

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 Respondent.

Case No. 05-2-0019c
**FINAL DECISION AND ORDER
COMPLIANCE ORDER
(LOPEZ VILLAGE UGA)**

9
10 **I. SYNOPSIS**

11 This matter comes to the Board as a result of the Board's October 15, 2002 Compliance
12 Order and Stephen Ludwig's petition challenging the Ordinance 9-2005 and the
13 Determinations of Non-Significance for the Lopez Village Water Supply Report and
14 Recommendations and the Abbreviated Water Coordinated Water System Plan (Report)
15 and various aspects the 2005 Lopez Village UGA, adopted by Ordinance 9-2005. The
16 October 2002 compliance order found that to complete final urban growth boundaries the
17 County needed to complete studies on water availability and saltwater intrusion and adopt a
18 compliant capital facilities plan. Petitioner Fred Ellis challenged this compliance effort.
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21 The County has worked to designate a UGA in the vicinity of Lopez Village to fulfill Growth
22 Management Act (GMA) goals of reducing sprawl and providing for affordable housing while
23 at the same time not degrading the fragile environment at this location. Evidence in the
24 record shows that the County has made slow, steady progress to establish a Lopez Village
25 UGA consistent with these goals. Through the use of volunteers to compile information,
26 studies completed with state agency grants, and its own resources, the County has
27 completed many important tasks: several studies on groundwater capacity and supply, an
28 evaluation of threats to salt water intrusion, and assessment of water and sewer service
29 capacity, means of delivery and financing.
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1 In this order, the Board recognizes that while the County has completed much of the work
2 needed to establish this UGA, several pieces remain undone. While the County has
3 responsibly reduced the size of the Lopez Village UGA by more than half based on the
4 water supply analysis, it does not yet have a compliant capital facilities plan for water and
5 sewer services over the 20-year planning horizon. Although the County's plan for the UGA
6 relies upon the Fisherman Bay Water Association (FBWA) to provide service within the
7 UGA, FBWA has not entered into an agreement with the County to provide service
8 throughout the UGA and re-allocate its water rights to serve the entire UGA. Likewise, the
9 Fisherman's Bay Sewer District (FBSD), the likely sewer provider, also must agree to
10 expand its service area to include the entire UGA. To rely upon private providers for the
11 urban services needed in the UGA, the County must obtain written agreements with those
12 providers. Also, the County needs to include an analysis of the capability of these private
13 service providers to serve UGA over the 20 year planning period in its comprehensive plan
14 as well as including a six year capital improvement financing plan. RCW 36.70A.070(3).
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18 To ensure the quality and quantity available to residents of the UGA, the County has
19 established a "critical water supply area" and imposed regulations to protect the water
20 supply and monitor the impacts of development on the water supply. The County has
21 successfully obtained state grants to expand its monitoring efforts. However, even though
22 the County has adopted recommendations to establish an adaptive management program
23 to monitor possible saltwater intrusion into the Lopez Village water supply, the County has
24 not actually adopted an adaptive management program to guard against sea water
25 intrusion. In light of the limitations of its ground water model and the data assembled to
26 date, the studies done do not conclusively show that the increased densities of the UGA will
27 not result in saltwater intrusion into the water supply. The adaptive management program
28 recommended by the advisory group is a necessary part of the County's protection strategy.
29
30 Until the County completes these missing pieces, the Lopez Village UGA fails to comply
31 with RCW 36.70A.070(3)(a)-(d), RCW 36.70A.070(1), and RCW 36.70A.020(10) and (12).
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1 This order also finds that the UGA land capacity analysis justifies the size of the UGA, as
2 long as Ordinance 6-2002 remains in place to ensure that urban densities are not permitted
3 until urban services are available.
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5 With respect to the SEPA challenges, the Board finds that the failure to reference the prior
6 environmental studies, notably the 2000 Supplemental Environmental Statement done for
7 the Lopez Village and Eastsound UGAs, in the DNS for the designation of the 2005 Lopez
8 Island UGA fails to comply with Ch. 43.21C RCW and WAC 197-11-600. This failure is not
9 merely a matter of form – publication of the DNS should give the public notice of the
10 information that was used to make the negative threshold determination. However, this
11 error can be corrected with the County’s remand work.
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14 **II. PROCEDURAL HISTORY**

15 See Appendix A.
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18 **III. BURDEN OF PROOF**

19 For purposes of board review of the comprehensive plans and development regulations
20 adopted by local government, the GMA establishes three major precepts: a presumption of
21 validity; a “clearly erroneous” standard of review; and a requirement of deference to the
22 decisions of local government.
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24 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
25 amendments to them are presumed valid upon adoption:
26

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

30 RCW 36.70A.320(1).
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32 The statute further provides that the standard of review shall be whether the challenged
enactments are clearly erroneous:

1 The board shall find compliance unless it determines that the action by the state
2 agency, county, or city is clearly erroneous in view of the entire record before the
3 board and in light of the goals and requirements of this chapter.
4 RCW 36.70A.320(3).

5 In order to find the County's action clearly erroneous, the Board must be "left with the firm
6 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
7 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

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

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

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

28 IV. ISSUES PRESENTED

29 Issues in the Stephen F. Ludwig Petition (Case No. 05-2-0019c)

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31 1. ***Is the DNS of adoption by resolution of the Report non-compliant with RCW***
32 ***43.21C and SEPA Rules, WAC 197-11?***

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2. ***Is the Report non-compliant with RCW 36.70A.172 which requires counties to “include the best available science in developing policies and development regulations to protect the functions and values of critical areas”?***
3. ***Is the Report non-compliant with RCW 36.70A.060(2) which requires counties to “adopt development regulations that protect critical areas” and substantially interferes with RCW 36.70A.020 planning goals (1), (5), (10), and (12)?***
4. ***Is the provision in Ordinance 9-2005 that designates the Fisherman Bay Water Users Association, a private nonprofit homeowners association, as the sole supplier of water for the Lopez Village UGA non-compliant with RCW 36.70A.070(3)(a), (d), and (e)?***
5. ***Is the provision in Ordinance 9-2005 which designates the Fisherman Bay Sewer District, a special-purpose, nonprofit system, as the sole sewer system for the Lopez Village UGA non-compliant with RCW 36.70A.070(3)(a), (d), and (e)?***
6. ***Is the DNS of the San Juan Lopez Village UGA (May 25, 2005) non-compliant with RCW 43.21C, the SEPA rules WAC 197-11, and San Juan County Code 18.80.140?***
7. ***Is the inclusion of parcel No. P251514003 presently designated “open space-farm and agricultural” into the Lopez Village UGA by Ordinance 9-2005 non-compliant with RCW 36.70A.110, RCW 36.70A.070(5)(c)(v), RCW 36.70A.170(1)(a) and RCW 36.70A.060(1) and substantially interferes with RCW 36.70A.020 planning goals (2) and (8)?***
8. ***Are the Plan, Water System Analysis, the San Juan County Comprehensive Plan, and the San Juan County Code non-compliant for their failure to designate and protect Critical Aquifer Recharge Areas as required by RCW 36.70A.060(2), RCW 36.70A.070(1) and RCW 36.70A.070(1)(d)?***
9. ***Are the Plan, Water System Analysis, and Ordinance 9-2005 inconsistent with the San Juan County Comprehensive Plan, Sections 4.2B-6, 2.2.A-2, 2.2.A-9(b) and (c), 2.2 F-1 and 2.5.B.1C and therefore non-compliant with RCW 36.70A.070 and RCW 36.70A.040(4)?***

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- 3 1. ***Complete final growth boundary lines in the Lopez UGA after studies on water***
- 4 ***availability and saltwater intrusion are concluded that complies with the***
- 5 ***Growth Management Act (GMA).***
- 6 2. ***Complete a compliant Lopez UGA capital facilities plan that complies with the***
- 7 ***GMA.***

8 **V. DISCUSSION OF THE ISSUES**

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10 **Board Jurisdiction**

- 11 1. ***Is the DNS of adoption by resolution of the Report non-compliant with RCW***
- 12 ***43.21C and SEPA Rules, WAC 197-11? (Ludwig Petition)***
- 13 2. ***Is the Report non-compliant with RCW 36.70A.172 which requires counties to***
- 14 ***“include the best available science in developing policies and development***
- 15 ***regulations to protect the functions and values of critical areas”? (Ludwig***
- 16 ***Petition)***
- 17 3. ***Is the Report non-compliant with RCW 36.70A.060(2) which requires counties***
- 18 ***to “adopt development regulations that protect critical areas” and substantially***
- 19 ***interferes with RCW 36.70A.020 planning goals (1), (5), (10), and (12)? (Ludwig***
- 20 ***Petition)***

21 We will discuss these related issues together.

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23 Positions of the Parties

24 **Petitioner’s Position**

25 Petitioner alleges that San Juan County’s adoption of a Determination of Non-significance

26 (DNS) for the Lopez Village Water Supply Report and Recommendations and the

27 Abbreviated Water Coordinated Water System Plan (the Report) was clearly erroneous

28 because the direct and non-direct impacts of urban growth in the 2005 UGA required a

29 Determination of Significance (DS). Petitioner further contends that the County’s

30 environmental checklist violated RCW 43.21C (the State Environmental Policy Act (SEPA),

31 WAC 197-11 (SEPA rules), and San Juan County Code (SCC) Section 18.80.140 because

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1 of the County's lack of identification of pertinent documents and for its unsupported
2 conclusions. Petitioner's Prehearing Brief (December 20, 2005) at 1 and 2.

