

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2
3 STEPHEN F. LUDWIG, ET AL,

4 Petitioners,

5
6 v.

7 SAN JUAN COUNTY,

8
9 Respondent.

Case No. 05-2-0019c

**COMPLIANCE ORDER
(LOPEZ VILLAGE UGA)**

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11 THIS Matter came before the Board on September 22, 2009 following the submittal of San
12 Juan County's Compliance Report.¹ The Board held a telephonic compliance hearing
13 attended by Board members James McNamara, Nina Carter and William Roehl with Mr.
14 Roehl presiding. San Juan County (County) was represented by Jonathan W. Cain. Also
15 participating was Colin Maycock on behalf of the County. None of the Petitioners
16 participated and no objections to a finding of compliance were filed.
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19 **I. BURDEN OF PROOF**

20 After a board has entered a finding of non-compliance, the local jurisdiction is given a period
21 of time to enact legislation to achieve compliance. RCW 36.70A.300(3)(b).
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23 After the period for compliance has expired, the board is required to hold a hearing to
24 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and
25 (2).
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27 For purposes of board review of the comprehensive plans and development regulations
28 adopted by local governments in response to a non-compliance finding, the presumption of
29 validity applies and the burden is on the challenger to establish that the new adoption is
30 clearly erroneous. RCW 36.70A.320(1),(2) and (3).
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¹ San Juan County's Compliance Report (Lopez Village UGA), filed August 14, 2009.
COMPLIANCE ORDER – LOPEZ VILLAGE UGA
Case No. 05-2-0019c
September 29, 2009
Page 1 of 5

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

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5 In recognition of the broad range of discretion that may be exercised by counties
6 and cities consistent with the requirements of this chapter, the legislature intends
7 for the boards to grant deference to the counties and cities in how they plan for
8 growth, consistent with the requirements and goals of this chapter. Local
9 comprehensive plans and development regulations require counties and cities to
10 balance priorities and options for action in full consideration of local
11 circumstances. The legislature finds that while this chapter requires local
12 planning to take place within a framework of state goals and requirements, the
13 ultimate burden and responsibility for planning, harmonizing the planning goals of
14 this chapter, and implementing a county's or city's future rests with that
15 community. RCW 36.70A.3201(in part).

16 In sum, the burden is on the Petitioner to overcome the presumption of validity and
17 demonstrate that any action taken by the County is clearly erroneous in light of the goals
18 and requirements of the GMA. Where not clearly erroneous and thus within the framework
19 of state goals and requirements, the planning choices of the local government must be
20 granted deference.

21 **II. ISSUE TO BE DISCUSSED**

22 Whether San Juan County has achieved compliance with regard to the areas found to be
23 out of compliance with the Growth Management Act (GMA) and the State Environmental
24 Policy Act (SEPA) in the Board's Final Decision and Order/Compliance Order (FDO/CO) of
25 April 19, 2006?

26 **III. DISCUSSION**

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28 The Board's FDO/CO found that actions taken by the County when designating the Lopez
29 Village UGA failed to comply with SEPA and the GMA in three regards²:
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² FDO/CO dated April 19, 2006 at pg. 33.
COMPLIANCE ORDER – LOPEZ VILLAGE UGA
Case No. 05-2-0019c
September 29, 2009
Page 2 of 5

- 1 1. The County's failure to reference prior studies when it issued its Determination
2 of Non Significance (DNS) resulted in noncompliance with WAC 197-11-600 and
3 Ch. 43.21C RCW;
- 4 2. San Juan County's Ordinance 9-2005 and the designation of the Lopez Village
5 UGA did not comply with RCW 36.70A.070(1) and RCW 36.70A.020(10) due to
6 the failure to adopt an adaptive management program regarding saltwater
7 intrusion;
- 8 3. The Lopez Village UGA capital facilities element failed to comply with RCW
9 36.70A.070(3)(a)-(d) and RCW 36.70A.020(12).

