilized in the County's notice methods.
23 Also see WAC 365-195-600(2) and (2)(v). The County established a specific publication
24 participation process for consideration of its ADU amendments that included a provision for public
25 notice. The method of public notice that the County chose was notification by newspaper.¹⁰⁷
26 Specific notification to water systems users or Board members was not required.
27

28 **Conclusion:** The County's provided notification by newspaper of its workshops and public hearings
29 as specified in its public participation process for considering its ADU amendments. The GMA does
30

31 ¹⁰⁵ Petitioner's Prehearing Brief at 2

32 ¹⁰⁶ San Juan County's Prehearing Brief at 18-19

¹⁰⁷ Record at 000271

1 not require specific notice to private water systems, in this circumstance. The County's method of
2 public notification for consideration of its ADU amendments complies is with RCW 36.70A.035 (1).

3
4 Issue 12: Did Ordinance 07-2006 violate the San Juan County Code, by inserting "Lot Coverage"
5 legislation in an ordinance that is advertised as an Accessory Dwelling Unit Ordinance without
6 proper public process and without using the annual docket process? (Wanda Evans, 06-17)

7 Without Petitioner specifying what part of the County's code or specific statute is alleged to have
8 been violated, the Board can not decide this issue.

9
10 **Conclusion:** Petitioner has not carried her burden of proof in demonstrating that the County's
11 inclusion of lot coverage provisions in Ordinance 7-2006 was a clearly erroneous violation of the
12 GMA.

13 14 **F. PROCEDURAL ISSUES**

15
16 Issue 20: Does Ordinance 7-2006 impermissibly address issues which were adequately addressed
17 in the prior code provisions, and were not part of the Board's earlier finding of noncompliance and
18 invalidity in violation of RCW 36.70A.130 (1), (2)(a)(b) and (7)? (Baldwin et al. 06-16)

19 Issue 22: Did the County violate RCW 36.70A.305, RCW 36.70A.330, and RCW 36.70A.140 by
20 going well beyond the issues of noncompliance? (John Evans, 06-18)

21 We will discuss these two issues together.

22 Positions of the Parties

23 **Petitioners' Positions**

24 Petitioners declare that, except for regulations for detached ADUs, the County's ADU regulations
25 have withstood compliance challenges. In spite of that, Petitioners Marshall, Baldwin, and Ziegler
26 assert that the County Council impermissibly revised or added to compliant sections of the ADU
27 regulations for parking, locating detached ADUs to avoid sensitive areas such as orchards,
28 meadows, pastures ridgelines and critical distance from the main building, and providing of water
29 supply.¹⁰⁸ These Petitioners contend that these regulations create odd policy implications because
30
31
32

¹⁰⁸ Prehearing Brief of Baldwin, Marshall, and Ziegler at 10.
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1 the revised regulations apply to all ADUs in all zones, even urban zones. Petitioners say that there
2 is no apparent reason for the County to establish different restrictions that do not apply to similar
3 housing such as duplexes.¹⁰⁹

4
5 These Petitioners state RCW 36.70A.130(2) requires that updates, proposed revisions, and
6 amendments to comprehensive plans and development regulations should be considered no more
7 frequently than once per year so that the cumulative effect of proposals can be ascertained.

8 Petitioners point out the Prosecuting Attorney advised the Council and the Planning Commission
9 that the changes to ADU regulations could not go beyond the order of invalidity and were subject to
10 the annual amendment process. Petitioners affirm that the Planning Commission followed the
11 Prosecutor's advice, but the County Council did not.¹¹⁰

12
13 Petitioners also argue that this Board has previously ruled in its November 30, 2000 Order on
14 Rescission of Invalidity and Compliance/Invalidity in *Town of Friday Harbor v. San Juan County*,
15 WWGHMB Case No 99-2-0010c (*Friday Harbor*) that, in a similar situation, the County could not go
16 beyond the issue on remand in its compliance proceedings.¹¹¹

17
18 Petitioner John Evans argues the same issues raised by Petitioners Baldwin, Marshall, and Ziegler
19 and also contends that shoreline issues are changes that are not within the scope of the remand.¹¹²
20 He says that RCW 36.70A.140 directs that a more limited process be followed to address remand
21 orders. He contends that a response to a Growth Board order is not license for the County to make
22 wholesale amendments beyond the scope of the Growth Board's order. He asserts that RCW
23 36.70A.330 and RCW 36.70A.305 describes an abbreviated and limited process, which the County
24 exceeded here.
25

26 27 **County and Friends' Positions**

28 The County and Friends respond that many of the requirements that the Petitioners allege were
29 changed, including parking rules, requirements to locate detached ADUs to avoid or minimize
30

31 ¹⁰⁹ Ibid at 10.

32 ¹¹⁰ Ibid at 11.

¹¹¹ Ibid at 9.

¹¹² Petitioner's Prehearing Brief at 1 and 2.

1 intrusion on sensitive areas, and ownership requirements, actually did not change.¹¹³ Friends points
2 out that these conditions also applied in both urban and rural areas under Ordinance 21-2002.¹¹⁴
3 Both the County and Friends emphasize that the new conditions only apply to detached ADUs.
4 Friends acknowledges that the requirement to locate the detached ADUs within a certain distance
5 from the principal residence is new, and applies in both urban and rural areas, but argues that this
6 requirement would have little impact in an urban area, and does not rise to the clearly erroneous
7 standard.¹¹⁵ Friends maintains that the limitations are necessary to prevent the significant potential
8 for abuse caused by the County's original policy of allowing freestanding ADUs on all lots within rural
9 and resource lands without taking them into account when calculating residential densities.¹¹⁶

10
11 Friends disputes the applicability of *Friday Harbor v. San Juan County*.¹¹⁷

12
13 Board Discussion

14 We dispose of Mr. Evans assertion that exceeding the scope of the remand order violated with RCW
15 36.70A.305. RCW 36.70A.305 applies to judicial review of invalidity orders issued by growth boards
16 and does not apply here.

17
18 Petitioners also contend that the limitations on detached ADUs went beyond the scope of the
19 compliance order, which does not comply with RCW 36.70A.130 (1), (2)(a)(b) and (7), RCW
20 36.70A.140, and RCW 36.70A. 330. RCW 36.70A.130 states that comprehensive plans and
21 development regulations shall be subject to periodic review and evaluation by the county or city that
22 adopted them. RCW 36.70A.130 sets out the requirements for both annual amendments to the
23 comprehensive plan as well as the periodic review required every several years for cities and
24 counties on a schedule established in RCW 36.70A.130 (4). RCW 36.70A.130 (2)(a) specifies the
25 requirements for public participation for annual comprehensive plan updates and for periodic view.
26 RCW 36.70A.140 requires the counties and cities to develop and publish a public participation
27 program that provides for early and continuous public participation and to broadly disseminate that
28

29
30 ¹¹³ San Juan County's Prehearing Brief at 20, Intervenor Friends of San Juans' Response to Prehearing Brief
of Baldwin, Marshall, and Ziegler at 4 and 5.

31 ¹¹⁴ Intervenor Friends of San Juans' Response to Prehearing Brief of Baldwin, Marshall and Ziegler at 4 and 5.

32 ¹¹⁵ Ibid at 5.

¹¹⁶ Response Brief of Friends of San Juans at 2.

¹¹⁷ Intervenor Friends of San Juans' Response to Prehearing Brief of Baldwin, Marshall, and Ziegler at 5.

1 program to the public. RCW 36.70A.140 also allows a County subject to an order of invalidity to
2 modify its public participation program to fit the circumstances presented by the Board's order.
3 RCW 36.70A.330 requires cities and counties subject to a remand order achieve compliance at time
4 set for complying in the Board's remand order. At issue here is whether the County went beyond the
5 scope of the Board's order and added regulations that should have been addressed in the County's
6 annual amendment process pursuant to RCW 36.70A.130(2)(b).

7
8 From our comparison of Ordinance 7-2006 and Ordinance 21-2002, the Board concludes that the
9 provisions that Petitioners denote as being new, including requirements for parking, locating or
10 minimizing the intrusion of ADUs on sensitive areas, and ownership requirements were substantially
11 present in Ordinance 21-2002.¹¹⁸

12
13 The County and Friends point out that the rest of the changes only pertain to detached ADUs. The
14 Board finds that the limitations on location and services to new detached ADUs are important to the
15 Board's determination that Ordinance 7-2006 does not alter the existing, compliant scheme of rural
16 densities. Similarly, the County's concern as stated in its brief that detached ADUs would more
17 likely use more water than attached or internal ADUs is a legitimate concern to address in light of
18 San Juan County's water sources.¹¹⁹

19
20
21 As for the Petitioners' argument that applying the same restrictions to detached ADUs in urban
22 areas as to ADUs in rural and resource lands is beyond the scope of this order, the Board finds that
23 the subject of the Board's remand order is detached ADUs. How the County chooses to reach
24 compliance on that subject is not limited by the Board's analysis, but is within the County's discretion
25 so long as it falls within the parameters set by the GMA.¹²⁰

26
27
28
29 ¹¹⁸ Ordinance 21-2002 at SJCC 18.40.240(B), 18.40.240 (D)(1-4), and 18.40.240 E vs. Ordinance 7-2006
30 18.40.240(F)(2), 18.20.240(4), and 18.40.240 (G)(3).

31 ¹¹⁹ San Juan County Comprehensive Plan at 4.1.

32 ¹²⁰ Further, the Board reminds Petitioners that the County has very few urban designations. The Board also
notes that that the urban growth areas in the County's jurisdiction have yet to be found compliant. While it
might make sense to have less restrictions in urban growth areas where urban growth is to be encouraged,
these restrictions are within the County's discretion pursuant to RCW 43.63A.215.

1 Finally, we agree with Friends that *Friday Harbor* does not apply in this circumstance. Here the
2 County is addressing how to make their regulations for detached ADUs compliant, the issue
3 remanded in the Board's April 17, 2003 order, while in *Friday Harbor*, the County was working under
4 a remand order that did not include noncompliant resources lands. In that instance, the County went
5 beyond the scope of the compliance order when it re-designated 1000 acres of resource lands.¹²¹
6

7 **Conclusion:** The Board finds that in light of the entire record the County did not go beyond the
8 scope of the remand order and the amendments to the County's ADU regulations were not clearly
9 erroneous violations of RCW 36.70A.130 (2)(b), RCW 36.70A. 330(1), or RCW 36.70A.140.
10

11 Issue 21: Did the failure of Ordinance 7-2006 to set forth the goals and provisions of the GMA that
12 were considered violate RCW 36.70A.130 and RCW 36.70A.140 by failing to afford the public an
13 opportunity to comment at a public hearing on the rationale being considered? (Baldwin et al, 06-
14 16)

15 Positions of the Parties

16 **Petitioner's Position**

17 The Petitioners Marshall, Baldwin, and Ziegler ask that the Board interpret the GMA's public
18 participation provisions to clarify that the body of land use ordinances and public notices of city and
19 county councils be required to contain the provisions of the GMA or the rationale that is being
20 considered to provide for meaningful public comment. Petitioners contend that this is an implicit
21 GMA requirement.¹²²
22

23
24 These Petitioners state the Planning Commission recommendation was substantially altered, even
25 after there was much public testimony objecting to changing this recommendation. Petitioner
26 Marshall attests that citizens had to testify on the final draft of the ordinance without knowing the
27 rationale and that this hindered their testimony.¹²³ Petitioners argue that by taking action on these
28 changes without explanation the County violated that portion of RCW 36.70A.130(1) that states (in
29 part):
30

31 ¹²¹ Order on Rescission of Invalidity and Compliance/Invalidity in *Town of Friday Harbor v. San Juan County*,
32 WWGHMB Case No 99-2-0010c at 10.

¹²² Prehearing Brief of Petitioners Baldwin, Marshall, and Ziegler

¹²³ Ibid at 15.

1 Legislative action means the adoption of a resolution or ordinance following notice and a
2 public hearing indicating at a minimum, a finding that a review and evaluation has occurred
3 and identifying the revisions made, or that a revision was not needed and the reasons
4 therefor.¹²⁴

5 **County and Friends' Position**

6 The County maintains that it has complied with RCW 36.70A.140 requirements, although in the
7 circumstance where a regulation has been remanded to the Board for compliance, strict adherence
8 to its public participation program is not required.¹²⁵ Friends adds almost the complete text for
9 changes proposed by the County Council was included in the public notice for the June 6, 2006
10 public hearing.¹²⁶ Other pertinent arguments are included in the County's and Friends' position
11 statements under Public Process Challenges.

12 Board Discussion

13 In the Discussion Section of Issues 20 and 21, the Board explained that RCW 36.70A.130 sets out
14 requirements for annual updates and periodic review and RCW 36.70A.140 establishes the public
15 participation program requirement. Petitioners claim that the County Council did not comply RCW
16 36.70A.130 (1) by not providing a rationale for the changes it made to the Planning Commission's
17 recommendations. Thus, they allege, they were denied the opportunity to provide meaningful public
18 comment. However, nowhere does RCW 36.70A.130(1) require a local jurisdiction to explain the
19 reasons for its amendments. While this a good practice and often appears in the "Whereas"
20 sections of an ordinance, it is not required specifically by RCW 36.70A.130(1). That section applies
21 to the periodic review requirement required by RCW 36.70A.130(1) rather than to comprehensive
22 plan amendments generally. The "legislative action" referred to in RCW 36.70A.130(1)(b) that
23 requires 'a finding that a review and evaluation has occurred and identifying the revisions made, or
24 that a revision was not needed, and the reasons therefore" is a requirement that applies to periodic
25 updates that counties and cities planning according RCW 36.70A.040 are required to undertake and
26 complete according to the schedule set out RCW 36.70A.130(4). It does not apply to annual
27 amendments and development regulations or to amendments made in response to a Board order.
28 Therefore, Petitioners' challenge that the County's lack of explanation about reasons for their
29
30

31
32 ¹²⁴ Ibid at 17.

¹²⁵ San Juan County's Prehearing Brief at 14.

¹²⁶ Response Brief of Friends of San Juans at 6.

1 changes to the Planning Commission's recommendations does not comply with RCW 36.70A.130(1)
2 fails.

3
4 As for Petitioners argument that the County did not comply with RCW 36.70A.140, we found above
5 the County's public process for adopting Ordinance 7-2006 complied with RCW 36.70A.140. We
6 also note that the amendments that the County Council eventually adopted were among the range of
7 alternatives that were before the public and discussed at workshops and in staff reports.¹²⁷ These
8 workshops were advertised.¹²⁸ We find that adequate, if not ample, opportunity for public
9 participation was provided . While RCW 36.70A.140 allows for an abbreviated process for
10 compliance actions, the County's process was not abbreviated. The County published a public
11 participation process and followed it for eight months.
12

13 The text of the ordinance that was adopted was similar to the September 1, 2005 version of the
14 ordinance presented at workshops and at the Planning Commission hearing, as well as the version
15 that accompanied the notice of the final public hearing.¹²⁹ While we agree with the Petitioners that
16 providing a rationale in public notices and in the body or recitals of land use ordinances adopted
17 according to the GMA would be an useful addition to the public process for all the reasons given by
18 the Petitioners, we can find no explicit or implicit requirement that this is required by the RCW
19 36.70A.140. The Board cannot prescribe a solution that might be better, but can only find
20 compliance or noncompliance.
21

22
23 **Conclusion:** Petitioners have not carried their burden of proof that the County's failure to provide a
24 rationale for the changes to the Planning Commission's recommendations either in the body of the
25 Ordinance 7-2006 or in the public notice for the final public hearing on June 6, 2006 does not comply
26 with RCW 36.70A.130(1)(b) or RCW 36.70A.140.
27

28 Issue 26: Did the County through the adoption of Ordinance 7-2006, Section 6, violate RCW
29 36.70A.370 and RCW 36.70A.140, by failing to show in the record why 12 percent was chosen as
30 the number of detached accessory dwelling units allowed in a given year, why there are no detached
31

32

¹²⁷ Record at 000262 at 3, 000311, 000349

¹²⁸ Record at 000270, 000271

¹²⁹ Record at 00064, Legal Advertisement for June 6, 2006 Public Hearing
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1 ADUs allowed on lots less than one acre, why there are no detached ADUs allowed on lots less than
2 five acres in the shoreline, why there are limitations on proximity of ADUs to a principal residence,
3 and why there is a prohibition of rentals of ADUs? (John Evans, 06-18)

4 Position of the Parties

5 Petitioner John Evans contends that the County has failed to demonstrate that the extent and nature
6 of the regulations were necessary for compliance with the Growth Board order and the GMA. He
7 maintains that a fundamental tenet of the GMA and its public participation program requirements is
8 that local governments be able to “show their work”; he alleges that the County has failed to do that
9 here.. Because regulations are actions taken by local government that limit existing rights of citizens
10 from what they have previously been allowed, citizens have a right to expect that the government to
11 show the reason behind new regulations.¹³⁰
12

13 The County responds that all the various issues that Petitioner Evans raises were addressed
14 throughout the public process in staff reports, previous studies, and discussions.¹³¹
15

16 Board Discussion

17 RCW 36.70A.370 requires the State Attorney General to establish a process to assist state agencies
18 and local government in evaluating proposed regulations to assure that those actions do not result
19 in a regulatory takings of public property. It does not require that the local jurisdiction give its
20 reasons for every aspect of the regulations in the ordinance itself.

