

TOWN OF FRIDAY HARBOR, FRED R. KLEIN,)	
JOHN M. CAMPBELL, LYNN BAHRYCH, et al.,)	No. 99-2-0010c
)	
Petitioners,)	COMPLIANCE
)	ORDER
v.)	
)	
)	
SAN JUAN COUNTY,)	
)	
Respondent,)	
)	
and)	
)	
JOE SYMONS, FRIENDS OF THE SAN JUANS, and)	
KAREN J. KEY SPECK, et al.,)	
)	
Intervenors)	
)	

Synopsis of the Order

We applaud the County on the progress made in capital facilities analysis and application of criteria in Section .110 of the Growth Management Act (GMA, the Act) for the Lopez and Eastsound urban growth areas (UGA). However, we are still unable to find compliance in several key areas.

We cannot find compliance regarding the Lopez UGA as data are still being collected on water capacity and on where the final UGA line should be drawn. A moratorium is in effect. The County has 180 days to complete its studies and establish a final urban growth boundary.

We cannot find compliance with the Eastsound UGA. The County has not achieved compliance regarding the sewer element of its capital facilities plan. As it finalizes its UGA, we urge the County to pay particular attention to its consultant and staff recommendations regarding average density, UGA boundary sizing, and market factor. We do not reach the question of whether the County was clearly erroneous in omitting the Klein property from the UGA. Sewer analysis,

inventory and a compliant market factor and density must be achieved before the County will be able to finally act on the Klein property. The density allowed in approximately 10 acres of undeveloped land in Airport Overlay South Zone #2 and also in Zones #3 and #4, which are zoned for 8 units per acre, 4-12/1 and in parts of Zone #4, 4-40/1, fails to discourage incompatible uses in the Airport Overlay Zone and is noncompliant.

Procedural History

On September 10, 2002, a compliance hearing and hearing on the merits were held in the above-captioned cases. Petitioner Fred Klein was the only petitioner to have briefed any of the issues in these cases and appeared for himself. Deputy Prosecutor Alan Marriner and Mr. Pat Mann of the Planning staff appeared for San Juan County. County Prosecutor Randall Gaylord was also present. No intervenors participated, as none had briefed any of the issues in these cases. The hearing was held at San Juan County Fire District Number 2, in Eastsound, Washington. Present for the Board were Nan A. Henriksen, Margery Hite, and Les Eldridge.

Presumption of Validity, Burden of Proof, and Standard of Review

For Compliance Only

Pursuant to RCW 36.70A.320(1), Ordinances 4-2002, 5-2002 and 6-2002 are presumed valid upon adoption.

The burden is on Petitioner to demonstrate that the action taken by San Juan County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), we “shall find compliance unless it determines that the action by [San Juan County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” In order to find the County’s action clearly erroneous, we must be “left with the firm and definite conviction that a mistake has been made.” *Department of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

Positions of the Parties

Summary of Issues and Challenges

1. Petitioner maintained that San Juan County's capital facilities analysis regarding the Eastsound urban growth area (UGA) failed to comply with the requirements of RCW 36.70A.070(3). The petitioner maintained that the County's capital inventory assessment and its mapping were inadequate, and that, consequently, it was impossible to determine where existing public facility and service capacities were located and where urban growth area boundaries should be drawn.
2. Petitioner maintained that the boundaries and sizing of the Eastsound UGA failed to comply with Section .110 of the GMA. Petitioner argued that the planning process was flawed and that incorrect market factors were applied.
3. Petitioner maintained that the exclusion of his property from the Eastsound UGA failed to comply with the GMA.
4. Petitioner asserted that the Orcas Island Airport Overlay District failed to discourage the siting of incompatible uses adjacent to the Orcas Island Airport as required by RCW 36.70A.510 and .547.

Argument of the Parties

Petitioner Klein contended that the County, in adopting the Eastsound UGA, had failed to meet the urban growth goal in Section .020(1) of the Act which requires counties to encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. He further contended that Section .070(3), which requires a capital facilities plan element consisting of an inventory of existing capital facilities owned by public entities showing the locations and capacities of the capital facilities, had not been complied with. He disputed the County's contention that north shore access regarding his property should be a factor in excluding it. He noted that the Airport Overlay failed to discourage siting of incompatible uses and that encroachment was occurring in the final approach flight path.