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4 Petitioner contends the County's information provided in the Report does not meet best
5 available science criteria as outlined in WAC 363[sic] -195-905 and does not identify risks to
6 the functions and values of critical areas. For these reasons, Petitioner argues, the Report
7 does not comply with the GMA's requirement to protect critical areas and the goals of the
8 GMA to prevent urban sprawl, protect property rights and the environment, and provide
9 adequate capital facilities. Petitioner's Prehearing Brief at 3 – 5.

12 **County's Position**

13 San Juan County argues that the Board lacks jurisdiction over Issues 1, 2, and 3. The
14 County points out that the Board only has authority in regard to SEPA determinations as
15 they relate to comprehensive plans, development regulations, and amendments to
16 comprehensive plans and development regulations. The County asserts that Report is
17 none of these; therefore the Report is not subject to the Board's jurisdiction. Likewise, the
18 County contends that because the Report is not a comprehensive plan, development
19 regulation, or an amendment to them, it is not required to comply with the requirement to
20 include best available science (RCW 36.70A.172) or the other goals and requirements of
21 the GMA. Respondent's Prehearing Brief (February 27, 2006) at 3 and 4.

25 Board Discussion

26 In determining the SEPA challenges in the petition for review, we must first consider
27 whether the Board has jurisdiction over them. The Petitioner challenges both the DNS for
28 the Report, adopted in Resolution 83-2003, and the DNS for the 2005 Lopez Village UGA.
29 The County responds that the Report is not subject to this Board's jurisdiction because it is
30 not a GMA action.

1 We agree with the County. Our jurisdiction is statutorily limited to legislative enactments
2 required by the GMA, primarily comprehensive plan adoptions, development regulation
3 adoptions and amendments to either. RCW 36.70A.280(1); 36.70A.290(2); *Wenatchee*
4 *Sportsmen's Ass'n v. Chelan County*, 141 Wn.2d 169, 178, 4 P.3d 123, 2000 Wash. LEXIS
5 472 (2000).
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8 Neither Resolution 83-2003 (which adopted the Report) nor Ordinance 9-2005 (which
9 adopted a comprehensive plan map amendment and new development regulations for the
10 Lopez Village UGA) indicates that the Report is part of the County's comprehensive plan.
11 Exhibit F and Ordinance 9-2005. Further, the Report does not contain development
12 regulations as defined in the GMA: "controls placed on development or land use activities."
13 RCW 36.70A.030(7).
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16 Since the Report forms part of the rationale for the County decision to create the 2005 UGA
17 boundaries on Lopez Island, we agree that some of its recommendations should become
18 plan policies. In fact, the failure to adopt the recommendations as part of the
19 comprehensive plan is a flaw in the sufficiency of the capital facilities plan for the Lopez
20 UGA. However, at this point, the Board finds that the Report does not constitute a
21 comprehensive plan, development regulation, or an amendment to them. Consequently,
22 the Board lacks jurisdiction over the Report. RCW 36.70A.280(1).
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25 Similarly, we find that the GMA requirements for incorporation of best available science do
26 not apply to the Report. RCW 36.70A.172 requires counties and cities to include best
27 available science in designating and protecting critical areas:

28 In designating and protecting critical areas under this chapter, counties and cities
29 shall include the best available science *in developing policies and development*
30 *regulations* to protect the functions and values of critical areas. In addition, counties
31 and cities shall give special consideration to conservation or protection measures
32 necessary to preserve or enhance anadromous fisheries.

RCW 36.70A.172(1). Emphasis added.

1 The Report does not designate or protect critical areas and therefore the requirement to
2 include best available science is not applicable to it. RCW 36.70A.172(1).

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4 **Conclusion:** Issues 1, 2, and 3 are not within the Board's jurisdiction and are dismissed.
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7 **Size of UGA**

- 8 7. ***Is the inclusion of parcel No. P251514003 presently designated "open space-***
9 ***farm and agricultural" into the Lopez Village UGA by Ordinance 9-2005 non-***
10 ***compliant with RCW 36.70A.110, RCW 36.70A.070(5)(c)(v), RCW***
11 ***36.70A.170(1)(a) and RCW 36.70A.060(1) and substantially interferes with RCW***
12 ***36.70A.020 planning goals (2) and (8)? (Ludwig Petition)***
13
14 9. ***(in part) Are the Plan, Water System Analysis, and Ordinance 9-2005***
15 ***inconsistent with the San Juan County Comprehensive Plan with County***
16 ***comprehensive plan policy 2.2.F1? (Ludwig Petition)***
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18 Positions of the Parties

19 Petitioner's issue statement challenges the inclusion of Parcel No. 0251514003 in the Lopez
20 Village UGA and argues that this does not comply with GMA goals and requirements to
21 conserve agricultural land and reduce urban sprawl. Petitioner cites *Abenroth v. Skagit*
22 *County*, WWGMHB Case No. 97-2-0060c (Final Decision and Order, January 23, 1998) and
23 *Hudson v. Clallam County*, WWGMHB Case No. 96-2-0031 (Final Decision and Order,
24 April 15, 1997) to support his position. Petitioner also disputes the County's assertion that
25 without this parcel the UGA lacks enough land for affordable housing. In Issue 9, Petitioner
26 also claims that inclusion of this parcel is inconsistent with County comprehensive plan
27 policy 2.2 F.1: Conserve Class II, III, and IV soils (USDA-N.R.C.S) classification for long-
28 term agricultural production.
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30
31 San Juan County responds that the Petitioner implies that because this parcel has been
32 designated "open space - farm and agriculture" under RCW 83.34, it must be considered

1 agricultural land. The County argues that exemptions made under the authority of the
2 current use assessment tax code do not force this parcel to be designated as agricultural
3 land pursuant to the GMA. Additionally, the County states that this tax code designation
4 was removed in November 2005. County's Prehearing Brief at 14.
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7 The County also asserts that the GMA sets out a hierarchy of lands appropriate for urban
8 development, including areas not currently characterized by urban growth but adjacent to
9 areas characterized by urban growth. The County says that concept is supported by WAC
10 365-195-070.
11

12 The County also argues that Petitioner does not provide any evidence that these are Class
13 II, III, and IV soils.
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16 The County further declares that the GMA requires the County to make adequate provision
17 for affordable housing. It argues that this parcel was added to the UGA for the purpose of
18 the Lopez Island Land Trust providing for affordable housing and no other suitable parcel is
19 available in the UGA for this purpose. Respondent's Prehearing Brief at 15.
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22 Board Discussion

23 RCW 36.70A.110(1) (in pertinent part) says:

24 An urban growth area may include territory that is located outside of a city only if
25 such territory already is characterized by urban growth whether or not the urban
26 growth area includes a city, or is adjacent to territory already characterized by urban
27 growth, or is a designated new fully contained community as defined by RCW
28 [36.70A.350](#).

RCW 36.70A.110(1).

29 RCW 36.70A.040 requires San Juan County to designate lands for agricultural use. RCW
30 36.170(2) requires the consideration of the guidelines in 365-190 WAC when designating
31 these lands. Tax status is one criterion among several that the County was required to
32 consider when designating agricultural land. See WAC 365-195-050.

1 While Petitioner's issue statement challenges the inclusion of Parcel No. 0251514003 in the
2 UGA on the basis that it is agricultural resource land, no argument in his brief nor evidence
3 presented shows that it is designated as long-term commercially significant agricultural land.
4 The County, on the other hand, offers evidence that this parcel's "open space farm and
5 agricultural tax status" was removed in 2005. Exhibit T. In addition, the Board agrees with
6 the County's assertion that even if this parcel still had an "open space - farm and
7 agricultural tax status," this tax status does not automatically make this GMA designated
8 agricultural land according to RCW 36.70A.040 nor does it make the land ineligible for
9 inclusion in the Lopez Village UGA. Further, the County points out that this parcel has not
10 been designated agricultural land pursuant to RCW 36.70A.040. San Juan County has
11 compliant agricultural designations and agricultural conservation measures. See
12 WWGMHB Case No. 99-2-0010c and Case No. 00-2-0062c (Order Finding Compliance and
13 Rescinding Invalidity, June 6, 2002). The Board finds that Parcel No. 0251514003 is neither
14 GMA designated agricultural resource land, nor ineligible for inclusion in the UGA on that
15 basis.
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19 This land is adjacent to land characterized by urban growth. See Exhibit C, Figure A and C.
20 RCW 36.70A.110(1) allows the County to include this parcel in the urban growth area if it
21 can show its need for accommodating the County's future urban growth.
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24 Petitioner offers no particular evidence to support his argument that other parcels are
25 available in the Lopez Village UGA to support affordable housing. In contrast, the County
26 did an extensive land supply analysis to show that the land included in the 2005 boundaries
27 of the UGA is needed to support projected residential growth. The County stated its
28 assumptions for the amount of residential land needed to support the population projected
29 for the UGA. The County further examined the developability of parcels in the UGA by
30 subtracting land classified as critical areas and determining the amount of already
31 developed land. Sizing of the UGA also included a 25 percent market factor. This analysis
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1 shows that this parcel is needed to provide land to support the County's population
2 projections. Exhibit C at 6 – 8. Petitioner does not challenge this analysis.

