

SYNOPSIS

The City of Sultan is approaching the conclusion of a year of intense catch-up work toward complying with the requirements of the Growth Management Act. Under the prodding of dedicated citizen activists, with the able assistance of CTED and Snohomish County planners, and – most importantly – under the leadership of the present Mayor, City Manager and planning staff, the City has stepped up to its statutory responsibilities for comprehensive planning. Taking advantage of the extended compliance schedule allowed by the Board’s March 14, 2008 Order in three coordinated cases, the City provided a thorough public process and amended and improved its Comprehensive Plan even beyond the requirements of the Board’s noncompliance rulings.

*The Board finds and concludes that the City’s enactment of revisions to its Comprehensive Plan and review and revision of its development regulations brings the City into compliance with the requirements of RCW 36.70A.130(1) and (4). The Board finds that the City **complies** with the Growth Management Act provisions at issue in Fallgatter V.*

*The Board finds and concludes that the City’s adoption of a revised Capital Facilities Element and Transportation Element in its Comprehensive Plan, amendment of Water and Sewer Plans, and enactment of a six-year Transportation Improvement Program (TIP) consistent with that Plan brings the City into compliance with the requirements of RCW 36.70A.070(3) and (6) and no longer interferes with GMA Goals (1), (3), and (12). The Board **rescinds invalidity and finds compliance** with the Growth Management Act provisions at issue in Fallgatter VIII and Fallgatter IX.*

I. PROCEDURAL BACKGROUND

This compliance proceeding addresses multiple orders of non-compliance and invalidity against the City of Sultan in three pending cases: *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, *Fallgatter VIII v. City of Sultan*, CPSGMHB Case No. 06-3-0034, and *Fallgatter IX v. City of Sultan*, CPSGMHB Case No.07-3-0017.¹

¹ *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006). *Fallgatter V*, Order Finding Partial Compliance [Re: Water Plan, Sewer Plan, and Critical Areas Regulations], Finding Continuing Noncompliance [Re: TIP and Failure to Act] and Amending Compliance Schedule (June 18, 2007).

Fallgatter VIII v. City of Sultan, CPSGMHB Case No. 06-3-0034, Final Decision and Order (Feb. 13, 2007).

Fallgatter VIII, Order Finding Continuing Noncompliance and Invalidity and Amending Compliance Schedule (June 18, 2007).

Fallgatter VIII, Order Finding Continuing Noncompliance and Invalidity [Re: TIP] and Setting Third Compliance Schedule (Oct. 3, 2007).

Fallgatter IX v. City of Sultan, CPSGMHB Case No. 07-3-0017, Final Decision and Order (Sep. 5, 2007).

Fallgatter V, *Fallgatter VIII*, *Fallgatter IX* Order of Continuing Noncompliance, Amending Compliance Schedule (March 14, 2008).

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

On March 14, 2008, after a coordinated compliance hearing for the three cases, the Board issued an Order of Continuing Noncompliance, Amending Compliance Schedule for *Fallgatter V, VIII and IX (March 14, 2008 Order)*. The March 14, 2008 Order also continued a determination of invalidity with respect to the issues in *Fallgatter VIII and IX*. The amended schedule set September 30, 2008, as the deadline for action by the City to achieve compliance.

On October 10, 2008, the Board received the following filings from the City in support of compliance:

- Index of the Record
- City of Sultan Compliance Report, with Exhibits (**SATC**)
- Ordinance No. 996-08, revising the City of Sultan 2004 Comprehensive Plan [Index 89]
- City of Sultan Comprehensive Plan Revision and FSEIS (September 25, 2008) – 3 volumes
- Resolution No. 08-24, approving 2009-2014 TIP [Index 90]
- Ordinance No. 993-08, amending development regulations [Index 91]
- Ordinance No. 994-08, amendment No. 2 to 2005 Water System Plan [Index 92]
- Ordinance No. 995-08, amendment No. 2 to General Sewer Plan [Index 93]

On October 24, 2008, the Board received Petitioners' Response to City of Sultan Compliance Report. (**Fallgatter Response**)

On October 31, 2008, the Board received the City of Sultan's Reply. (**City Reply**)

All pleadings were timely filed in accordance with the amended compliance schedule.

