

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

FRIENDS OF THE SAN JUANS, LYNN BAHRYCH and
JOE SYMONS, et al.,

Petitioners,

v.

SAN JUAN COUNTY,

Respondent.

No. 03-2-0003c

CORRECTED FINAL
DECISION AND
ORDER and
COMPLIANCE
ORDER

I. SUMMARY OF DECISION

This Final Decision and Order and Compliance Order deals with two issues (1) Redesignation of the Sandwith property to Forest Resource Land (FRL) and (2) Adoption of amendments to allow internal, attached, and freestanding Accessory Dwelling Units (ADUs) and guesthouses on any single-family lot in San Juan County's rural and resource lands with a principal residence without counting the ADU as a dwelling unit for the purposes of complying with the underlying density¹. With the County's redesignation of the Sandwith property, all of the designated FRLs in San Juan County (County) are now in compliance with the Growth Management Hearings Board (GMA). The majority of the decision deals with the County's ADU regulations.

The Board finds that the County's amendments with respect to ADUs in rural and resource lands are compliant with the GMA except with respect to detached or freestanding (the term the County's ordinance now uses) ADUs. Freestanding ADUs must be considered as the equivalent of another dwelling for purposes of density

¹ The issue of ADUs in Limited Areas of More Intensive Rural Development is not before the Board.

calculations, whether in rural or in resource lands. Further, freestanding ADUs in resource lands must also be limited to uses related to the resource, such as farm worker.

In order to achieve compliance, the County was ordered to analyze existing conditions, future projections and the need for ADUs, and the impacts of future ADU construction on public facilities and services, with special attention to the impacts of ADU construction on shorelines, critical areas, and resource lands. The County was also directed to ensure that additional guesthouse densities² are consistent with current densities allowed in the County.

The County completed an analysis of the current number of ADUs by analyzing assessor's parcel data and thereafter adopted new amendments in December 2002. Petitioners challenged the adopted 2002 amendments and the Determination of Nonsignificance (DNS) for the ADU regulation amendments.

The Board finds that the County's ADU analysis and its State Environmental Policy Act (SEPA) determination are adequate in forecasting the impacts of the changes in the definition of ADUs on public facilities and services, and on critical areas.

The Board finds that the fatal flaw in the 2002 amendments is that a freestanding ADU on a lot with a principal residence is not counted as a dwelling unit for the purpose of calculating the maximum allowable densities. We find that the County's regulations, as they apply to freestanding ADUs in rural residential areas create a density that has

²At the time of the original FDO, the County Code utilized the term "guesthouses". In the new code provisions, the definition of accessory dwelling unit has been used. Under the new code, the definition of an accessory dwelling unit includes a guesthouse but also includes internal, attached and detached accessory dwelling units.

consistently been determined to be sprawl by this Board and the Central Board.³ Such density in rural areas is not in compliance with RCW 36.70A.020(2) and RCW 36.70A.110(1) and the regulations permitting such density are invalid. If the County wishes to permit freestanding ADUs in rural lands that allow for residential uses, it must consider freestanding ADUs as dwelling units for the purpose of determining appropriate densities.

When permitting ADUs in resource lands, the County has the additional obligation to conserve the capacity of resource lands for commercial resource production, as mandated by RCW 36.70A.020(8). This means that freestanding ADUs in resource lands must be limited to uses related to the resource. The Department of Community, Trade and Economic Development's (CTED's) Model Ordinance, referenced in RCW 43.63A.215, also encourages counties to provide for ADUs in agricultural lands for farm workers. We conclude that creating accessory dwelling units in resource lands for the limited purpose of conserving and using the resource itself is compliant with the GMA and such use is applicable to forest workers as well as to agricultural workers. However, the county's regulations permitting freestanding ADUs in resource lands, do not, as drafted, adequately prevent interference with resource conservation, or restrict occupancy to family or other workers employed in resource production. To be compliant with the GMA, these regulations for freestanding ADUs must require: (1) limitation to family members or workers employed in resource production or conservation; (2) site location standards that prevent the freestanding ADU's interference with resource production, and (3) counting the freestanding ADU as a dwelling unit for the purposes of calculating the appropriate allowed density.

³ The Eastern Board has questioned whether a density of greater than one dwelling unit in ten acres is appropriate in a rural area. *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016, Order on Petitioner's Motion for Reconsideration (August 16, 2000); Final Decision and Order (May 23, 2000).