3
4 **Conclusion:** Petitioner has not sustained his burden of proof pursuant to RCW
5 36.70A.320(2) that this parcel is designated agricultural land pursuant to RCW
6 36.70A.170(1)(a), or that its inclusion in the UGA violates RCW 36.70A.110 and RCW
7 36.70A.060(1), and San Juan County Comprehensive Plan policy 2.2 F 1.
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10 **Capital Facilities Planning Challenges**

11 **4. Is the provision in Ordinance 9-2005 that designates the Fisherman Bay Water**
12 **Users Association, a private nonprofit homeowners association, as the sole**
13 **supplier of water for the Lopez Village UGA non-compliant with RCW**
14 **36.70A.070(3)(a), (d), and (e)? (Ludwig Petition)**

15 **5. Is the provision in Ordinance 9-2005 which designates the Fisherman Bay**
16 **Sewer District, a special-purpose, nonprofit system, as the sole sewer system**
17 **for the Lopez Village UGA non-compliant with RCW 36.70A.070(3)(a), (d), and**
18 **(e)? (Ludwig Petition)**

19 **Complete a compliant Lopez UGA capital facilities plan that complies with the GMA.**
20 **(Compliance Order (April 15, 2002))**

21 We will discuss these related issues together.

22
23 **Petitioners' Positions**

24 Petitioner Ludwig relies on our May 7, 2002, Final Decision and Order and Compliance
25 Order that found "the GMA does not allow a County to designate a UGA and then assign
26 responsibility of fulfilling its requirements to some other entity". Petitioner points out that
27 both the Fisherman Bay Water Users Association (FBWA) and the Fisherman Bay Sewer
28 District (FBSD) are private, non profit utilities and argues that they can not be required to
29 expand or provide service. This petitioner also asserts that no source of public money is
30 identified for financing water or service facilities in the Lopez Island UGA and that user fees
31 and state grants do not meet GMA requirements. Petitioner's Prehearing Brief at 6.
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1 Petitioner Ellis contends that San Juan County has failed to develop a capital facilities plan
2 that meets the GMA's capital facilities planning requirements, specifically by failing to
3 identify the costs of infrastructure and sources of public money. Ammendment [sic] to
4 Motion to Deny Compliance (Lopez Village Urban Growth Area) at 2. Petitioner Ellis argues
5 that the County has not satisfied the GMA's capital facilities planning requirements because
6 it failed to analyze the financial plans of the private entities on which it relies and fails to
7 demonstrate how these entities could finance their capital facilities to support growth in the
8 UGA in the next six years. *Ibid* at 4.
9

10 11 **County's Position**

12 The County replies that it has not designated the FBWA and the FBSD to provide water or
13 sewer service to the Lopez Village UGA, but has only identified them as existing providers
14 of retail water and sewer service with capacity and willingness to meet projected growth in
15 the UGA. The County argues that the GMA allows for private purveyors of water and sewer
16 to provide urban levels of service to UGAs by referencing RCW 36.70A.110(3), the August
17 25, 2003 Final Decision and Order in *Whidbey Island Environmental Network v. Island*
18 *County*, WWGMHB 03-2-0008), and WAC 365-195-070(3). Respondent's Brief at 6, 7, and
19 9.
20
21

22 23 *Water service*

24 The County emphasizes that water availability was a key factor in downsizing the 2005 UGA
25 boundaries and that this action is supported by the Washington State Department of
26 Community, Trade and Economic Development. The County asserts that the "San Juan
27 County Lopez Village Water System Analysis" (Water System Analysis) provides a detailed
28 capital facilities analysis. Exhibit G. *Ibid* at 7. The County states that Washington State's
29 Municipal Water Law (MWL)¹ imposes certain legal obligations to provide service in its retail
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32 ¹ Laws of 2003, Chapter 5, 2E@SHB 1338. This legislation has been codified in various sections of the Revised Code of Washington. Respondent's Prehearing Brief at 8.

1 service area based on specific conditions. The County insists that the FBWA has sufficient
2 water supply and capacity to serve the UGA until 2014, and has adequate funded capital
3 facilities to provide capacity and service in the UGA in the next six years.
4

5 *Sewer Service*

6 The County provides the following information about FBSD:
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- 8 • FBSD's service area includes the Lopez Village core and most of the rest of the 2005
9 UGA. Its planning area includes all of the 2005 UGA to 2020.
- 10 • The 2003 Addendum to FBSD's Engineering Report (Sear Brown Addendum) approved
11 by the Washington State Department of Ecology provides a good discussion of the
12 recommendations for system improvements and alternatives for achieving treatment
13 capacity. Exhibit I.
- 14 • "Review of Engineering and Economic Issues Impacting the Fisherman Bay Sewer
15 District" provides the most complete analysis including time schedule and detailed cost
16 analysis of system improvements needed to fulfill system demands. Exhibit J.
- 17 • RCW 57.16.010(6) requires that FBSD must plan for a adequate sewer system for
18 current and "reasonably foreseeable future needs" and that the County must approve the
19 initial plan, amendments, and major actions including annexation or withdrawal of
20 territory from the FBSD.
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23
24 The County declares that the "Sear Brown Addendum" and "Review of Engineering and
25 Economic Issues Impacting the Fisherman Bay Sewer District" support the conclusion that
26 FBSD can provide sewer service and finance the capital improvements to meet the
27 anticipated growth needs to the Lopez Village UGA. *Ibid* at 10 -12.
28

29 Board Discussion

30 The Board agrees with the County that the GMA, specifically RCW 36.70.110(3) and RCW
31 36.70A.030(19), does not prohibit utilizing private nonprofit purveyors to provide urban
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1 levels of service to UGAs. See *Whidbey Island Environmental Network v. Island County*,
2 WWGMHB 03-2-0008) at 11. In fact, many cities and urban growth areas throughout the
3 state are served by private nonprofit purveyors or public utility districts. Showing that FBWA
4 and the FBSD will be the sole providers of water and sewer service does not make the 2005
5 Lopez Village UGA noncompliant with RCW 36.70A.070(3).
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7
8 However, we agree with Petitioners that the County is not relieved of the responsibility of
9 including information and analysis about these two private purveyors' capital facilities plans
10 in San Juan County's Comprehensive Plan's capital facilities element when these private
11 purveyors will be the service providers for the Lopez Village UGA. An urban growth area
12 may be designated where there is a realistic plan for the extension of urban levels of service
13 throughout the UGA during the 20-year planning horizon. Here, the County has chosen to
14 rely upon private agencies to provide water and sewer services to the Lopez Village UGA.
15 Private providers may be the source of such public services. See RCW 36.70A.110(3).
16 However, if they are, the County's plan for the UGA must include necessary capital facilities
17 information and financing for those services needed during the planning period. RCW
18 36.70A.070(3)(a), (c), and (d). Moreover, in order for the plan to be realistic, there must be
19 a commitment from the private provider(s) to act upon the 20-year plan. There must also be
20 a County policy to "reassess the land use element" for the UGA, in particular the densities
21 and uses allowed within it, in the event that the private provider is unable to meet the needs
22 of the UGA for services. RCW 36.70A.070(3)(e).
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26 The County has done an admirable job of working with the local water provider (FBWA) to
27 develop capacity to serve the new Lopez Village UGA. The capital facilities element of the
28 County's comprehensive plan reflects its reliance upon this provider and the water system
29 plan for FBWA shows a solid planning effort to meet the anticipated needs of the new UGA.
30 Fisherman Bay Water Association Draft Water System Plan (March 2006). However, while
31 the County has declared that its strategy is to work with the FBWA to accomplish the service
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1 needs of the Lopez Village UGA, it has no written agreement to accomplish reallocation of
2 water rights and the service area expansion as needed within the planning horizon.
3 Critically, there is no commitment to do this referenced in the County's comprehensive plan.
4

5 RCW 36.70A.070(3) delineates the requirements of GMA capital facilities element:
6

7 ...an inventory of existing capital facilities owned by public entities, showing the
8 locations and capacities of the capital facilities; (b) a forecast of the future needs for
9 such capital facilities; (c) the proposed locations and capacities of expanded or new
10 capital facilities; (d) at least a six-year plan that will finance such capital facilities
11 within projected funding capacities and clearly identifies sources of public money for
12 such purposes; and (e) a requirement to reassess the land use element if probable
13 funding falls short of meeting existing needs and to ensure that the land use element,
14 capital facilities plan element, and financing plan within the capital facilities plan
15 element are coordinated and consistent....

16 RCW 36.70A.070(3).

17 In *Achen et al. v. Clark County*, the Board held that RCW 36.70A.070(3) applies both to
18 capital facilities owned by the County, and to other "public facilities" not owned by the
19 County. These facilities are required to be included in capital facilities plans in order to
20 assess their adequacy and to fulfill the requirements of RCW 36.70A.070(d). See *Achen v.*
21 *Clark County*, WWGMHB Case No. 95-20067c at 59.