On November 6, 2008, the Board convened the Compliance Hearing at 10:10 a.m. in the Palouse Room, 20th Floor, 800 Fifth Avenue, Seattle. Board member Margaret Pageler presided.² Board members David O. Earling and Edward G. McGuire and Board attorney Julie Ainsworth-Taylor also attended. Petitioner Jocelynne Fallgatter was present *pro se*. Andrew Lane of Cairncross and Hemplemann, P.S. represented the City of Sultan. Also in attendance were Sultan Mayor Carolyn Eslik, City Manager Deborah Knight, and Community Planning Director Bob Martin. Keith Arndt, a City Planning Board member, attended as an observer.

Prior to the hearing, in response to a request from the Presiding Officer, the City submitted a table correlating the projects in the TIP with text and project lists in the Comprehensive Plan Transportation Element and Capital Facilities Plan. The memo was admitted as **Compliance Hearing Exhibit 1**.

² Board member Dave Earling is the Presiding Officer for *Fallgatter IX*. For the sake of convenience, Board member Pageler presided over all three cases in this combined compliance proceeding.

#06-3-0003 *Fallgatter V Order of Compliance (Nov. 10, 2008)*

#06-3-0034 *Fallgatter VIII Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)*

#07-3-0017 *Fallgatter IX Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)*

The Compliance Hearing provided the Board an opportunity to express appreciation to the Petitioners for their persistence since their first petition filed in 2004. The Board acknowledges the considerable personal costs borne by *pro se* petitioners who seek to ensure compliance with the GMA in the public interest, and recognizes the exceptional diligence and perseverance of the Petitioners here. The Board also acknowledged the political, administrative and financial commitment of the City of Sultan in its recent focused efforts to resolve its compliance deficiencies and produce a credible and robust GMA Plan. The Hearing enabled the Board to ask a number of questions and develop a clear understanding of the compliance issues. The Hearing was tape-recorded. Adjournment was at 11:10 a.m.

II. STANDARD OF REVIEW and BURDEN OF PROOF

RCW 36.70A.320(4) provides:

A county or city subject to a determination of invalidity ... has the burden of demonstrating that the ordinance or resolution it has enacted in response to the determination of invalidity will no longer substantially interfere with the fulfillment of the goals of this chapter under the standard in RCW 36.70A.302(1).

Thus, with respect to invalidity, the burden is on the City to demonstrate that the actions it has taken in response to the Board's orders of invalidity in *Fallgatter VIII* and *Fallgatter IX* no longer impede GMA goals.

Then, with respect to compliance, the burden is on Petitioners to demonstrate whether the City's enactments are "clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." RCW 36.70A.320(3). To meet the burden, Petitioners' legal and factual arguments must leave the Board with "the firm and definite conviction that a mistake has been committed." *Swinomish Indian Tribal Community, et al. v Western Washington Growth Management Hearings Board*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007). RCW 36.70A.3201 requires the Board to give deference to a city's choices in GMA compliance, but the Swinomish Court clarified:

The amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give the [jurisdiction's] actions a "critical review" and is a "more intense standard of review" than the arbitrary and capricious standard.

Id. at 435, fn. 8 (internal citations omitted).