He stated that the map used by the County, showing the location of sewer main lines, is a hand-drawn map he prepared and presented to this Board with a previous petition. He maintained that

the County should prepare an inventory map which would properly show line sizes and locations as well as provide commentary on available capacity in the lines and overall treatment capacity of the sewer plant. He contended that such an inventory map would show a four-inch line reaching the Bartwood property and enabling connection for up to 349 homes, thus allowing for urban development on his property. He further claimed that the boundaries in Eastsound were improperly drawn because his property and Bartwood Estates should have been within the boundaries of the UGA. He characterized the UGA as undersized because of the County's erroneous application of incorrect market factors, designation of high density residential uses under the airport's runway flight path, and double counting of lands for commercial and residential development.

Regarding allowed densities in the southern portion of the Airport Overlay Zone, Petitioner Klein claimed that adopted densities are 800% greater in Zone #2 and 200% greater in Zones #3 and #4 than those recommended by the Planning Staff's analysis (Exhibit H, Table 2, p. 9).

The County responded first by noting that in the Lopez Island UGA, the County is still working on capital facilities inventory and that the study of available water is not yet finished. The County has established a moratorium while finishing the work on Lopez.

With regard to Eastsound, the County noted that the capital facilities consultant, EDAW, Inc., had stated that there is "sufficient water and sewer for twenty years." The County expressed its thanks to Petitioner Klein for providing the first map of the sewer facilities. The County asserted that the ULID map, not in the record, provided the sizing of the lines taken from a more detailed ULID map. The County pointed out that the record contains discussions on sewer service on April 12, 2002, and noted that the sewer plant treats effluent only. Solids are treated in septic tanks.

The County noted what it characterized as a contradiction in the arguments of Petitioner Klein because, the County contended, on one hand petitioner is claiming that capital facilities capacity is inadequate, and on the other hand he argues for expansion of the UGA by including his property. The County claimed that population projections and residential analysis are in the record and that public participation was more than adequate to meet GMA standards. The

County asserted that Bartwood Estates is separated from the UGA and that the North Shore is not a “vibrant commercial enclave” as Klein asserts.

The County acknowledged that the EDAW recommendation excluded the west side properties. The County asked this question of the Board: “Is the inclusion of the west side properties wrong?” The County contended that the Board should tell the County whether west side inclusion is proper. The County claimed that the inclusion of the west side properties increases the incorporated tax and voter base. The County acknowledged that the market factor used was between 32% to 45%.

With regard to the inclusion of the Klein property, the County contended that the entire north shore is not urban, that the consultant EDAW noted that the capacity of the north beach road had already been reached, and that the Planning Commission recommended the inclusion of Klein only if the road issues could be resolved.

With regard to the Airport Overlay, the County maintained that it had considered aviation division guidelines, but had balanced them with property rights.

Issues Presented

1. Is the County in compliance with the GMA with respect to the Lopez Village UGA where the County has imposed a moratorium on land division into parcels less than five acres until the County completes its capital facilities analysis?
2. Does the County’s capital facilities analysis for the Eastsound UGA comply with the capital facilities planning requirements of RCW 36.70A(3)?
3. Do the boundaries and sizing of the Eastsound UGA comply with the requirements of the GMA?
4. Does the exclusion of the Petitioner’s property from the Eastsound UGA comply with the GMA?
5. Does the Orcas Island Airport Overlay District discourage the siting of incompatible uses adjacent to the Orcas Island Airport as required by RCW 36.70A.510 and RCW

Conclusions

While the County has made considerable progress toward establishing a final urban growth boundary in the Eastsound UGA, we are unable to find compliance at this time. Among the factors which preclude such a finding are an inadequate sewer capital facilities plan (including inventory, projected needs, and financing) an unusually high market factor, and questions raised by the County itself regarding the adequacy of the average density and the inclusion of the westernmost properties of the UGA. The County must preclude incompatible uses in the airport overlay approach zones. The County has erred in failing to discourage siting of incompatible uses in Zone #2 (South) by allowing high-density uses in the airport approach zone. The County plan permits 8 units per acre in an area in which even its staff report recommended 1 unit per acre, and in Zones #3 and #4, within which even the staff-recommended 4/1 density was exceeded by 4-12/1 or, in parts of Zone #4, 4-40/1 density (Exhibit H). With these uncertainties before us, we do not reach the question of whether or not the exclusion of the Klein property was within the scope of the discretion afforded the County under Section .3201.

Discussion

Issue No. 1: Is the County in compliance with the GMA with respect to the Lopez Village UGA where the County has imposed a moratorium on land division into parcels less than five acres until the County completes its capital facilities analysis?

