

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 IRONDALE COMMUNITY ACTION  
4 NEIGHBORS (ICAN) et al.,

Case No. 07-2-0012c

5 Petitioners,

**COMPLIANCE ORDER**

6 v.

7  
8  
9 JEFFERSON COUNTY,

10 Respondent.  
11

12  
13 This matter comes before the Board following the submittal of a Compliance Report<sup>1</sup> by  
14 Jefferson County (the "County") relating actions taken by the County in response to the  
15 Board's May 31, 2005 Final Decision and Order (FDO)<sup>2</sup> and subsequent Orders Finding  
16 Continuing Noncompliance and Granting Additional Time for Compliance.<sup>3</sup> In earlier orders,  
17 the Board had found that the County's plan for the Hadlock/Irondale UGA was not in  
18 compliance with the GMA in regards to, among other things, the provision of sanitary  
19 sewers and the land supply market factor, as set forth in the FDO and as described further  
20 below.  
21

22  
23 **I. PERTINENT PROCEDURAL HISTORY<sup>4</sup>**

24 On May 31, 2005 the Board issued its Final Decision and Order in Case Nos. 03-2-0010  
25 and 04-2-0022. While the Board found Petitioners had not carried their burden of proof with  
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28 <sup>1</sup> Jefferson County's Statement of Actions Taken (April 2009) and Request for Lifting of Invalidity and Finding  
29 of Compliance, filed April 9, 2009.

30 <sup>2</sup> The FDO was issued for Case Nos. 03-2-0010 and 04-2-0022. Those cases were subsequently  
31 consolidated with Case No.07-2-0012 and are now designated as Case No. 07-2-0012c.

32 <sup>3</sup> See, May 30, 2006 Compliance Order; April 9, 2007 Order Finding Continuing Noncompliance and Granting  
Additional Time for Compliance; April 16, 2008 Order Finding Continuing Noncompliance and Granting  
Additional Time for Compliance.

<sup>4</sup> The full procedural history is described in Appendix A.

1 regard to certain issues raised in those appeals, the Board found the County out of  
2 compliance with the Growth Management Act (GMA) in several regards, including:<sup>5</sup>

- 3 • The creation of the Irondale and Port Hadlock UGA boundaries in Ordinance  
4 10–0823– 04 to include large areas for which no public sewer will be provided  
5 in the 20 year planning horizon does not comply with RCW 36.70A.110. [COL  
6 C];
- 7 • The development regulations that allow new urban levels of development  
8 without provision of public sanitary sewer fail to comply with RCW 36.70A.110,  
9 RCW 36.70A.020(1) and (12). [COL D];
- 10 • The development regulations that allow commercial and industrial development  
11 on interim septic tanks without a defined and adopted capital facilities funding  
12 mechanism fail to comply with RCW 36.70A.110(4) and 36.70A.020(2). [COL  
13 E];
- 14 • The capital facilities plan of the County’s UGA Element for the Irondale and  
15 Port Hadlock UGA fails to comply with RCW 36.70A.070(3)(a)(c) and (d), and  
16 RCW 36.70A.210 (inconsistency with the Countywide Planning Policies). [COL  
17 F];
- 18 • The County’s use of a market factor to increase the OFM population range on  
19 which planning is based in the Irondale and Port Hadlock UGA does not comply  
20 with RCW 36.70A.110(2). [COL H].

21 The May 31, 2005 FDO was amended on reconsideration to provide the following  
22 Conclusions of Law in regard to Invalidity:<sup>6</sup>

- 23 • Those policies in Jefferson County’s comprehensive plan that allow designation  
24 of optional sewerred and non-sewerred areas in the Irondale and Port Hadlock  
25 UGA substantially interfere with the fulfillment of goals 1 and 12 of the Act  
26 (RCW 36.70A.020(1) and (12)) and are therefore invalid. [COL M];
- 27 • The development regulations entitled “Jefferson County, Irondale & Port  
28 Hadlock UGA Implementing Development Regulations, Unified Development  
29 Code Appendix D” adopted by Ordinance No. 10-823-04 (Index No. 13-32)  
30 allow urban levels of development without corresponding urban levels of  
31 service. The continued validity of these development regulations substantially  
32 interferes with the County’s ability to fulfill goals 1, 2, and 12 of the Growth  
Management Act (RCW 36.70A.020(1), (2) and (12)). Jefferson County,  
Irondale & Port Hadlock UGA Implementing Development Regulations, Unified  
Development Code Appendix D are therefore invalid. [COL N];

<sup>5</sup> May 31, 2008 FDO at 48-49.