III. THE MARCH 14, 2008 ORDER

#06-3-0003 *Fallgatter V Order of Compliance* (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII Order of Compliance, Rescinding Invalidity* (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX Order of Compliance, Rescinding Invalidity* (Nov. 10, 2008)

In its March 14, 2008 Order, at 16, the Board ruled:

1. In *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, the Board enters an **order finding continuing noncompliance** with RCW 36.70A.130(1) and (4) because of the City's ongoing failure to act to review and revise its development regulations by the statutory deadline, December 1, 2004. The Board sets a **new compliance schedule** below. The Board declines to enter a determination of invalidity at this time.
2. In *Fallgatter VIII v. City of Sultan*, CPSGMHB Case No. 06-3-0034, the Board enters an **order finding continuing noncompliance** with RCW 36.70A.070(6) and **continuing invalidity** due to substantial interference with GMA Goals RCW 36.70A.020(1), (3), and (12). ...
3. In *Fallgatter IX v. City of Sultan*, CPSGMHB Case No. 07-3-0017, the Board enters an **order finding continuing noncompliance** with RCW 36.70A.070(3) and **continuing invalidity** due to substantial interference with GMA Goal RCW 36.70A.020(12). ...

The March 14, 2008 Order set a coordinated compliance schedule for the three cases.

IV. FALLGATTER V – COMP PLAN

In the *Fallgatter V* Final Decision and Order issued June 29, 2006, the Board found the following matters noncompliant:

- The TIP for 2005-2011 was noncompliant because there was no transportation element to be consistent with.
- The Water Plan and Sewer Plan were noncompliant because the plans did not use the same population numbers as the Comprehensive Plan and the service areas did not coincide with the UGA.
- Development regulations and critical areas regulations had not been reviewed and updated as of the statutory deadline (December 1, 2004).

The City subsequently revised its Water Plan and Sewer Plan to reflect the City's population projection, and a critical areas regulation was adopted. At the first Compliance Hearing for *Fallgatter V* (June 4, 2007), the Board found compliance on these components, but continuing noncompliance regarding the TIP and the failure to review development regulations.³

³ *Fallgatter V*, Order Finding Partial Compliance [Re: Water Plan, Sewer Plan, and Critical Areas Regulations], Finding Continuing Noncompliance [Re: TIP and Failure to Act] and Amending Compliance Schedule (June 18, 2007).

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

Eighteen months later, following the compliance hearing that coordinated the three cases, the Board found continuing noncompliance because the development regulations had still not been reviewed and updated. March 14, 2008, Order, at 5-6. Additionally, the City had not prepared and updated its Transportation Element – a necessary precedent to evaluating the consistency of a TIP. Because TIP’s are updated annually, that issue was rolled forward and combined with the continuing noncompliance and invalidity imposed in *Fallgatter VIII*.

Actions Taken to Comply. The City of Sultan has now enacted Ordinance No. 996-08 (Comprehensive Plan revisions) and Ordinance 993-08 (development regulation revisions). The City’s SATC documents a thorough review of the City’s population, employment and housing forecasts, capital facilities needs assessment and strategic funding analysis, transportation, water and sewer plans. SATC at 4-5. The City’s development regulations were then reviewed and revised to implement and ensure consistency with the Comprehensive Plan and to comply with any changes in the GMA. SATC at 13-14. The City asks for an order of compliance in *Fallgatter V*.

Petitioners compliment the City on its efforts overall. They note that the public process conformed to statutory requirements but contend that may not have been sufficient to fully inform citizens of the implications of changes in the City’s plan, especially the increased cost and decreased LOS of city services. Petitioners’ Response, at 2-3. They specifically object to the City’s failure to zone two parcels of land annexed in 2006. *Id.* at 4. Petitioners state simply: “Zoning for recently annexed parcels has not been done. The Future Land Use Map located at page 61 of the Revised Plan shows two City-owned parcels as un-zoned.” *Id.*

The City replies regarding the two un-zoned parcels: (1) no GMA amendment requires the City to address this issue in its review and update of development regulations, and (2) Petitioners’ two-sentence comment does not rise to the level of “briefing” necessary to prove noncompliance.⁴ City Reply, at 7. At the Compliance Hearing, the City stated that it contemplates creating a “public institution” zoning category which would then be applied to the two un-zoned parcels annexed in 2006 as well as to other publicly-owned land. The City stated this issue is on the near-term work plan for its planning board, and that the two un-zoned parcels are not at risk of other uses (one is a park subject to open-space easements and the other is the site of the water treatment plant). Nevertheless, the City contends that it has complied with the GMA requirements at issue in *Fallgatter V*.