We conclude that the process of establishing a final urban growth boundary for the Lopez Island non-municipal urban growth area is not yet complete. The County acknowledged that final boundary lines could not be drawn until more data are received regarding water availability and saltwater intrusion problems and that a moratorium has been established by the County on development in the initial or preliminary UGA area. We previously ruled that interim or temporary UGAs do not comply with the requirements of Section .110. Therefore, we cannot find compliance at this time. We applaud the County for adopting a moratorium to maintain the status quo while it works toward compliance for the Lopez UGA.

Issue No. 2: Does the County’s capital facilities analysis for the Eastsound UGA comply with the capital facilities planning requirements of RCW 36.70A(3)?

The County has taken significant steps towards developing a capital facilities plan. For example, the work done on the water systems of the capital facilities plan and the transportation element of the comprehensive plan (contained in Exhibit D to County’s Motion for Compliance) answers the need for an analysis of these issues in the context of a small rural county with limited planning resources. However, the wastewater analysis and the drainage analysis (contained in Exhibit D to the County’s Motion for Compliance) fail to meet the requirements of a capital facilities element, even recognizing the limited planning resources available to a small county.

A comprehensive plan must include a capital facilities plan element. RCW 36.70A.070(3); WAC 365-195-300(a)(iii). A capital facilities element must contain five features: an inventory of existing capital facilities owned by public entities; a forecast of future needs for such capital facilities; the proposed locations and capacities of expanded or new capital facilities; at least a six-year plan for financing such capital facilities with clearly identified sources of public money for such purposes; and a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element and the financing plan within the capital facilities plan element are coordinated and consistent. RCW 36.70A.070(3); WAC 365-195-315(1). Drainage systems and sanitary sewer systems are included in the definition of capital facilities. WAC 365-195-315(2)(a).

The water system that serves Eastsound is provided through the Eastsound Water Users Association (“EWUA”), a non-profit membership organization. The EWUA has adopted a water system plan under guidelines set by the Washington State Department of Health. Its service boundaries encompass the entire Eastsound UGA as currently mapped. The analysis of the water system prepared for the capital facilities element fails to inventory existing water mains but does describe the wells used by EWUA, water production capacity, sources, water rights, and demand. The EWUA adopted a 10-year capital improvement plan in 2001 which details capital improvements it needs to make, including a plan for recouping the costs associated with the improvements.

While the water element of the capital facilities plan could be improved with a fuller inventory of

the water facilities in the EWUA (which would include the location and condition of the water lines), we conclude that it does provide sufficient information for planning for growth within the Eastsound UGA.

The wastewater system and drainage system analyses, on the other hand, are simply inadequate. Wastewater for the Eastsound UGA is handled by private septic systems and by the Eastsound Sewer and Water District (“ESWD”). The ESWD is a water and sewer district created under RCW Title 57. The ESWD does not have a comprehensive sewer plan, and the County’s capital facilities plan relies entirely upon the ESWD analysis done by consultant Earth Tech for its wastewater component. Instead of detailing the work that will need to be done to meet projected further demand, the wastewater analysis simply notes that sewer main lines will be installed “periodically in future years to serve new customers. The scope and cost of these projects will be determined on an as-needed basis that reflects the pattern of future development.” According to the statements of the County’s planning representative (Mr. Mann) at the hearing, planning will be on a permit-by-permit basis. This is not what the Act contemplates as capital facilities planning.

Even less attention is paid to the question of financing the system expansion. Perhaps because there is so little information available on the current state of sewer lines (save only the handwritten map provided by petitioner, Mr. Klein), there is no assessment of capital improvements that may be necessary currently and over time. Hook-up fees are expected to generate revenues to pay for past expenses for the existing treatment plant and “other facilities”; while unspecified “other fees” are expected to cover the cost of sewer main line extensions. The consultant tries valiantly to generate an analysis from these principles but largely gives up and says that the cost of the new treatment plant will need to be funded, somehow, through the revenue stream. Since the GMA expressly requires that the capital facilities plan provide a six-year plan that will finance capital facilities within projected funding capacities and clearly identify sources of public money for such purposes, the wastewater element of the capital facilities plan for the Eastsound UGA does not comply with the GMA.

Similarly, the drainage analysis lacks a plan for financing needed improvements. The consultant’s report points out a need to plan for capital improvements and to develop a funding

source for those improvements in addition to the county's annual budgeting process. However, neither of these tasks is accomplished in the drainage analysis.