22 This case's record shows the County, FBWA, and FBSD have done a considerable amount
23 of work compiling and analyzing information about each of the capital facilities that they own
24 and manage. To stretch its limited resources, San Juan County enlisted citizens, volunteers
25 with credentials and appropriate expertise as well as consultants paid for with grants, to
26 assess the capacity of the facilities and determine how water and sewer service will be
27 provided to the UGA. Various reports contain this information. Exhibits F, G, H, I. However,
28 the County admitted at argument that neither the documents nor pertinent information
29 contained in these documents needed for meeting the requirements of RCW 36.70A.070 (3)
30 have been incorporated into the County's comprehensive plan, or adopted by reference as
31
32

1 part of the plan. Adopting these documents as part of the comprehensive plan, or
2 incorporating at least the information that satisfies the requirements of RCW 36.70A.070(3)
3 is essential to fulfilling Goal 12 of the Act – public facilities and services - in order to show
4 that public facilities and services will be available at the time of development.
5

6
7 Furthermore, the County's staff report candidly admits that the FBWA does not have water
8 rights allocated for the entire 2005 UGA. Also, the Lopez Village Water System Analysis
9 and the Review of Engineering and Economic Issues Affecting the Fisherman Bay Sewer
10 District (May 2004) by Robert Mayo (the Mayo study) show that the service areas of both
11 private water and sewer purveyors do not cover the entire UGA for the 20-year planning
12 period. Exhibit G at 1-2 and Exhibit 5. To their credit, the Lopez Village Water Supply
13 Analysis and the Mayo study contain a strategy of necessary actions that the County and
14 these sewer and water purveyors need to take to obtain future capacity and provide service
15 delivery in the 20-year planning period. Exhibits G and J. However, the County and FWBA
16 and FWSD have not agreed in any formal way to implement this strategy. For the UGA to be
17 compliant with RCW 36.70A.110, the County needs to have a documented agreement with
18 FBWA and FBSD referenced in its comprehensive plan that commits these entities to
19 pursue a strategy with the County for reallocating the necessary water rights and providing
20 the needed capital facilities to support the UGA's projected 20-year growth.
21
22

23
24 Additionally, Ordinance 6-2002 must be kept in place so that urban levels of development
25 are not permitted until there are urban levels of service provided. This is important to
26 prevent sprawl and to ensure that development in the areas, which do not have water rights
27 allocated to them and are not part of the FBWA and FBSD service area at this time, will not
28 permanently develop at more than rural, but less than urban densities.
29

30 In regard to RCW 36.70A.070(3)(e), the County's capital facilities element does contain a
31 policy to reassess the land use element if probable funding falls short of meeting existing
32 needs. The goal of this policy is bring development into balance with available capital

1 facilities and services. It also outlines measures that will be taken in the event that certain
2 facilities, including water and sewer, cannot be made available within the UGA. See
3 Comprehensive Plan Policy 7.1F, 7.3.B. 8 and 9, and 7.3.1C 8, 9, and 10.
4

5 **Conclusion:** Reliance upon private purveyors of sewer and water utilities within the UGA is
6 an acceptable means of bringing urban levels of service to the Lopez Village UGA.
7 However, because the capital facilities plans of the private providers have not been
8 incorporated into the County's comprehensive plan in a manner that fulfills the requirements
9 of RCW 36.70A.070(3)(a)-(d), and because no agreement exists with the private water and
10 sewer purveyors to provide service to the entire UGA, the Lopez Village UGA capital
11 facilities planning is clearly erroneous pursuant to RCW 36.70A.320(3) and remains non
12 compliant with RCW 36.70A.070(3)(a), (b), (c), (d) and RCW 36.70A.020(12). Because the
13 County's comprehensive plan contains policies requiring that the land use element of the
14 UGA be revisited in the event that anticipated levels of service are not provided, the
15 County's capital facilities element complies with RCW 36.70A.070(3)(e).
16
17
18

19 **Water Supply Quality**

- 20
21 **8. Are the Plan, Water System Analysis, the San Juan County Comprehensive**
22 **Plan, and the San Juan County Code non-compliant for their failure to**
23 **designate and protect Critical Aquifer Recharge Areas as required by RCW**
24 **36.70A.060(2), RCW 36.70A.070(1) and RCW 36.70A.070(1)(d)? (Ludwig Petition)**
- 25
26 **9. (in the most part) Are the Plan, Water System Analysis, and Ordinance 9-2005**
27 **inconsistent with the San Juan County Comprehensive Plan, Sections 4.2B-6,**
28 **2.2.A-2, 2.2.A-9(b) and (c), and 2.5.B.1C and therefore non-compliant with RCW**
29 **36.70A.070 and RCW 36.70A.040(4)? (Ludwig Petition)**

30 **Complete final growth boundary lines in the Lopez UGA after studies on water**
31 **availability and saltwater intrusion are concluded that complies with the Growth**
32 **Management Act (GMA). (Compliance Order, October 15, 2002)**

We will discuss these related issues together.

1 Parties' Positions

2 Petitioner Ludwig argues that the report (Exhibit F), water system analysis (Exhibit G), the
3 San Juan County comprehensive plan and development code are non compliant with the
4 GMA because of their failure to designate salt water intrusion areas as critical areas.
5 Petitioner cites this Board's January 10, 2002, Final Decision and Order in *OEC v. Jefferson*
6 *County*, WWGMHB Case No. 01-2-0015 where the Board required Jefferson County to
7 designate sea water intrusion areas as critical areas. Petitioner's Prehearing Brief at 9.
8

9
10 Petitioner Ludwig further contends that these documents as well as Ordinance 9-2005 do
11 not comply with comprehensive plan policies that direct the County to consider (1) the
12 availability, adequacy, and protection of the water resource as well as the management of
13 sewage, grey water, and storm drainage when approving land use and development and (2)
14 site capabilities and existing development patterns with determining various land uses'
15 appropriate locations and intensities². Petitioner's Prehearing Brief at 9 and 10.
16

17
18 Petitioner Ellis claims the 2005 Lopez Village UGA should be found noncompliant and
19 invalid because that the County has not classified or designated relevant critical aquifer
20 recharge areas (CARAs) and has failed to implement a groundwater monitoring program for
21 CARAs. Ammendment (sic) to Motion to Deny Compliance (Lopez Village Urban Growth
22 Area) at 4.
23

24
25 Petitioner Ellis also asserts that the Report fails to mention that serious saltwater intrusion
26 exists directly east of the Report's well monitoring boundaries and that insufficient data for
27 analysis exists north of the well monitoring boundaries. Ammendment [sic] to Motion to
28 Deny Compliance (Lopez Village Urban Growth Area) at 3.
29

30 _____
31 ² The Board discussed Petitioner's Ludwig's challenge to comprehensive policy 2.2 F1 under heading size of
32 the UGA and found that he had not met his burden of proof pursuant to RCW 36.70A.320 for that the County's
action in adopting Ordinance 9-2005 was noncompliant in regard to this plan policy.

1 **County's position**

2 The County repeats its position that the Board does not have jurisdiction over the Plan or
3 the Water System Analysis. Exhibits F and G.

4
5 San Juan County states that it has adopted development regulations to protect CARAs and
6 also designated the Lopez Village UGA a Critical Water Supply Area under the County's
7 health code. The County maintains that this provides significant protection of the water
8 supply through stricter development standards. The County says it has also implemented
9 an extensive monitoring and adaptive management program. Respondent's Prehearing
10 Brief at 16 and 17.

11
12
13 The County also declares that extensive study supports the County's decisions on the
14 suitability of the site of the Lopez Village UGA, the capability to develop and serve growth in
15 the UGA without harming environmentally sensitive areas, and the sufficiency of water
16 utilities to serve the projected growth in the UGA during the planning period. Additionally,
17 the County argues that the designation of the Lopez Village UGA acknowledges the existing
18 uses in the UGA and that Lopez Village is the commercial and cultural hub of the island.
19
20 *Ibid* at 17.

21
22
23 Board Discussion

24 We have found that that the Board does not have jurisdiction to determine whether the
25 Report complies with the GMA (see Board Discussion of Issues 1-3 above). For the same
26 reasons, we also lack jurisdiction to determine the compliance of the Water System Analysis
27 with the GMA. However, we do find that these reports are relevant to determining whether
28 the designation and development regulations of the Lopez Village UGA (Ordinance 9-2005)
29 comply with the GMA and the Board's October 15, 2002 Order. In that order, the Board
30 determined that final growth boundary lines in the Lopez UGA must be based on studies on
31 water availability and saltwater intrusion to comply with RCW 36.70A.070(1) which requires:
32

1 "The land use element shall provide for protection of the quality and quantity of groundwater
2 used in public water supplies."
3

4 Both Petitioners Ludwig and Ellis argue that the sea water intrusion studies are incomplete
5 because of the inadequacy of the model used to evaluate groundwater data. Their
6 arguments, cited above, assert that the studies were not based on best scientific
7 methodology and the study area was not large enough. For these reasons, Petitioners
8 believe the County underestimated the likelihood of seawater intrusion into Lopez Village's
9 aquifer and its threat to the Lopez Village UGAs water supply. Petitioners' position is
10 supported by the Washington Department of Ecology (Ecology). Exhibit R.
11
12

13 The County concedes that its studies of saltwater intrusion into the water supply for Lopez
14 Village are not conclusive. However, the County plans a strategy for on-going monitoring of
15 chloride levels in wells within the UGA rather than re-doing its original analysis. The well
16 monitoring program will provide continuing information about possible saltwater intrusion
17 into the water source for the UGA.
18
19