21 Petitioner Evans asserts that the County did not “show its work” and should have done so when it
22 adopted restrictions on detached ADUs. In a similar situation, in Whatcom County, the Board held:

23 While it is true that the Act imposes on the County the obligation to “show its work” in some
24 contexts, such as in the creation of its urban growth areas, the GMA does not require the
25 County to demonstrate that it harmonized all of its planning documents when it undertakes
26 an amendment of them. This does not mean that the County is free to enact legislation that
27 is inconsistent with the requirements of the GMA and its own planning policies; it just means
28 that the burden is on any petitioners to show that the inconsistency exists.¹³²
29
30

31 ¹³⁰ Petitioner’s Prehearing Brief at 4

32 ¹³¹ San Juan’s Prehearing Brief at 21

¹³² *Cal Leenstra v. Whatcom County*, WWGMHB Case No.03-2-0011 (Final Decision and Order, September 26, 2003) at 14 and 15.

1 The “show your work” requirement arises when the GMA expressly requires the local jurisdiction to
2 undertake particular foundation analysis prior to adopting a regulation or policy. It arises in the
3 context of the creation of UGA boundaries, for instance, so that a reviewing growth board can
4 determine whether “areas and densities sufficient to permit the urban growth that is projected to
5 occur in the county or city for the succeeding twenty-year period” forms the basis for those
6 boundaries, as required by RCW 36.70A.110(2). Another example arises for limited areas of more
7 intensive rural development (LAMIRDs) under RCW 36.70A.070(5)(d). Because the logical outer
8 boundaries of such LAMIRDs must reflect, among other things, the state of development in those
9 areas as of July 1, 1990, the counties must “show their work:” so that that assessment may be
10 evaluated. The GMA does not impose a generalized requirement to explain the rationale for every
11 comprehensive plan amendment, although the wise jurisdiction will often ensure that that is done to
12 avoid unnecessary challenges.
13

14 As a matter of public participation as we discussed in the issue directly above, the record shows that
15 these amendments were the subject of workshops and hearings and discussed with at those noticed
16 meetings with the public. That is what RCW 36.70A.140 requires.
17

18 **Conclusion:** Petitioner has not carried his burden of proof pursuant to RCW 36.70A.320 (2) to
19 demonstrate that County has not complied with RCW 36.70A.370 or RCW 36.70A.140 by failing “to
20 show its work”.
21

22 **G. Shoreline Management Act**

23 Issue 30: Did the passing of Ordinance 7-2006 violate the Shoreline Management Act, RCW
24 90.58.130 and RCW 36.70A.480(1) by amending the County’s Shoreline Master Program without
25 proper notification and adoption process? (Wanda Evans, 6-17, Manning et al., 06-15c)

26 Issue 31: Did the passing of Ordinance 7-2006, Section 18.40.240 G(4) (c) violate WAC 173-26-100
27 (1) and (2), RCW 90.58.090 because no notice was given that Ordinance 7-2006 amended
28 Shoreline Density? (Wanda Evans, 06-17)

29 Position of the Parties

30 With regard to Issue 30, Petitioner Wanda Evans argues that San Juan County failed to provide the
31 proper notice and review opportunity to the Department of Ecology as prescribed by the statute. As
32 to Issue 31, she argues that the County expanded the adoption of new regulations and controls

1 beyond what was necessary to respond to this Board's prior order, and that the proper public
2 process was not followed. Petitioner does not provide detailed argument or cite to any prior court or
3 Board opinions in support of her position.

4
5 The County replies that, because Ordinance 7-2006 adopts uniform rules for ADUs throughout the
6 County, it was not necessary to follow the procedure for amendments to its Shoreline Master
7 Program. The County argues that the parcel size limitation of 18.40.240 G(4) (c) pertains generally
8 to the construction of detached ADUs; just as it is not necessary to amend the Shoreline Master
9 Program SMP for a change to zoning in shoreline jurisdiction, it was not necessary when it adopted
10 a generalized ADU siting ordinance.

11
12 Board Discussion

13 There is only one section of Ordinance 7-2006 that appears to have the potential to affect the
14 establishment of ADUs in lands subject to the County's Shoreline Management Program. Section
15 18.40.240 G(4) (c) provides:

16 **The minimum parcel size for the construction of a detached accessory dwelling unit is**
17 **five acres for any parcel with waterfront.** 10 acres for parcels located in the agricultural
18 district, and 20 acres for parcels located in the forest district and one acre for all parcels
19 located in a rural land use district. This restriction does not apply to parcels located in urban
20 growth areas or activity centers. (emphasis added).

21 Aside from this provision affecting the placement of ADUs on parcels with waterfront, there is no
22 reference or other connection between Ordinance 7-2006 and San Juan County's SMP. The relation
23 of the County's ADU ordinance to the County's SMP exists solely in that Ordinance 7-2006
24 establishes a 5 acre minimum parcel size for the placement of lots that have waterfront, and that
25 therefore are also regulated by the SMP.

26 This Board has previously held that "a change in zoning does not *de facto* amend the SMP."
27 *Storedahl & Sons, v. Clark County*, WWGMHB 96-2-0016 (Order on Motion for Reconsideration,
28 9/15/97). In that case this Board noted that the Clark County Code provided that designated
29 shoreline areas of the County are "to be combined with zoning that has been applied to such areas."
30 Under the Clark County legislative scheme then under review, the designated shoreline areas and
31 the SMP regulations, were subject to and independent of, the zoning districts established by Clark
32

1 County's GMA actions. A similar legislative scheme is in place in San Juan
2 County Code (SJCC) 18.50.010 C¹³³.

3
4 SJCC section 18.50.020 A. provides in part: "If a conflict occurs between this chapter and other
5 sections of this code, this chapter shall prevail." In addition, SJCC 18.50.010 C. 3. provides, in part,
6 "Unless specifically provided otherwise, in the event that provisions of the Shoreline Master Program
7 conflict with other applicable state or local policies or regulations, the SMA and Shoreline Master
8 Program shall control. Where the Shoreline Master Program is more restrictive than other applicable
9 state or local policies or regulations, the SMA and Shoreline Master Program shall control." Thus,
10 whatever restrictions the SMP placed on ADU's prior to the adoption of Ordinance 7-2006 are still in
11 place.
12

13
14 **Conclusion:** The County's adoption of Ordinance 7-2006 was not an amendment of the County
15 SMP. Whatever regulations the SMP imposed on construction in shoreline jurisdiction prior to the
16 adoption of Ordinance 7-2006 remain unaltered. We therefore conclude that the County was not
17 required to comply with the notice and adoption procedures applicable to an amendment of its SMP.
18

19 **H. State Environmental Policy Act (SEPA)**

20 Issue 34: Did the County violate WAC 197-11-230 by conducting a SEPA process for the Ordinance
21 that was reviewed by the Planning Commission, and by not conducting a new SEPA process for the
22 new ordinance that was adopted by the County Council? (John Evans, 06-17, Wanda Evans, 06-18
John Evans)

23 Issue 36: Is the SEPA Threshold Determination of DNS noncompliant with RCW 43.21C and the
24 SEPA Rules, Chapter 197-11-060, -080, and -330 WAC? (Ludwig, 06-24)

25 Issue 37: Was the environmental evaluation and analysis required by the SEPA rules adequate and
26 compliant with RCW 43.21C and Chapter 197-11 -030 and -031 WAC? (Ludwig, 06-24)

27 Positions of the Parties

28 **Petitioners' Positions**

29
30 Both Petitioners Wanda Evans and Stephen Ludwig argue that the County failed to conduct a proper
31 SEPA process. Wanda Evans points out that the SEPA checklist was dated April 5, 2006, while the
32

¹³³ Chapter 18.50 of the San Juan County Code is the County's Shoreline Management Program.

1 County Council did not propose the changes that it eventually adopted until April 25, 2006.¹³⁴
2 Petitioner Ludwig describes the regulations for which the checklist was prepared as regulations that
3 prohibited detached ADUs in parcels of less than 10 acres citing answers to Questions one and two
4 on the checklist. For these reasons, Petitioner Ludwig maintains that no threshold determination
5 was made for the Ordinance that was eventually adopted as required by 43.21C.030(2)(c) –(e) and
6 WAC 197-11-310 and -330.¹³⁵

7
8 Petitioner Ludwig contends that not only was the process conducted improperly, but the DNS issued
9 by the County was clearly erroneous. He says that the impacts from the amendments to the
10 County's ADU regulations adopted by Ordinance 7-2006 are significant for the following reasons:
11 (1) the amendments allow for a near doubling of the number of dwelling units in SJC, (2) the County
12 has already experienced an increasing level of nitrates in groundwater caused from drain fields in
13 several areas, (3) the County's own consultant has recommended that all of San Juan County be
14 designated a critical aquifer recharge area, and (4) all the County's shorelines are critical fish and
15 wildlife habitat areas.¹³⁶

16 17 **County's Position**

18 The County replies that amendments to the County's ADU regulations adopted by Ordinance 7-2006
19 reduce the environmental impacts from those caused by the regulations adopted by Ordinance 21-
20 2002. The County maintains that the threshold determination for Ordinance 21-2002 survived a
21 previous challenge, where the potential impacts were thoroughly discussed. These documents were
22 clearly referenced and incorporated in the April 5, 2006 Determination of Non-significance (DNS).¹³⁷

23 24 Board Discussion

25 The April 17, 2003 Final Decision and Order found that the DNS issued for Ordinance 21-2002 that
26 incorporated the Final ADU report was not clearly erroneous.¹³⁸ Both Petitioners Wanda Evans and
27 Stephen Ludwig are correct in their assertion that the DNS was prepared for the planning
28 commission's version of ADU amendments that did not allow for detached ADUs. Petitioners
29

30 ¹³⁴ Petitioner's Prehearing Brief at 4.

31 ¹³⁵ Petitioner's Prehearing Brief at 5 – 7.

32 ¹³⁶ Ibid at 7

¹³⁷ San Juan County's Prehearing Brief at 23 -24.

¹³⁸ Corrected Final Decision and Order at 34.

1 contend that the County should have issued a new threshold determination when the County
2 Council amended the Planning Commission's recommendation that allowed for no detached ADUs,
3 eliminated many of the restrictions on placement of ADUs and changed the ERU requirement. WAC
4 197-11-600 (2)(b) says this about the County's obligation in this situation:

5 For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is
6 required if there are: i) Substantial changes to a proposal so that the proposal is likely to
7 have significant adverse environmental impacts (or lack of significant adverse impacts, if a
8 DS is being withdrawn); or (ii) New information indicating a proposal's probable significant
9 adverse environmental impacts. (This includes discovery of misrepresentation or lack of
10 material disclosure.) **A new threshold determination or SEIS is not required if probable
11 significant adverse environmental impacts are covered by the range of alternatives
12 and impacts analyzed in the existing environmental documents.**

13 WAC 197-11-600(2)(b)(emphasis added).

14 The April 5, 2006 DNS was accompanied by an environmental checklist clearly incorporates the
15 environmental checklist that was issued for Ordinance 21-2002.¹³⁹ RCW 43.21C.030 allows the
16 incorporation of existing documents:

17 Lead agencies are authorized to use in whole or in part existing environmental documents for
18 new project or nonproject actions, if the documents adequately address environmental
19 considerations set forth in RCW 43.21C.030. The prior proposal or action and the new
20 proposal or action need not be identical, but must have similar elements that provide a basis
21 for comparing their environmental consequences such as timing, types of impacts,
22 alternatives, or geography.

23 While the changes that allowed a limited number of detached ADUs would most likely have had
24 more environmental impacts than the Planning Commission's version, the Council's changes would
25 not have caused more environmental impacts than Ordinance 21-2002 which did not include any
26 limitations on ADUs. Those impacts were analyzed and commented upon in the Final ADU Report
27 that was incorporated into the DNS that was issued for Ordinance 21-2002.¹⁴⁰ The April 17, 2003
28 Corrected Final Decision and Order found that the DNS issued for Ordinance 21-2002 that
29 incorporated the Final ADU report was not clearly erroneous.¹⁴¹

30
31 ¹³⁹ Exhibit C, attached Ludwig Petitioner's Brief at 2.

32 ¹⁴⁰ .Exhibit C, DNS (August 13,2002) attached to San Juan County, Motion to Rescind Invalidity and Find
Compliance (Accessory Dwelling Units)(December 19, 2002)

¹⁴¹ Corrected Final Decision and Order at 34.

1 Petitioner Ludwig argues that the impacts of the amendments made by Ordinance 7-2006 are
2 significant. His argument that the amendments could cause doubling of density were arguments
3 made by Petitioners in opposing Ordinance 21-2002 and were analyzed in the accompanying
4 environmental documents to Ordinance 21-.2002.¹⁴² The County has a compliant Fish and Wildlife
5 Habitat Conservation Critical Area designations and compliant regulations to protect them. The
6 rising level of nitrates from some drain fields and recommendations from a County consultant that all
7 of San Juan County should be designated a CARA may be new information. However, Petitioner
8 Ludwig does not present us sufficient information concerning these allegations to determine whether
9 it pertains to the ADU regulation amendments nor does he provide any analysis of how the County's
10 current regulations for CARAs are inadequate for protecting these critical areas from the limited
11 number of ADUs that will result from the adoption of Ordinance 7-2006.
12

13
14 An analysis of SEPA compliance for GMA purposes is based upon the same "clearly erroneous"
15 standard as established for compliance.¹⁴³ Petitioners carry the burden of proof in showing that a
16 mistake has been made in issuing the DNS.
17

18 **Conclusion:** Therefore, the Board finds that the County was not required to issue a new threshold
19 determination pursuant WAC 197-11-600(2)(b) because the environmental impacts caused by the
20 Council's changes were not more significant than similar impacts that were previously analyzed by
21 the County for Ordinance 21-2002 and incorporated in the April 5, 2006 checklist.
22

23 Additionally, these previous environmental documents were challenged and found to be compliant
24 by the April 17, 2003 Corrected Final Decision and Order. Our review of the environmental checklist
25 issued for the April 5, 2006 DNS and Petitioner Ludwig's arguments does not convince us that a
26 mistake was made in issuing the April 5, 2006 DNS. Petitioner has not sustained his burden of proof
27 pursuant to RCW 36.70A.320(2).
28

29 I. Water Systems

30

31
32 ¹⁴² Friends of San Juans, Opposition to San Juan County's Motion to Rescind Invalidation and Find Compliance
and Request for SEPA Review (January 1, 2003) at 9.

¹⁴³ *Durland v. San Juan County*, WWGMHB Case No. 99-2-0010c (May 2001).