If they are regulated in the manner we have outlined above, long term rental of accessory dwelling units in rural lands is consistent with the GMA and provides a level of affordable housing sorely needed in San Juan County. We find long-term rentals of freestanding ADUs in resource lands appropriate only if they are rented to family members and other workers actually engaged in resource production. Because of the nature of their construction, internal and attached ADUs are unlikely to interfere with resource production. The County's ordinance as it pertains to the permitting of internal and attached ADUs is compliant with the GMA. The question of whether short-term rentals in resource lands are compliant with GMA was not before the Board.

II. PROCEDURAL HISTORY

See Appendix A.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF AND STANDARD OF REVIEW

Pursuant to RCW 36.70A.320(1), Ordinances 21-2002 (ADUs) and 24-2002 (Sandwith property) are presumed valid upon adoption. The burden is on the petitioners to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "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).

Under RCW 36.70A.320(4) the County has the burden of initially showing that the action it took in response to the determination of invalidity “will no longer substantially interfere with the fulfillment of the goals of this chapter.” Nonetheless, in reviewing a local government’s request to modify or rescind invalidity, we apply the presumption of validity under RCW 36.70A.320(1) to Ordinance 21-2002 and Ordinance 24-2002.

IV. ANALYSIS AND DISCUSSION OF THE ISSUES

Sandwith Property

On December 10, 2002, the County adopted Ordinance 24-2002 which redesignated the northern portion of the Sandwith property to Forest Resource Land (FRL) “except as provided for in the settlement agreement entered into with the Sandwith family on December 24, 1984”. The Petitioners requested that the Board find compliance and rescind invalidity only as to the redesignation of the land as Resource Land (RL) and make no decision on the contract issue. **Based on our independent review of the record, we find that the County’s action in redesignating the northern portion of the Sandwith property to FRL is in compliance with the GMA. By this action, the County has removed substantial interference with the goals of the GMA as to forest resource lands. Our previous finding of invalidity in this regard is rescinded.** We note that this finding relates only to the redesignation of this property to FRL. With regard to the contract entered into with the Sandwiths by the County, we repeat what the Board said in the March 28, 2002 Order on Compliance and Invalidity:

There is no authority in the GMA for Growth Management Hearings Boards to issue a ruling on the terms of any individual contract between the County and a property owner. Secondly, the provisions of the contract were in effect long before the resource land designation made in 1998.

What the effect of the contract is today under the conditions set forth in this record is wholly beyond the scope of authority which the Legislature has granted to us. Those questions need to be answered in a different forum.

Town of Friday Harbor v. San Juan County, Case No. 99-2-0010c, Order on Compliance and Invalidity (March 28, 2002).

While this decision involves just 350 acres of RL designation, it is important to note that with this decision, the County's overall designation of RLs is now in compliance with the GMA. The Board commends the County for this accomplishment.

Accessory Dwelling Units (ADUs)

Background

The Petitioners and the County have stipulated that the issues before the Board in the Compliance Orders and the issues raised in Petition 03-3-0003 were heard at the Compliance Hearing on February 19, 2003. The parties also stipulated: (1) that no additional briefing or argument is needed for the Board to decide these issues in this Compliance Order, and (2) that all of these issues will be decided in the March 2003 Order, subject to the usual rights of appeal. Therefore, we will discuss both the compliance issues as well as the issues raised in Petition 03-2-0003. When the issues are related, we will discuss them together.

In this Board's Final Decision and Order (FDO) of July 21, 1999, the Board found that the County's comprehensive plan and development regulations allowing for guesthouses did not comply with the GMA. The Board ordered:

If the County wishes to allow guesthouses as an accessory dwelling unit for each SFR it must first do an analysis which includes existing conditions, a reasonable projection of future guesthouse additions and the need for them as well as the potential additional cost of public services and facilities needed for this new growth. The County must also ensure that the additional guesthouse densities are considered and consistent with the basic densities to be established during the remand. SJC must particularly analyze the impact of guesthouses on its shorelines, RLs and critical areas.

Town of Friday Harbor. v. San Juan County, WWGMHB Case No. 99-2-0010c, FDO (July 21, 1999), at 13.