20 The County says that it uses the recommendations in the Report as "guidance", and points
21 out how it has taken steps to implement them. Exhibit E at 9 and Exhibit F 1-4. These steps
22 include declaring an area larger than the 2005 UGA itself as a Critical Water Resource Area
23 (CWRA) to complement its CARA protections, and requiring development in the CWRA to
24 meet more stringent development standards, San Juan County Code 8.06.170.
25
26

27 The County has begun to implement some of the recommendations in the report. Also,
28 supported by a grant from Ecology and using its CWRA regulations, the County is working
29 to update and expand its well monitoring network. SCC 8.06.170 and Declaration of Mark
30 Tomkins (Exhibit V). Other public grants have been obtained for developing a water budget
31 for the UGA, cooperative agreements for managing water systems, a memorandum of
32

1 understanding for joint management of the resource by Ecology and the County, and
2 updates of the requirements for CARAs, Critical Water Resource Area (CWRA), and sea
3 water intrusion policies. Exhibit V.
4

5 The Board recognizes these steps as positive and necessary ones for establishing this
6 UGA. The Board also notes that the concept of a Lopez Village UGA was endorsed as a
7 needed measure to reduce sprawl and increase affordable housing in this Board's
8 Compliance Order of October 15, 2002. We continue to hold that view and appreciate that
9 the County has made considerable progress in completing work necessary for a compliant
10 UGA. Even so, the adaptive management program to monitor and respond to any signs of
11 saltwater intrusion into the UGA water supply is needed to ensure that the designation of
12 the 2005 Lopez Village UGA does not degrade the quality of its water supply and complies
13 with the Board's October 15, 2002 Order.
14
15

16
17 In our January 10, 2002, Final Decision and Order in *OEC v. Jefferson County*, Case No.
18 01-2-0015, the Board required Jefferson County to establish an adaptive management plan
19 that included benchmarks and a commitment of the County to act to adopt more protective
20 measures when the monitoring information required it. These are the hallmarks of an
21 adaptive management program where a risk of saltwater intrusion into the water supply is
22 uncertain.
23

24
25 San Juan County has taken sound, deliberate steps to addressing its sea water intrusion
26 threat, and has committed to do more. Both the Report and San Juan County Resource
27 Management Plan WRIA 2 (October 2004) (Exhibit U) recommend that an adaptive
28 management program should be established with data being reviewed every five years.
29 Exhibit F at 3 and Exhibit U at 21. The County says it uses these recommendations as
30 "guidance," and will implement them "as funding permits." Currently, evidence shows that
31 funding is available to lay the groundwork for this program. Exhibit V. In light of concerns
32

1 about the County's groundwater model and limited monitoring data, an adaptive
2 management program that includes benchmarks, indicators of when more protective
3 measures are necessary, and an assurance for taking action when indicators show action is
4 needed. Such an adaptive management program should be adopted either as a
5 comprehensive plan policy or development regulation to ensure the 2005 UGA designation
6 does not result in degraded its water quality. Under the circumstances here, such an
7 adaptive management program is essential to making the 2005 UGA compliant with RCW
8 36.70A.070(1) and RCW 36.70A.020(10).
9

10
11 Petitioner Ludwig further contends that the inadequacy of the model, particularly by
12 underestimating the threat of seawater intrusion and adopting inadequate measures to
13 protect the 2005 UGA's water supply, makes the designation of the 2005 Lopez Island UGA
14 inconsistent with County comprehensive plan policies (CPP) 4.2.B-6, 2.2.A-2, 2.2.A-9(b)
15 and (c), 2.2.B-4(h), and 2.5.B -1(c).³ CPP 4.2.B-6 and CPP 2.2.A-9(b) and (c) address the
16 question of when it is appropriate to reduce densities that have been established in a
17 comprehensive plan based on services availability or environmental sensitivity at the time of
18 permitting. Therefore, we find that these comprehensive plan policies CPP 4.2.B-6 and CPP
19 2.2.A-9(b) and (c) are not relevant to this challenge.
20
21

22
23 Petitioner Ludwig also challenges Comprehensive Plan Policy 2.5.B-1(c). We find through
24 examining San Juan County's comprehensive plan that Petitioner most likely meant to
25 challenge policy 2.5 B -3(c), the policy that directs the County to develop regulations to
26 protect CARAs. We find that the County has regulations to protect CARAs that are deemed
27 compliant, and the County must review them, and revise them by December 1, 2006.
28 Therefore, we do not find this challenge timely at this time.
29

30
31
32 ³ Petitioner also challenged comprehensive policies 2.2 F-1 and 2.5-3 (c) which we have addressed earlier in
this order.

1 The overriding theme in Petitioner Ludwig's comprehensive plan policy challenges is the
2 suitability of the designation of the 2005 UGA because of the threat to water quality and
3 inadequacy of sewer and water service. AS discussed above, only the following two
4 challenged policies are relevant to the 2005 UGA designation:

5 Comprehensive Plan Policy 2.2.A.-2: Consider site capabilities and existing
6 land use patterns when determining the locations and various intensities of
7 land.

8 Comprehensive Plan Policy 2.2.B-4(h): Ensure that new commercial,
9 industrial and institutional uses are consistent with the island's natural
10 resource environment, community livability and needs of county residents by
11 establishing performance standards that address...(h) environmentally
12 sensitive areas.

13 We find that the County considered these policies when it designated the UGA. In response
14 to the information presented in the Report and Water Supply Analysis, the County has
15 reduced the noncompliant interim UGA by more than half based on its analysis of water
16 supply. Still, the water supply analysis pointed out that while there was adequate water
17 supply and storage capacity for the 2005 UGA, its use for some parts of the 2005 UGA will
18 be limited without the re-allocation of water rights and expansion of the FBWA service area.

19
20
21 Further, the County responded to the limitations in the groundwater modeling documented
22 in the Report, which makes recommendations on how to protect against future seawater
23 intrusion. It has established a CWRA and imposed more stringent development standards
24 in this area. In choosing the location for the Lopez Island UGA the County chose the most
25 densely developed area and the area which has the most likely chance of obtaining urban
26 services. We find that the County's actions are consistent with comprehensive plan policies
27 2.2.A-2 and 2.2.B-4(h). However, the designation of the Lopez Village UGA does not
28 comply with RCW 36.70A.070(1) and RCW 36.70A.020(10).
29

30
31 **Conclusion:** Based on the foregoing, Ordinance 9-2005 and the designation of the Lopez
32 Village UGA are clearly erroneous. Protecting the water supply under the circumstances

1 here requires an adaptive management program such as the one recommended in the
2 Report. Until that has been adopted by the County, the water supply has not been
3 protected and the designation of the Lopez Village UGA fails to comply with RCW 36.70A.
4 070(1) and RCW 36.70A.020(10). However, Petitioner has not carried his burden of proof
5 pursuant to RCW 36.70A.320(2) that the County's actions in designating the 2005 Lopez
6 Village UGA are not consistent with comprehensive plan policies CPP 4.2.B-6, 2.2.A-2,
7 2.2.A-9 (b) and (c), 2.2.B-4(h), and 2.5. B -3(c).⁴ The County's action in designating the
8 Lopez Village UGA and implementing development regulations is not inconsistent with
9 these comprehensive plan policies and, therefore, is compliant with RCW 36.70A.070
10 (preamble).
11
12

13 **Challenge to DNS for Ordinance 9-2005**

14 **6. *Is the DNS of the San Juan Lopez Village UGA (May 25, 2005) non-compliant***
15 ***with RCW 43.21C, the SEPA rules WAC 197-11, and San Juan County Code***
16 ***18.80.140?***
17

18 Positions of the Parties

19 Petitioner challenges the DNS for the 2005 UGA. Petitioner contends that the County
20 neglected to analyze the potential significant impacts of the 2005 Lopez Village UGA
21 despite the large number of documents produced by the County since 1999. Petitioner
22 specifically cites the lack of analysis of impacts of large amount of groundwater withdrawals
23 on public health and safety; and the growth impacts of the expansion of water and sewer
24 systems in the UGA. Petitioner contends that the proposal analyzed in 2000 for the more
25 than 500 acre UGA differs substantially from the 2005 UGA proposal: the first relied upon
26 multiple interconnected water systems drawing water from throughout the area, whereas the
27 second relies on one water system with three wells. He contends that these differing
28 impacts are significant enough to demand an environmental impact statement. He also
29
30
31

32 ⁴ Petitioner also challenged comprehensive policies 2.2 F-1 which we addressed earlier in this order.

1 contends that the analysis done for the first proposal doesn't cover the altered proposal.
2 Petitioner's Prehearing Brief at 7 and 8.