1 Issue 14: Does the requirement for one equivalent residential unit (ERU) of water for any detached
2 ADU contained on Ordinance 7-2006, Section 9, mislead the public process and is it contrary to the
3 County's stated goals, as stated in the Ordinance's recitals, in violation of RCW 36.70A.020 (4) and
(7), RCW 36.70A.540, and RCW 36.70A.011? (Gutschmidt, 06-20)

4 Issue 39: Does the requirement contained in Ordinance 7-2006 for one additional Equivalent
5 Residential Unit (ERU) of water for an detached ADU violate RCW 36.70A.130(1)(d), RCW
6 36.70A.070 and 36.70A.040(5) because it is inconsistent with the goals and policies of the
7 Comprehensive Plan Section 4.2.B.1.6 and Development Regulations (UDC Section 18.60.020)
8 contrary to state policy and water regulations that are regulated by WAC 246-290-100-4 and WAC
246-290-100-4(b)(i) and (ii)? (Nelson, 06-20, Wanda Evans, 06-17).

9 Positions of the Parties

10 **Petitioner's Position**

11
12 Petitioner Ralph Gutschmidt contends that requiring one ERU of water for a detached ADU is
13 contrary to Ordinance 7-2006's stated goals, will eliminate ADUs by doubling the water requirement,
14 and misleads the public into believing that these requirements will provide affordable housing for
15 moderate income people. Petitioner Gutschmidt also claims that the County failed to consider
16 property rights when it imposed doubling the water requirements for detached ADUs and imposed
17 an impossible burden of proof on applicants that detached ADUs will not interfere sensitive areas
18 and open spaces.

19 Petitioner Wanda Evans asserts that the County changed the "water buildout" within water systems'
20 service areas without consideration of an individual water system's plan. This, she claims violates
21 RCW 36.70A.130(1)(d).
22

23 **County's Position**

24 The County argues that no evidence in the record exists to support to Petitioner Gutschmidt's
25 contention that requirement for one ERU for a detached ADU will eliminate a large number of
26 affordable ADUs. Even if this new requirement makes one type of housing less affordable, the
27 County maintains that it is up to the County to reconcile the GMA's affordable housing goal with
28 other GMA goals. The County says that the requirement rose from the County Council's concern
29 from the onset of the public participation process that a detached ADU would operate more like an
30 independent living unit. The County says that RCW 19.27.097 gives it the responsibility to assure
31
32

1 that adequate water is available for planned development uses and authorizes the Council's action
2 to require one ERU of water for detached ADUs.¹⁴⁴

3
4 The County asserts that its comprehensive plan does not prohibit the County Council from taking
5 this action, and this action does not interfere with WAC provisions governing private water
6 systems.¹⁴⁵

7
8 Board Discussion

9 Even though both the Petitioner Gutschmidt and the County's argument on Issue 14 address the
10 County's alleged violation of the property rights goal of the GMA, the issue statement does not
11 allege a violation of the property rights goal (RCW 36.70A.020(6), but violations of RCW
12 36.70A.020(7) (Permitting) and the RCW 36.70A.020(4) (Housing). Because the issue statement
13 does not allege violations of the property rights goal, the Board cannot address it. Pursuant to RCW
14 36.70A.290(1), the Board is limited to issues that were raised in the issue statement:

15 The Board shall not issue advisory opinions on issues not presented to it in the statement of
16 issues, as modified by the prehearing order".

17 The Presiding Officer issued a prehearing order to which Petitioners had seven days to respond.
18 Several Petitioners, but not Mr. Gutschmidt, did respond with objections and their issues were
19 amended. On September 18, 2006, the Presiding Officer entered an Amended Prehearing Order
20 and it does not contain a claim that the requirements for an ERU for a detached ADO violates Goal 6
21 of the GMA (RCW 36.70A.020(6)). It is therefore not before the Board.

22
23 Petitioner Gutschmidt contends that the County has mislead the public because the County's
24 restrictions on detached ADUS will not let the County realize some of the goals expressed in
25 Ordinance 7-2006. Ordinance 7-2006 recites objectives of the legislation, including goals to provide
26 rental income, to add affordable housing to existing housing, and to make housing available to
27 moderate income people who are having trouble finding homes. Petitioner Gutschmidt says the
28
29
30
31

32

¹⁴⁴ San Juan County's Prehearing Brief at 16 – 18.

¹⁴⁵ San Juan County's Prehearing Brief at 16 and 17.

1 conflict between the stated goals in Ordinance 7-2006 and what it actually allows violates the
2 housing and permitting GMA goals, as well RCW 36.70A. 011.¹⁴⁶

3
4 However, in these issues, Petitioners allege that violations of Goals 4 and 7 of the GMA arise from
5 the imposition of a requirement for a full ERU of water availability to a permitted detached ADU.
6 There is simply nothing before the Board to show that this requirement will have the impact of
7 interfering with the County's efforts to promote affordable housing or to provide a timely, fair and
8 predictable permitting process.

9
10 In Issue Statement 39 Petitioner Wanda Evans claims that requiring one ADU for water is not
11 consistent with Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60.020. This
12 inconsistency in turn, she claims, does not comply with RCW 36.70A.130(4) which requires
13 comprehensive plan and development regulation amendments to be consistent with the County's
14 existing comprehensive plan and development regulations.¹⁴⁷

15
16 The Board's examination of Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60.020
17 finds that both this section of the Comprehensive Plan and the section of the Unified Development
18 Code authorize the County to ensure that each development permit has adequate and available
19 water and establishes methods for doing this. We find no inconsistency between the requirements
20 of one ERU of water for a detached ADU and the cited comprehensive plan policy and development
21 regulation.¹⁴⁸

22
23 Finally our examination of WAC 246-290-100-4 and WAC 246-290-100-4(b)(i) and (ii) confirm that
24 these WACs set out the requirements for water system plan. They do not set the parameters for
25 cities and counties to establish the adequacy of water for building permits. Additionally, determining
26 compliance with these requirements of the WAC is not within the jurisdiction of a growth
27 management hearings board. See RCW 36.70A.280.

28
29
30 ¹⁴⁶ Prehearing Brief at 5-7. Issue 14 alleges a violation of RCW 36.70A.570, but Petitioner's Brief does not
offer any arguments on how Ordinance 7-2006 violates this statute.

31 ¹⁴⁷ Petitioner's Prehearing Brief at 4 and 5. Issue Statement 39 contains the allegation that the requirement
32 for one ERU is not consistent with RCW 36.70A.070 and RCW 36.70A.040 (5), however Petitioner's
Prehearing Brief does not address this violation.

¹⁴⁸ Comprehensive Plan, Element 4, Water Resources at 2 and UDC Section 18.60.20(A) – (C) at 1 – 2.

1
2 **Conclusion:** Based on the foregoing, Petitioners have not carried their burden of proof that the
3 amendment to require one ERU of water for an attached ADU violates RCW 36.70A.020(4) and (7),
4 RCW 36.70A.570, RCW 36.70A. 011, RCW 36.70A.130(4), and RCW 36.70A. 070. The Board
5 finds that it has no jurisdiction to determine compliance with WAC 246-290-100-4 and WAC 246-
6 290-100-4(b)(i) and (ii) pursuant to RCW 36.70A.280(1).

7
8 **J. Invalidity**

9 Petitioner's Position

10 Petitioner Ludwig asks that the Board impose invalidity and request that the Governor impose
11 sanctions because the County has disregarded the consequences of its noncompliance and has
12 been out of compliance for at least seven years.¹⁴⁹

13
14 Board Discussion

15 The only provision of the amendments established by Ordinance 7-2006 that the Board has found
16 noncompliant is SJCC 18.40. 240(G) (4)[it is ALL of 18.40.240(G)(4)]. Prior to imposing a
17 determination of invalidity, the Board must make a finding of noncompliance. RCW
18 36.70A.302(1)(a). Therefore, the only provision of Ordinance 7-2006 that is subject to an invalidity
19 determination is SJCC 18.40. 240(G) (4).

20
21 The Board has held that it will impose invalidity when the continuance of the regulation would
22 interfere with the County's ability to properly plan during the remand period.¹⁵⁰ Here, the limited
23 number of potential detached ADU permits that might be issued during the remand period makes it
24 unlikely that continued validity of SJCC 18.40. 240(G) (4) will substantially interfere with the
25 fulfillment of the goals of the GMA generally and Goal 2 specifically. However, if the County does
26 not act to achieve compliance on this provision within the remand period, the Board would consider
27 a properly supported motion for invalidity at that time.

28
29
30 _____
31 ¹⁴⁹ Ludwig, Prehearing Brief at 8.

32 ¹⁵⁰ See *Lake Cavanaugh Association v. Skagit County*, WWGMHB 04-2-0011 (Order on Dispositive Motion ,
September 21, 1994), *Butler, et. al v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis
County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, February
13, 2004)

1 Conclusion: As long as the County acts within the remand period set in this order, the Board finds it
2 unlikely that the continued validity of SJCC 18.40. 240(G) (4) will substantially interfere with the
3 fulfillment of the goals of the GMA. Therefore, we decline to enter a finding of invalidity at this time.
4 As for sanctions, the Board finds that Ordinance 7-2006 represents good progress in bringing San
5 Juan County's detached ADU regulations into compliance with the GMA. There is no basis for
6 seeking sanctions at this time.
7

8 VII. FINDINGS OF FACT

- 9 1. San Juan County is located west of the crest of the Cascade Mountains and is required to
10 plan according to RCW 36.70A.040.
- 11 2. Margaret Manning and Timothy Blanchard (Case No. 06-2-00013), Donna Gavora (Case No.
12 06-2-0015), Wanda Evans (Case No.06-2-0017), John Evans (Case No.06-2-0018), Brian
13 and Orgelina Wiese(Case No. 06-2-0019), Ralph Gutschmidt (Case No. 06-2-0020), James
14 Nelson (Case No. 06-2-0021), and Stephen Ludwig (Case No. 00-2-0024) filed timely
15 Petitions for Review.
- 16 3. Case No. 06-2-0013 and Case No. 06-2-0015 were consolidated as Case No. 06-2-0015c.
17 Case No. 06-2-0015c was consolidated with Case Nos. 06-2-0017, 06-2-18. 06-2-0019, 06-
18 2-0020. 06-2-0021, and 06-2-0024 and captioned as James Nelson et al v. San Juan
19 County, Case No. 06-2-0024c..
- 20 4. Friends of San Juans was an original petitioner in Case No. 03-2-0003c and was granted
21 intervention in Case No. 06-2-0024c.
- 22 5. All the Petitioners and Intervenor Friends of San Juans participated orally and in writing in
23 the process to adopt Ordinance 7-2006.
- 24 6. San Juan County adopted Ordinance 7-2006 on June 8, 2006.
- 25 7. Ordinance 7-2006 was adopted to achieve compliance with the Board's Final Decision and
26 Order/Compliance Order in WWGMHB Case No. 03-2-0003c. That decision found that the
27 County's prior ADU regulations allowed unlimited detached ADUs throughout rural and
28 resource lands without counting those detached ADUs as additional residential density. The
29 Board found this violated GMA requirements for rural densities (RCW 36.70A.070(5)), GMA
30 prohibitions against creating urban growth in rural and resource lands (RCW 36.70A.110(1))
31 and the GMA's goal for reduction of sprawl (RCW 36.70A.020(2)) and conservation of
32 resource lands (RCW 36.70A.020(8)).
8. The Board rescinded its determination of invalidity placed on the County's provisions
regulating detached ADUs on August 18, 2006 in its Order Lifting Invalidity, based on the
amendments adopted by Ordinance 7-2006.
9. The chief petitioner in the compliance case (WWGMHB Case No. 03-2-0003c), was Friends
of San Juans (Friends). Friends no longer challenges the compliance of the County's ADU
development regulations with the goals or requirements of the Growth Management Act
(GMA) and now supports a finding of compliance.
10. Pursuant to SJCC 18.20.010, an "accessory dwelling unit (ADU)" is defined as a living area
that is accessory to the principal residence, located on the same lot, and that provides for
sleeping quarters, kitchen, and sanitation facilities.

- 1 11. Pursuant to SJCC 18.20.040, a “detached ADU” is defined as an ADU that is physically
- 2 distinct from the principal residence.
- 3 12. The amendments enacted by Ordinance 7-2006 count a detached ADU as a unit of density
- 4 in rural and resource lands unless allowed pursuant to an ADU permit. SJCC 18.40.240(A).
- 5 13. SJCC 18.40.240 establishes a program to allow a small number of permits for detached
- 6 ADUs in resource and some rural lands annually.
- 7 14. Detached ADUs are limited to no more than 1,000 square feet in living area. SJCC
- 8 18.40.240(F)(1).
- 9 15. SJCC 18.240(F)(4) requires the accessory dwelling unit to be owned by the owner of the
- 10 principal residence.
- 11 16. New SJCC 18.40.240(G)(1)(b) provides that outside of the boundaries of activity centers and
- 12 urban growth areas, the number of detached ADU permits in any calendar year shall not
- 13 exceed 12 percent of the total number of building permits for new principal residences issued
- 14 for the previous calendar year outside the boundaries of activity centers and urban growth
- 15 areas.
- 16 17. New SJCC 18.40.240 (G)(2) restricts the maximum distance between the
- 17 closest vertical walls of the main house and any detached accessory dwelling unit to no
- 18 more than 100 feet, unless the 100 feet distance would result in a greater impact on the
- 19 open space features of the property.
- 20 18. SJCC 18.40.240(G)(3) requires the location impacts to “avoid or minimize
- 21 intrusion on the most sensitive open-space features of the site” including existing orchard,
- 22 meadows an pasture areas; ridgelines and contrasting edges between landscape types
- 23 unbroken by structures; rolling, open or steep open slopes, and critical areas.
- 24 19. Ordinance 7-2006 amends SJCC 18.40.240 to provide that an accessory
- 25 dwelling unit shall use the same driveway, septage[sic]/sewer system, and water system as
- 26 the principal residence.
- 27 (SJCC 18.40.240(F)(3)).
- 28 20. The requirement for a shared septic system is new to this version of the ADU development
- 29 regulations.
- 30 21. The absolute number of ADU permits, based on historical numbers of building permits issued
- 31 outside of activity centers and urban growth areas, is estimated to be about 15 per year. Of
- 32 that amount, 1/6th of the ADU permits are allocated to conversions of existing structures that
- have been legal for at least 5 years.
22. The Official Maps of the County’s Comprehensive Plan establish rural densities at one
- dwelling unit per five acres and one dwelling unit per ten acres. These rural densities have
- been found compliant with RCW 36.70A.070(5)(b) and (c).
23. San Juan County’s comprehensive plan describes its rural character as:
- “...Rural lands are intended to retain the pastoral, forested, and natural landscape qualities
- of the islands while providing people with choices for living environments at lower densities
- or use intensities than those in Activity Centers”.
24. San Juan County’s development code further describes rural character as: “...a quality of
- landscape dominated by pastoral, agricultural, forested and natural areas interspersed with
- single-family homes and farm structures....”
25. San Juan County’s isolation, recognition as a tourist destination, historic use of ADUs for
- vacationing family members or as a vacation residence before a main house is built, and
- rural lot development pattern are unique characteristics.

