

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 Michael Durland and Kathleen Fennell,

3  
4 Petitioners,

5 v.

6 San Juan County,

7  
8 Respondent.

Case No. 07-2-0013

**COMPLIANCE ORDER**

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11 **I. SYNOPSIS**

12 This order finds that the County's amendment to its definition of Research Facilities in its  
13 development regulations for the Deer Harbor Hamlet (Hamlet) eliminates the inconsistency  
14 between the County's comprehensive plan elements and the comprehensive plan and  
15 development regulations. The Hamlet Plan and development regulations now comply with  
16 the Growth Management Act (GMA).  
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19 **II. PERTINENT PROCEDURAL HISTORY**

20 Petitioners Durland and Fennel challenged various aspects of the Deer Harbor Hamlet Plan  
21 (Plan) and implementing development regulations adopted by Ordinance 26-2007. While  
22 the March 24, 2008 Final Decision and Order found that Petitioners had not carried their  
23 burden of proof on most of the challenged issues, the Board did find that an inconsistency  
24 existed between the Plan, the Land Use Table for Existing Allowable Uses and the  
25 definition of Research Facilities. These inconsistencies did not comply with RCW 36.70A.  
26 070, RCW 36.70A.040, and RCW 36.70A130(1)(d).<sup>1</sup>  
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28  
29 On July 15, 2008, San Juan County adopted Ordinance 31-2008 to amend the definition  
30 section of the County's development regulations for the Hamlet. This amendment requires  
31 that Research Facilities be located on parcels of at least 20 acres in size only in the Hamlet  
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<sup>1</sup> Final Decision and Order at 27 (Finding of Fact D).

1 Residential zone. The County filed its compliance report on August 1, 2008 and requested  
2 a finding of compliance.

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4 Petitioners Durland and Fennel filed no objections to a finding of compliance.

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6 A telephonic compliance hearing was held on September 24, 2008. San Juan Deputy  
7 Prosecutor Jonathan Cain represented the County. Petitioners Durland and Fennel  
8 represented themselves. All three Board members attended.

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10 **III. BURDEN OF PROOF**

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

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

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21 **IV. ISSUE TO BE DISCUSSED**

22 Has San Juan County cured the inconsistency which existed between the Comprehensive  
23 Plan, the Land Use Table for Existing Allowable Uses and the definition of Research  
24 Facilities that did not comply with RCW 36.70A.070, RCW 36.70A.040, and RCW  
25 36.70A130(1)(d)?

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28 **V. DISCUSSION OF THE ISSUE**

29 The Board's March 24, 2008 Final Decision and Order found that Ordinance 26-2007 that  
30 adopted a Deer Harbor Hamlet Plan and implementing development regulations created an  
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1 inconsistency between the elements of the Plan<sup>2</sup> as well as between the Plan and the  
2 development regulations. This was due to the Plan's text and Land Use Table allowance of  
3 Research Facilities as conditional uses in Hamlet Industrial-A and Hamlet Commercial  
4 zones and as a discretionary use in the Hamlet Residential zone. However, Section 14.E of  
5 the development regulations for the Hamlet appeared to limit Research Facilities to  
6 properties of 20 acres in size. Because Petitioner Durland's property in the Hamlet  
7 Industrial-A designation was only an acre or so in size, it appeared that Research Facilities  
8 would not be allowed in designations that did not contain properties that were less than 20  
9 acres as the Plan and land use tables allowed.  
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11  
12 San Juan County has cured this inconsistency by passing Ordinance 31-2008 which  
13 amended Section 14.E of the development regulations for the Hamlet. This amendment  
14 eliminates the requirement that all Research Facilities be located on parcels of at least 20  
15 acres in size, applies this requirement only to the Hamlet Residential District, and makes it  
16 possible to locate Research Facilities in the Hamlet Commercial and Hamlet Industrial-A  
17 Districts. Therefore, Research Facilities can now be located in the designations that the  
18 Plan and land use tables allow.  
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21 Petitioner raises no objection to the County's request for a finding of compliance.  
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23 **Conclusion:** Based on the amendment to the definition of Research Facilities and  
24 Petitioners' lack of objection to a finding of compliance, the Board finds the Deer Harbor  
25 Hamlet Plan and development regulations now comply with RCW 36.70A.070, RCW  
26 36.70A.040, and RCW 36.70A.130(1)(d).  
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## 28 VI. FINDINGS OF FACT

- 29 1. San Juan County is located west of the crest of the Cascade Mountains and is  
30 required to plan in accordance with RCW 36.70A.040.  
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<sup>2</sup> It was not clear whether the Land Use Tables were part of the comprehensive plan and/or development regulations. See Final Decision and Order at 16 and 17.

- 1 2. The March 24, 2008 Final Decision and Order found that an inconsistency existed  
2 between the Deer Harbor Hamlet Plan, the Land Use Table for Existing Allowable  
3 Uses and the definition of Research Facilities. These inconsistencies did not comply  
4 with RCW 36.70A.070, RCW 36.70A.040, and RCW 36.70A.130(4)(d). Final Decision  
5 and Order, Finding of Fact D.  
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7 3. On July 15, 2008, San Juan County adopted Ordinance 31-2008 to amend definition  
8 14.E of the County's development regulations for the Deer Harbor Hamlet.  
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10 4. Ordinance 31-2008 amends Section 14.E, the definition of Research Facilities, so  
11 that it now allows this type of facility to be located in zones where the Deer Harbor  
12 Hamlet Plan and Land Use Tables allow them.  
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14 5. Petitioners Durland and Fennel filed no objections to a finding of compliance.  
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16 6. Any Finding of Fact determined to be a Conclusion of Law is adopted as such.

## 17 VII. CONCLUSIONS OF LAW

- 18 A. This Board has jurisdiction over the parties and subject matter of this compliance  
19 proceeding.  
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21 B. Based on the amendment to the definition in 14.E, Research Facilities, in the  
22 County's development regulations for the Deer Harbor Hamlet, the Board finds the  
23 Deer Harbor Hamlet Plan and development regulations now comply with RCW  
24 36.70A.070, RCW 36.70A.040, and RCW 36.70A.130(1)(d).  
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26 C. Any Conclusion of Law determined to be a Finding of Fact is adopted as such.

## 27 VIII. ORDER

28 By the adoption of the amendment to definition in 14.E of the County's development  
29 regulations for the Deer Harbor Hamlet, San Juan County has removed the inconsistency in  
30 the Deer Harbor Plan elements as well as between the Plan and the development  
31 regulations. The Deer Harbor Hamlet Plan and development regulations now comply with  
32 RCW 36.70A.070, RCW 36.70A.040, and RCW 36.70A.130 (1)(d). This development  
regulation amendment cures the only remaining element of noncompliance regarding the

1 Deer Harbor Hamlet Plan and development regulations. Therefore, this case is hereby  
2 CLOSED.

3  
4 Dated this 21st day of October 2008.

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6 \_\_\_\_\_  
7 Holly Gadbaw, Board Member

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10 James McNamara, Board Member

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12 \_\_\_\_\_  
13 William Roehl, Board Member

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

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

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24 **Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the  
25 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for  
26 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

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28 **Enforcement.** The petition for judicial review of this Order shall be filed with the  
29 appropriate court and served on the Board, the Office of the Attorney General, and all  
30 parties within thirty days after service of the final order, as provided in RCW  
31 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,  
32 but service on the Board means **actual receipt of the document at the Board office**  
within thirty days after service of the final order.

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

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