In Spring of 2000, the County completed an analysis of ADUs and the Board reviewed that analysis in November 2000. In the Board's Order on Recision of Invalidity and Compliance/Invalidity on November 30, 2000, the Board determined that the provisions of the Uniform Development Code that allow new guesthouse construction in rural and resource lands were invalid. The Board found that the County's analysis was deficient and again ordered the County to adequately analyze the effects of new guesthouse construction in rural and resource lands. This finding of invalidity effectively banned the construction of new guesthouses in all areas of the County except in its two non-municipal UGAs. San Juan County's Brief in Support of Motion to Rescind Invalidity and Find Compliance (County's Brief), at 1.

Issue 1: *Has the County adequately analyzed existing conditions?*

Applicable Law and Rules

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365-195-050(4).

Position of the Parties

The Petitioners argued in their brief and at the hearing that the County did not review new and appropriate data and called the County's analysis "anecdotal guesstimates dressed up in a new skirt" because it does not contain actual "as built data". They suggested several other methods of obtaining "on the ground" data such as the number of power connections, on the ground inspections by neighborhood associations, improving the assessor's evaluation tools, and interviewing and analyzing information from permit applicants who had obtained a guesthouse permit and who could now build a main house pursuant to the Board's Order Clarifying Invalidity (April 6, 2001). Petitioner's Reply to Juan County's Motions to Rescind Invalidity and Find Compliance (Petitioner's Reply Brief) (February 11, 2003), at 3, 5, and 6. .

The County, in its Brief and again at oral argument at the February 19, 2003 Hearing, asserts that the County determined the number of ADUs by analyzing all the county assessor's building and parcel data records. The August 2002 *Final Accessory Dwelling Units Analysis Report* (Final ADU Report) provides that all of those records through 2001 were utilized. The County explained at the hearing how the assessor's data is compiled from actual inspections by assessor's staff and how it was interpreted for this report to determine the presence of an ADU on a particular parcel. Exhibit D.

Discussion

The County staff, with the help of a consultant, conducted a new analysis of the number of ADUs in nonurban San Juan County. A draft of the analysis was made available for public review and comment on June 19, 2002. The data from assessor's records is adequate to determine whether a full additional unit is present on the property, since the assessor's records reflect the presence of additional bathrooms and kitchen(s). From that data, however, it cannot be completely accurately determined whether that unit is attached, internal or freestanding.

Conclusion

The Board has reviewed the Draft and Final ADU Reports. Exhibits A and D. **We find that the methodology used is acceptable for a small county with limited resources like San Juan County to estimate the numbers of ADUs that exist and for the purposes of estimating impacts on public facilities and services. The presence of additional bathrooms and kitchen(s) is adequate to determine population density impacts.**

Issue 2: *Did the County make a reasonable projection of future guesthouse additions?*

Applicable Law and Rules

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365- 195-050(4).

Positions of the Parties

Petitioners point out that there has effectively been a moratorium on the construction of ADUs in the county and that this effective moratorium was not taken into account in the County's trend analysis. The Petitioners argue that the County's current analysis of trends for future ADU construction is not adequate for planning or permitting additional residential density in rural and resource lands throughout the County. Opposition to San

Juan County's Motion's to Rescind Invalidity and Find Compliance and Request for SEPA Review (Petitioner's Opposition Brief) (February 20, 2003), at 8-9.

The County concluded that for both market and owner preference reasons, it is not likely for new ADU development to exceed the current percentage (16.7 percent) of nonurban residential lots with ADU development in rural and resource lands in the County. County's Brief, at 10.

Discussion

The Final ADU Report describes the projection of future trends of ADU development as being "inherently highly speculative." Exhibit D, at 38-39. The Final ADU Report discusses influences for ADU development including homeowner preferences, individual lot differences, demographics, and economics. The Final ADU Report also discusses how various factors such as land costs, development costs, and increase or decrease in the quality of life, ferry service, or desirability as a recreation destination in the county could impact the development of ADUs. From this discussion, the report concludes that ADU development will continue at the same rate on nonurban rural and resource parcels. This is the same percentage that the Final ADU Report concludes exist currently. Based on the Draft ADU Report and the Final ADU Report, at 50 and at 66 respectively, the County concludes that data and the conditions affecting the development of ADUs will change over time and will require re-evaluation of the assumptions and findings in the report and the measures for keeping the data current.

We agree with the County that the projections of future ADU construction are inherently speculative. There are too many highly variable factors for the County to be able to make a reasoned prediction about future construction and use of ADUs. However, we do not conclude the County has any further duty to attempt a more definitive projection of future ADU construction or use. The County's efforts in this regard have been admirable.