- 1 26. Given the number of potential parcels upon which detached ADUs may be constructed and
2 the limitations on their size, location, and ownership, an annual limit of approximately 15 of
3 such permits is unlikely to disturb the existing, compliant scheme of rural densities, that is,
4 densities of 1 dwelling unit per 5 acres or 1 dwelling unit per 10 acres.
- 5 27. The limited number of detached ADU permits coupled with the limitations on location,
6 ownership, utilities and impact on the open-space features of the lot also prevent the
7 detached ADU regulations from creating sprawl in rural zones of compliant rural densities.
- 8 28. The small number of such permits issued for detached ADUs in rural and
9 resource lands restrains the extent of such development in any one area so it is most likely
10 that detached ADU permits will be issued in different locations, rather than establishing a
11 pattern of growth.
- 12 29. However, Ordinance 7-2006 also allows detached ADUs to be constructed or converted on
13 rural lots that are less than 5 acres in size, if the lots are at least 1 acre in size. (SJCC
14 18.40.240 (G)(4)(b)).
- 15 30. The County Comprehensive Plan acknowledges the existence of lots in the RR (rural
16 residential) zone that are below 5 acres in size but notes that this is because they were
17 established in the 1979 comprehensive plan.
- 18 31. The Comprehensive Plan also encourages combination of existing lots in order to reduce the
19 number of dwelling units that may be developed in rural areas "where the existing parcel
20 pattern would permit development at a density greater than that established by this Plan and
21 the Official Maps".
- 22 32. Where the rural lots are nonconforming (under 5 acres in size), the addition of a second
23 residence causes residential uses to predominate over rural uses and to exceed a rural level
24 of development.
- 25 33. Allowing an additional detached residence on a nonconforming rural lot is not consistent with
26 the County's own plan for rural densities and preservation of rural character.
- 27 34. Intensive residential uses on these substandard rural lots constitute urban growth in rural
28 lands.
- 29 35. The County's estimate of 15 detached ADUs annually applies to all rural and resource lands,
30 not just to resource lands.
- 31 36. In resource lands, the location, size and ownership requirements for detached ADUs
32 together with the limit on numbers of such detached ADUs minimize the conversion of
resource lands to non-resource purposes, and do not create an incompatible use.
- 37 37. No evidence exists in the record that San Juan County has elected to
create an affordable housing incentive program pursuant to RCW 36.70A.540.
- 38 38. No Petitioner cites to any portion of the CTED recommendations for providing ADUs that the
County is alleged to have violated.
- 39 39. No evidence has been presented that either Ordinance 7-2006's limitations on
attaching ADUs to accessory buildings or limiting building permits for detached ADUs to 12
percent of the annual residential permits in rural and resource lands exceed the scope of
local flexibility allowed by RCW 43.63A.215.
- 40 40. Petitioners have not offered any evidence that the County's ADU regulatory scheme will
reduce the affordability of housing in San Juan County.
- 41 41. Petitioners have not demonstrated that the limitation on detached ADUs in rural and resource
lands will have a significant impact upon economic development in the San Juan Islands.
- 42 42. SJCC 18.40. 240 (G)(3) provides criteria to use when issuing a building permit for a

- 1 detached ADU. Building Permits are issued on a case by case basis.
- 2 43. The County promptly published guidelines on how to apply for an ADU permit and allows for
- 3 telephone reservations for ADU permits to help make the permit system more accessible for
- 4 those who must travel long distances to the permit office and nonresident applicants.
- 5 44. The County adopted a public participation program specifically for consideration of the
- 6 amendments to its ADU regulations. The public participation program included workshops,
- 7 hearings before the planning commission, opportunities for written comment, and public
- 8 hearings before the County Council.
- 9 45. The County followed its adopted public participation program for eight months.
- 10 46. The County held several public workshops and three public hearings
- 11 47. The record shows that there was full public participation here and this was not an
- 12 abbreviated process
- 13 48. The Commissioners developed a September 1, 2005 draft version of amendments to the
- 14 County's ADU regulations that allowed for a limited number of detached ADUs subject to
- 15 certain restrictions. These or similar recommendations were the subject of several
- 16 workshops, as well as hearings before the Planning Commission and a County Council
- 17 public hearing on June 6, 2006.
- 18 49. Letters in the record from Friends indicate that it supported the September 1, 2005 County
- 19 draft recommendations that allowed for an exception to requiring detached ADUs as a unit of
- 20 density in rural and resource lands with strict conditions.. Friends also supported the
- 21 Planning Commission's recommendations that detached ADUs should not be allowed in rural
- 22 or resource lands without counting them as a unit of density.
- 23 50. The County invited written public comments on the draft amendments presented at the June
- 24 6, 2006 public hearing, as well as allowing public testimony.
- 25 51. The subject of the Board's remand order was the County's ADU regulations.
- 26 52. The subject of Ordinance 7-2006 is an amendment to the County Code concerning ADU
- 27 construction and permitting.
- 28 53. The amendments that the County Council eventually adopted were among the range of
- 29 alternatives that were before the public and discussed at workshops and in staff reports. .
- 30 54. The recommendations in the September 1, 2005 draft were discussed at workshops, before
- 31 the planning commission, and at the June 6, 2006 public hearing. These recommendations
- 32 were very similar to those eventually adopted by the County Council.
55. The County's adoption of Ordinance 7-2006 affects lots in the shoreline that seek to add a detached ADU but did not amend its shoreline master program.
56. The April 5, 2006 Determination of Nonsignificance was accompanied by the environmental checklist which clearly incorporates the environmental documents that were issued for Ordinance 21- 2002.
57. The changes to Ordinance 21-2002 adopted by Ordinance 7-2006 are not likely to cause more environmental impacts that the regulations adopted by Ordinance 21-2002, since the regulations in Ordinance in 21-2002 did not include any limitations on ADUs.
58. Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60 authorize the County to ensure that each development permit has adequate and available water.
59. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby adopted as such.

VIII. CONCLUSIONS OF LAW

1 A . The Board has jurisdiction over the parties and subject matter of this consolidated case.

2
3 B. The petitions were timely brought and the petitioners have standing to raise the issues in their
4 petitions for review (now consolidated).

5
6 C. The petitions challenge the County’s adoption of San Juan County Ordinance 7-2006.

7 D. Ordinance 7-2006, as it applies to permitted detached ADUs in existing, compliant rural zones,
8 does not alter the existing compliant residential densities in those zones to an extent that violates
9 RCW 36.70A.070(5).

10 E. Ordinance 7-2006, as it applies to permitted detached ADUs in existing, compliant rural zones,
11 does not violate the prohibitions against urban growth in rural areas in RCW 36.70A.110(1) or Goal
12 2 of the GMA (sprawl reduction) (RCW 36.70A.020(2)).

13 F. The regulations that permit a detached ADU to be constructed or converted on a nonconforming
14 rural lot of less than 5 acres (SJCC 18.40.240(G)(4)) fail to comply with RCW 36.70A.070(5) by
15 expanding the structural intensity in rural zones beyond that which is set out in the County
16 comprehensive plan and/or is consistent with the GMA.

17 G. SJCC 18.40.240(G)(4) also creates urban growth in rural zones and promotes sprawl, thus not
18 complying with RCW 36.70A.110(1) and RCW 36.70A.020(2).

19 H. The limited provision for detached ADU permits in resource lands under the strict constraints of
20 SJCC 18.40.240(F) and (G)(1),(2) and (3) complies with Goal 8 of the GMA (the natural resource
21 industries goal)(RCW 36.70A.020(8)).

22 I. The nature and scope of the limitations placed on detached ADUs in rural and resource lands as
23 adopted by Ordinance 7-2006 are within the County’s “local flexibility” pursuant to RCW 43.63A.215
24 and therefore comply with RCW 36.70A.400.

25 J. Ordinance 7-2006 complies with RCW 36.70A.020(4), RCW 43.63A.215, RCW 36.70A.011 and
26 RCW 36.70A.540.

27 K. Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3,5 of the Ordinance comply with
28 RCW 36.70A.020 (7).

29 L. The public participation process followed to adopt the amendments to the County’s ADU
30 regulations by Ordinance 7-2006 were not clearly erroneous violations of RCW 36.70A.130 (2)(b),
31 RCW 36.70A.130(1), or RCW 36.70A.140.

32 M. The County’s method of public notification for consideration of its ADU amendments in Ordinance
7-2006 complies with RCW 36.70A.035 (1).

1 N. The adoption of Ordinance 7-2006 did not violate the Shoreline Management Act (Ch. 90.58
2 RCW).

3 O. The adoption of Ordinance 7-2006 did not violate the State Environmental Policy Act (SEPA) (Ch.
4 43.21C RCW).

5 P. The Board has no jurisdiction over the regulation of private water systems or deciding compliance
6 with WAC 246-290-100-4 and WAC 246-290-100-4(b)(i) and (ii) pursuant to RCW 36.70A.280(1).

7 Q. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.
8

9 **IX. ORDER**

10 San Juan County is ordered to bring ICC SJC 18.40.240(G)(4) into compliance with the GMA in
11 accordance with this decision within 180 days. **Compliance shall be due no later than July 12,**
12 **2007.** The following schedule shall apply:
13

14 Compliance Due	July 12, 2007
15 Compliance Report and Index to 16 Compliance Record (County to file 17 and serve on all parties)	July 23, 2007
18 Any Objections to a Finding of 19 Compliance and Record 20 Additions/Supplements Due	August 6,, 2007
21 County's Response Due	August 20, 2007
22 Compliance Hearing (location to be 23 determined)	August 27, 2007

24 Any requests for an extension of the period for compliance must substantiate that compliance could
25 not reasonably be achieved within the time period set herein and must be filed with the Board no
26 later than **June 30, 2007.**

27 Entered this 12th day of February 2007.

28
29 _____
30 Holly Gadbow, Board Member

31
32 _____
Margery Hite, Board Member

James McNamara, Board Member

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

Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. **Filing means actual receipt of the document at the Board office.** RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for filing a petition for judicial review.

Judicial Review. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means **actual receipt of the document at the Board office** within thirty days after service of the final order.

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

Appendix A¹⁵¹

In its final decision and order on the consolidated case, the Board found the County's regulations that allowed freestanding accessory dwelling units (ADUs) in rural and resource lands to be noncompliant and invalid. *Friends of San Juans, et al. v. San Juan County*, WWGMHB Case No. 03-2-0003c (Corrected Final Decision and Order, April 17, 2003). Both the County and Petitioners appealed this decision, which was heard in Thurston County Superior Court.

¹⁵¹ For procedural history in this case previous to April 17, 2003, see Order Lifting Invalidity (August 18, 2006)
COMPLIANCE ORDER AND FINAL DECISION AND ORDER
Case Nos. 03-2-0003c; 06-2-0024c
February 12, 2007
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1
2 On October 7, 2003, the Board divided the issues in the consolidated case, *Friends of San Juans v.*
3 *San Juan County*, WWGMHB Case No. 03-2-0003c, because the issues consolidated in these
4 cases were on two different compliance schedules. The issues regarding ADUs remained in Case
5 No. 03-2-0003c.¹⁵² The issues regarding the designation of urban growth areas (UGAs) for Lopez
6 Village and Eastsound were kept in their original case, *Michael Durland v. San Juan County*,
7 WWGMHB Case No. 00-2-0062c. That case is being heard with *Fred Klein v. San Juan County*,
8 WWGMHB Case No. 02-2-0008.

9
10 On October 31, 2003, the Board granted the County an extension of time.

11 On January 9, 2004, the Thurston County Superior Court issued a decision that upheld the Board's
12 decision on density requirements for freestanding ADUs in rural and resource lands.¹⁵³

13
14 On January 30, 2004, the County submitted a progress report to the Board. The report stated that
15 the County has appealed the superior court decision and that the County is not accepting any
16 applications for freestanding ADUs that do not conform to the Board's April 17, 2003, decision as
17 modified by the superior court decision.
18

19 A telephonic hearing was held on May 21, 2004. After the compliance hearing, the County
20 participated in two mediation sessions with Friends. Neither of these mediation sessions was
21 successful in resolving the issues. The County requested in its June 21, 2004, letter that the Board
22 exercise its discretion and not issue an order until the appellate court issues its decision.
23

24 On June 30, 2004, the Board issued an order finding continuing noncompliance and invalidity and
25 ordering the County to take official action to comply with the Board's April 17, 2003, order and to
26 notify the public of that action.
27

28
29
30 ¹⁵² ADU issues were originally heard in *Town of Friday Harbor, Fred R. Klein, John M. Campbell, and Lynn*
Bahrych, et al. v. San Juan County, WWGMHB Case No. 99-2-0010c.

31 ¹⁵³ However, the superior court ruled that the occupants of ADUs in resource lands did not have to be limited
32 to family members or farm workers as required by the Board's decision and upheld the County's siting
requirements.

1 On July 9, 2004, the Board received Petitioners' Motion for Clarification or Reconsideration.
2 Petitioners alleged that the County is permitting a second single-family residence on lots in rural and
3 resource lands that contain a single family dwelling unit of 1000 square feet or less. Therefore,
4 Petitioners asked the Board to:

5 (1) direct the County immediately to discontinue its policy of permitting a second single-family
6 dwelling unit on all lands with existing dwelling units smaller than 1000 square feet, and

7 (2) direct the County to amend its ordinance within a specific time period to bring its
8 ordinances and policies into compliance with the GMA.
9

10 On December 3, 2004, the Board found that Ordinance 21-2002 had not been amended and that the
11 Board could no longer accept, pending resolution of the County's appeal to the courts, the County's
12 "practice" of not issuing building permits that did not conform to the Board's order as interim
13 compliance in lieu of amending its ordinance because now Petitioners dispute whether the County in
14 fact is complying with this order when issuing building permits for ADUs. Order on Issues for
15 Reconsideration (December 3, 2004). Therefore, the Board found Ordinance 21-2002 in continuing
16 noncompliance and invalidity and ordered the County to bring that ordinance into compliance within
17 120 days. *Ibid.*
18

19 The County adopted Ordinance 3 – 2005 on April 14, 2005. After a compliance hearing , the Board
20 issued an order that found because Ordinance 3-2005 was an interim ordinance, it could not find
21 compliance. Further, the Board found that this ordinance did not cure invalidity of the County's
22 regulations for detached ADUs because the regulations adopted by this ordinance did not restrict
23 ADUs in resource lands to the underlying density. Compliance Order (2005) (July 21, 2005).
24

25 On September 15, 2005, the Board received the County's motion to amend the compliance schedule
26 followed by a response from the Petitioners in support of amending the schedule. The parties had
27 jointly filed a motion with the Court of Appeals to stay the issuance of a decision of the County's
28 appeal of the Thurston County Superior Court's decision in this case in order to craft regulations for
29 detached ADUs acceptable to both parties. On September 29, 2005, the Board issued an order
30 amending the compliance schedule. Order Granting Extension (September 2005).
31
32

1 On March 3, 2005 the County requested another extension, supported by the Petitioners to
2 complete the public participation process. The Board granted this extension on March 23, 2006.
3 Order Granting Extension (March 2006). The County asked for a 60 day extension of the
4 compliance deadline on May 10, 2006 in order to have a second public hearing on changes the
5 county council has made to the planning commission draft. Petitioners objected to a 60 day
6 extension. Later, in a conference with Petitioners, the County, and the Presiding Officer, the
7 Petitioners and the County agreed to an expedited compliance schedule. On May 25, 2006, the
8 Board issued an order that extended the compliance period to June 14, 2006 and scheduled a
9 compliance hearing for June 30, 2006. Order Extending the Compliance Period (May 2006).
10
11 On June 8, 2006 the San Juan County adopted Ordinance 7-2006.
12
13 In response to Stephen Ludwig's May 24, 2006 request to intervene, the Board issued an order on
14 June 13, 2006 adding Mr. Ludwig as a participant.
15
16 After the May 25, 2006, Order Extending the Compliance Period, the Board received numerous
17 letters objecting to the expedited compliance schedule and requests to become participants in the
18 compliance proceedings. In response the Board held a compliance prehearing conference on June
19 13, 2006 with the County, original petitioners, and parties requesting to be added as participants.
20 On June 21, 2006, the Board issued an order rescheduling the compliance hearing to July 21, 2006
21 and issued a new briefing schedule. The order also added the following people to the case as
22 participants: Dorothy Austin, Thomas Baldwin, Miriam M. Ziegler, Howard Tollefson, John B. Evans,
23 Wanda Evans, Ri Warren, James E. Nelson, Timothy P. Blanchard, Margaret Manning, Donna
24 Gavora, Jay Kimball, Brian Wiese, Margot Shaw and Doug Marshall. Order Rescheduling the
25 Compliance Hearing and Adding Parties. Later, on June 30, 2006, the Board added Ralph
26 Gutschmidt as a participant, and on July 12, 2006, Fred Munder.
27
28 Also, on June 21, 2006, San Juan County filed its compliance report and a motion to rescind
29 invalidity. Compliance Report and Motion to Rescind Invalidity.
30
31 On July 28, 2006, the Board received Request for Reconsideration and Motion to Reschedule
32 Deadline for Parties to Submit Objections to a Finding of Compliance and Motions to Supplement

1 the Record from James Nelson, and a motion making the same requests from Margaret Manning
2 and Timothy Blanchard on June 30, 2006. Douglas Marshall filed Motion for Reconsideration of
3 Scope, and Motion for Extension of Deadlines on June 29, 2006. On July 3, 2006, the Board issued
4 Order Denying Motions and Requests to Reschedule the Compliance Hearing, Readjust the
5 Compliance Schedule, and Broaden the Compliance Hearing.