The GMA requirements on this point are not a mere formality. If permit-by-permit planning were sufficient, there would be no need for a capital facilities analysis at all. Instead, the GMA directs local communities to think ahead and make sure that there is capacity for needed facilities where growth is being directed. The present reliance in Eastsound on private septic systems is by no means unrelated to other potential problems associated with growth, such as drainage and water quality. If the Eastsound UGA boundaries are to extend beyond the present capacity to provide service in the key areas of sewer and drainage, there must be a plan that shows how this will be done and how it will be financed.

Issue No. 3: Do the boundaries and sizing of the Eastsound UGA comply with the requirements of the GMA?

The Board's final decision and compliance order of May 7, 2001 directed the County to establish non-municipal UGA boundaries using RCW 36.70A.110 criteria. In particular, we directed the County to utilize its capital facilities analysis as a basis for drawing the UGA boundaries.

Although the GMA primarily anticipates urban growth areas will include cities and adjacent areas, it also contemplates a non-municipal UGA:

“An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.”

RCW 36.70A.110(1)

However, urban growth areas must first be established in areas where there are public facility and service capacities to serve urban development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. RCW 36.70A.110(3)

The Eastsound UGA boundaries trespass into admittedly rural areas. Most of the western portion of the UGA, outside the ULID of the sewer district, has already been built out in parcels of one dwelling unit to one or two acres. The County does not anticipate more growth being accommodated in this area since it is largely developed already. No.14, Findings and Recommendations of the San Juan County Planning Commission. These are not areas which have urban growth on them. While the County planning staff used a figure of one dwelling unit per acre or higher density as a gauge for urban-level density, we cannot agree that this is a proper measure for urban densities within UGAs. The County's consultants used the ratio of four dwelling units per acre as a minimum urban density level and we agree that this ratio more accurately reflects an urban level of density.

This area is not now served by sewer but by private septic systems. The major justification offered for including these areas is to provide needed urban services to areas already fully developed, even at non-urban densities. UGA Boundary Inclusion Criteria, Exhibit J to County's Motion To Find Compliance. At the same time, there is little evidence to show that the sewer district will actually be able to serve all these properties. The area will not be able to accept much, if any, additional growth and will not do so at true urban densities. The County's own consultants recommended against including this area within the Eastsound UGA boundaries.

Issue No. 4: Does the exclusion of the Petitioner's property from the Eastsound UGA comply with the GMA?

Petitioner Klein has raised many issues concerning the County's overall compliance with the GMA, and ably demonstrates the basis on which his concerns lie.

In addition, Petitioner raises a specific challenge to the Eastsound UGA boundaries based on the exclusion of his property and the North Shore generally from the UGA. His argument in essence is that his property, and the rest of the North Shore are characterized by urban growth and therefore the County must include them in the UGA before turning to areas not already characterized by urban growth.

Petitioner's claim that his property should have been included in the Eastsound UGA relies upon

the language of RCW 36.70A.110(3) (in pertinent part):

“Urban growth should be located first in areas already characterized by urban growth that have existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.”

And upon the definition of the terms, “urban growth” and “characterized by urban growth:”

“‘Urban growth’ refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of such land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services.

‘Characterized by urban growth’ refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.’”

RCW 36.70A.030(15)

Petitioner points out that his property is adjacent to the Giffens subdivision on the west, a property having urban growth on it. He also points to the Bartwood Estates subdivision to the east of his property (but not directly adjacent to it) that also has urban growth located on it. To the north of his property, Petitioner asserts, there are 9-10 lots already developed at low intensity urban levels. Two sewer lines serve Bartwood Estates and the North Shore, which creates capacity for sewer service to Petitioner’s property. Petitioner also provides a letter from an engineering firm indicating that service from the sewer main to his property is feasible. All these factors support the claim that Petitioner’s property is located in relationship to an area with urban growth on it as to be appropriate for urban growth, thus constituting property “characterized by urban growth”.

However, even if we were to find that Petitioner’s property could be characterized by urban growth, it does not follow that Petitioner’s property must be included in the UGA. Petitioner correctly asserts that property characterized by urban growth must be included in a UGA before

property that is not characterized by urban growth is included. We have concluded that the County did not comply with the GMA when it included property west of the sewer district (EWSD) ULID boundaries in the UGA. We have also directed the County to complete the capital facilities analysis as to drainage and sewer services. It is now up to the County to reconsider the Eastsound UGA boundaries in light of this decision. The County has discretion to determine how it will channel growth so long as those decisions comply with the GMA. As the County has not had an opportunity to reconsider its boundary choices, we cannot determine whether Petitioner's property must be included in them.