<sup>6</sup> July 29, 2005 Order Granting Reconsideration, at 6-7.

- 1 • The Urban Residential designation on the Future Land Use Map (Figure 2-1)  
2 and the designations allowing urban development outside of the Sewer  
3 Planning Area in Figure 2-3 (the Irondale and Port Hadlock UGA – Sewer  
4 Service Areas Map May 19, 2004) substantially interfere with Goals 1 and 12 of  
5 the GMA (RCW 36.70A.020(1) and (12)) and are therefore invalid. [COL O];
- 6 • The Zoning map for the UGA (Figure D-1 in “Jefferson County, Irondale & Port  
7 Hadlock UGA Implementing Development Regulations, Unified Development  
8 Code Appendix D” - Index No. 13-31) establishes urban zoning areas for the  
9 proposed UGA which substantially interfere with RCW 36.70A.020(1), (2) and  
10 (12). The zoning map (Index No. 13-31) is therefore invalid.<sup>7</sup> [COL P].

11 In the intervening years, all other issues in the consolidated cases have been resolved as  
12 addressed by the Board in subsequent compliance orders.<sup>8</sup>

13 On June 2, 2009, the Board held a compliance hearing in Olympia, Washington on the  
14 remaining compliance issues. ICAN was represented by Gerald Steel. Mark Johnsen  
15 represented the County and was accompanied by Al Scalf, Director of Community  
16 Development for Jefferson County. Amicus Joyce M. Murphy was present and represented  
17 by her attorney, Gary Colley. All three Board members attended, with Mr. McNamara  
18 presiding.

## 19 20 **II. BURDEN OF PROOF**

21 After a board has entered a finding of non-compliance, the local jurisdiction is given a period  
22 of time to adopt a legislative enactment to achieve compliance. RCW 36.70A.300(3)(b).

23 After the period for compliance has expired, the board is required to hold a hearing to  
24 determine whether the local jurisdiction has achieved compliance. RCW 36.70A.330(1) and  
25 (2). For purposes of board review of the comprehensive plans and development regulations  
26 adopted by local governments in response to a non-compliance finding, the presumption of  
27 validity applies and the burden is on the challenger to establish that the new adoption is  
28 clearly erroneous. RCW 36.70A.320(1),(2) and (3).

31 \_\_\_\_\_  
32 <sup>7</sup> July 29, 2005, Order Granting Reconsideration.

<sup>8</sup> See, eg. May 30, 2008 Compliance Order.

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm  
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,  
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).  
4

5  
6 Within the framework of state goals and requirements, the boards must grant deference to  
7 local governments in how they plan for growth:

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

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

24 However, if a finding of invalidity has been entered, the burden is on the local jurisdiction to  
25 demonstrate that the ordinance or resolution it has enacted in response to the finding of  
26 invalidity no longer substantially interferes with the goals of the GMA. RCW 36.70A.320(4).  
27

28 Here, since the Board has previously entered a Determination of Invalidity, the County bears  
29 the burden of demonstrating that the provisions of its plan and development regulations no  
30 longer substantially interfere with these goals. As to the other areas of non-compliance, the  
31  
32

1 Board did not find that they substantially interfered with the goals of the GMA, and therefore,  
2 the burden of proving lack of compliance remains with the Petitioners.

3  
4 **III. DISCUSSION**

5 With this compliance proceeding, the Board is left to determine if the County has amended  
6 its CP and DRs to comply with the GMA's requirement as to the provision of sanitary sewers  
7 within the Port Hadlock/Irondale UGA and whether the County's selected market factor is  
8 reasonable in regards to urban growth population estimates, as noted by the May 2005  
9 FDO and subsequent orders of this Board. In addition, the Board needs to determine if with  
10 its curative actions the County's CP and DRs no longer substantially interfere with the goals  
11 of the GMA such that the Board's Determination of Invalidity should be rescinded.  
12

13  
14 As noted *supra*, the Board's May 31, 2005 Final Decision and Order (FDO) remanded  
15 portions of the County's comprehensive plan and development regulations to the County for  
16 compliance with the GMA.  
17

18 On remand, the County took a number of steps to achieve compliance resulting in the  
19 adoption of Ordinance No. 03-0323-09 on March 23, 2009. With this Ordinance, the  
20 County adopted a Port Hadlock Sewer Facilities Plan ("General Sewer Plan") which  
21 provides that all areas within the proposed UGA will have sanitary sewer available within the  
22 20 year planning period; identified capital facilities funding for the next six years; adopted  
23 amendments to JCC 18.18, its UGA development regulations; and documented the  
24 population holding capacity analysis for the UGA.<sup>9</sup>  
25  
26