6
7 Stephen Ludwig filed objections to a finding of compliance on June 27, 2006. The following
8 participants filed written objections to a finding of compliance and motions to supplement the record
9 on July 6, 2006: Margaret Manning, Douglas Marshall, James Nelson, John Evans, and Wanda
10 Evans. Dorothy Austin also filed objections to a finding of compliance on that date. Thomas
11 Baldwin and Miriam Ziegler filed objections and a motion to supplement the record on July 10, 2006.

12
13 On July 17, 2006, the County filed San Juan County's Response to Objections to Compliance
14 Finding and Friends filed Petitioners' Response to Objections and Brief in Support of Lifting Invalidity
15 and Opposition to Motions to Supplement the Record.

16
17 The Board held a compliance hearing in Anacortes on July 21, 2006. Deputy Prosecutor Cameron
18 Carter represented San Juan County; Lynn Bahrych and David Mann represented Petitioners.
19 James Nelson, Douglas Marshall, John Evans, Timothy Baldwin, Fred Munder, Stephen Ludwig, Ri
20 Warren, and Ralph Gutschmidt spoke in opposition to a finding of compliance and lifting invalidity.
21 Board members Gayle Rothrock, Margery Hite, and Holly Gadbow attended.

22
23 On August 8, 2006, the Board received Motion to Clarify and /or Modify Previous Orders of Invalidity
24 and for Other Relief along with Memorandum in Support of Motions Regarding Ordinance 11-2006 .

25 On August 29, 2006 the Board issued Order on County's Motion Regarding Ordinance 11-2006.

26 On August 18, 2006, the Board issued Order Lifting Invalidity.

27
28 On August 22, 2006 Order on Supplementing the Record was issued on the motions to supplement
29 the record in response to motions to supplement the record filed by Douglas Marshall, James
30 Nelson, Ri Warren, John Evans, Wanda Evans, Thomas Baldwin, Miriam Ziegler, and Ralph
31 Gutschmidt.

32 **Case No. 6-2-0024c**

1 Between July 17, 2006 and August 14, 2007, the Board received petitions for review from the
2 following people: Margaret Manning and Timothy Blanchard, Donna Gavora, Thomas Baldwin,
3 Douglas Marshall, and Miriam Ziegler, Wanda Evans, John Evans, Brian and Orgelina Wiese, Ralph
4 Gutschmidt, James Nelson, and Stephen Ludwig. Donna Gavora's case was consolidated with
5 Margaret Manning and Timothy Blanchard's case.

6
7 A telephonic prehearing conference was held on August 23, 2006 with all petitioners attending as
8 well as San Juan County Deputy Prosecuting Attorney Cameron Carter, and Presiding Officer Holly
9 Gadshaw. The Prehearing Order was issued on August 31, 2006. Several petitioners objected to
10 the issues statements as presented. On September 18, 2006, the Presiding Officer issued an
11 Amended Prehearing Order.

12
13 On August 31, 2006, an order consolidated these cases, which captioned it as *James Nelson et al v.*
14 *San Juan County*, Case No. 06-2-0024c.

15
16 Friends of San Juans filed a motion to intervene on September 8, 2006. An order granting Friends
17 of San Juans intervention was issued on September 20, 2006.

18
19 Petitioners Stephen Ludwig, Ralph Gutschmidt, John Evans, Wanda Evans, and Thomas Baldwin,
20 Douglas Marshall, and Miriam Ziegler filed Prehearing Briefs. The Baldwin, Marshall, and Ziegler
21 brief was not served on Intervenor Friends until December 11, 2006. Intervenor Friends filed its
22 brief on December 7, 2006.

23
24 In response to motions for from the County, the Board extended the County's briefing schedule
25 deadline until December 11, 2006. The Presiding Officer also adjusted the time for Intervenor
26 Friends to respond to the Baldwin Marshall, and Ziegler Prehearing Brief, for Petitioners to respond
27 to the County's Brief, and for Baldwin, Marshall, and Ziegler to respond to Friends' Response Brief in
28 an order issued on December 13, 2006.

29
30 A Hearing on the Merits was held at the Eastsound Fire Station on January 4, 2006. The County
31 was represented by Special Deputy Prosecutor Craig Magnusson. David Mann and Lynn Bahrych
32 represented Friends. John Evans, Wanda Evans, Ralph Gutschmidt, and Stephen Ludwig

1 represented themselves. Douglas Marshall represented himself, Thomas Baldwin and Miriam
2 Ziegler. Board Members James McNamara, Margery Hite, and Holly Gadbow attended.

3
4 At the hearing after receiving no objection from the County or Friends, the Board granted the
5 Baldwin, Marshall, and Ziegler motion to supplement the record with the following items with the
6 following index numbers, with the stipulation that the Board will give these items the appropriate
7 weight:

- 8 • 1501 – August 30, 2005 e-mail from Commissioner Lichter to Commissioner Richter
- 9 • 1502 – August 20, 2005 e-mail from Prosecuting Attorney Randall Gaylord to County
10 Commissioners
- 11 • 1503 – August 31, 2005 e-mail from Stephanie Buffum Filed to Commissioner Lichter that
12 forwarded an earlier e-mail from Lynn Bahrych
- 13 • 1504 – 1507 – Cover memo from Friends to the San Juan Board of Commissioners,
14 including a three page 3-page document executed by Lynn Bahrych and Stephanie Buffum
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**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

FRIENDS OF THE SAN JUANS, LYNN BAHRYCH and
JOE SYMONS, et al.,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

No. 03-2-0003c

CORRECTED FINAL
DECISION AND
ORDER and
COMPLIANCE
ORDER

I. SUMMARY OF DECISION

This Final Decision and Order and Compliance Order deals with two issues (1) Redesignation of the Sandwith property to Forest Resource Land (FRL) and (2) Adoption of amendments to allow internal, attached, and freestanding Accessory Dwelling Units (ADUs) and guesthouses on any single-family lot in San Juan County's rural and resource lands with a principal residence without counting the ADU as a dwelling unit for the purposes of complying with the underlying density¹. With the County's redesignation of the Sandwith property, all of the designated FRLs in San Juan County (County) are now in compliance with the Growth Management Hearings Board (GMA). The majority of the decision deals with the County's ADU regulations.

The Board finds that the County's amendments with respect to ADUs in rural and resource lands are compliant with the GMA except with respect to detached or freestanding (the term the County's ordinance now uses) ADUs. Freestanding ADUs must be considered as the equivalent of another dwelling for purposes of density

¹ The issue of ADUs in Limited Areas of More Intensive Rural Development is not before the Board.

calculations, whether in rural or in resource lands. Further, freestanding ADUs in resource lands must also be limited to uses related to the resource, such as farm worker.

In order to achieve compliance, the County was ordered to analyze existing conditions, future projections and the need for ADUs, and the impacts of future ADU construction on public facilities and services, with special attention to the impacts of ADU construction on shorelines, critical areas, and resource lands. The County was also directed to ensure that additional guesthouse densities² are consistent with current densities allowed in the County.

The County completed an analysis of the current number of ADUs by analyzing assessor's parcel data and thereafter adopted new amendments in December 2002. Petitioners challenged the adopted 2002 amendments and the Determination of Nonsignificance (DNS) for the ADU regulation amendments.

The Board finds that the County's ADU analysis and its State Environmental Policy Act (SEPA) determination are adequate in forecasting the impacts of the changes in the definition of ADUs on public facilities and services, and on critical areas.

The Board finds that the fatal flaw in the 2002 amendments is that a freestanding ADU on a lot with a principal residence is not counted as a dwelling unit for the purpose of calculating the maximum allowable densities. We find that the County's regulations, as they apply to freestanding ADUs in rural residential areas create a density that has

²At the time of the original FDO, the County Code utilized the term "guesthouses". In the new code provisions, the definition of accessory dwelling unit has been used. Under the new code, the definition of an accessory dwelling unit includes a guesthouse but also includes internal, attached and detached accessory dwelling units.

consistently been determined to be sprawl by this Board and the Central Board.³ Such density in rural areas is not in compliance with RCW 36.70A.020(2) and RCW 36.70A.110(1) and the regulations permitting such density are invalid. If the County wishes to permit freestanding ADUs in rural lands that allow for residential uses, it must consider freestanding ADUs as dwelling units for the purpose of determining appropriate densities.

When permitting ADUs in resource lands, the County has the additional obligation to conserve the capacity of resource lands for commercial resource production, as mandated by RCW 36.70A.020(8). This means that freestanding ADUs in resource lands must be limited to uses related to the resource. The Department of Community, Trade and Economic Development's (CTED's) Model Ordinance, referenced in RCW 43.63A.215, also encourages counties to provide for ADUs in agricultural lands for farm workers. We conclude that creating accessory dwelling units in resource lands for the limited purpose of conserving and using the resource itself is compliant with the GMA and such use is applicable to forest workers as well as to agricultural workers. However, the county's regulations permitting freestanding ADUs in resource lands, do not, as drafted, adequately prevent interference with resource conservation, or restrict occupancy to family or other workers employed in resource production. To be compliant with the GMA, these regulations for freestanding ADUs must require: (1) limitation to family members or workers employed in resource production or conservation; (2) site location standards that prevent the freestanding ADU's interference with resource production, and (3) counting the freestanding ADU as a dwelling unit for the purposes of calculating the appropriate allowed density.

³ The Eastern Board has questioned whether a density of greater than one dwelling unit in ten acres is appropriate in a rural area. *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016, Order on Petitioner's Motion for Reconsideration (August 16, 2000); Final Decision and Order (May 23, 2000).

If they are regulated in the manner we have outlined above, long term rental of accessory dwelling units in rural lands is consistent with the GMA and provides a level of affordable housing sorely needed in San Juan County. We find long-term rentals of freestanding ADUs in resource lands appropriate only if they are rented to family members and other workers actually engaged in resource production. Because of the nature of their construction, internal and attached ADUs are unlikely to interfere with resource production. The County's ordinance as it pertains to the permitting of internal and attached ADUs is compliant with the GMA. The question of whether short-term rentals in resource lands are compliant with GMA was not before the Board.

II. PROCEDURAL HISTORY

See Appendix A.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), Ordinances 21-2002 (ADUs) and 24-2002 (Sandwith property) are presumed valid upon adoption. The burden is on the petitioners to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action by [San Juan County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." In order to find the County's action clearly erroneous, we must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Under RCW 36.70A.320(4) the County has the burden of initially showing that the action it took in response to the determination of invalidity “will no longer substantially interfere with the fulfillment of the goals of this chapter.” Nonetheless, in reviewing a local government’s request to modify or rescind invalidity, we apply the presumption of validity under RCW 36.70A.320(1) to Ordinance 21-2002 and Ordinance 24-2002.

IV. ANALYSIS AND DISCUSSION OF THE ISSUES

Sandwith Property

On December 10, 2002, the County adopted Ordinance 24-2002 which redesignated the northern portion of the Sandwith property to Forest Resource Land (FRL) “except as provided for in the settlement agreement entered into with the Sandwith family on December 24, 1984”. The Petitioners requested that the Board find compliance and rescind invalidity only as to the redesignation of the land as Resource Land (RL) and make no decision on the contract issue. **Based on our independent review of the record, we find that the County’s action in redesignating the northern portion of the Sandwith property to FRL is in compliance with the GMA. By this action, the County has removed substantial interference with the goals of the GMA as to forest resource lands. Our previous finding of invalidity in this regard is rescinded.** We note that this finding relates only to the redesignation of this property to FRL. With regard to the contract entered into with the Sandwiths by the County, we repeat what the Board said in the March 28, 2002 Order on Compliance and Invalidity:

There is no authority in the GMA for Growth Management Hearings Boards to issue a ruling on the terms of any individual contract between the County and a property owner. Secondly, the provisions of the contract were in effect long before the resource land designation made in 1998.

What the effect of the contract is today under the conditions set forth in this record is wholly beyond the scope of authority which the Legislature has granted to us. Those questions need to be answered in a different forum.

Town of Friday Harbor v. San Juan County, Case No. 99-2-0010c, Order on Compliance and Invalidity (March 28, 2002).

While this decision involves just 350 acres of RL designation, it is important to note that with this decision, the County's overall designation of RLs is now in compliance with the GMA. The Board commends the County for this accomplishment.

Accessory Dwelling Units (ADUs)

Background

The Petitioners and the County have stipulated that the issues before the Board in the Compliance Orders and the issues raised in Petition 03-3-0003 were heard at the Compliance Hearing on February 19, 2003. The parties also stipulated: (1) that no additional briefing or argument is needed for the Board to decide these issues in this Compliance Order, and (2) that all of these issues will be decided in the March 2003 Order, subject to the usual rights of appeal. Therefore, we will discuss both the compliance issues as well as the issues raised in Petition 03-2-0003. When the issues are related, we will discuss them together.

In this Board's Final Decision and Order (FDO) of July 21, 1999, the Board found that the County's comprehensive plan and development regulations allowing for guesthouses did not comply with the GMA. The Board ordered:

If the County wishes to allow guesthouses as an accessory dwelling unit for each SFR it must first do an analysis which includes existing conditions, a reasonable projection of future guesthouse additions and the need for them as well as the potential additional cost of public services and facilities needed for this new growth. The County must also ensure that the additional guesthouse densities are considered and consistent with the basic densities to be established during the remand. SJC must particularly analyze the impact of guesthouses on its shorelines, RLs and critical areas.

Town of Friday Harbor. v. San Juan County, WWGMHB Case No. 99-2-0010c, FDO (July 21, 1999), at 13.

In Spring of 2000, the County completed an analysis of ADUs and the Board reviewed that analysis in November 2000. In the Board's Order on Recision of Invalidity and Compliance/Invalidity on November 30, 2000, the Board determined that the provisions of the Uniform Development Code that allow new guesthouse construction in rural and resource lands were invalid. The Board found that the County's analysis was deficient and again ordered the County to adequately analyze the effects of new guesthouse construction in rural and resource lands. This finding of invalidity effectively banned the construction of new guesthouses in all areas of the County except in its two non-municipal UGAs. San Juan County's Brief in Support of Motion to Rescind Invalidity and Find Compliance (County's Brief), at 1.

Issue 1: *Has the County adequately analyzed existing conditions?*

Applicable Law and Rules

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365-195-050(4).

Position of the Parties

The Petitioners argued in their brief and at the hearing that the County did not review new and appropriate data and called the County's analysis "anecdotal guesstimates dressed up in a new skirt" because it does not contain actual "as built data". They suggested several other methods of obtaining "on the ground" data such as the number of power connections, on the ground inspections by neighborhood associations, improving the assessor's evaluation tools, and interviewing and analyzing information from permit applicants who had obtained a guesthouse permit and who could now build a main house pursuant to the Board's Order Clarifying Invalidity (April 6, 2001). Petitioner's Reply to Juan County's Motions to Rescind Invalidity and Find Compliance (Petitioner's Reply Brief) (February 11, 2003), at 3, 5, and 6. .

The County, in its Brief and again at oral argument at the February 19, 2003 Hearing, asserts that the County determined the number of ADUs by analyzing all the county assessor's building and parcel data records. The August 2002 *Final Accessory Dwelling Units Analysis Report* (Final ADU Report) provides that all of those records through 2001 were utilized. The County explained at the hearing how the assessor's data is compiled from actual inspections by assessor's staff and how it was interpreted for this report to determine the presence of an ADU on a particular parcel. Exhibit D.

Discussion

The County staff, with the help of a consultant, conducted a new analysis of the number of ADUs in nonurban San Juan County. A draft of the analysis was made available for public review and comment on June 19, 2002. The data from assessor's records is adequate to determine whether a full additional unit is present on the property, since the assessor's records reflect the presence of additional bathrooms and kitchen(s). From that data, however, it cannot be completely accurately determined whether that unit is attached, internal or freestanding.