3
4 As for the DNS for the 2005 Lopez Village UGA, the County declares that the issue of
5 SEPA compliance has been previously decided by the Board. The County reviews San
6 Juan County's SEPA history regarding the Lopez Village (and Eastsound UGAs).⁵ The
7 County maintains that the Board's May 7, 2001, Final Decision and Order found the County
8 had complied with SEPA requirements for the Lopez Village UGA. The County concedes
9 that the DNS for the 2005 Lopez Village UGA did not follow the SEPA requirements for
10 incorporation of previous SEPA documents by reference. Nevertheless, the County argues
11 that this should not negate the extensive environmental review of Lopez Village UGA
12 undertaken by the County. Respondent's Prehearing Brief at 12 and 13.
13
14

15
16 The County states that the purpose of SEPA review is to disclose potential adverse
17 environmental impacts to assist decision makers. The County contends that the adequacy
18 of this review depends on the "rule of reason" and references cases to support this
19 contention.⁶ The County asserts that the Final Supplemental Environmental Impact
20 Statement (FSEIS) issued in 2000 included the Lopez Village UGA. Although it did not
21 cover all the environmental impacts that Petitioner Ludwig would like analyzed, the County
22 argues, it did include sufficient analysis of the major environmental impacts of the 2005
23 UGA proposal.
24
25
26
27

28 ⁵ Draft Environmental Impact Statement (EIS) (February, 1995), Supplemental EIS for Shoreline Element of
29 the Plan (June 1996), Final EIS for revised Comprehensive Plan (November 1997) – examined impacts of
30 Lopez Village and Eastsound activity centers; Final Supplemental EIS (April 14, 2000) – impacts of converting
31 Lopez Village and Eastsound activity centers to UGAs.

32 ⁶ *Ullock v. Bremerton*, 17 Wn.App.573, 581 (1977) and *Tonandos Peninsula Ass'n v. Jefferson County*, 32
WN.App.473, 483 (1982)

1 The County points out that the 2005 UGA is less than one half the size of the interim UGA
2 the County 2000 SEIS analyzed. Since then, the County argues, studies related to water
3 supply and service and saltwater intrusion support the DNS.
4

5 Board Discussion
6

7 In contrast to our decision on Issues 1, 2, and 3, the Board does have jurisdiction over
8 Ordinance 9-2005, which adopts amendments to San Juan County's comprehensive plan
9 map and unified development code SEPA challenges to Ordinance 9-2005 are within the
10 Board's jurisdiction. RCW 36.70A.280(1).
11

12 With regard to SEPA and state and local agency decisions, WAC 197-11-650 defines the
13 purpose of applying SEPA to agency decisions, in part, as the following: "Ensure the use of
14 concise, high quality environmental documents and information in making decisions." WAC
15 197-11-650(1).
16

17
18 WAC 197-11-600 says this about the use of existing documents:

19 (2) An agency may use environmental documents that have previously been
20 prepared in order to evaluate proposed actions, alternatives, or environmental
21 impacts. The proposals may be the same as, or different than, those analyzed in the
22 existing documents.

23 Petitioner Ludwig appealed the DNS for the Adoption of the Lopez Village UGA to the San
24 Juan County Hearings Examiner. The Hearings Examiner dismissed the appeal because
25 San Juan Code Section 18.80.140A did not give Hearings Examiner jurisdiction over a non-
26 project action (the designation over the 2005 UGA).
27

28
29 Even though the Hearings Examiner dismissed the appeal, several observations of the
30 Hearings Examiner are worth noting. In his decision, the Hearing Examiner observed the
31 problem with the County's position that it had reviewed environmental impacts in prior
32 environmental documents and the effects of the present lesser proposal did not create new

1 impacts beyond the scope of the original documents. That problem was that the
2 environmental documents were not referenced in the DNS or the accompanying checklist
3 as required by WAC 197-11-600 (3)(b). The Hearings Examiner also remarked, after
4 reviewing the information in the July 22, 2005, staff report:

5 ...it is likely the sum of information available to decision makers in fact provided
6 sufficient information to evaluate the proposal. It is also likely that the substance of
7 this information supported the issuance of the DNS. ...

8 Exhibit O, at 5.

9
10 The Hearings Examiner further commented that the studies done to evaluate the 2005
11 boundaries or to draw the conclusions about the new boundaries were only cursorily
12 discussed in the Environmental Checklist:

13 ...this may be largely a problem of form, but the purpose of SEPA is to provide full
14 disclosure in advance of decisions.

15 Exhibit O, at 5.

16
17 The County acknowledges that it did not follow SEPA rules for incorporation of previous
18 environmental documents. It did not, therefore, provide full disclosure in advance of the
19 decision to adopt Ordinance 9-2005. The record developed for the appeal to the Hearings
20 Examiner shows that the decision to designate the 2005 UGA was based on the type of
21 additional needed environmental studies in the "Final Supplemental Environmental
22 Statement for San Juan County Activity Centers on Orcas and Lopez Island (April 14, 2000"
23 identified . Exhibit Q at 16 and 17, These include the Report (Exhibit F), the Water Supply
24 Analysis (Exhibit G), Lopez Village Groundwater Model Report (Exhibit E), Addendum to
25 the Sear Brown Report (Exhibit I), and the Mayo Report (Exhibit J). Ordinance 9-2005.
26 However, nothing in the DNS advised the public of the use of these documents when the
27 threshold determination was issued. SEPA requires that the record show "actual
28 consideration of environmental factors before a determination of no environmental
29 significance can be made." *Sisley v. San Juan County*, 89 Wn.2d 78, 86-7, 569 P.2d 712
30 (1977). As the Hearings Examiner stated: "For a person relying solely on the environmental
31
32

1 record here, the information provided is not really sufficient to evaluate the rationale for the
2 proposal.” Exhibit O, Conclusion of Law 11(c).

3
4 The County has reduced the size of the 2005 UGA from the UGA analyzed by April 14,
5 2000 FSEIS. While Petitioner argues that this has new significant impacts, the Report, the
6 Water Supply Analysis, and Lopez Village Groundwater Model Report investigated these
7 impacts, and made recommendations on how to deal with them. Exhibits E, F, and G.
8 Exhibits G, I, and J investigated capital facility needs. Resolution 9-2005 shows that the
9 decision makers used the environmental information listed above to make their decision
10 about the size and conditions to be imposed in the Lopez Village UGA. Even so, the Board
11 is concerned about the lack of disclosure in the DNS and the environmental checklist and its
12 possible impact on public participation in the decision making process. The SEPA rules
13 allow the County to rely upon existing environmental documents in making its threshold
14 determination WAC 197-11-600(2); but they require that they be used by adoption,
15 incorporation by reference, an addendum or through preparation of an SEIS. WAC 197-11-
16 600(4)(a)-(d). The failure to comply with the SEPA rules on use of previous environmental
17 documents is clearly erroneous, even if the County’s failure to do so was inadvertent.
18
19
20
21

22 **Conclusion:** The Board finds that it was necessary for the responsible official to
23 incorporate the prior studies into the DNS in some fashion (see WAC 197-11-600) in order
24 for the requirements of SEPA to be met. Full disclosure of the bases for the DNS must be
25 provided, not only to the decision-makers but also to the public, before the proposed action
26 is taken. Failure to do this is clearly erroneous. Since the Board has found noncompliance
27 with respect to the capital facilities plan for the 2005 Lopez UGA, this error can be corrected
28 when the new threshold determination is made for the legislative enactment taken to
29 achieve compliance on remand.
30
31
32

1 **Lopez Village Growth Reserve Area and the Marine Center Limited Area of More**
2 **Intense Development (LAMIRD)**

3 Party's Position

4 Petitioner Ellis challenges the designation of the Lopez Village Growth Reserve Area and
5 the Marine Center LAMIRD and asks that they both be found noncompliant with the GMA.
6 Petitioner alleges that the County designated these areas without inventorying and
7 describing the present uses and layout or evaluating projected impacts. Ammendment [sic]
8 to Deny Compliance (Lopez Village Urban Growth Area) at 5.
9

10
11 Board Discussion

12 Petitioner Ellis offers no evidence why these designations are noncompliant.
13

14
15 **Conclusion:** Petitioner has not met his burden of proof that these designations are
16 noncompliant pursuant to RCW 36.70A.320. Additionally, this is not a compliance issue. To
17 challenge this designation Petitioner Ellis is required to file a new petition.
18

19 **Invalidity**

20 Petitioner Ellis and Ludwig request invalidity of Ordinance 9-2005 because its failure to
21 protect the water supply of the 2005 Lopez Village UGA and because of the failure to
22 include an adequate capital facilities plan to serve 2005 UGA. They claim that these
23 failures substantially interfere with RCW 36.70A. 020 (2), (10), and (12).
24

25
26 **Conclusion:** The Board declines to impose invalidity as long as Ordinance 6-2002 is in
27 place to prohibit development of more than 1 unit per 5 acres where urban services are not
28 available. Further, the language of Ordinance 6-2002 says it will remain in place until the
29 Lopez Village UGA is found compliant. Important factors in the Board's decision not to
30 impose invalidity at this time include the County's activities to increase groundwater
31 monitoring and secure increased protections of its groundwater supply through its CWRA.
32