27 ICAN's objections to a finding of compliance cover four areas: ICAN alleges that, despite  
28 the amendments, approximately one-third of the proposed UGA will remain unsewered in  
29 the 20-year planning horizon; the County failed to adopt a six-year financing plan; the  
30 County failed to adopt development regulations specifying rural densities and standards;  
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<sup>9</sup> County Statement of Actions Taken, at 2; Ordinance 03-0323-0.  
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1 and finally, ICAN claims that the population holding capacity analysis for the UGA is  
2 fundamentally flawed.<sup>10</sup> The Board will address each issue in turn.

3  
4 **A. Sewering of the Proposed UGA in the 20 Year Planning Horizon**

5 ICAN argues the Board should find that the County remains out of compliance with those  
6 areas identified in Conclusion of Law C in the May 2005 FDO because the County  
7 continues to propose that approximately one-third of the UGA will remain unsewered during  
8 the 2004-2024 life of the Plan.<sup>11</sup> According to ICAN, the County intends to begin to provide  
9 sewer collection lines to what is called Residential Area #3 in the year 2024, but that only  
10 20% of this area will actually have sewer collection lines at the end of the 20 year planning  
11 horizon.  
12

13  
14 The County, in response, stresses that sewer will be *available* throughout the UGA within  
15 the 20 year planning period and that this will be accomplished by installing the infrastructure  
16 necessary to provide service within the area, including the remaining treatment plant  
17 expansion by 2024, so that there is capacity to accommodate the entire sewer service area  
18 and by installing two pump stations, force mains and gravity sewers within Residential Area  
19 #3.<sup>12</sup>  
20

21 As the County correctly notes, there is an important distinction between sewer service  
22 availability and having all residential sewer connections in place. The Central Puget Sound  
23 Growth Management Hearings Board (Central Board) has previously held that making  
24 capital facilities such as a treatment plant, trunk lines, and pump stations *available* within the  
25 20 year planning horizon is sufficient. We follow the Central Board in this regard. In *KCRP*  
26 *v. Kitsap County*, CPSGMHB No. 06-3-0005, Order Finding Compliance (11/5/07) the  
27 Central Board revisited an earlier Invalidity Order that was based on the failure to ensure  
28  
29  
30

31 <sup>10</sup> ICAN Objections, at 3-4.

32 <sup>11</sup> Id. at 4.

<sup>12</sup> County Response at 2-3.

1 that sewer lines would be appropriately located and available for connection in the existing  
2 UGA. The Central Board found that by revising its capital facilities plan to extend urban  
3 sewer services throughout the sub-area UGA, and identifying and mapping proposed trunk  
4 lines and additional pump stations necessary to provide coverage, Kitsap County had come  
5 into compliance with RCW 36.70A.070 and .110.  
6

7 Exhibit D to County Ordinance 03-0323-09 incorporates the Port Hadlock UGA Sewer  
8 Facility Plan. Jefferson County plans to have two pump stations, two force mains, and the  
9 infrastructure in place to serve Residential Area #3 by 2024.<sup>13</sup> In addition, a portion of the  
10 collection system will be in place, running down 7<sup>th</sup> Street and from the Irondale Beach  
11 pump station in the northeast of the UGA.<sup>14</sup> 8" gravity lines are shown along most  
12 delineated roads. Chapter 9 of the GSP notes at 9-7 that: "The local collection system is  
13 assumed to be installed in the Core and Alcohol Plant areas in 2010 and presumed to be in  
14 place in the Rhody Drive area within a few years after system startup. This would include  
15 any local pump stations. Expansion of sewer service into the 20-year residential areas is  
16 anticipated to begin in the year 2016 and continue to expand as shown in the capital  
17 facilities plan through the year 2024 when sewer service will be available through the entire  
18 sewer service area. The capital facilities plan shows development of the collection system to  
19 continue within the sewer service area and be completed by the year 2030." As a result, it  
20 can be concluded that sewer will be available throughout the UGA within the 20 year  
21 planning horizon as the sewer system is phased in.  
22  
23  
24

25 **Conclusion:** Jefferson County's adoption of its General Sewer Plan adequately  
26 demonstrates that sewer will be available in the Port Hadlock UGA within the 20 year  
27 planning horizon, as required by RCW 36.70A.110.  
28

### 29 **B. Six Year Financing Plan for Sewer**

30  
31

32 <sup>13</sup> Figure 5-2 and Table 5-3, UGA Sewer Facility Plan.