Board Discussion. The Board emphasizes, first, that the City’s work in 2008 to bring its planning and development regulations up to a GMA standard is impressive. Comprehensive planning in a transition community can be costly and is often

⁴ A petitioner’s burden is not satisfied by conclusory statements, even where, as here, the facts are self-evident. *MBA/Brink v. Pierce County*, CPSGMHB Case No. 02-3-0010, Final Decision and Order (Feb. 4, 2003), at 21-24; *Cave/Cowan v. City of Renton*, CPSGMHB Case No. 07-3-0012, Final Decision and Order (July 30, 2007), at 15.

#06-3-0003 *Fallgatter V Order of Compliance* (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII Order of Compliance, Rescinding Invalidity* (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX Order of Compliance, Rescinding Invalidity* (Nov. 10, 2008)

contentious. It is a high testament to the focus and persistence of City leaders that only this one objection is raised on compliance.

The *Fallgatter V* Final Decision and Order and subsequent Board orders finding continuing noncompliance specified that the GMA violation at issue was Sultan's **failure to act** to review and revise its development regulations by the statutory deadline, as required in RCW 36.70A.130(1) and (4). In a failure-to-act challenge, the Board generally requires the noncompliant jurisdiction to demonstrate that it has taken the necessary action; then, any objection to the **substance** of that action requires a new Petition for Review.⁵ Here, it is undisputed that the City **has reviewed and revised its development regulations**, seeking to reflect changes to the GMA and to provide consistency with the City's revised Comprehensive Plan.

The Board notes that the lack of zoning on the two City-owned parcels annexed in 2006 was at issue in *Fallgatter VII*, CPSGMHB Case No. 06-3-0023, where Petitioner Fallgatter challenged the City's annexation and failure to designate zoning of two parcels, the 20-acre City-owned Reese Park and the 35-acre City-owned Water Treatment Plant property. The case was dismissed because the Board lacks jurisdiction over annexations. *Fallgatter VII*, Order of Dismissal (June 29, 2006). The Order of Dismissal harkened back to the City's work program, appended a year earlier to the Final Decision and Order in *Fallgatter V*, where the City undertook to zone the newly annexed areas when it next

⁵ See, e.g., *Futurewise III v. Snohomish County*, CPSGMHB Case No. 05-3-0020, Order on Motions (May 23, 2005), at 5-6; *1000 Friends v. Kitsap County*, CPSGMHB Case No. 04-3-0031c, Order on Motions Dismissing Harless Petition (March 15, 2005), at 4-6 (as amended in Order on Reconsideration, March 31, 2005).

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

amended its comprehensive plan and development regulations.⁶ Until the zoning for these parcels is resolved, the City is at risk of an additional GMA challenge.⁷

Conclusion. The Board finds and concludes that, by enacting Ordinance Nos. 996-08 and 993-08 the City of Sultan has **cured its failure to act** and has **complied** with RCW 36.70A.130(1) and (4). The Board therefore enters an Order of Compliance in *Fallgatter V*, CPSGMHB Case No. 06-3-0003.

V. FALLGATTER VIII - TIP

In the *Fallgatter VIII* Final Decision and Order, issued February 13, 2007, the Board found the City of Sultan's TIP for 2006-2012 noncompliant. For its 2006 TIP, the City had essentially reenacted the 2005 TIP (found noncompliant in *Fallgatter V*) without addressing the underlying insufficiency of the Transportation Element of its Comprehensive Plan. The March 14, 2008, Order merged the *Fallgatter V* noncompliance concerning the 2005 TIP with the *Fallgatter VIII* noncompliance and invalidity of the 2006 TIP and ruled:

In *Fallgatter VIII v. City of Sultan*, CPSGMHB Case No. 06-3-0034, the Board enters an **order finding continuing noncompliance** with RCW 36.70A.070(6) and **continuing invalidity** due to substantial interference with GMA Goals RCW 36.70A.020(1), (3), and (12).