Conclusion

The Board has reviewed the Draft and Final ADU Reports. Exhibits A and D. **We find that the methodology used is acceptable for a small county with limited resources like San Juan County to estimate the numbers of ADUs that exist and for the purposes of estimating impacts on public facilities and services. The presence of additional bathrooms and kitchen(s) is adequate to determine population density impacts.**

Issue 2: *Did the County make a reasonable projection of future guesthouse additions?*

Applicable Law and Rules

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365- 195-050(4).

Positions of the Parties

Petitioners point out that there has effectively been a moratorium on the construction of ADUs in the county and that this effective moratorium was not taken into account in the County's trend analysis. The Petitioners argue that the County's current analysis of trends for future ADU construction is not adequate for planning or permitting additional residential density in rural and resource lands throughout the County. Opposition to San

Juan County's Motion's to Rescind Invalidity and Find Compliance and Request for SEPA Review (Petitioner's Opposition Brief) (February 20, 2003), at 8-9.

The County concluded that for both market and owner preference reasons, it is not likely for new ADU development to exceed the current percentage (16.7 percent) of nonurban residential lots with ADU development in rural and resource lands in the County. County's Brief, at 10.

Discussion

The Final ADU Report describes the projection of future trends of ADU development as being "inherently highly speculative." Exhibit D, at 38-39. The Final ADU Report discusses influences for ADU development including homeowner preferences, individual lot differences, demographics, and economics. The Final ADU Report also discusses how various factors such as land costs, development costs, and increase or decrease in the quality of life, ferry service, or desirability as a recreation destination in the county could impact the development of ADUs. From this discussion, the report concludes that ADU development will continue at the same rate on nonurban rural and resource parcels. This is the same percentage that the Final ADU Report concludes exist currently. Based on the Draft ADU Report and the Final ADU Report, at 50 and at 66 respectively, the County concludes that data and the conditions affecting the development of ADUs will change over time and will require re-evaluation of the assumptions and findings in the report and the measures for keeping the data current.

We agree with the County that the projections of future ADU construction are inherently speculative. There are too many highly variable factors for the County to be able to make a reasoned prediction about future construction and use of ADUs. However, we do not conclude the County has any further duty to attempt a more definitive projection of future ADU construction or use. The County's efforts in this regard have been admirable.

Conclusion

The Final ADU Report has shown the difficulty in predicting future trends for ADU construction. The County has adopted a monitoring mechanism through the Resolution which will implement the data collection recommended by the county reports. The use of measures that are already in place, such as concurrency requirements, critical areas regulations, and health and environmental codes will ensure mitigation of the impacts of ADUs at the time of permitting. The County will be able to respond to unforeseen trends.

We find that the County’s analysis of trends in ADU development is adequate for the purpose of analyzing the impacts of the future construction of ADUs on the County’s public facilities and services.

Issue 3: *Did the County adequately analyze the need for additional ADUs?*

Applicable Law and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

(4) Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.020(2) and (4).

Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3).

RCW 36.70A.400.

Unless provided otherwise by the Legislature, by December 31, 1994, local governments shall incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, and official control. To allow for local flexibility, the recommendation shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

RCW 43.63A.215(3).

The department shall, in consultation, with the affordable housing advisory board created in RCW 43.185B.020, report to the legislature on the development and placement of accessory apartments. The department shall produce a written report by December 15, 1993 which.... (b) Makes recommendations to the legislature designed to encourage accessory apartments in areas zoned for single-family use....

RCW 43.63A.215(1).

As used in this section a "local government" means.... (b) a county that is required to or has elected to plan under the state growth management act...

RCW 43.63.215(4)(b).

Positions of the Parties

The Petitioners argue that if the County wishes to increase densities in rural and resource lands, it must show that there is an over-riding need for such an increase. Although Petitioners agree that affordable housing is needed in the county, they urge that previous board decisions and the record in this case show that "guesthouses" will not create affordable housing. They point out that the Final ADU Report shows that at present the primary motive for developing new ADUs is to provide accommodations for guests and that, in particular, the development of new freestanding guesthouses on single-family (SF) lots for the purpose of accommodating visiting family members and guests is not useful in meeting the need for affordable housing.

The Petitioners contend that the purpose of ADUs in the Model Ordinance is to increase allowable density where appropriate in traditional single-family zones in urban areas and that because the county is primarily rural, the standards for ADUs in urban areas are not appropriate and do not comply with the GMA requirement to preserve rural character. Petitioner's Reply Brief, at 9 and 10.

The County addresses the need for new ADUs by emphasizing that ADUs are a source of affordable housing. The County says that the Housing Element of the County's Comprehensive Plan considers that the long-term rental of ADUs is important to the county's affordable housing supply. The County analyzed what affordable rates would be for low and moderate-income groups by surveying realtors. From this information, the County estimated the rates at which ADUs could be rented long-term and determined that long-term rental of some ADUs could be affordable to lower income groups. County's Brief, at 10.

The County acknowledged at the hearing that the Final ADU Report found that an owner's original intent in building an ADU might not be for the purpose of providing affordable housing. Changes in a property owner's personal or financial circumstances, property ownership, or market conditions could cause ADUs to become available as long-term rentals, after their initial use for family members. Final ADU Report, at 40.

The County points out that the Petitioners tend to lump together internal ADUs, attached ADUs, and ADUs that are internal to a larger freestanding structure (such as a garage or machine shop) together with freestanding ADUs when they use the term "guesthouse". The County explains that they changed the term "guesthouse" to "ADUs" in the new ordinance so that various types of ADUs could be distinguished and that all ADUs would not be thought of as only freestanding structures. The County admits that there may not be much affordable housing created initially through the new ADU regulations, but urges

that any affordable housing in San Juan County is a significant improvement for low and moderate income residents.

Discussion

We note that RCW 43.63A.215(4)(b) requires that counties planning under the GMA make provisions for ADUs and directs these counties to look at the Model Ordinance for guidance in drafting ordinances regarding ADUs. We observe that the purpose of the Model Ordinance is to assist local jurisdictions in finding ways to facilitate the provision of ADUs; it does not offer guidance on how to harmonize the ADU requirement with other goals and requirements of the GMA, particularly RCW 36.70A.020(1) and (2) or RCW 36.70A.110(1).

In examining the Model Ordinance, the following purposes for ADUs are listed: (1) Provide homeowners with a means of rental income, companionship, security, and services; (2) Add affordable units to existing housing; (3) Make housing units available to moderate income people who otherwise have difficulty finding homes within the (city/county); (4) Develop housing units in single-family neighborhoods that are appropriate for people at a variety of states in the life cycle; and (5) Protect neighborhood stability by ensuring ADUs are installed under the conditions of this Ordinance. Washington State Department of Community Development, *Accessory Dwelling Unit Ordinance and Study* (January 1994), at 3.

The Board notes that it is important that the County has defined the different types of ADUs (internal, attached and freestanding) in the amendments to its ADU regulations. This distinction is valuable to analyzing the importance of ADUs, for the provision of affordable housing in rural and resource lands, and to evaluating other impacts of ADUs on density and rural character. We agree with the Petitioners that the Final ADU Report points out that freestanding ADUs provide for very little affordable housing at the time of

construction. We also agree with the County that ADUs have potential, over time, to provide for a variety of housing needs due to changes in a property owner's personal or financial circumstances, property ownership, or market conditions. We agree that the County has adequately analyzed the need for additional ADUs in general. However, this does not relieve the County of the obligation to harmonize its affordable housing strategy with the other goals and requirements of the GMA.

Issue 4: *Did the County adequately analyze the potential costs for additional public services associated with new ADU construction?*

Issue 5: *Will concurrency required under WAC 365-195-010(6) be possible given the piecemeal, lot-by-lot nature of ADU development by the County? Petition for Review (PFR) (February 7, 2003), Case No. 03-3-003c.*

We will discuss these two related issues together.

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

(12) Public Facilities and Services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12).

Through the Growth Management Act, the Legislature provided a new framework for land use planning and the regulation of development in Washington State in response to challenges posed to the quality life by rapid growth. Major features of this framework include: . . .

(6)The principle that development and the providing of public facilities needed to support development should occur concurrently.

WAC 365-195-110(6).

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3)

State Environmental Policy Act (SEPA). Adoption of comprehensive plans and development regulations are "actions" as defined under SEPA. This means that SEPA compliance is necessary. When a complete new plan is being written, in most instances, the preparation of an environmental impact statement (EIS) will be required prior to its adoption. SEPA compliance should be considered as part of the planning process rather than as a separate exercise. Indeed, the SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another. SEPA compliance for development regulations should concentrate on the impact difference among alternative means of successfully implementing the plan. Detailed discussion of SEPA compliance is contained in Department of Ecology Publication No. 92-07, *The Growth Management Act and the State Environmental Policy Act, A Guide to Interrelationships*

WAC 365-195-610.

Position of the Parties

The Petitioners are concerned that allowing ADUs to be rented long term will create significant impacts on public services. They argue that as drafted, the County's ordinance does not provide that the development of ADUs will trigger any additional corresponding provisions in the County's Uniform Development Code requiring additional open space, drainage, streets and roads, potable water, sewage disposal, parks and recreation, schools, ferry service, power service capacity, telecommunication service, and law enforcement. Petitioners argue that the additional residential occupancy of a

second living space on residential parcels will have large-scale and cumulative effects on services. PFR, at 5.

The County argues that the ADU analysis evaluates the functional impacts on water, solid waste, law enforcement, fire and other emergency services, schools, and traffic. The County explains that because ADUs have not been considered functionally separate from primary single-family residences, few studies exist to specifically quantify such data. Given the difficulty of obtaining ADU specific data, the evaluations were based on qualitative assessments from utility providers, supplemented by quantitative data when no qualitative data was available. County's Brief, at 14.

Discussion

Development and the provision of public services needed to support development should occur concurrently. *See* WAC 365-195-010(6). These issues ask whether the County has sufficiently analyzed the potential impacts of additional ADU construction upon public facilities and services. For purposes of the impacts on facilities and services, the key question is the adequacy of the projected population increase due to the ADUs. Because the question is population rather than structural density, all ADUs (whether attached, freestanding or internal) may be considered the same way.

The County's Draft and Final ADU Reports state that due to market conditions, the percentage of ADU development on nonurban residential parcels that has occurred in the past is likely to occur in the future. The reports use this assumption and assumptions about how ADUs are occupied today to analyze impacts to the County's public facilities in the future. Based on this, they conclude that the future development of all types of ADUs will have little impact on future county facilities.

Under WAC 365-195-610, a determination of compliance of development regulations with SEPA should concentrate on the difference between impacts among alternative means of successfully implementing the plan. The questionnaire for non-project actions that was part of the County's Declaration of Nonsignificance identified that, as a result of the ADU analysis, there were identifiable impacts to water systems that the County regulated. In response, the County proposed a mitigating measure.

Under County regulations, an ADU is counted as an additional residential use equivalent of one-half a connection. Ordinance 21-2002, Section 8. By doing this, the County can monitor the capacity of Class B water systems when ADUs are added.

In our discussion of the County's analysis of future trends, we noted the difficulty of making these projections. For internal ADUs, the County's assumptions about the impacts upon public facilities and services are reasonable. For the attached and freestanding ADUs, the impacts on public facilities and services are less firm. The County has committed to reassessing these impacts if the percentage of ADUs reaches twenty five percent. Until then, the County can mitigate for any discrepancies in their assumptions through the application of its concurrency standards (Section 18.60.200 of the County's Uniform Development Code for roads and water); storm-drainage regulations (Section 18.60.070 of the County's Uniform Development Code); and health and safety codes (the County's Code 8.16.050 and 8.16.060 for on-site systems) for the construction of ADUs during the permit process. San Juan County Uniform Development Code, (November 2000). The County's August 13, 2002 Determination of NonSignificance states that these codes will be used when permitting ADUs.

Conclusion

We find the County's analysis of the impacts of ADUs on future public facilities and services to be adequate for the purposes of formulating development regulations and no further analysis of the impacts to public facilities and services of the future construction of ADUs are necessary at this time. We also find that the County has followed the guidance in WAC 365-195-610 and has regulations in place to comply with RCW 36.70A.020(12) and to be consistent with the principle expressed in WAC 365-195-110(6).

Issue 6: *Did the County adequately analyze the impact of the future construction of ADUs on critical areas?*

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.020(10).

State Environmental Policy Act (SEPA). Adoption of comprehensive plans and development regulations are "actions" as defined under SEPA. This means that SEPA compliance is necessary. When a complete new plan is being written, in most instances, the preparation of an environmental impact statement (EIS) will be required prior to its adoption. SEPA compliance should be considered as part of the planning process rather than as a separate exercise. Indeed, the SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another. SEPA compliance for development regulations should concentrate on the impact difference among alternative means of successfully implementing the plan. Detailed discussion of SEPA compliance is contained in Department of Ecology

Publication No. 92-07, *"The Growth Management Act and the State Environmental Policy Act, A Guide to Interrelationships*

WAC 365-195-610.

Positions of the Parties

The Petitioners argue that because the County did not analyze the impact of new ADU construction on every single-family lot, especially lots in resource lands, critical areas, and rural lands, the County has not assessed the impact of ADUs on critical areas.

Critical areas are called environmentally sensitive areas in the County's Uniform Development Code and are defined as geologically sensitive areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife areas. The County maintains that critical areas regulations act as an overlay district. This overlay district applies to the permitting and construction of ADUs, just as it does to single-family homes and other development. County's Support Brief, at 22.

Discussion

The County has a valid critical areas ordinance. The County enforces its critical areas regulations through Section 18.30.110 of the County's Uniform Development Code, Environmentally Sensitive Areas District (ESA). Section 18.30.110 B provides that any land use or development activity subject to a development permit under the San Juan County Uniform Development Code may be undertaken on land containing an ESA or its buffer only if the provisions of the ESA section are met. Citations provided by the County to the San Juan County Code. Section 18.80.070 E.1 shows that the County does enforce critical areas ordinances for ADUs. The County's Uniform Development Code, Title 18, Revised November 2000. The County's Environmental Checklist identifies that the County regulates ADUs through the County's Uniform Development Code, Section 18.30.110-160. Exhibit C.

Conclusion

We find that enforcement of the County’s critical areas ordinance at the time of permitting an ADU will mitigate the impacts of ADU development. Therefore, we find that no further analysis on the impacts of ADUs on critical areas is needed.

Issue 7: *Did the County ensure that the additional guesthouse (now referred to as ADUs) densities are considered and consistent with the basic densities established during the remand and now in effect for the County?*

Issue 8: *By permitting an ADU on every legal parcel, does the ordinance fail to contain rural development? PFR, at 3.*

Issue 9: *Does the Ordinance fail to preserve rural character as required by RCW 36.70A.030(14)? PFR, at 2.*

We will discuss these related issues together.

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040... (2)Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

RCW 36.70A.020(2).

Each county that is required or chooses plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside which of which urban growth can occur only if it is not urban in nature...

RCW 36.70A.110(1).

Position of the Parties

The Petitioners argue that Ordinance 21-2002 does not address the “fundamental requirement of the GMA to reduce the inappropriate conversion of undeveloped land into low-density development in the rural area.” Petitioner’s Opposition Brief at 6 and 9, San Juan County’s Planning Commission’s Findings and Recommendations, September 27, 2002 Exhibit E, Unlettered Attachment to *San Juan County Planning Department’s Staff Report*.

The County argues that the impact on rural areas will be *de minimis*. The County relies on the analysis in the Final ADU Report; this states that it is reasonable to assume that the current percentages of ADUs present in residential areas (16.7 percent of the residential parcels on rural and resource lands will contain ADUs, 2.3 percent of nonurban residential parcels have an internal ADU and 14.4 percent of parcels with an ADU will be freestanding or attached) will be the same in the future. The County asserts that market conditions and the requirement that the owner of the single-family residence must also own any ADU on the same parcel are the reasons why these percentages of new ADU construction will stay the same in the future. The County’s analysis of the impacts on ADUs on public facilities and services uses these percentages to assess the impacts of future development of ADUs on both public facilities and services and rural character and concludes these impacts will be nominal. The County concludes that it is appropriate to consider any ADU an “appurtenance” to a residential dwelling; the County also argues that this approach is consistent with that of other jurisdictions. The County has determined that the identified structural effects of ADUs may be addressed through the site location standards included in the ordinance and view protection measures in the County’s Shoreline Master Program. County’s Brief, at 23.