<sup>14</sup> Id.

1 ICAN asserts that, while the General Sewer Plan discussed possible funding sources for the  
2 next six years of development of a sewer system, it does not meet the requirement of RCW  
3 36.70A.070(3)(d) to have “at least a six-year plan that will finance such capital facilities  
4 within projected funding capacities and clearly identifies sources of public money for such  
5 purposes.”<sup>15</sup>  
6

7 In response, the County argues that RCW 36.70A.070(3)(d) does not require absolute  
8 certainty regarding the financing of capital facilities at the beginning of the six year period,  
9 but instead requires that the County be able to finance the facilities within “projected funding  
10 capacities”.<sup>16</sup>  
11

12 Chapter 9 of the General Sewer Plan identifies sources of funding from grants, loans, bond  
13 issues, utility local improvement districts and connection charges.<sup>17</sup> Table 9-5, Part 1, of the  
14 Plan lays out a repayment stream through 2018. The Sewer Plan describes the Table as a  
15 test of “an estimated stream of revenue that would be generated from connection charges to  
16 make the annual debt payments” based on a scenario of the sale of general obligation  
17 bonds for the portion of the project that is not funded from grants and low-interest loans.<sup>18</sup>  
18 The Table demonstrates that with anticipated connection charges and additional borrowing  
19 in the years 2013 and 2018, the sewer capital investment would be self-supporting. Table  
20 9-5, Part 2 carries these projections out to the year 2024 and 2025-2030 and shows that  
21 with no additional borrowing after the year 2018, the system has a positive ending balance  
22 in the year 2024.  
23  
24  
25

26 The Plan also describes three strategies for recovering capital costs from users of the sewer  
27 system, including connection charges per connection and usage of the system, formation of  
28  
29

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30 <sup>15</sup> ICAN Objections at 6.

31 <sup>16</sup> County Response at 6.

32 <sup>17</sup> See, General Sewer Plan, 9-1 to 9-12.

<sup>18</sup> General Sewer Plan at 9-9.

1 a ULID to spread the costs based on benefit, and assessed value of the property to spread  
2 the costs based on property value.<sup>19</sup>

3  
4 ICAN argues that the Plan “only gives examples” of how the system costs will be funded  
5 and that it is clear from Table 9-5 that the sewer system will be largely funded by new  
6 connection charges. However, the Plan concluded that “as long as connection charges  
7 come in at the anticipated pace, the sewer utility would have sufficient funds to make the  
8 debt payments”.<sup>20</sup> Recognizing that RCW 36.70A.070(3)(d) requires a six year plan to  
9 finance capital facilities within “projected” funding capacities, not “existing” funds, the Board  
10 finds that the County’s Plan satisfies this requirement.  
11

12 **Conclusion:** The County’s adopted General Sewer Plan identifies sources of funding from  
13 grants, loans, bond issues, utility local improvement districts and connection charges and  
14 lays out a repayment stream through 2018, meeting the requirements of RCW  
15 36.70A.070(3)(d).  
16

### 17 **C. Location and Capacities of Capital Facilities**

18  
19 ICAN also argues that the County remains out of compliance with RCW 36.70A.070(3)(c)’s  
20 requirement to provide “the proposed locations and capacities of expanded or new capital  
21 facilities”. It notes that the General Sewer Plan merely discusses *possible* locations for the  
22 sewer treatment plant.<sup>21</sup> However, the Board finds that the County has identified the  
23 expected location of the plant at page 8-7 of the Plan where it states:  
24

25 Based upon the results of the alternative analysis and feedback from the  
26 stakeholder workshop, a treatment plant located in the south service area is  
27 recommended. A specific parcel has not been identified at this time, but a parcel  
28 in the vicinity of the Sheriff’s facility or the adjacent gravel pit/cement plant is  
29 recommended.  
30

31 <sup>19</sup> Id. at 9-11- 9-12.

32 <sup>20</sup> Id. at 9-11.

<sup>21</sup> ICAN Objections at 7.