⁶ The Order stated:

During the PHC, the City's attorney acknowledged that amendment to the land use designation, the zoning, and development regulations that are required due to this annexation, will be accomplished during the annual Comprehensive Plan update process. The Board notes that the "Overview of Comprehensive Place Amendment Tasks and Schedule" prepared by the City March 21, 2006, includes amendments to the City's comprehensive plan that are based on the ordinances at issue. *See*, Appendix B to *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006), at 29. Task 4 seeks to update and amend the comprehensive plan consistent with the UGA; ... Task 11(b) concerns zoning regulations for any newly annexed areas; *Id.* The City should be aware that *the annexations will require amendments to its Comprehensive Plan and related documents and that such amendments should be included within this year's update cycle* as the City's attorney acknowledged during the PHC. Failure to amend the comprehensive planning documents to reflect these annexations during that process may give rise to a Failure to Act challenge.

Fallgatter VII, Order of Dismissal (June 29, 2006), at 6 (emphasis added).

⁷ The Board notes that the two parcels in question are owned by the City and unlikely to face development pressure. While the City could act quickly to zone them to avoid a challenge, the Board is supportive of the City's intention to promptly create a "Public/Institutional" zone, with accompanying text in the zoning code, to address such parcels.

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

Action Taken to Comply. The City has enacted Resolution No. 08-24, the 2009-2014 TIP. The City has also enacted Ordinance No. 996-08, adopting a revised Comprehensive Plan (**Plan**) which contains a detailed transportation element. Plan, at 73-124. The City asserts that its TIP projects are consistent with the priorities and projects laid out in the Transportation Element of its Plan and are supported by the financial analysis of its Capital Facilities Plan. SATC, at 7-8; Compliance Hearing Exhibit 1. The City requests a finding of compliance and rescission of invalidity in *Fallgatter VIII*.

Petitioners raise no objections to the TIP or the Transportation Element of the Plan, but point out that the capital costs will largely be borne by property owners and that the City has abandoned a prior policy that called for phasing of development to match infrastructure. Petitioners' Response, at 2-3.

Board Discussion. The Board's March 14, 2008 Order in the coordinated cases sets forth the history of this issue in detail. In summary, by the time the City, in response to repeated noncompliance orders, developed a competent Transportation Plan, other components of the Comprehensive Plan and development regulations needed to be revised to ensure consistency. March 14, 2008, Order, at 12. To the City's credit, it tackled this larger task and has produced a well-coordinated plan.

As the Board has acknowledged, the City's location on State Highway 2 is a mixed blessing – the highway makes Sultan readily accessible for further development, but major highway expansion or safety improvements, which are long overdue, are dependent on State priorities and funding. March 14, 2008, Order, at 2; *see Fallgatter VIII*, Final Decision and Order (Feb. 13, 2007), at 6. Coordinated transportation planning is thus at the heart of the GMA agenda for this community. The work represented by Sultan's revised Transportation Element and CFP should provide a strong basis for the City's future.

The Board pointed out in the *Fallgatter VIII* Final Decision and Order that the GMA requirements for transportation planning in RCW 36.70A.070(6) are the most detailed and specific of all the GMA plan elements. *Id.* at 7. The Board has reviewed the Transportation Element in Ordinance No. 996-08 and the 2009-2014 TIP enacted by Resolution No. 08-24 and finds these enactments **comply** with RCW 36.70A.070(6) and that the TIP is **consistent** with the Plan. The City has met its burden of demonstrating that its enactments no longer interfere with GMA Goals (1), (3) and (12). The determination of invalidity is rescinded.