Discussion

The question of how freestanding (detached) ADUs should be considered for the purposes of density calculations is not entirely a new one. We previously considered a similar issue in Lewis County (*Yanisch v. Lewis County*, Case No. 02-2-0007c, Final Decision and Order (December 11, 2002) and the Central Board considered a similar issue in Pierce County, *Pierce County Neighborhood Association v. Pierce County (PNA II)*, Case No. 95-3-0071 (March 11, 1996). The County's ADU amendments permit all three types of ADUs (internal, attached, and freestanding) on all lots that have single-family houses as their primary use. The County's Uniform Development Code 18.40.240 A.

We will first review what the Western Washington Growth Management Hearings Board (WWGMHB) and the Central Puget Sound Growth Management Hearings Board (CPSGMHB) have ruled concerning the permitting of ADUs in rural residential areas in prior cases. To our knowledge, the Eastern Washington Growth Management Hearings Board has not considered this issue.

In *Yanisch v. Lewis County*, Case No. 02-2-0007c, Final Decision and Order, (December 11, 2002), this Board said, "We have consistently found that densities greater than 1 unit per five acres are not rural densities." This Board found that ADUs could be allowed in Lewis County as *internal or attached units* on single-family (SF) lots of five acres or less. However, we ordered Lewis County to remove from the Lewis County Code provisions that permitted *detached* ADUs on lots that did not contain the basic underlying rural density.

The Central Board, in a case referenced in the County's Final ADU Report, looked at the definition of ADUs in Pierce County. The Central Board then discussed the regulating of freestanding (detached) ADUs in rural areas:

Construction of a detached new ADU on a parcel smaller than 10 acres is generally prohibited because it would effectively allow two freestanding dwelling units. The effect would necessarily be one freestanding dwelling on a lot smaller than 5 acres, which the Board has previously held to constitute urban growth. Regardless of the size of the rural lot, ADU's attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth.

PNA II, Case 95-3-0071, FDO (March 20, 1996), at 22.

With these prior cases in mind, we now examine the County's Uniform Development Code amendments regulating ADUs:

The following standards apply to all accessory dwelling units:

- A. Where not otherwise authorized by this Code, one internal, attached, or freestanding accessory dwelling unit is permitted on any lot having a single-family residence as the principal use of the lot . The ADU shall not be counted in the density calculations and shall not require a density unit in addition to that for the principal residence.

Section 18.40.240 A.

Other provisions in this section require that an ADU can not exceed 1000 square feet and must be owned by the owner of the principal residence, and make them subject to certain site location standards. Section 18.40.240 D.

Section 18.20.010 of the County Code includes this definition of ADUs:

Accessory Dwelling Unit (ADU) means a second structure or living unit that is accessory to the principal, single-family residential living unit and provides the basic requirements of sleeping quarters, heating, kitchen facilities, and sanitation, and which shares a lot with a principal residence. Types of ADUs include "internal ADU", "attached ADU", "freestanding ADU", and "guesthouse".

County Uniform Development Code, Section 18.20.010.

The County's Uniform Development Code also defines each one of the types of ADUs, including "freestanding ADU" (Section 18.20.60):

Freestanding ADU means an accessory dwelling unit that is physically distinct from the principal residence. To be freestanding, the ADU and the principal residential unit may not be connected or must be structurally independent per the Uniform Building Code.

The County's Uniform Development Code, Section 18.20.60.

Guesthouse (Section 18.20.70) is defined as follows:

Guesthouse means an accessory dwelling unit that is not rented, but is designed and most commonly used for irregular occupancy by family members, guests, and persons providing health care or property maintenance for the owner.

The County's Uniform Development Code, Section 18.20.70.

At argument, we asked the County to explain how a freestanding ADU differs from a single-family residence. The County responded that an ADU is limited in size to no more than 1,000 square feet. So, we asked, how is a freestanding ADU different from a single-family residence of 1,000 square feet? The County responded that there are certain site limitations that would apply to an ADU, although the County also conceded that the site limitations may be waived. Other than the size and potential site restrictions, the County acknowledged that a freestanding ADU is not *structurally* distinguishable from a single-family residence, since single ownership of the ADU and the main residence is not a structural characteristic.

We conclude that a freestanding ADU is a separate dwelling unit and has all the structural characteristics of a dwelling unit, whether it is owned by the owner of a principal residence or not. Also in areas where residential use is allowed in rural lands, allowing a freestanding ADU with a principal residence on lots of less than ten acres creates a density of greater than one dwelling unit to five acres. Densities of greater than one dwelling unit to five acres are not rural densities. Both this Board and the Central

Board have consistently said that densities of more than one unit per five acres constitute urban growth. (The Eastern Board has indicated that densities of more than one unit per *ten* acres of land is not a rural density.) Therefore, allowing freestanding ADUs together with a principal residence on lots of less than ten acres in rural areas constitutes inappropriate urban growth in a rural area.

Conclusion

Consistent with our previous decisions, we find that Ordinance 21-2002 as it pertains to internal and attached ADUs in Rural Residential designations is consistent with the GMA and fulfills the County's obligation to provide for ADUs in rural single-family (SF) neighborhoods pursuant to RCW 43.63A.215. However, we continue to find that a freestanding ADU should be considered as one dwelling unit. The effect of not counting a freestanding ADU as a dwelling unit would be the equivalent of permitting one dwelling unit a lot of less than 5 acres in a rural area. **The sections of Ordinance 21-2002 that allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, fail to prevent urban sprawl, contain rural development, and, instead, allow growth which is urban in nature outside of an urban growth area. These sections do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) and are clearly erroneous. The sections of the County Code that were amended by Ordinance 21-2002 that allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, substantially interfere with Goal 2 of the Act and therefore, are found invalid.**

These provisions are invalid because they permit growth levels in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl.

If a freestanding ADU is not counted as a dwelling unit when permitted with a principal residence in rural lands, it will create a density of more than one unit per five acres. Such densities substantially interfere with RCW 36.70A.020 (2). This GMA goal directs cities and counties to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

With regard to internal and attached ADUs in rural areas, we find that the County's Uniform Development Code as now amended, complies with the GMA.

Issue 10: *Does the Ordinance fail to preserve rural character as required by RCW 36.70A.030(14)? PFR, at 2.*

Because we have decided that allowing a freestanding ADU on every single-family lot without regard to the underlying density violates RCW 36.70A.020(2) and RCW 36.70A.110(1), we do not reach the rural character issue.

Issue 11: *Does permitting the rentals of ADUs fail to contain rural development? PFR, at 3.*

Applicable Law and Rules

Measures controlling urban development. The rural element should include measures that apply to rural development and protect the rural character of the area, as established by the county, by (i) Containing and otherwise controlling urban development, (ii) Assuring visual compatibility of rural development with the surrounding area, and (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area...

RCW 36.70A.070(5)(c)(i), (ii), (iii).

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040... (4). Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.020(4).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365-195-050(4).

Positions of the Parties

The Petitioners argue that the new ordinance is based on estimates and on no actual information about the actual numbers of long-term ADU rentals. They argue that the County should require registration of ADU rentals, which Ordinance 21-2002 does not do. They insist the County should not allow any rentals until the County begins monitoring their numbers and can analyze the impacts of short-and long-term rentals of all types of ADUs from data that contains the actual number of ADU rentals which would likely result from the amendments. Petitioner's Opposition Brief, at 14.

The County maintains that prohibiting the long-term rentals of new ADUs would eliminate an important component of San Juan County's affordable housing program. County's Brief, at 23. The County points out how it has shown its work in estimating the amount of short- and long-term rentals. County's Brief, at 28.

Discussion

The Final ADU Report states that the County has been issuing permits for transient rentals since 1998 and uses census data to develop an estimate of the number of ADUs that are generally rented long-term. There is very little in the Petitioner's Opposition or Reply Briefs that address the impacts of the rental of ADUs on rural development. We accept the County's methodology for estimating the amount of long and short-term ADU rentals in nonurban residential areas. WAC 365-195-050(4). The Final ADU Report estimates that 3.0 percent of nonurban residential parcels (including rural residential and resource land parcels) have ADUs that are rented long-term. Final ADU Report, at 20. Even if this percentage is doubled in the future, the impact of the long-term rentals of ADUs on population density will be minimal. Earlier in this order, we found internal and attached ADUs can be allowed on single-family lots with a principal residence in rural lands. We also found that allowing freestanding ADUs in conjunction with a principal residence without regard to the underlying density to be inconsistent with the GMA because it allowed non-rural levels of growth in rural areas.

Conclusion

We find that the County has not failed in its obligation to contain rural development by allowing long-term rentals of ADUs in rural residential areas so long as freestanding ADUs are counted as separate dwelling units for density purposes. In fact, long-term rentals of existing and new ADUs could help the County fulfill some of its affordable housing goals as required by RCW 36.70A.020(4).

Issue 12: Did the County properly analyze the impacts of ADUs on resource lands?

Issue 13: Does the Ordinance fail to protect resource lands from inconsistent uses under the GMA, as by required by RCW 36.70A.020(8)? PFR, at 20.

Applicable Law and Rules

Natural Resource Industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands and discourage incompatible uses.

RCW 36.70A.020(8).

Unless provided otherwise by the legislature, by December 31, 1994, local governments should incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, and official control. To allow for local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

RCW 43.63A.215(3).

Position of the Parties

The Petitioners maintain that the 2002 amendments allow construction of a new ADU on every parcel with a primary residence in more than 33,000 acres of resource lands. This, they urge, does not comply with GMA mandates to conserve resource lands. Petitioner's Reply Brief, at 12.

The County states that residential use of resource lands is not prohibited under the GMA, as long as the resource is adequately protected. This Board upheld the County's maximum densities for Agricultural Resource Lands (ARLs) and Forest Resource Lands (FRLs) in its November 30, 2000 Order on Recision of Invalidity and Compliance/Invalidity. The County argues that single-family residences are not prohibited on resource lands and that a single-family residence includes internal, attached, or free standing ADUs. The County contends that its restrictions on ADUs, including new site location standards, conserve the County's resource lands. County's Brief, at 21.

Discussion

In the November 30, 2000 Order on Recision of Invalidity and Compliance/Invalidity, the Board found that the densities that the County has designated for ARLs and FRLs complied with the GMA and were appropriate for conserving the County's resource lands. The Board also found noncompliant and invalidated the County's regulations pertaining to guesthouses in rural and resource lands. CTED's Model Accessory Dwelling Unit Ordinance Recommendations, referenced by RCW 43.63A.215, make a specific recommendation about ADUs in agricultural zones. The recommendation states, "Multiple detached ADUs may be created in agricultural zones, if one of the occupants of each unit is employed by the property owner." Department of Community Development, *Accessory Dwelling Unit Ordinance and Study* (January 1994), at 4.

In deciding whether ADUs are appropriate in agricultural and forest resource lands of long-term commercial significance, the County must harmonize the need to enhance resource production and discourage incompatible uses with the goal of providing affordable housing. The use of ADUs for farm workers and family members employed by the property owner could enhance commercial resource production. However, if these units are not appropriately located, they could interfere with resource production.

Regulations that allow a freestanding ADU on a natural resource land parcel can be made to be consistent with the GMA only under the following conditions: (1) The ADU can only be available for occupancy or rent on a long-term basis to family members or other workers employed by the property owner in resource production; (2) The regulations include specific locational standards that clearly do not allow interference with resource production; and (3) The freestanding ADU is counted as a dwelling unit for the purposes of calculating the appropriate density on a resource parcel.

Ordinance 21-2002 includes the following site locational standards:

1. Locate new freestanding ADUs outside of the most sensitive open space features,
2. Locate new freestanding ADUs and their utilities and driveways in order to minimize intrusion of the most sensitive open space features of the site. Use the same water system to serve the principal residence and the freestanding ADU unless separate system or driveway have fewer impacts on the environment,
3. Maintain existing orchards, meadows, and pasture areas,
4. Leave ridgelines and contrasting edges between landscape types unbroken by structures,
5. On rolling open or steep slopes, locate new freestanding ADUs so that buildings will be screened by existing vegetation, or terrain; and
6. Ensure the protection of features such as wetlands and wildlife habitat.

Section 18.40.240 D of the County's Uniform Development Code, Exhibit I.

These standards clearly are directed at protecting visual, rural character, and critical areas. They are not directed at conserving resource lands.

Conclusion

By the nature of their construction, internal and attached ADUs in resource lands are unlikely to interfere with the production of the natural resource. We find the County's ordinance as it pertains to the permitting of internal and attached ADUs in resource lands to be consistent with the GMA. RCW 36.70A.020(8).

We find that the County's decision to allow one freestanding accessory dwelling unit on any parcel in agricultural and forest resource lands fails to conserve resource lands and prevent interference with the conservation of the resource, and are not in compliance with RCW 36.70A.020(8). We find this decision is clearly erroneous, does not comply with RCW 36.70A.020(8) and substantially interferes with RCW 36.70A.020(8) pursuant to RCW 36.70A.302.

Regulations to protect resource lands must ensure that the housing densities allowed in resource lands do not impinge upon the use of the resource and conservation of

resource lands. Residences for resource owners and workers must be sited in such a way as not to interfere with resource production. The County's current regulations allow freestanding ADUs in natural resource lands in ways that do not ensure conservation of resource lands and interfere with natural resource production. This substantially interferes with Goal 8 of the GMA. RCW 36.70A.020(8). Goal 8 of the GMA directs counties to maintain and enhance natural resource-based industries, encourage the conservation of productive agricultural and forest resource lands, and discourage incompatible uses.

We find that the issue of short-term rental of ADUs in resource lands was not before the Board.

Issue 14: *Was Ordinance 21-2002 enacted without benefit of formal SEPA review? PFR, at 4.*

Applicable Law and Rules

Guidelines for state agencies, local governments -- Statements -- Reports -
- Advice – Information. The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) All branches of government of this state, including state agencies, municipal and public corporations, and counties shall...

...

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

RCW 43.21C.030(2)(c).

Positions of the Parties

Petitioners complain that no SEPA review of the new designation of accessory dwelling units has taken place since 1997. The Petitioners contend that RCW 43.21C and WAC 197-11-560 require that SEPA review be completed before legislation is adopted. They argue that the adoption of an ordinance permitting a second freestanding residence on every parcel in rural and resource lands will have significant environmental impacts. PFR, at 4.

The County responds that it completed an Environmental Checklist which referenced the Final ADU Report and reiterated the report's major findings. The County states that the Final ADU Report is an integrated SEPA/GMA document and is an integral part of the County's overall SEPA analysis of the effects of ADUs and evaluates possible changes to the ADU ordinance. County's Brief, at 5, Exhibit C and Exhibit D.

Discussion

The Final ADU Report did analyze a wide range of impacts of ADUs based on the data extracted from assessor's records, a range of alternatives, and mitigating measures for those alternatives. The Draft ADU Report (Exhibit A) was circulated for public comments and those comments were responded to by the County in the Final ADU Report. Exhibit D.

The proposal for which an environmental determination was required is an amendment to the County's comprehensive plan and development regulations. The integrated document and checklist that incorporated information from the Final ADU Report provided enough

information about environmental impacts to guide policy makers in choosing among the alternatives for the adopted regulations. An analysis of SEPA compliance for GMA purposes is based upon the same “clearly erroneous” standard as established for compliance. *Durland. v. San Juan County*, Case No. 99-2-0010c (May 2, 2001). Petitioners have the burden of proof of showing that a mistake has been made in issuing a determination of nonsignificance.

Conclusion

Our review of the environmental checklist, including the Final ADU Report, does not convince us that a mistake has been made concerning the SEPA determination in this case and finds that the Petitioners have not sustained their burden of proof.

Issue 15: *Did the County adequately analyze the impact of ADUs on Shorelines?*

Issue 16: *Does the Ordinance unlawfully enlarge the exemption for single-family residences in the Shoreline Management Act, which is a goal of GMA? PFR, at 3, Petitioner’s Reply Brief, at 13.*

Both of these issues raise timeliness considerations:

Applicable Laws and Rules

For the shorelines of the state, the goals and policies of the shoreline management act are added as one of the goals of this chapter as set forth in RCW 36.70A.020. The goals and policies of a shoreline master program approved by a city or county approved under chapter 90.58 RCW shall be considered an element of a county or city’s comprehensive plan. For other portions of the shoreline master program for a city or county adopted under chapter 90.58 RCW, including use regulations, shall be considered part of the county or city’s development regulations.

