

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 Stephen F. Ludwig, et al,

3  
4 Petitioners,

5 v.

6 San Juan County,

7  
8 Respondent,

**CASE NO. 05-2-0019c  
COMPLIANCE ORDER -  
EASTSOUND UGA**

9  
10 Fred R. Klein,

11 Petitioner,

12 v.

13 San Juan County,

14  
15 Respondent.

**CASE NO. 02-2-0008  
COMPLIANCE ORDER -  
EASTSOUND UGA**

16  
17 John M. Campbell, et al,

18 Petitioner,

19  
20 v.

21 San Juan County,

22  
23 Respondent.

**CASE NO. 05-2-0022c  
COMPLIANCE ORDER -  
EASTSOUND UGA**

24  
25 THIS Matter came before the Board on September 22, 2009 following the submittal of San  
26 Juan County's Compliance Report.<sup>1</sup> The Board held a telephonic compliance hearing  
27 attended by Board members Jim McNamara, Nina Carter and William Roehl with Mr. Roehl  
28 presiding. San Juan County (County) was represented by Jonathan W. Cain. Also  
29  
30

31  
32 <sup>1</sup> San Juan County's Compliance Report (Eastsound UGA), filed August 11, 2009.

1 participating was Colin Maycock on behalf of the County. None of the Petitioners  
2 participated and no objections to a finding of compliance were filed.

### 4 I. BURDEN OF PROOF

5 After a board has entered a finding of non-compliance, the local jurisdiction is given a period  
6 of time to enact legislation to achieve compliance. RCW 36.70A.300(3)(b).

7  
8 After the period for compliance has expired, the board is required to hold a hearing to  
9 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and  
10 (2).

11  
12 For purposes of board review of the comprehensive plans and development regulations  
13 adopted by local governments in response to a non-compliance finding, the presumption of  
14 validity applies and the burden is on the challenger to establish that the new adoption is  
15 clearly erroneous. RCW 36.70A.320(1),(2) and (3).

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

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

31 In sum, the burden is on the Petitioner to overcome the presumption of validity and

1 demonstrate that any action taken by the County is clearly erroneous in light of the goals  
2 and requirements of the GMA. Where not clearly erroneous and thus within the framework  
3 of state goals and requirements, the planning choices of the local government must be  
4 granted deference.

## 6 **II. ISSUE TO BE DISCUSSED**

7 Whether San Juan County has achieved compliance with regard to the area found to be  
8 non-compliant in the Board's Compliance Order (CO) of January 30, 2009?  
9

## 10 **III. DISCUSSION**

11 The Compliance Report describes the action the County took in response to the CO in  
12 which the Board found that a single compliance issue remained in regards the Eastsound  
13 UGA:  
14

15 By including the (Eastsound Sewer and Water) District Plan's proposed  
16 extensions outside the UGA including an extension to a nonexistent LAMIRD, an  
17 area where no documented health hazard exists, and no investigation of  
18 alternatives to sewer service is discussed in its capital facilities element, the  
19 County's capital facilities element for sewer service does not comply with RCW  
36.70A.110(4), RCW 36.70A.070, and RCW 36.70A.020(2).

20 The County states that on April 28, 2009 it adopted Ordinance No. 11-2009 which amended  
21 the Capital Facilities element of the Comprehensive Plan to indicate that the Eastsound  
22 Sewer and Water District 2008 Update of 2003-2023 General Sewer Plan (2008) was  
23 adopted with the exception "for any references in that plan to the development of a sewer  
24 line extension outside of the Eastsound UGA".<sup>2</sup>  
25

## 26 **IV. ORDER**

27 The Board finds that the action of San Juan County has achieved compliance by amending  
28 its Comprehensive Plan's Capital Facilities Element as required by prior order of this Board  
29 so as to achieve compliance with RCW 36.70A.110(4), 36.70A.020(2) and 36.70A.070.  
30

31 \_\_\_\_\_  
32 <sup>2</sup> San Juan County Ordinance 11-2009, pg. 4, Sec. 4.

1 Therefore, the Board enters a finding of compliance and the Eastsound UGA portion of this  
2 case is closed.

3  
4 Dated this 29<sup>th</sup> day of September, 2009.

5  
6  
7 \_\_\_\_\_  
William Roehl, Board Member

8  
9  
10 \_\_\_\_\_  
James McNamara, Board Member

11  
12  
13 \_\_\_\_\_  
Nina Carter, Board Member

14  
15  
16 Pursuant to RCW 36.70A.300 this is a final order of the Board.

17  
18 **Reconsideration.** Pursuant to WAC 242-02-832, you have ten (10) days from the date  
19 of mailing of this Order to file a petition for reconsideration. The original and three  
20 copies of a motion for reconsideration, together with any argument in support  
21 thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the  
22 original and three copies of the motion for reconsideration directly to the Board, with  
23 a copy served on all other parties of record. **Filing means actual receipt of the**  
24 **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.

25  
26 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
27 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
28 judicial review may be instituted by filing a petition in superior court according to the  
29 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil  
30 Enforcement. The petition for judicial review of this Order shall be filed with the  
31 appropriate court and served on the Board, the Office of the Attorney General, and all  
32 parties within thirty days after service of the final order, as provided in RCW  
34.05.542. Service on the Board may be accomplished in person or by mail, but  
service on the Board means **actual receipt of the document at the Board office within**

1 thirty days after service of the final order. A petition for judicial review may not be  
2 served on the Board by fax or by electronic mail.

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

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