1 Candidate sites for the treatment plant are shown on Figure 8-2 of the Plan, and Figure 5-2  
2 shows much of the proposed gravity system including mains and pump stations. The  
3 County pointed out at oral argument that it is not always possible to identify the exact sites  
4 where facilities will be located, due to the nature of the real estate acquisition process. The  
5 Board finds that the County has provided the necessary degree of specificity.  
6

7 **Conclusion:** The County's General Sewer Plan sufficiently provides the proposed locations  
8 and capacities of expanded or new capital facilities, and therefore now complies with RCW  
9 36.70A.070(3)(c).  
10

#### 11 **D. Reassessment for Funding Shortfalls**

12 Finally ICAN argues that the County is out of compliance with RCW 36.70A.070(3)(e)'s  
13 requirement to have "a requirement to reassess the land use element if probable funding  
14 falls short of meeting existing needs" regarding the proposed sewer system.<sup>22</sup> While the  
15 County asserts that this requirement will be met as part of the County's required  
16 comprehensive plan update in 2011,<sup>23</sup> there is a more fundamental flaw in ICAN's objection.  
17 This Board had not found Jefferson County out of compliance with RCW 36.70A.070(3)(e).  
18 Therefore, it is not appropriate for ICAN to raise a new issue in a compliance proceeding  
19 that was not previously raised in a Petition for Review.<sup>24</sup>  
20  
21

22 **Conclusion:** The issue of the County's compliance with RCW 36.70A.070(3)(e) is not  
23 properly before the Board in this proceeding.  
24

#### 25 **E. Development Regulations for the UGA**

26 ICAN argues that the County has acted prematurely by adopting UGA development  
27 regulations which require areas that do not have sewer available to "develop at rural  
28 densities using rural standards", without stating what rural densities and standards are  
29  
30

31 <sup>22</sup> ICAN Objections at 7.

32 <sup>23</sup> County Response at 7.

<sup>24</sup> See, eg. Dry Creek et al. v. Clallam County, 07-2-0018c, Compliance Order (1/30/09) at 2-3.

1 applicable.<sup>25</sup> Instead, ICAN asserts the UGA development regulations continue to allow  
2 urban levels of development in the UGA before sewer is provided, and more intensive  
3 commercial and industrial development.<sup>26</sup> In addition, ICAN argues that the County allows  
4 commercial and industrial development on interim septic tanks before sewer enters the  
5 subarea without a defined and adopted capital facility funding mechanism.<sup>27</sup>  
6

7 In response, the County argues that determining the applicable rural standards is merely a  
8 matter of referencing the adopted zoning map together with Title 18.15 JCC. Attachment A  
9 to Ordinance No. 12-1215-08 is entitled “Land Use Designations June 2005” and shows the  
10 zoning designations in the UGA. Title 18.15 JCC is the portion of the County Unified  
11 Development Code establishing standards for rural lands. It contains the applicable  
12 development standards for rural lands including density standards.  
13

14  
15 During the Compliance Hearing ICAN argued the zoning map upon which the County relies  
16 was repealed by Section 6 of Ordinance 03-0323-09, which provides “Interim Ordinance 12-  
17 1215-08, instituting an interim control of 18.18. JCC, is hereby repealed except for Section  
18 4<sup>28</sup> of that Ordinance which shall remain in full force and effect.” Section 2 of the repealed  
19 ordinance put the rural designations of the Irondale/Hadlock UGA into place and delineated  
20 them in “Attachment A” to the ordinance.  
21

22  
23 At the hearing, the County disputed ICAN’s position that the relevant zoning map had been  
24 repealed. The Board requested the County to provide evidence of the continued existence  
25 of this map. Following the hearing the County submitted supplemental material to “provide  
26 clarification as to the interim Rural Regulations which would be applied within the  
27 boundaries of the Hadlock/Irondale UGA before sewer is available”.<sup>29</sup> ICAN filed a motion  
28

29  
30 \_\_\_\_\_  
31 <sup>25</sup> ICAN’s Objections at 8.

32 <sup>26</sup> Id.

<sup>27</sup> Id at 9.

<sup>28</sup> Section 4 dealt with mini-storage facilities.

<sup>29</sup> Jefferson County’s Supplemental Submittal, at 1.

1 to strike the County's Supplemental Submittal to which the County has responded. In brief,  
2 ICAN argues that the County failed to provide the material requested by the Board, and  
3 instead provided a June 10, 2009 staff-issued administrative interpretation.