Conclusion

The Final ADU Report has shown the difficulty in predicting future trends for ADU construction. The County has adopted a monitoring mechanism through the Resolution which will implement the data collection recommended by the county reports. The use of measures that are already in place, such as concurrency requirements, critical areas regulations, and health and environmental codes will ensure mitigation of the impacts of ADUs at the time of permitting. The County will be able to respond to unforeseen trends.

We find that the County’s analysis of trends in ADU development is adequate for the purpose of analyzing the impacts of the future construction of ADUs on the County’s public facilities and services.

Issue 3: *Did the County adequately analyze the need for additional ADUs?*

Applicable Law and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

(4) Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.020(2) and (4).

Accessory apartments. Any local government, as defined in RCW 43.63A.215, that is planning under this chapter shall comply with RCW 43.63A.215(3).

RCW 36.70A.400.

Unless provided otherwise by the Legislature, by December 31, 1994, local governments shall incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, and official control. To allow for local flexibility, the recommendation shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

RCW 43.63A.215(3).

The department shall, in consultation, with the affordable housing advisory board created in RCW 43.185B.020, report to the legislature on the development and placement of accessory apartments. The department shall produce a written report by December 15, 1993 which.... (b) Makes recommendations to the legislature designed to encourage accessory apartments in areas zoned for single-family use....

RCW 43.63A.215(1).

As used in this section a "local government" means.... (b) a county that is required to or has elected to plan under the state growth management act...

RCW 43.63.215(4)(b).

Positions of the Parties

The Petitioners argue that if the County wishes to increase densities in rural and resource lands, it must show that there is an over-riding need for such an increase. Although Petitioners agree that affordable housing is needed in the county, they urge that previous board decisions and the record in this case show that "guesthouses" will not create affordable housing. They point out that the Final ADU Report shows that at present the primary motive for developing new ADUs is to provide accommodations for guests and that, in particular, the development of new freestanding guesthouses on single-family (SF) lots for the purpose of accommodating visiting family members and guests is not useful in meeting the need for affordable housing.

The Petitioners contend that the purpose of ADUs in the Model Ordinance is to increase allowable density where appropriate in traditional single-family zones in urban areas and that because the county is primarily rural, the standards for ADUs in urban areas are not appropriate and do not comply with the GMA requirement to preserve rural character. Petitioner's Reply Brief, at 9 and 10.

The County addresses the need for new ADUs by emphasizing that ADUs are a source of affordable housing. The County says that the Housing Element of the County's Comprehensive Plan considers that the long-term rental of ADUs is important to the county's affordable housing supply. The County analyzed what affordable rates would be for low and moderate-income groups by surveying realtors. From this information, the County estimated the rates at which ADUs could be rented long-term and determined that long-term rental of some ADUs could be affordable to lower income groups. County's Brief, at 10.

The County acknowledged at the hearing that the Final ADU Report found that an owner's original intent in building an ADU might not be for the purpose of providing affordable housing. Changes in a property owner's personal or financial circumstances, property ownership, or market conditions could cause ADUs to become available as long-term rentals, after their initial use for family members. Final ADU Report, at 40.

The County points out that the Petitioners tend to lump together internal ADUs, attached ADUs, and ADUs that are internal to a larger freestanding structure (such as a garage or machine shop) together with freestanding ADUs when they use the term "guesthouse". The County explains that they changed the term "guesthouse" to "ADUs" in the new ordinance so that various types of ADUs could be distinguished and that all ADUs would not be thought of as only freestanding structures. The County admits that there may not be much affordable housing created initially through the new ADU regulations, but urges

that any affordable housing in San Juan County is a significant improvement for low and moderate income residents.

Discussion

We note that RCW 43.63A.215(4)(b) requires that counties planning under the GMA make provisions for ADUs and directs these counties to look at the Model Ordinance for guidance in drafting ordinances regarding ADUs. We observe that the purpose of the Model Ordinance is to assist local jurisdictions in finding ways to facilitate the provision of ADUs; it does not offer guidance on how to harmonize the ADU requirement with other goals and requirements of the GMA, particularly RCW 36.70A.020(1) and (2) or RCW 36.70A.110(1).