Conclusion. The Board finds and concludes that, by enacting Ordinance No. 996-08 and Resolution No. 08-24 (2009-2014 TIP), the City of Sultan has complied with RCW 36.70A.070(6) and no longer interferes with GMA Goals RCW 36.70A.020(1), (3), and (12). The Board **rescinds invalidity and enters an order finding compliance** in *Fallgatter VIII v. City of Sultan*, CPSGMHB Case No. 06-3-0034.

VI. FALLGATTER IX – CAPITAL FACILITIES PLAN

#06-3-0003 *Fallgatter V* Order of Compliance (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)

In the *Fallgatter IX* Final Decision and Order, issued September 5, 2007, the Board found the City of Sultan’s December 2006 Capital Facilities Plan (CFP) noncompliant and invalid.⁸ The Final Decision and Order concluded that the CFP:

- does not demonstrate that adequate public facilities and services [i.e. sanitary sewer, domestic water, parks and recreation] will be available within the planning period for the population within the urban growth area;
- fails to incorporate adopted locally-established minimum service standards or “Levels of Services” within the Capital Facilities Plan;
- based on identified funding shortfalls, the City failed to implement reassessment strategies set forth in its Capital Facilities Plan to address such shortfalls.

Fallgatter IX, FDO, at 18. The Board found noncompliance with RCW 36.70A.070(3) and substantial interference with GMA Goal (12).

Following the coordinated compliance hearing, the Board’s March 14, 2008 Compliance Order provided:

In *Fallgatter IX v. City of Sultan*, CPSGMHB Case No. 07-3-0017, the Board enters an **order finding continuing noncompliance** with RCW 36.70A.070(3) and **continuing invalidity** due to substantial interference with GMA Goal RCW 36.70A.020(12). ...

Action Taken to Comply. The City has enacted Ordinance No. 996-08 substantially revising and expanding the Capital Facilities Element of its Comprehensive Plan. The City asserts that it has now planned for urban services throughout the incorporated area and the UGA. SATC, at 8. It has enacted amendments to its Water and Sewer Plans for consistency. Ordinance Nos. 994-08, 995-08. The City states that it has adopted LOS standards for transportation (Plan, at 78-79), water (147), sewer (131), stormwater (162), and parks (177). SATC, at 13. The City points to financing strategies for transportation (CFP-7), parks (CFP-9), water (CFP-11), sewer (CFP-13), stormwater (CFP-15), and general government facilities (CFP-17). The Plan also includes reassessment provisions in the event of a funding shortfall. SATC, at 12; Plan, at 224-227. The City requests a finding of compliance and rescission of invalidity in *Fallgatter IX*.

⁸ The deficiencies in Sultan’s capital facilities planning have been raised in appeals brought by Petitioners since September, 2004. See *Fallgatter I*, CPSGMHB Case No. 04-3-0021, Final Decision and Order (June 13, 2005), at 5-6.

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

Petitioner⁹ again generally compliments the City on its work but expresses concerns about the costs that will be borne by property owners. Petitioners' Response, at 3-4. Petitioner also questions certain sewer line extensions outside of the UGA. *Id.* at 4.

The City in reply points the Board to policies in Sultan's Comprehensive Plan prohibiting sewer or water connections without an annexation agreement, and thus ensuring that such connections will only be possible within the UGA.¹⁰ City Reply, at 8 (at the Board's request, specific references were provided electronically after the hearing). Similar provisions in Snohomish County's policies also prohibit rural connections to sewer services.¹¹

Board Discussion. The Board has reviewed the revised Capital Facilities Plan enacted in Ordinance No. 996-08. The Board finds that the City has analyzed the public facility needs for the incorporated area and the UGA, including provision of sewer service to all the urban area. New, more-realistic LOS standards have been adopted. Impact fees have been recalculated for parks and transportation as part of a revised finance strategy. The City has also adopted provisions for reassessment of land use in the event of funding shortfalls. The Board finds and concludes that the City has cured the deficiencies in its Capital Facilities Plan and **complies** with the requirements of RCW 36.70A.070(3).