4  
5 ICAN is correct. The Board sought to give the County the opportunity to establish that the  
6 zoning map it relies upon to demonstrate which rural standards are in effect was not  
7 repealed as ICAN asserted. The County instead submitted a code interpretation created  
8 after the compliance hearing. This was not responsive to the Board's request and the  
9 Board will not consider the County's submittal. While the Board invited the County to submit  
10 proof of the continued applicability of rural standards, it is also true that the Board generally  
11 does not allow the record to be supplemented with documents created after the County took  
12 the challenged action.  
13

14  
15 Until such time as the County clearly adopts measures that demonstrate where the rural  
16 development standards of Title 18.15 JCC apply, it has not cured the area of non-  
17 compliance identified by the Board when it found that "The development regulations that  
18 allow new urban levels of development without provision of public sanitary sewer fail to  
19 comply with RCW 36.70A.110, RCW 36.70A.020(1) and (12)."<sup>30</sup>  
20

21 The County also argues that it is not improperly allowing residential urban development to  
22 occur before sewer is available while foreclosing new commercial development on septic  
23 because commercial development is more intensive and less consistent with rural  
24 characteristics.<sup>31</sup>  
25

26  
27 With regard to ICAN's argument that interim rural development standards foreclose urban  
28 development, the County points out that this argument has previously been rejected by the  
29 Board. This Board has noted earlier that:  
30

31  
32 \_\_\_\_\_  
<sup>30</sup> May 31, 2005FDO at 48.

<sup>31</sup> County Response at 8.

1 The County adopted the interim ordinance making the applicable development  
2 standards within the Port Hadlock/Irondale UGA boundaries rural to assure that  
3 urban levels of development do not take place while the County continues to  
4 work on its sewer plan. This is an appropriate step to take as compliance is being  
5 achieved, and obviates the need for further determinations of invalidity and/or  
sanctions.

6 ICAN v. Jefferson County, WWGMHB Nos. 03-2-0010, 04-2-0022, Order on  
7 Motion for Reconsideration (4/19/07)

8 Further, this Board has taken note of the County's requirement that owners of new septic  
9 systems agree to the creation of a restrictive covenant binding them to extend public sewer  
10 to a parcel upon formation of a Local Infrastructure Financing Tool (LIFT).<sup>32</sup> Thus, as this  
11 Board has previously held, the County is proceeding in a reasonable manner to transition  
12 from rural to urban development standards in the UGA.  
13

14  
15 Therefore, except with respect to the issue of specifying which rural development standards  
16 apply within the UGA prior to sewer availability, the County development regulations are  
17 compliant with the GMA.  
18

19 **Conclusion:** Until such time as the County clarifies which rural development standards  
20 apply prior to sewer availability, it remains out of compliance with the requirements of RCW  
21 36.70A.110 and RCW 36.70A.020(1) and (12).  
22

### 23 F. Population Holding Capacity Analysis

24 ICAN asserts that the County has made a fundamental error in its population holding  
25 capacity analysis for the UGA by failing to realize that when sewer is available every  
26 existing lot in the residential zone can have one house without any further subdivision or  
27 subtraction for critical areas, road rights of way or public facilities.<sup>33</sup> ICAN notes that there  
28 are 5,106 existing lots in the UGA, and based on the County's projected population for the  
29  
30

31 <sup>32</sup> See. ICAN v. Jefferson County, Case Nos. 03-2-0010, 04-2-0022, 07-2-0012, Order Re: ICAN's Objections,  
32 (6/19/08).

<sup>33</sup> ICAN's Objections at 9.

1 year 2004 of 2,553, with a projected growth of 2,353 additional residents by the year 2024,  
2 with 2.2 persons per household, the County is using a market factor of 274%.<sup>34</sup> ICAN's  
3 analysis assumes that the existing 2,500 square foot lots can develop at 17 units per acre  
4 without further subdivision.<sup>35</sup> ICAN suggests that because the market factor is so high, the  
5 County should be required to reduce the size of its UGA.<sup>36</sup>  
6

7 The County, in turn, argues that ICAN's analysis is flawed because it assumes that every  
8 platted lot within the UGA must be treated as developable once sewer is available, even  
9 though many of these lots are substandard with regard to minimum lot size.<sup>37</sup> The County  
10 notes that the density requirement in JCC 18.18, Table 3-A2 establishes a maximum of six  
11 units per acre in the Urban Low Density Residential Zone.  
12

13  
14 The County further points out that the Washington State Attorney General has opined that  
15 ancient plats need not be recognized by a local jurisdiction if they are not currently  
16 developed at a higher density.  
17

18 In AGO 1996, No. 5, the Attorney General stated:

19 [W]e do not believe local governments are obligated to accept 1937-era plats, or  
20 precluded from enacting new requirements covering such land. That seems  
21 clear from the language in RCW 58.17.900 authorizing the amendment of pre-  
22 1969 ordinances, as well as the general pattern of both the 1937 and 1969 acts,  
23 which allow local governments to change their land use policies and amend or  
24 replace their subdivision ordinances from time-to-time

25 In conformance with this analysis, which the Board finds to be sound and applicable to the  
26 facts of this case, the non-conforming plats would not be developable with new single family  
27 residences, as ICAN suggests. Instead, it is reasonable to assume that they would develop  
28 in accordance with the density allowed in the Urban Low Density Residential zone. Per  
29

30 \_\_\_\_\_  
31 <sup>34</sup> Id. at 9-10.