Issue No. 5: Does the Orcas Island Airport Overlay District discourage the siting of incompatible uses adjacent to the Orcas Island Airport as required by RCW 36.70A.510 and RCW 36.70.547?

The Orcas Island Airport is a general aviation airport which is owned and operated by the Port of Orcas. Boundaries and Regulations to Govern Airport Overlay Districts: Orcas Island (Eastsound) Airport, ("Airport Overlay District Report") p.v. The County has developed an airport overlay to the Eastsound Subarea Plan that attempts to balance safety concerns together with existing and projected development. The furthest southern portion of the airport safety zone is now virtually surrounded by the Village Residential zone and, to a much lesser extent, the Village Commercial zone. Under Washington law, counties are required to discourage the siting of incompatible uses adjacent to general aviation airports. RCW 36.70.547. The question before the Board is whether the airport overlay does enough to discourage incompatible uses in the airport safety zone.

RCW 36.70.547 expresses a strong legislative concern for both the safety and the viability of commercial airports in the state:

“Every county, city, and town in which there is located a general aviation airport that is operated for the benefit of the general public, whether publicly owned or privately owned public use, shall, through its comprehensive plan and development regulations, discourage the siting of incompatible uses adjacent to such general aviation airport.”

RCW 36.70.547 (in pertinent part)

The County's Airport Overlay District Report reviews the safety risks, applicable FAA

regulations, and options for regulating uses in the Airport Overlay District at Eastsound. Because there are increased safety risks in the vicinity of an airport, land use regulations will normally restrict uses such as schools, hospitals and nursing homes; multi-family housing; and places of public assembly such as churches and public meeting halls. Airport Overlay District Report, p. 19. Because airports are noisy, placing residential housing in flight paths and in the vicinity of airports creates a potential for conflicts between residents and the airport. Airport Overlay District Report, p. 20.

The Washington State Department of Transportation recommends rural densities for uses within the airport safety zone(s). Airport Overlay District Report, p. 21. However, this creates difficulties for airports located in areas which have already become urbanized. The Orcas Island Airport is in such an area.

The flight approach patterns for the Orcas Island Airport take planes over portions of the Eastsound commercial and residential core. Within Airport Accident Safety Zone #2 (South) the County allows 8 dwelling units per acre, an area within which the draft County Staff 2001 Report recommended 1 unit per acre (Exhibit H). Although the County's Airport Overlay District Report notes the problems associated with high-density uses in Zone #3 (an inner turning zone), Village Residential densities continue to be permitted there. This means that densities as high as 12 dwelling units per acre are permitted in the inner turning zone, Zone #3. San Juan County Code 18.40.032 (C)(1). The Code places other restrictions on uses in this zone – it prohibits uses that create high concentrations of people or are occupied by dependent people such as children, the sick and the elderly, for example. However, it does anticipate and permit further residential development in Zone #3 at urban densities.

Within the Airport Overlay District, residential densities of 4-12 dwelling units per acre are permitted within parts of the outer safety zone (Zone #4), an area within staff recommended 4 dwelling units per acre. Further, commercial densities of 4-40 units/acre are permitted within parts of Zone #4.

The County points out that there is very little vacant land in the Airport Overlay District within permitted residential zones. It also argues that there is no hard and fast rule about what densities

are “incompatible” with an airport. The Washington State Department of Transportation recommends rural densities in the airport safety zones but the County urges that those recommendations are for airports already located in rural areas, not airports located in urbanized settings.

However, state law expressly requires a jurisdiction to discourage incompatible uses adjacent to an airport. RCW 36.70.547. The densities which the Eastsound UGA permits in the airport zone are simply too high to be compatible with the existence of the airport. The experience of airports in other parts of the state has shown that where the densities are high, the pressures to reduce or eliminate operation of the airport are intense. See, e.g., *Achen v. Clark County*, WWGMHB No. 95-2-067 (FDO 9/20/95). The high densities permitted in the vicinity of the Orcas Island Airport are therefore non-compliant with the UGA.