VI. FINDINGS OF FACT

1. San Juan County is a county, located west of the crest of the Cascade Mountains, that is required to plan pursuant to RCW 36.70A. 040.
2. Petitioner Ellis was an original petitioner in this consolidated case.
3. Petitioner Ludwig participated in writing and orally in the adoption of Ordinance 9-2005.
4. The Board’s October 15, 2002 Compliance Order found that the final UGA boundaries for the Lopez Island UGA should be completed after studies on water availability and saltwater intrusion and a compliant capital facilities plan were completed.
5. The Report does not constitute a comprehensive plan, development regulation, or an amendment to them.
6. The Board’s jurisdiction is statutorily limited to legislative enactments required by the GMA, primarily comprehensive plan adoptions, development regulation adoptions and amendments to either. RCW 36.70A.280(1).
7. The Report does not designate or protect critical areas, so it does not have to comply with RCW 36.70A.172.
8. If a parcel still has “open space – farm and agricultural tax status”, this tax status does not automatically make this GMA designated agricultural land according to RCW 36.70A.040 nor ineligible for inclusion in the Lopez Village UGA.
9. Parcel No. 0251514003 was removed from open space - farm and agricultural tax status” in 2005. Exhibit T.
10. Petitioner offers no evidence that Parcel No. 0251514003 contains Class II, III, or IV soils, making it eligible for agricultural resource land designation.
11. San Juan County has designated agricultural resource land and these designations are deemed compliant. WWGMHB Case No. 99-2-0010c and Case No. 00-2-0062c (Order Finding Compliance and Rescinding Invalidity, June 6, 2002).
12. Parcel No. 0251514003 is not GMA designated agricultural resource land in the San Juan County comprehensive plan.
13. Parcel No. 0251514003 is adjacent to land characterized by urban growth.
14. The County’s land capacity analysis shows that Parcel No. 0251514003 is needed to provide land to support the County’s population projections.
15. RCW 36.70.110(3) and RCW 36.70A.030(19), does not prohibit the use of private nonprofit purveyors from providing urban levels of service to UGAs.
16. The County has no written agreement with the FBWA to accomplish reallocation of water rights and service area expansion to serve the entire Lopez Village UGA. There is also no commitment to do this referenced in the County’s comprehensive plan.
17. The County has no written agreement with the FBSD to expand its sewer service area to cover the entire Lopez Village UGA and no commitment from the FBSD to provide sewer service over the course of the 20 year planning horizon is documented in the County’s comprehensive plan.

- 1 18. The County's comprehensive plan contains no analysis of the FBWA and the FBSD
2 capability of serving the 2005 Lopez Village UGA in the 20 year planning period nor
3 six year capital facilities improvement plans for these private purveyors.
4 19. Comprehensive Plan Policy 7.1F, 7.3.B. 8 and 9, and 7.3.1C 8, 9, and 10 show that
5 the County's capital facilities element does contain policies to reassess the land use
6 element if probable funding falls short of meeting existing needs.
7 20. The Report (Exhibit F) and the Water Supply Analysis (Exhibit G) are relevant to
8 determining whether Ordinance 9-2005 complies with the GMA and the Board's
9 October 15, 2002 Order.
10 21. The Washington Department of Ecology expressed concern that the County's
11 groundwater model could have underestimated the threat of saltwater intrusion.
12 22. The County plans a strategy for on-going monitoring of chloride levels in wells within
13 the UGA rather than re-doing its original analysis.
14 23. Both the Report and San Juan County Resource Management Plan WRIA 2 (October
15 2004) recommend that an adaptive management program should be established with
16 data being reviewed every five years.
17 24. The County has established a CWRA that is larger than the 2005 Lopez Village UGA
18 and imposed more stringent development standards in this area.
19 25. Comprehensive plan policies CPP 4.2.B-6 and CPP 2.2.A-9(b) and (c) are not
20 relevant to the challenge of Ordinance 9-2005.
21 26. The location of the Lopez Village UGA is in the densest part of Lopez Island and the
22 hub of the island.
23 27. Environmental documents were not referenced in the DNS for the GMA action
24 designating the Lopez Village UGA or the accompanying checklist as required by
25 WAC 197-11-600 (3)(b).
26 28. The County has reduced the size of the 2005 UGA from the UGA analyzed by
27 April 14, 2000 FSEIS.
28 29. The Report, the Water Supply Analysis, and Lopez Village Groundwater Model
29 Report investigated these impacts, and made recommendations on how to deal with
30 them. Exhibits E, F, and G. Exhibits G, I, and J investigated capital facility needs.
31 30. The designation of the Lopez Village Growth Reserve Area and the Marine Center
32 Limited Area of More Intense Development (LAMIRD) are not compliance issues.
33 Lopez Village Growth Reserve Area and the Marine Center LAMIRD are not issues in
34 any petition for review in this case.
35 32. Petitioner Ellis did not file a petition for review concerning the Lopez Village Growth
36 Reserve Area and the Marine Center LAMIRD.
37 33. Ordinance 6-2002 prohibits development at less than 5 units an acre in the Lopez
38 Village UGA until urban services are available.
39 34. The language of Ordinance 6-2002 states it will remain in place until the Lopez
40 Village UGA is found compliant with the GMA.
41
42

VII. CONCLUSIONS OF LAW

- A. The Board has jurisdiction over the parties.
- B. The Board does not have jurisdiction over the Report or its DNS. RCW 36.70A.280(1); 36.70A.290(2).
- C. The Board does have jurisdiction over Ordinance 9-2005 and its DNS.
- D. Petitioner Ludwig has standing to challenge Ordinance No. 9-2005.
- E. Petitioner Ellis has standing to challenge the compliance issues set out in the Board's October 15, 2002 order.
- F. Lopez Village Growth Reserve Area and the Marine Center LAMIRD are not before the Board pursuant to RCW 36.70A.290.
- G. The inclusion of Parcel No. 0251514003 complies with RCW 36.70A.110(3), and is not inconsistent with RCW 36.70A.060, RCW 36.70A.040, and RCW 36.0A.170.
- H. The inclusion of Parcel No. 0251514003 is not inconsistent with Comprehensive Plan Policy 2.2 F or inconsistent with RCW 36.70A.070 (preamble).
- I. The Lopez Village UGA capital facilities element is clearly erroneous and fails to comply with RCW 36.70A.070(3)(a)-(d) and RCW 36.70A.020(12).
- J. The County's capital facilities element complies with RCW 36.70A.070(3)(e).
- K. Until San Juan County adopts an adaptive management program, Ordinance 9-2005 and the designation of the Lopez Village UGA are clearly erroneous and do not comply with RCW 36.70A. 070(1) and RCW 36.70A.020(10).
- L. The designation of the 2005 Lopez Village UGA is consistent with comprehensive plan policies 4.2.B-6, 2.2.A-2, 2.2.A-9(b) and (c), 2.2.5.B-3(c), and 2.2.B-4(h) and therefore complies with RCW 36.70A.070 (preamble).
- M. The failure to include earlier environmental documents in the DNS is clearly erroneous and does not comply with WAC 197-11-600, and C 43.21C RCW. This procedural error may be corrected on remand when the County takes legislative action to achieve compliance.

VII. ORDER

San Juan County must take legislative action to bring the designation of the 2005 Lopez Village UGA designated by Ordinance 9-2005 into compliance with RCW 36.70A.070(3)(a) – (d), RCW 36.70A.070(1), RCW 36.70A.020(10) and (12), and 43.21C RCW in accordance with this decision within 180 days. The following schedule will apply:

Compliance Due	October 16, 2006
Statement of Actions Taken	October 30, 2006
Objections to a Finding of Compliance, if any	November 8, 2006
Response to Objections, if necessary	November 29, 2006
Compliance Hearing	December 12, 2006

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

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

11 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the
12 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
13 judicial review may be instituted by filing a petition in superior court according to the
14 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil
15 Enforcement. The petition for judicial review of this Order shall be filed with the
16 appropriate court and served on the Board, the Office of the Attorney General, and all
17 parties within thirty days after service of the final order, as provided in RCW
18 34.05.542. Service on the Board may be accomplished in person or by mail, but
19 service on the Board means **actual receipt of the document at the Board office** within
20 thirty days after service of the final order. A petition for judicial review may not be
21 served on the Board by fax or by electronic mail.

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

24 Entered this 19th day of April 2006.

25 _____
26 Holly Gadbow, Board Member

27 _____
28 Margery Hite, Board Member

29 _____
30 Gayle Rothrock, Board Member

1 **Appendix A**

2 Origin

3 These cases have had a long and tangled procedural history. This procedural history deals
4 with only the parts of the case relating to the designation of Lopez Village and Eastsound
5 UGAs. The Board's deliberations on issues related to these UGAs began when Petitioners
6 Dorothy Austin Mudd (now known as Dorothy Austin), Fred Klein, and John Campbell, and
7 Joint Petitioners Joanne Smith and Fred Ellis filed petitions challenging San Juan County's
8 October 2000 comprehensive plan amendments regarding the designation of these UGAs.⁷
9 Petitioner Austin raised issues in regard to both UGAs. Petitioners Ellis and Smith
10 challenged only the Lopez Village UGA, while Petitioners Klein and Campbell raised issues
11 concerning the Eastsound UGA. On December 14, 2000, the Board consolidated these
12 petitions with other petitions challenging the October 2000 comprehensive plan
13 amendments. The case was captioned *Michael Durland, et al, v. San Juan County*,
14 WWGMHB Case No.02-0062c. The Opal Community Land Trust, along with several other
15 parties, was granted intervention in the consolidated case on January 23, 2001.
16
17

18
19 This case was heard with the compliance issues in *Town of Friday Harbor, Fred R. Klein,*
20 *John M. Campbell, Lynn Bahrych et al., v. San Juan County*, WWGMHB Case No. 99-2-
21 0010c.
22

23
24 The Board's May 7, 2001 Final Decision and Order in these cases ordered San Juan
25 County to do the following in regard to the designation of the Lopez Village and the
26 Eastsound UGAs: establish non-municipal boundaries using RCW 36.70A.110 criteria and
27 to establish these boundaries only after a complete capital facilities and services analysis.
28
29

30
31 _____
32 ⁷ Petitioner Austin's petition was given Case No. 00-2-0056, Petitioner Klein's Petition given Case No. 00-2-0057, Petitioners Smith and Ellis's petition was given Case No. 00-2-0058, and Petitioner Campbell's petition was given 00-2-0059.