In examining the Model Ordinance, the following purposes for ADUs are listed: (1) Provide homeowners with a means of rental income, companionship, security, and services; (2) Add affordable units to existing housing; (3) Make housing units available to moderate income people who otherwise have difficulty finding homes within the (city/county); (4) Develop housing units in single-family neighborhoods that are appropriate for people at a variety of states in the life cycle; and (5) Protect neighborhood stability by ensuring ADUs are installed under the conditions of this Ordinance. Washington State Department of Community Development, *Accessory Dwelling Unit Ordinance and Study* (January 1994), at 3.

The Board notes that it is important that the County has defined the different types of ADUs (internal, attached and freestanding) in the amendments to its ADU regulations. This distinction is valuable to analyzing the importance of ADUs, for the provision of affordable housing in rural and resource lands, and to evaluating other impacts of ADUs on density and rural character. We agree with the Petitioners that the Final ADU Report points out that freestanding ADUs provide for very little affordable housing at the time of

construction. We also agree with the County that ADUs have potential, over time, to provide for a variety of housing needs due to changes in a property owner's personal or financial circumstances, property ownership, or market conditions. We agree that the County has adequately analyzed the need for additional ADUs in general. However, this does not relieve the County of the obligation to harmonize its affordable housing strategy with the other goals and requirements of the GMA.

Issue 4: *Did the County adequately analyze the potential costs for additional public services associated with new ADU construction?*

Issue 5: *Will concurrency required under WAC 365-195-010(6) be possible given the piecemeal, lot-by-lot nature of ADU development by the County? Petition for Review (PFR) (February 7, 2003), Case No. 03-3-003c.*

We will discuss these two related issues together.

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

(12) Public Facilities and Services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

RCW 36.70A.020(12).

Through the Growth Management Act, the Legislature provided a new framework for land use planning and the regulation of development in Washington State in response to challenges posed to the quality life by rapid growth. Major features of this framework include: . . .

(6)The principle that development and the providing of public facilities needed to support development should occur concurrently.

WAC 365-195-110(6).

Local plans and development regulations are expected to vary in complexity and in level of detail provided in the supporting record, depending on population size, growth rates, resources available for planning, and scale of public facilities and services provided.

WAC 365-195-050(3)

State Environmental Policy Act (SEPA). Adoption of comprehensive plans and development regulations are "actions" as defined under SEPA. This means that SEPA compliance is necessary. When a complete new plan is being written, in most instances, the preparation of an environmental impact statement (EIS) will be required prior to its adoption. SEPA compliance should be considered as part of the planning process rather than as a separate exercise. Indeed, the SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another. SEPA compliance for development regulations should concentrate on the impact difference among alternative means of successfully implementing the plan. Detailed discussion of SEPA compliance is contained in Department of Ecology Publication No. 92-07, *The Growth Management Act and the State Environmental Policy Act, A Guide to Interrelationships*

WAC 365-195-610.

Position of the Parties

The Petitioners are concerned that allowing ADUs to be rented long term will create significant impacts on public services. They argue that as drafted, the County's ordinance does not provide that the development of ADUs will trigger any additional corresponding provisions in the County's Uniform Development Code requiring additional open space, drainage, streets and roads, potable water, sewage disposal, parks and recreation, schools, ferry service, power service capacity, telecommunication service, and law enforcement. Petitioners argue that the additional residential occupancy of a

second living space on residential parcels will have large-scale and cumulative effects on services. PFR, at 5.

The County argues that the ADU analysis evaluates the functional impacts on water, solid waste, law enforcement, fire and other emergency services, schools, and traffic. The County explains that because ADUs have not been considered functionally separate from primary single-family residences, few studies exist to specifically quantify such data. Given the difficulty of obtaining ADU specific data, the evaluations were based on qualitative assessments from utility providers, supplemented by quantitative data when no qualitative data was available. County's Brief, at 14.

Discussion

Development and the provision of public services needed to support development should occur concurrently. *See* WAC 365-195-010(6). These issues ask whether the County has sufficiently analyzed the potential impacts of additional ADU construction upon public facilities and services. For purposes of the impacts on facilities and services, the key question is the adequacy of the projected population increase due to the ADUs. Because the question is population rather than structural density, all ADUs (whether attached, freestanding or internal) may be considered the same way.

The County's Draft and Final ADU Reports state that due to market conditions, the percentage of ADU development on nonurban residential parcels that has occurred in the past is likely to occur in the future. The reports use this assumption and assumptions about how ADUs are occupied today to analyze impacts to the County's public facilities in the future. Based on this, they conclude that the future development of all types of ADUs will have little impact on future county facilities.