Findings of Fact Pursuant to RCW 36.70A.270(6)

1. San Juan County is a county west of the crest of the Cascade mountains which has chosen to plan under RCW 36.70A.040.
2. The Board issued a Final Decision and Order in #99-2-0010c and #00-2-0062c, on May 7, 2001, finding that the County was not in compliance with the Growth Management Act with respect to the Lopez Village and Eastsound UGAs.
3. On May 15, 2002, the San Juan County Board of Commissioners published Ordinances 4-2002, 5-2002, and 6-002, adopted May 3, 2002.
4. The County filed its Motion To Find Compliance on May 6, 2002.
5. Petitioner filed his Petition for Review of the land use ordinances adopted in May on July 13, 2002, and also alleged that the County’s ordinances fail to comply with the Board Final Decision and Order of May 7, 2001.
6. Petitioner participated before the County regarding the land use ordinances adopted in May of 2002.
7. Ordinance 6-2002 imposes a moratorium on land division in the Lopez Village UGA until an analysis of water supply and capital facilities is completed.

8. The capital facilities analysis for the Lopez Village UGA has not been completed.
9. Ordinance 4-2002 amends the Eastsound Subarea Plan and modifies the Eastsound Urban Growth Area boundaries.
10. The wastewater component of the Eastsound UGA does not contain an inventory of existing facilities or a projection of needed capital improvements.
11. The wastewater component fails to outline a financing plan which would ensure that there were sufficient funds to meet the demands for expanded sewer service within the Eastsound UGA.
12. The County intends to address the question of expanded sewer service on a permit-by-permit basis.
13. The drainage component of the Eastsound UGA capital facilities analysis also lacks a plan for financing needed improvements.
14. The boundaries of the Eastsound UGA include properties on the west side of the sewer district ULID which are not now and not projected to exceed densities of one dwelling unit per acre.
15. The west side properties utilize private septic systems. There is no financing plan sufficient to show that the properties can feasibly be served by the sewer district.
16. The Orcas Island Airport is a general aviation airport owned and operated by the Port of Orcas.
17. The airport is located in close proximity to the Eastsound commercial and residential core.
18. Ordinance 5-2002 establishes an Airport Overlay District to regulate uses within the airport safety zones.
19. Within the Airport Overlay District, residential densities of 4-12 dwelling units per acre are permitted within the inner turning zone (Zone #3) and within parts of the outer safety zone (Zone #4), areas within which staff recommended 4 dwelling units per acre.
20. Within Airport Accident Safety Zone #2 (South) the County allows 8 dwelling units per acre, an area within which the draft County Staff 2001 Report recommended 1 unit per acre

(Exhibit H).

21. Within the Airport District, commercial densities of 4-40 units/acre are permitted within parts of Zone #4, an area within which staff recommended 4/1.

Conclusions of Law

A. This Board has jurisdiction over San Juan County's compliance with the Board's Final Decision and Order in Nos. 99-2-0010c and 00-2-0062c.

B. This Board has jurisdiction over Petitioner's Petition for Review in No. 02-2-0058.

C. Petitioner has standing to challenge the land use actions taken by the County's Board of Commissioners in May, 2002.

D. The County fails to comply with the Growth Management Act with respect to the Lopez Village UGA.

E. The capital facilities analysis of the Eastsound UGA fails to comply with the Growth Management Act.

F. The boundaries of the Eastsound UGA fail to comply with the Growth Management Act

G. The Airport Overlay District fails to discourage incompatible uses as mandated by RCW 36.70.547.

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ORDER

Within 180 days of the date of this Order, the County must bring the Lopez and Eastsound UGAs into compliance. The County must:

1. Complete final growth boundary lines in the Lopez UGA after studies on water availability and saltwater intrusion are concluded.
2. Complete a Lopez UGA capital facilities plan.
3. Complete an Eastsound UGA capital facilities analysis with respect to wastewater and drainage services.
4. Reconsider the Eastsound market factor.

5. Reconsider the inclusion of the westernmost, low-density properties in the Eastsound UGA and establish appropriate urban densities for a non-municipal UGA.
6. Reconsider incompatible uses in the Airport Overlay Zone.
7. Provide a report on its progress toward compliance no later than April 2, 2003.

Pursuant to RCW 36.70A.330(1), the Board hereby establishes a compliance hearing date of May 15, 2003 at 9:00 am, in a location to be determined. In the event that the County takes compliance actions before its 180-day compliance deadline, the County may file a motion with the Board requesting an adjustment of the hearing date.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 15th day of October, 2002.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member

Margery Hite
Board Member