32 <sup>35</sup> Id. at 12.

<sup>36</sup> Id. at 11.

<sup>37</sup> County Response at 11.

1 Table 3A-2 of JCC 18.18 the allowed density is 4-6 units/acre, far less than the 17 units per  
2 acre assumed by ICAN. Therefore, the Board concludes that ICAN has failed to carry its  
3 burden to prove that the County's population holding capacity analysis for the UGA was  
4 clearly erroneous.

5  
6 **Conclusion:** The County's population holding capacity analysis, which concluded that the  
7 sizing of the UGA is large enough to accommodate the mid-range projections for population  
8 growth and that there is an appropriate amount of urban land designated and zoned to meet  
9 the 20 year projected growth allocation for the Irondale/Port Hadlock UGA has not been  
10 shown to be clearly erroneous.  
11

#### 12 IV. ORDER

13  
14 Based on the foregoing, the Board determines that the County's adoption of its General  
15 Sewer Plan adequately demonstrates that sewer will be provided in the Port Hadlock UGA  
16 within the 20 year planning horizon as required by RCW 36.70A.110. In addition, the  
17 General Sewer Plan now meets the requirement of RCW 36.70A.070(3)(d) to have "at least  
18 a six-year plan that will finance such capital facilities within projected funding capacities and  
19 clearly identifies sources of public money for such purposes." The Board finds that the  
20 County's population holding capacity analysis has not been shown to be clearly erroneous.  
21

22  
23 However, the Board finds that until such time as the County adopts an ordinance clarifying  
24 which rural development standards apply prior to sewer availability, it remains out of  
25 compliance with the requirement of RCW 36.70A.110 and RCW 36.70A.020(1) and (12).  
26 The County is ordered to bring that portion of its development regulations into compliance  
27 with the GMA, and the following schedule shall apply:  
28

29 <b>Compliance Due</b> for rural development standards	<b>November 12, 2009</b>
30 County's Report of Action Taken Due	November 25, 2009
31 Index Due	November 25, 2009
32 Additions to Index Due	December 3, 2009

Written Objections to a Finding of Compliance	December 17, 2009
County's Response to Objections	December 30, 2009
<b>Compliance Hearing</b>	<b>January 5, 2010</b>

Entered this 12th day of August, 2009.

\_\_\_\_\_  
James McNamara, Board Member

\_\_\_\_\_  
William Roehl, Board Member

\_\_\_\_\_  
Nina Carter, Board Member

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

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

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

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

**APPENDIX A  
PROCEDURAL HISTORY  
*ICAN v Jefferson County, 07-2-0012c***

1  
2  
3  
4 On February 24, 2003, Irondale Community Action Neighbors (ICAN) filed a Petition for  
5 Review (PFR) challenging Jefferson County's adoption of Ordinance Nos. 18-1213-02, 19-  
6 1213-02 and 21-1220-02. This matter was assigned Case No. 03-2-0010.  
7

8  
9 On August 22, 2003, the Board issued its Final Decision and Order (FDO) in Case No. 03-2-  
10 0010. With this FDO, the Board found the County failed to comply with the Growth  
11 Management Act's (GMA) requirements as to capital facilities planning, specifically the  
12 provision of sewers within the Port Hadlock/Irondale UGA. The Board set a compliance  
13 deadline of February 27, 2004.  
14

15 On June 10, 2004, the Board issued its Compliance Order (CO) in Case No. 03-2-0010.  
16 With this CO, the Board found the County, although working diligently towards compliance,  
17 had failed to take legislative action and therefore continued to be out of compliance with the  
18 GMA. The Board set a new compliance deadline of December 6, 2004.  
19

20 On October 25, 2004, ICAN and Nancy Dorgan filed a new PFR challenging Jefferson  
21 County's adoption of Ordinance No. 10-0823-04. This matter was assigned Case No. 04-2-  
22 0022.  
23

24  
25 At a prehearing conference on November 22, 2004, the presiding officer and attorneys for  
26 the parties agreed the two cases, Case No. 03-2-0010 and Case No. 04-2-0022, would be  
27 tracked together, for convenience and economy, but not consolidated.  
28

29 On December 22, 2004, Jefferson County filed its Compliance Report for Case No. 03-2-  
30 0010.  
31  
32

1 On February 4, 2005, the Board granted a stipulated request to extend the issuance of the  
2 combined FDO and Compliance Order until May 31, 2005.