10 The County states that in order to achieve compliance, it:

- 11 1. Issued a new Determination of Nonsignificance on April 11, 2007 for the Lopez
12 Village UGA;
- 13 2. Adopted Ordinance 17-2008 on April 1, 2008 which amended the UGA
14 boundaries to exclude properties for which urban levels of sewer and water
15 service cannot be provided;
- 16 3. Adopted Ordinance 5-2009 on February 3, 2009, which amended the capital
17 facilities element of the Comprehensive Plan to include reference to the
18 Fisherman Bay Water System Plan and amendments;
- 19 4. Adopted Ordinance 15-2009 on May 19, 2009, which amended the capital
20 facilities element of the Comprehensive Plan to reference the Water System Plan
21 for the Milagra Water System;
- 22 5. Adopted Ordinance 14-2009 on May 19, 2009 which amended the
23 Comprehensive Plan capital facilities element and Appendix 7 to reference and
24 include details regarding the Fisherman Bay Sewer District Wastewater System
25 Master Plan;
- 26 6. Adopted Ordinance 40-2008 on August 19, 2008, which amended the
27 Comprehensive Plan to establish an adaptive management program regarding
28 seawater intrusion into the Lopez Village UGA water supply.³

29 The Board has reviewed the referenced ordinances adopted by the County and the DNS of
30 April 11, 2007 and finds they address the three remaining areas of noncompliance. The
31 DNS references prior studies as was required.⁴ Ordinance 17-2008 removes three parcels
32 without urban levels of service from the UGA.⁵ Ordinance 5-2009 amended the capital
facilities element of the Comprehensive Plan to include reference to the Fisherman Bay

³ San Juan County's Compliance Report (Lopez Village UGA) pages 2, 3.

⁴ San Juan County's Compliance Report (Lopez Village UGA) Exhibit A.

⁵ Id. Exhibit B, pg. 3.

1 Water System Plan and amendments.⁶ Ordinance 15-2009 amended the capital facilities
2 element of the Comprehensive Plan to reference the Water System Plan for the Milagra
3 Water System.⁷ Ordinance 14-2009 amended the Comprehensive Plan capital facilities
4 element and Appendix 7 to reference and include details regarding the Fisherman Bay
5 Sewer District Wastewater System Master Plan.⁸ Ordinance 40-2008 amended the
6 Comprehensive Plan to establish an adaptive management program regarding seawater
7 intrusion into the Lopez Village UGA water supply.⁹
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10 The County has successfully completed a long and arduous undertaking. Coordination with
11 separate service districts is often difficult as this case evidences. The County is to be
12 sincerely congratulated.

13 IV. ORDER

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15 The Board finds that San Juan County has achieved compliance by its actions. Therefore,
16 the Board enters a finding of compliance and this case is closed.

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18 Dated this 29th day of September, 2009.

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21 _____
William Roehl, Board Member

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James McNamara, Board Member

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Nina Carter, Board Member

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

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32 ⁶ Id. Exhibit D, pg. 6.

⁷ Id. Exhibit F, pg. 7.

⁸ Id. Exhibit E.

⁹ Id. Exhibit C.

1 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date
2 of mailing of this Order to file a petition for reconsideration. The original and three
3 copies of a motion for reconsideration, together with any argument in support
4 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the
5 original and three copies of the motion for reconsideration directly to the Board, with
6 a copy served on all other parties of record. Filing means actual receipt of the
7 document at the Board office. RCW 34.05.010(6), WAC 242-02-240, and WAC 242-02-
330. The filing of a motion for reconsideration is not a prerequisite for filing a petition
for judicial review.

8 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
9 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
10 judicial review may be instituted by filing a petition in superior court according to the
11 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
12 Enforcement. The petition for judicial review of this Order shall be filed with the
13 appropriate court and served on the Board, the Office of the Attorney General, and all
14 parties within thirty days after service of the final order, as provided in RCW
15 34.05.542. Service on the Board may be accomplished in person or by mail, but
16 service on the Board means actual receipt of the document at the Board office within
thirty days after service of the final order. A petition for judicial review may not be
served on the Board by fax or by electronic mail.

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