RCW 36.70A.480(1).

All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the Department of Ecology.

RCW 36.70A.290(2).

Position of the Parties

The Petitioners argue that the redefinition of accessory dwelling unit which allows freestanding ADUs to be considered a normal appurtenance to a residence is an attempt to avoid the need for a substantial development permit under the Shoreline Management Act

The Petitioners also state that issues surrounding the construction and rental of ADUs have been before this Board since the Petitioners filed the first Petition for Review in this case in 1999. They contend that these issues have been reserved by the Board for a hearing as a package when the County has appropriately analyzed and adopted a final ADU ordinance.

The County argues that it adopted the regulation defining “normal appurtenance” to include one freestanding ADU on any lot in 1998, so the Petitioner’s challenge of this item is not timely. The County also argues that shorelines will be protected through their Shoreline Master Program.

Discussion and Conclusion

We note that Ordinance 21-2002 did amend the County’s Shoreline Master Program, Chapter 18.50, by replacing the definition of guesthouse to accessory dwelling unit. Exhibit I, Ordinance 21-2002, at 13. Amendments to the County’s Shoreline Master Program are, at this writing, pending before the Department of Ecology. Pursuant to RCW 36.70A.290(2)(c), appeals of Shoreline Master Program amendments to this Board are not ripe until the Department of Ecology has approved or disapproved the amendments, and notice of that decision is published. **To the extent that these issues raise questions regarding the Shoreline Master Program amendments, they are not yet before us. To the extent that these issues do not implicate the Shoreline Master Program amendments, we incorporate our findings with respect to rural and resource lands.**

V. FINDINGS OF FACT

1. On December 10, 2002, the County adopted Ordinance 24 -2002 which redesignated the northern portion of the Sandwith property to Forest Resource Land (FRL) “except as provided for in the settlement agreement entered into with the Sandwith family on December 24, 1984”.
2. On December 2, 2002, the San Juan County Board of County Commissioners (BOCC) adopted Ordinance 21-2002, which amends the regulations for the construction of accessory dwelling units (“ADUs”); and Resolution 120-2002, which establishes a monitoring program for new ADUs.
3. Ordinance 21-2002 defines four types of accessory dwelling units (“ADUs”): internal ADUs; attached ADUs; freestanding ADUs and guesthouses. The Ordinance provides that any type of ADU may be constructed on any single-family lot and resource parcel in rural and resource designations [on a lot] that allowed for residential uses where there is a principal residence.
4. The provisions in Ordinance 21-2002 do not require any ADUs, including freestanding ADUs, to be counted as a single-family dwelling unit for the purposes of calculating maximum density allowed in zoning designations.
5. Petitioners challenged the provisions in Ordinance 21-2002 for allowing and renting of ADUs in rural and resource lands.
6. Petitioners have standing in this case by being a member of the County ADU Advisory Committee and through commenting at various stages in the process on ADU amendments.
7. The County published a draft ADU Analysis Report in June 2002 and circulated it for public review. The report examined existing conditions and impacts of the projected number of ADUs.
8. The County published a Final ADU Report on August 14, 2002 and responded to public comment in the final report.

9. The County issued a Determination of Nonsignificance regarding the amendments to its Unified Development Code (Title 18) and Health and Safety Code on August 13, 2002.
10. The County has adopted valid critical areas protection as part of the San Juan County Code.
11. The County has adopted a concurrency ordinance, provisions for regulating storm drainage, and health and safety codes for the permitting of on-site systems.
12. Ordinance 21-2002 adopted amendments to the County's Shoreline Master Program.
13. The WWGMHB and the CPSGMHB have found that one dwelling unit per five acres is the maximum density that can be allowed in areas that allow for residential use outside of LAMIRDs. *Yanisch v. Lewis County*, Case No. 02.-2-0007c, FDO (December 11, 2002) and *PNA II*, Case No. 95-3-0071, FDO (March 20, 1996).
14. The WWGMHB and the CPSGMHB have both found that allowing more than one unit per five acres constitute sprawl and violate RCW 36.70A 020(2) and RCW 36.70A.110(1). *Yanisch et al v. Lewis County*, Case No. 02.-2-0007c, FDO (December 11, 2002) and *PNA II*, Case No. 95-3-0071, FDO (March 20, 1996).
15. A guesthouse can be a freestanding ADU. County Uniform Development Code, Section 18.20.40.
16. A freestanding ADU is not any different structurally than any other single-family dwelling unit.
17. The only difference between a dwelling that is defined in the County Uniform Development Code and a freestanding ADU is that it must be owned by the owner of the principal residence and could be subject to some site location standards.
18. The County Uniform Development Code as amended by Ordinance 21-2002 allows a freestanding ADU with a principal residence on lots of less than ten acres in rural residential areas. This effectively would allow a dwelling unit on a lot of less than five acres.
19. RCW 36.70A.020(8) discourages incompatible uses in resource lands.

20. A freestanding ADU is an incompatible use in resource lands unless it is occupied by family members and workers in resource production employed by the property owner, subject to site location standards that prevent interference with resource production, and is counted as a dwelling unit for the purpose of calculating the appropriate density on a resource parcel.
21. Internal and attached ADUs because they are integral to the structure and do not interfere with resource production.
22. Long-term rental of ADUs in rural residential areas, if freestanding ADUs are counted as density unit for purposes of calculating density, do not constitute rural development.

VI. ORDER

We find that Ordinance 21-2002 as it amends sections of the County's Code to allow for a freestanding ADU on single-family lots with a principal residence in rural lands, that allow for residential uses, without counting it as a unit of density for the purpose of calculating the underlying density is not compliant with RCW 36.70A.020(2) and RCW 36.70A.110(1). We find that these regulations substantially interfere with RCW 36.70A.020(2) and are invalid according to RCW 36.70A.302(1).

We find that Ordinance 21-2002, as it amends sections of the County's Code to permit and to rent on a long-term basis a freestanding ADU on a resource parcel, is not compliant with RCW 36.70A.020(8) without the following limitations: (1) limiting the occupants to family members and workers employed by the property owner in resource production, (2) imposing site location standards that ensure that the ADU does not interfere with resource production, and (3) counting the freestanding ADU as a dwelling unit for the purposes of calculating the appropriate underlying density on a resource parcel. These sections of the County's Code substantially interfere with RCW 36.70A.020(8) and are invalid according pursuant to RCW 36.70A.302(1).

We find that the County's action in redesignating the northern portion of the Sandwith property to RFL is in compliance with the GMA. By this action, the County has removed substantial interference with the goals of the GMA. Our previous finding of invalidity is rescinded. In regard to the contract entered into with the Sandwiths by the County, we find there is no authority in the GMA for a Growth Management Hearings Board to issue a ruling on the terms of any individual contract between the County and a property owner.

We find that the Ordinance 21-2002 as it amends sections of the County's Code for the permitting of internal and attached ADUs in rural lands that allow for residential uses and in resource lands is in compliance with the GMA.

We find that the long-term rental of ADUs in rural lands if the ADUs are otherwise consistent with this Order, is compliant with the GMA.

San Juan County must bring its code regarding accessory dwelling units into compliance with the GMA within 180 days of this Order. The due date for compliance is **September 16, 2003**. A **progress report** on the County's efforts to comply with this Order is due **July 1, 2003**. A **Compliance Hearing** on this Order is scheduled for **October 22, 2003**. In the event of earlier compliance efforts by the County, the County may request an earlier hearing date. Because this Order contains a finding of invalidity, the County may, by motion, request an expedited hearing in accordance with RCW 36.70A.302(6).

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 17th day of April, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw
Board Member

Nan A. Henriksen
Board Member

Margery Hite
Board Member

Appendix A

Procedural History

On July 21, 1999, the Western Washington Growth Management Hearings Board (WWGMHB) issued a Final Decision and Order in Case No. 99-2-0010c that found, along with other findings, that San Juan County (County) had failed to analyze the impacts of allowance of attached or freestanding guesthouses for each single-family residence (SFR) and that, therefore, the County had failed to comply with the Growth Management Act (GMA, Act). The Board ordered that the County analyze current and potential new guesthouse use and rentals in light of the GMA goals and requirements and the new density designation. The Board also found that the densities designated for agricultural and forest resource lands were invalid.

On October 2, 2000, the San Juan Board of County Commissioners adopted ordinances that amended their comprehensive plan (CP), development regulations (DRs), official maps, Shoreline Master Program (SMP), and the Eastsound Subarea Plan.

On November 30, 2000, the Board found that the provisions of the 2000 amendments that allowed for new guesthouse construction in rural and resources lands failed to comply with the GMA and were invalid because the Board found the analysis of the impacts of freestanding Accessory Dwelling Units (ADUs) continued to be inadequate to demonstrate compliance with the GMA. The Board also found that the County's redesignation of approximately 1,000 acres of resource lands (RLs) continued to substantially interfere with Goal 8 of the GMA and ordered the County to redesignate resource lands only after complying with previously adopted county processes. It should be noted that the Board reviewed these ordinances under the timelines imposed by RCW 36.70A.330(2). Because of the tight timelines imposed by RCW 36.70A.330(2), the Board only addressed the county's request for rescission of invalidity, the redesignation of RLs, and the guesthouse issue.

In November 2000, the Board received several petitions for review (PFRs), including a PFR from Michael Durland, that challenged the County's October 2000 Comprehensive Plan amendments. The Board also received a motion for intervention from the Opal Community Land Trust and several other parties. On January 23, 2001, the Board granted the motions to intervene and captioned the case as Michael Durland, et al. v. San Juan County, No. 00-2-0062c.

On January 3, 2001, the Board removed the determination of invalidity from one specific RL property.

On January 16, 2001, the County filed a petition for a declaratory ruling. The County posed the question whether the order of invalidity "prohibits the issuance of building permit to construct the main house when the property owners have previously constructed a guesthouse on the property." On April 6, 2001, the Board issued an Order Clarifying Invalidity. In this Order, the Board declared that property owners that have previously constructed or have a permit-vested guesthouse that met the definition of a guesthouse in the County Uniform Development Code 18.40.240 could construct a main house.

On April 18, 2001, the Board rescinded the Order of Invalidity for redesignation of the 292-acre Eagle Lake Property from forest resource land to rural farm forest. With this order, the Board began to consider the issues raised in Case Nos. 99-2-0010c and 00-2-0062c together.

On May 7, 2001, the Board found that allowing transient or short-term rentals in rural zones complied with the GMA. The Board also found that allowing transient and long-term rentals in resource lands was not in compliance with the GMA, and substantially interfered with RCW 36.70A.020(8) and was invalid.

The County and one property owner appealed this decision to the Thurston County Superior Court. The parties were able to reach settlement on two RL designated properties. Those properties were dismissed from the appeal and the Board rescinded its findings of invalidity, but maintained noncompliance for those properties.

On July 23, 2001, the Superior Court reversed the Board's determination that the RL redesignations went beyond the scope of the remand order, but affirmed the Board's decision because of the lack of public participation.

On October 11, 2001, the Board found that in regards to transient and long-term rentals in resource lands, the County regulations were now in compliance and no longer invalid. On October 11, 2001, the Board found that the County no longer allowed transient and long-term rentals in resource lands.

On December 4, 2001, the County adopted Ordinance 14-2001. On December 14, 2001, the County filed a motion for the Board to rescind invalidity and to determine that the County had achieved compliance. The Board held a Compliance and Recision of Invalidity hearing on March 7, 2002. The Board reviewed the redesignation of the Lawrence, Bond, Eagle Lake, Griffin Bay, Sandwith (southern portion) and Alex Bay properties and found that the County had removed substantial interference and that the new designations complied with the GMA. In regard to the Sandwith (northern portion), Wood, and Bell properties, the Board found continued noncompliance and declined to modify previous determinations of invalidity for these properties.

On June 4, 2002, the Board held a compliance hearing on the adoption of Ordinance 2-2002, which adopted the "San Juan Heritage Plan". This plan included 3300 acres in the San Juan Valley that contain a special area involving Agricultural Resource Lands

(ARLs) that are one of the few remaining areas of noncompliance and invalidity regarding ARLS. The Board found that through the adoption of Ordinance 2-2002, the County was in compliance. The Board rescinded the previous determination of invalidity and found that the designation of this area in compliance.

On May 16, 2002, the Board received a motion from the County to rescind the finding of invalidity for the Bell and Wood properties and to find compliance with the GMA, because these properties have now been designated Forest Resource Land (FRL). On June 12, 2002, the Board held a telephonic Compliance Hearing. On June 13, 2002, the Board found compliance and rescinded invalidity for the Bell and Wood properties.

On December 10, 2002, the County adopted Ordinance 24-2002 which redesignated the northern portion of the Sandwith property to FRL “except as provided for in the settlement agreement entered into with the Sandwith family on December 21, 1984” to comply with the Board’s March 28, 2002 Order on Compliance and Invalidity. On December 19, 2002, the Board received a motion from the County to rescind invalidity and find compliance for this property.

On December 3, 2002, after a consultant’s analysis of ADUs, which was published and subject to public review and comment, the County considered changes to their Uniform Development Code and shoreline regulations regarding ADUs. After public hearings held by both the Planning Commission and the Board of County Commissioners (BOCC) and a recommendation from the Planning Commission, the BOCC adopted Ordinance 21-2002, which amended the regulations for the construction of ADUs and Resolution 120-2002, which proposed monitoring of the construction of new ADUs. Notice of adoption of these ordinances was published on December 11, 2002.

On December 19, 2002, we received a motion from the County to rescind our findings of invalidity for the construction of ADUs in rural and resource lands and find that the recently adopted amendments to the UDC and the SMP regulating ADUs comply with the GMA.

On February 7, 2003, we received a Petition for Review (PFR) from Friends of San Juans, Lynn Bahrych and Joe Symons challenging Ordinance 21-2002 on the basis of amendments to the regulations for the construction of ADUs. The basis for the challenge is noncompliance with the GMA, the State Environmental Protection Act (SEPA), and the Shoreline Management Act (SMA). The Board issued a Notice and Preliminary Schedule to deal with this PFR on February 7, 2003, and assigned number 03-2-0003 to the case.

On February 18, 2003, the Board held a Compliance Hearing at the Office of Environmental Hearings in Lacey, Washington. In attendance were Board Members Nan Henriksen, Margery Hite, and Holly Gadbow. Alan A. Marriner, San Juan Deputy Prosecuting Attorney represented the County and was assisted by Richard Rutz. Lynn Bahrych, Attorney, represented the Petitioners, and was assisted by Stephanie Buffum, President of the Friends of San Juans. At the hearing, the Petitioners, the Board and the County discussed whether the issues raised in the PFR were before the Board in the Compliance Hearing. That discussion was inconclusive.

On February 25, 2003, the Board held a telephonic Prehearing Conference. Board Members Nan Henriksen and Holly Gadbow, San Juan Deputy Prosecuting Attorney Alan Marriner, and Attorney for the Petitioners Lynn Bahrych, participated and discussed whether the issues outlined in the February 3, 2003 PFR had been adequately argued before the Board.

Later on February 25, 2003, the Board received a stipulation from Friends of San Juan, Lynn Bahrych, Joe Symons and San Juan County in which the parties stipulated that issues regarding ADUs raised in Petition 03-2-0003 were heard at the Compliance Hearing on February 18, 2003. The parties also stipulated: (1) that no additional briefing or argument is needed for Board to decide these issues in its compliance order to be issued in March 2003, and (2) that all of these issues will be decided in the March 2003 Order, subject to the usual rights of appeal. The Petitioners and the County stipulated to a consolidation of Case No. 03-2-0003 with Case Nos. 99-2-0010c and 00-2-0062c.

Finally, on February 25, 2003, the Board issued a Consolidation Order that consolidated Case No. 03-2-0003 with Case Nos. 99-2-0010c and 00-2-0062c. The case is now known as Case No. 03-2-0003c.