3  
4 On May 31, 2005, the Board issued its combined FDO in Case No. 04-2-0022 and  
5 Compliance Order in 03-2-0010 (FDO/CO). This Order was subsequently modified by the  
6 Board's July 29, 2005 Order on Reconsideration. The Order continued to find Jefferson  
7 County's efforts in regards to the provision of sewer service with the Port Hadlock/Irondale  
8 UGA failed to comply with the GMA along with improper transportation planning, use of  
9 market factor, and various inconsistencies between text and maps. In conjunction with  
10 these findings, the Board issued a Determination of Invalidity as to the optional sewer areas  
11 and unsewered areas. The Board set a compliance deadline of December 1, 2005.  
12

13  
14 On January 9, 2006, the Board granted Jefferson County's request for an extension of the  
15 compliance period for sewer planning. The Board set a new compliance date of January  
16 25, 2007.

17  
18 On March 8, 2006, the Board declined to lift invalidity as to the comprehensive plan  
19 provisions and development regulations for the Port Hadlock/Irondale UGA.  
20

21 On May 30, 2006, the Board issued a CO in the coordinated cases, Case No. 03-2-0010  
22 and Case No. 04-2-0022. With this CO, the Board determined Jefferson County had not  
23 achieved full compliance on the issues upon which non-compliance was found in the May  
24 31, 2005 FDO/CO. The Board set a compliance date of January 25, 2007.  
25

26 On April 9, 2007, the Board issued a CO in the coordinated cases. The Board held that  
27 because the County has not taken any legislative action to achieve compliance since the  
28 Board issued its May 30, 2006 CO, the County continues to be noncompliant with regard to  
29 all areas of noncompliance addressed in the Board's May 30, 2006 Compliance Order.  
30

31 The Board established three separate compliance deadlines. For those minor corrections  
32 addressed in the prior orders, a deadline of July 3, 2007 was established. Additional items

1 were added to this requirement with the Board's April 19, 2007 Order on Reconsideration.  
2 For sewer planning and UGA boundaries reflecting the provision of sewers, a deadline of  
3 April 2, 2008 was established. For development regulations related to the Port  
4 Hadlock/Irondale UGA, a deadline of April 2, 2009 was established.

5  
6 On September 4, 2007, ICAN filed a PFR challenging Jefferson County's adoption of  
7 Ordinance No. 04-0702-07. This matter was assigned Case No. 07-2-0012.

8  
9 On October 2, 2007 the Board considered ICAN's motion to conduct the Compliance  
10 hearing on Case Nos. 03-2-0010 and 04-2-0022, at the time of the Hearing on the Merits on  
11 Case No. 07-2-0012. The Board denied the motion and determined to set an expedited  
12 schedule for case No. 07-2-0012 and issue a single order on the County's compliance  
13 efforts taken in enacting Ordinance No. 04-0702-07.  
14

15  
16 On February 8, 2008, the Board issued its coordinated FDO in Case No. 07-2-0012 and CO  
17 in Case Nos. 03-2-0010 and 04-2-0022. With this FDO/CO the Board continued to find the  
18 County failed to achieve compliance with the GMA in several regards, including  
19 incorporation of the County's Water System Plan, the 20-year planning period, and various  
20 inconsistencies. The Board set a compliance deadline of July 10, 2008.  
21

22 On April 16, 2008, noting the County's diligent efforts to achieve compliance in regards to  
23 the provision of sewer but finding the County had failed to take legislative action, the Board  
24 found continuing non-compliance, maintained invalidity, and granted additional time to the  
25 County. The Board set a deadline for compliance of March 31, 2009.  
26

27  
28 On October 22, 2008, the Board issued its coordinated CO in Case Nos. 03-2-0010, 04-2-  
29 0022, and 07-2-0012. With this CO, the Board concluded the County had achieved  
30 compliance with some minor areas as required by the Board's February 2, 2008 FDO/CO.  
31 Clarification of the Board's holding in this CO were confirmed in the November 14, 2008  
32 Order on Reconsideration.

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On April 17, 2009, the Board issued its order consolidating the three cases, Case Nos. 03-2-001, 04-2-0022, and 07-2-0012, into a single matter. The consolidated matter is referenced as Case No. 07-2-0012c, *ICAN, et al v. Jefferson County*.

On May 1, 2009, the Board granted *Amicus Curiae* status to Joyce M. Murphy.