The Board is persuaded that, where sewer lines are proposed to be extended through rural areas in order to connect various portions of the urban area, neither the City of Sultan (as sewer service provider) nor Snohomish County (as permitting agency) will allow connections to serve development within the rural area.

Regarding the extension of sewer lines through the rural area to reconnect to the UGA, the Board notes that this is a "new issue" that is beyond the scope of the compliance proceeding. Such an action could provide the basis for a new petition for review. However, the Board has previously found that sewer lines extending beyond the UGA into the rural area to re-connect with the UGA or another UGA is not prohibited under the GMA, so long as connections to such a line in the rural area are prohibited.¹² The City has carried its burden in demonstrating that its enactments no longer interfere with GMA Goal (12). The determination of invalidity in *Fallgatter IX* will be rescinded.

Conclusion. The Board finds and concludes that, by enacting Ordinance Nos. 996-08, 994-08, and 995-08, the City of Sultan has complied with RCW 36.70A.070(3) and no longer interferes with GMA Goals RCW 36.70A.020(12). The Board **rescinds invalidity**

⁹ *Fallgatter IX* is brought by Petitioner *Fallgatter* alone. Jeff Kirkman is a party to *Fallgatter V* and *VIII*.

¹⁰ Sewer Service Policy 7 (Plan, at 144, and Plan, Appendix O, Policy 7, p. 3) requires annexation for City sewer service.

¹¹ Snohomish County Code SCC 30.29.110, prohibits sewer connections outside the UGA, with limited exceptions.

¹² *Gain v. Pierce County*, CPSGMHB Case No. 99-3-0019, Final Decision and Order (Apr. 18, 2000); *Heikkila v. City of Winlock*, WWGMHB Case No. 04-2-0020, Order on Motions (Jan. 10, 2005), at 6.

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

and enters an order finding compliance in *Fallgatter IX v. City of Sultan*, CPSGMHB Case No. 07-3-0017.

VII. FINDING OF COMPLIANCE, RESCISSION OF INVALIDITY

1. Based upon review of the GMA, the June 29, 2006, Final Decision and Order, prior Board Orders in this and coordinated cases,¹³ Ordinance Nos. 996-08 and 993-08, the SATC, the briefing filed by the parties, the arguments of the parties, and having deliberated on the matter, the Board enters a **Finding of Compliance** for the City of Sultan in *Fallgatter V*, CPSGMHB Case No. 06-3-0003.
2. Based upon review of the GMA, the February 13, 2007 Final Decision and Order, prior Board orders in this and coordinated cases, Ordinance No. 996-08 and Resolution No. 08-24, the SATC, the briefing filed by the parties, the arguments of the parties, and having deliberated on the matter, the Board enters a **Finding of Compliance and Rescission of Invalidity** for the City of Sultan in *Fallgatter VIII*, CPSGMHB Case No. 06-3-0034.
3. Based upon review of the GMA, the September 5, 2007, Final Decision and Order, prior Board orders in this and coordinated cases, Ordinance Nos. 996-08, 994-08, and 995-08, the SATC, the briefing filed by the parties, the arguments of the parties, and having deliberated on the matter, the Board enters a **Finding of Compliance and Rescission of Invalidity** for the City of Sultan in *Fallgatter IX*, CPSGMHB Case No. 07-3-0017.

VIII. ORDER

Based upon review of the Final Decisions and Orders and prior Board orders in the coordinated cases, the Statements of Actions Taken to Comply, the briefs and exhibits submitted by the parties, the GMA, prior Board Orders and case law, having considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

¹³ *Fallgatter V v. City of Sultan*, CPSGMHB Case No. 06-3-0003, Final Decision and Order (June 29, 2006).