Under WAC 365-195-610, a determination of compliance of development regulations with SEPA should concentrate on the difference between impacts among alternative means of successfully implementing the plan. The questionnaire for non-project actions that was part of the County's Declaration of Nonsignificance identified that, as a result of the ADU analysis, there were identifiable impacts to water systems that the County regulated. In response, the County proposed a mitigating measure.

Under County regulations, an ADU is counted as an additional residential use equivalent of one-half a connection. Ordinance 21-2002, Section 8. By doing this, the County can monitor the capacity of Class B water systems when ADUs are added.

In our discussion of the County's analysis of future trends, we noted the difficulty of making these projections. For internal ADUs, the County's assumptions about the impacts upon public facilities and services are reasonable. For the attached and freestanding ADUs, the impacts on public facilities and services are less firm. The County has committed to reassessing these impacts if the percentage of ADUs reaches twenty five percent. Until then, the County can mitigate for any discrepancies in their assumptions through the application of its concurrency standards (Section 18.60.200 of the County's Uniform Development Code for roads and water); storm-drainage regulations (Section 18.60.070 of the County's Uniform Development Code); and health and safety codes (the County's Code 8.16.050 and 8.16.060 for on-site systems) for the construction of ADUs during the permit process. San Juan County Uniform Development Code, (November 2000). The County's August 13, 2002 Determination of NonSignificance states that these codes will be used when permitting ADUs.

Conclusion

We find the County's analysis of the impacts of ADUs on future public facilities and services to be adequate for the purposes of formulating development regulations and no further analysis of the impacts to public facilities and services of the future construction of ADUs are necessary at this time. We also find that the County has followed the guidance in WAC 365-195-610 and has regulations in place to comply with RCW 36.70A.020(12) and to be consistent with the principle expressed in WAC 365-195-110(6).

Issue 6: *Did the County adequately analyze the impact of the future construction of ADUs on critical areas?*

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040...

Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

RCW 36.70A.020(10).

State Environmental Policy Act (SEPA). Adoption of comprehensive plans and development regulations are "actions" as defined under SEPA. This means that SEPA compliance is necessary. When a complete new plan is being written, in most instances, the preparation of an environmental impact statement (EIS) will be required prior to its adoption. SEPA compliance should be considered as part of the planning process rather than as a separate exercise. Indeed, the SEPA analysis and documentation can serve, in significant part, to fulfill the need to compile a record showing the considerations which went into the plan and why one alternative was chosen over another. SEPA compliance for development regulations should concentrate on the impact difference among alternative means of successfully implementing the plan. Detailed discussion of SEPA compliance is contained in Department of Ecology

Publication No. 92-07, *"The Growth Management Act and the State Environmental Policy Act, A Guide to Interrelationships*

WAC 365-195-610.

Positions of the Parties

The Petitioners argue that because the County did not analyze the impact of new ADU construction on every single-family lot, especially lots in resource lands, critical areas, and rural lands, the County has not assessed the impact of ADUs on critical areas.

Critical areas are called environmentally sensitive areas in the County's Uniform Development Code and are defined as geologically sensitive areas, frequently flooded areas, critical aquifer recharge areas, wetlands, and fish and wildlife areas. The County maintains that critical areas regulations act as an overlay district. This overlay district applies to the permitting and construction of ADUs, just as it does to single-family homes and other development. County's Support Brief, at 22.

Discussion

The County has a valid critical areas ordinance. The County enforces its critical areas regulations through Section 18.30.110 of the County's Uniform Development Code, Environmentally Sensitive Areas District (ESA). Section 18.30.110 B provides that any land use or development activity subject to a development permit under the San Juan County Uniform Development Code may be undertaken on land containing an ESA or its buffer only if the provisions of the ESA section are met. Citations provided by the County to the San Juan County Code. Section 18.80.070 E.1 shows that the County does enforce critical areas ordinances for ADUs. The County's Uniform Development Code, Title 18, Revised November 2000. The County's Environmental Checklist identifies that the County regulates ADUs through the County's Uniform Development Code, Section 18.30.110-160. Exhibit C.

Conclusion

We find that enforcement of the County’s critical areas ordinance at the time of permitting an ADU will mitigate the impacts of ADU development. Therefore, we find that no further analysis on the impacts of ADUs on critical areas is needed.