1 October 15, 2002 Final Decision and Order

2 After a September 10, 2002 compliance hearing in Case No. 99-2-0010c and Case No. 00-
3 2-0062c and hearing on the merits in Case No. 02-2-0008, the Board found the following in
4 regard to the Lopez Village and Eastsound UGAs:

- 5 • Complete final growth boundary lines in the Lopez UGA after studies on water
6 availability and saltwater intrusion.
- 7
- 8 • Complete a compliant Lopez UGA capital facilities plan.
- 9 • Complete an Eastsound UGA capital facilities analysis with respect to wastewater
10 and drainage services.
- 11
- 12 • Reconsider the Eastsound market factor.
- 13 • Reconsider the inclusion of the westernmost, low-density properties in the Eastsound
14 UGA and establish appropriate urban densities for a non-municipal UGA.

15 Short period of consolidation with WWGMHB Case No. 03-2-0003c

16 On February 29, 2003, WWGMHB Case No. 99-2-0010c and WWGMHB Case No. 00-2-
17 0062c was consolidated with *Friends of the San Juans, Lynn Bahrych, Joe Symons et al., v.*
18 *San Juan County*, WWGMHB 03-2-0003c, a case arising from a petition challenging San
19 Juan County's regulations for accessory dwelling units (ADUs). This case was captioned as
20 *Friends of the San Juans, Lynn Bahrych, Joe Symons et al., v. San Juan County*.

21
22
23 Following a request for an extension of the compliance period for the issues related to the
24 Lopez Village and the Eastsound UGAs, along with opposition from several petitioners, the
25 Board issued a 90 day compliance period extension on April 17, 2003 for the issues related
26 to the noncompliant UGAs.
27

28
29 On October 7, 2003, the Board divided this consolidated case. The compliance issues
30 related to the ADU regulations remained in WWGMHB Case No. 03-2-0003c, while the
31 compliance issues related to the UGAs were placed in WWGMHB Case No. 00-2-0062c.
32

1 Several Compliance Period Extensions

2 In its December 19th Compliance Order/ Extension of Time order in Case Nos. 00-2-0062c
3 and 02-2-0008 , the Board granted the County a 60 day extension of the compliance period
4 to prepare a work plan for the completion of the remand work related to the Lopez Village
5 and Eastsound UGAs. After the County's submission of a work plan on February 17, 2004
6 and Ordinance 3-2004 that prohibited subdivisions of less than one unit per five acres in the
7 areas of the Eastsound UGA that did not have sewer service, on March 2, 2004, the Board
8 granted an extension of the compliance period for both the Lopez Village and Eastsound
9 UGAs until November 15, 2004.
10

11
12 On November 8, 2004, the County submitted a progress report and a request from the
13 County for another 180 day extension of the compliance period. The County stated that the
14 lack of progress in completing the work necessary for making the Eastsound and Lopez
15 Island was caused by rapid turnover in staff, lack of institutional knowledge of new staff, and
16 the inability of consultants to obtain needed information due to this staff turnover to
17 complete capital facilities planning work. At the November 30, 2004, compliance hearing,
18 the County stressed the County Commissioners were still committed to completing the
19 necessary work to make the Eastsound and Lopez Village UGAs compliant. The Board
20 granted a 270-day compliance extension due to the scope and complexity of capital facilities
21 planning and the County's prohibition of subdivisions in areas of the UGAs not served by
22 sewers.
23
24

25
26 On August 30, 2005, San Juan County submitted Motion and Declaration to Find
27 Compliance (Lopez Village UGA). This motion was based on the County's adoption of
28 Ordinance 9-2005 that stated the County had completed its remand work for the Lopez
29 Village UGA.
30
31
32

1 The Board received a Motion to Deny Compliance for the Lopez Island UGA from Frederick
2 Ellis on September 20, 2005.

3
4 Case No. 05-2-0019c

5 Stephen Ludwig filed a petition for review challenging, among other things, Ordinance 9-
6 2005 and the Determinations of Nonsignificance for the Lopez Island UGA, the Lopez
7 Village, Water Supply Report and Recommendations and the Abbreviated Coordinated
8 System Plan.

9
10
11 A prehearing conference was held on October 10, 2005. Stephen Ludwig represented
12 himself, Deputy Prosecutor Cameron Carter represented San Juan County, and Board
13 Member Holly Gadbow presided.

14
15
16 On October 11, 2006, the Presiding Officer consolidated this case with Case No. 00-2-
17 0062c and rescheduled the compliance hearing in Case No. 00-20062c to coincide with the
18 February 27, 2006 hearing on the merits in Case No. 05-2-0019. This case was captioned,
19 for a short time, as Case No. 00-2-0062c.

20
21
22 Also, on October 11, 2006, the Presiding Officer issued a Notice of Requirements for
23 Participation in Case No. 00-2-0062c and Case No. 02-2-0008 and Intent to Participate
24 Form. Based on this notice and intent to participate forms returned to the Board by the
25 required deadline, the Presiding Officer issued an order establishing the parties on
26 October 21, 2005.

27
28
29 Shortly after this, Michael Durland requested that the Board re-caption Case No. 00-2-
30 0062c. Mr. Durland explained that although he had been a petitioner in this case several
31 years ago, his issues had been resolved early in the proceedings and because he had no
32 interest in the case, he wanted his name removed from the caption. The Board issued an

1 order on October 21, 2005, that re-captioned Case No. 00-2-0062c as *Stephen F. Ludwig,*
2 *et al., v. San Juan County*, WWGMHB Case No. 05-2-0019c.

3
4 On October 26, 2006, the Board received a Joint Motion from the parties to the Ludwig
5 petition to extend the date for issuing the Final Decision and Order for the issues raised in
6 the Ludwig petition. The Board granted the extension of the Final Decision and Order for
7 the Ludwig petition issues for 30 days to April 19, 2006.

8
9
10 On October 28, 2006, a combined Prehearing Order/ Compliance Order for Case No. 05-2-
11 0019c and a Compliance Prehearing Order for Case No. 02-2-0008 were issued.

12
13 Petitioner Ludwig and the Respondent both made motions to supplement the record.
14 Respondent raised objections to the issue statement in the prehearing order for Case No.
15 05-2-0019 and moved to change the issue statement. On December 1, 2005, the Board
16 issued an order allowing both the Respondent and the Petitioner to supplement the record,
17 but denied the Respondent's motion to change the issue statement.

18
19
20 On November 29, 2005, the County submitted its Report of Actions Taken that included
21 Ordinance 13-2005 establishing the boundaries of the Eastsound UGA.

22
23
24 The Board received on December 9, 2005, a stipulation from Fred Klein and San Juan
25 County to allow certain additions to the record. The Board issued an order on allowing
26 these additions to the record on January 3, 2006.

27
28 On December 20, 2005, Petitioner Ludwig submitted his prehearing brief. Having been
29 granted permission to submit an amendment to his prehearing brief objecting to compliance
30 of the Lopez Island UGA, Petitioner Ellis submitted this amendment on December 22, 2005.
31
32

1 On January 12, 2006, the County submitted its prehearing brief for the Lopez Village UGA
2 issues.

3
4 Relevant Hearing and Post Hearing Activities

5 The Board held a combined hearing on the merits and compliance hearing on the issues
6 raised in the Ludwig petition and compliance issues for Lopez Village UGA on February 27,
7 2006, at the Lopez Islander. Petitioners Ludwig and Ellis represented themselves, Deputy
8 Prosecutor Cameron Carter represented San Juan County, and all three Board members
9 attended.
10

11
12 **Rulings at the Hearing**

13 At the hearings, the Presiding Officer made the following rulings:

14 San Juan County was allowed to supplement the record with the following exhibits:

15 *Index Letter T – Declaration of Sandy Bishop (January 9, 2006)
16
17

18 The Board also asked the County to submit information showing the implementation of an
19 adaptive management program for protection of groundwater on Lopez Island.
20

21
22 **Relevant Post Hearing Actions**

23 In response to Board requests, the County submitted San Juan County Water Resource
24 Management Plan WRIA 2, Declaration of Mark Tompkins, and Fisherman Bay Water
25 Association's Draft Plan, and Appendices to Fisherman Bay Water Association Draft Plan.

26 These exhibits are given the following Index numbers:

- 27
- 28 • San Juan County Water Resource Management Plan WRIA 2 – Index # U
 - 29 • Declaration of Mark Tompkins – Index # V
 - 30 • Fisherman Bay Water Association's Draft Plan – Index # V
 - 31 • Appendices to Fisherman Bay Water Association Draft Plan – Index # W
- 32

1 On March 14, 2006, Petitioner Ludwig submitted a Motion to Exclude Non-Authentic
2 Documents objecting to the Declaration of Mark Tompkins. This information was requested
3 by the Board. This motion is denied.
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