Fallgatter V, Order Finding Partial Compliance [Re: Water Plan, Sewer Plan, and Critical Areas Regulations], Finding Continuing Noncompliance [Re: TIP and Failure to Act] and Amending Compliance Schedule (June 18, 2007).

Fallgatter VIII v. City of Sultan, CPSGMHB Case No. 06-3-0034, Final Decision and Order (Feb. 13, 2007).

Fallgatter VIII, Order Finding Continuing Noncompliance and Invalidity and Amending Compliance Schedule (June 18, 2007).

Fallgatter VIII, Order Finding Continuing Noncompliance and Invalidity [Re: TIP] and Setting Third Compliance Schedule (Oct. 3, 2007).

Fallgatter IX v. City of Sultan, CPSGMHB Case No. 07-3-0017, Final Decision and Order (Sep. 5, 2007).

Fallgatter V, *Fallgatter VIII*, *Fallgatter IX* Order of Continuing Noncompliance, Amending Compliance Schedule (March 14, 2008).

#06-3-0003 *Fallgatter V* **Order of Compliance** (Nov. 10, 2008)

#06-3-0034 *Fallgatter VIII* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

#07-3-0017 *Fallgatter IX* **Order of Compliance, Rescinding Invalidity** (Nov. 10, 2008)

1. The City of Sultan's adoption of Ordinance Nos. 996-08, 994-08, 995-08, and Resolution No 08-24 has removed substantial interference with GMA Goals 1, 3, and 12 [RCW 36.70A.020(1), (3), and (12)]. Therefore the Board **rescinds the determinations of invalidity** in CPSGMHB Case Nos. 06-3-0034 and 07-3-0017.
2. The City of Sultan's adoption of Ordinance Nos. 996-08 and 993-08 corrected the compliance deficiencies found by the Board in *Fallgatter V*, CPSGMHB Case No. 06-3-0003. The City now **complies** with the goals and requirements of the GMA [RCW 36.70A.130(1) and (4)] as set forth in the Board's June 29, 2006, Final Decision and Order, June 18, 2007, Order Finding Partial Compliance, and March 14, 2008, Order of Continuing Noncompliance. The Board therefore enters a Finding of Compliance for the matter of *Fallgatter V*.
3. The City of Sultan's adoption of Ordinance Nos. 996-08 and Resolution No. 08-24 corrected the compliance deficiencies found by the Board in *Fallgatter VIII*, CPSGMHB Case No. 06-3-0034. The City now **complies** with the goals and requirements of the GMA [RCW 36.70A.070(6) and RCW 36.70A.020(1), (3), and (12)] as set forth in the Board's February 13, 2007, Final Decision and Order, June 18, 2007, Order of Continuing Noncompliance and Invalidity, October 3, 2007, Order of Continuing Noncompliance and Invalidity, and March 14, 2008, Order of Continuing Noncompliance. The Board therefore enters a Finding of Compliance for the matter of *Fallgatter VIII*.
4. The City of Sultan's adoption of Ordinance Nos. 996-08, 994-08 and 995-08 corrected the compliance deficiencies found by the Board in *Fallgatter IX*, CPSGMHB Case No. 07-3-0017. The City now **complies** with the goals and requirements of the GMA [RCW 36.70A.070(3) and RCW 36.70A.020(12)] as set forth in the Board's September 5, 2007 Final Decision and Order, and March 14, 2008, Order of Continuing Noncompliance. The Board therefore enters a Finding of Compliance for the matter of *Fallgatter IX*.
5. CPSGMHB Case Nos. 06-3-0003, 06-3-0034, and 07-3-0017 are **closed**.

So ORDERED this 10th day of November, 2008.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.¹⁴

¹⁴ 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 motion 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 served on 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, WAC 242-020-330. 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.

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

#06-3-0003 *Fallgatter V Order of Compliance (Nov. 10, 2008)*

#06-3-0034 *Fallgatter VIII Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)*

#07-3-0017 *Fallgatter IX Order of Compliance, Rescinding Invalidity (Nov. 10, 2008)*