Issue 7: *Did the County ensure that the additional guesthouse (now referred to as ADUs) densities are considered and consistent with the basic densities established during the remand and now in effect for the County?*

Issue 8: *By permitting an ADU on every legal parcel, does the ordinance fail to contain rural development? PFR, at 3.*

Issue 9: *Does the Ordinance fail to preserve rural character as required by RCW 36.70A.030(14)? PFR, at 2.*

We will discuss these related issues together.

Applicable Laws and Rules

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040... (2)Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low density development.

RCW 36.70A.020(2).

Each county that is required or chooses plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside which of which urban growth can occur only if it is not urban in nature...

RCW 36.70A.110(1).

Position of the Parties

The Petitioners argue that Ordinance 21-2002 does not address the “fundamental requirement of the GMA to reduce the inappropriate conversion of undeveloped land into low-density development in the rural area.” Petitioner’s Opposition Brief at 6 and 9, San Juan County’s Planning Commission’s Findings and Recommendations, September 27, 2002 Exhibit E, Unlettered Attachment to *San Juan County Planning Department’s Staff Report*.

The County argues that the impact on rural areas will be *de minimis*. The County relies on the analysis in the Final ADU Report; this states that it is reasonable to assume that the current percentages of ADUs present in residential areas (16.7 percent of the residential parcels on rural and resource lands will contain ADUs, 2.3 percent of nonurban residential parcels have an internal ADU and 14.4 percent of parcels with an ADU will be freestanding or attached) will be the same in the future. The County asserts that market conditions and the requirement that the owner of the single-family residence must also own any ADU on the same parcel are the reasons why these percentages of new ADU construction will stay the same in the future. The County’s analysis of the impacts on ADUs on public facilities and services uses these percentages to assess the impacts of future development of ADUs on both public facilities and services and rural character and concludes these impacts will be nominal. The County concludes that it is appropriate to consider any ADU an “appurtenance” to a residential dwelling; the County also argues that this approach is consistent with that of other jurisdictions. The County has determined that the identified structural effects of ADUs may be addressed through the site location standards included in the ordinance and view protection measures in the County’s Shoreline Master Program. County’s Brief, at 23.

Discussion

The question of how freestanding (detached) ADUs should be considered for the purposes of density calculations is not entirely a new one. We previously considered a similar issue in Lewis County (*Yanisch v. Lewis County*, Case No. 02-2-0007c, Final Decision and Order (December 11, 2002) and the Central Board considered a similar issue in Pierce County, *Pierce County Neighborhood Association v. Pierce County (PNA II)*, Case No. 95-3-0071 (March 11, 1996). The County's ADU amendments permit all three types of ADUs (internal, attached, and freestanding) on all lots that have single-family houses as their primary use. The County's Uniform Development Code 18.40.240 A.

We will first review what the Western Washington Growth Management Hearings Board (WWGMHB) and the Central Puget Sound Growth Management Hearings Board (CPSGMHB) have ruled concerning the permitting of ADUs in rural residential areas in prior cases. To our knowledge, the Eastern Washington Growth Management Hearings Board has not considered this issue.

In *Yanisch v. Lewis County*, Case No. 02-2-0007c, Final Decision and Order, (December 11, 2002), this Board said, "We have consistently found that densities greater than 1 unit per five acres are not rural densities." This Board found that ADUs could be allowed in Lewis County as *internal or attached units* on single-family (SF) lots of five acres or less. However, we ordered Lewis County to remove from the Lewis County Code provisions that permitted *detached* ADUs on lots that did not contain the basic underlying rural density.

The Central Board, in a case referenced in the County's Final ADU Report, looked at the definition of ADUs in Pierce County. The Central Board then discussed the regulating of freestanding (detached) ADUs in rural areas:

Construction of a detached new ADU on a parcel smaller than 10 acres is generally prohibited because it would effectively allow two freestanding dwelling units. The effect would necessarily be one freestanding dwelling on a lot smaller than 5 acres, which the Board has previously held to constitute urban growth. Regardless of the size of the rural lot, ADU's attached to the main residence or a conversion of a detached existing structure (e.g., a garage) in close association with the primary residence would not constitute new urban growth.

PNA II, Case 95-3-0071, FDO (March 20, 1996), at 22.

With these prior cases in mind, we now examine the County's Uniform Development Code amendments regulating ADUs:

The following standards apply to all accessory dwelling units:

- A. Where not otherwise authorized by this Code, one internal, attached, or freestanding accessory dwelling unit is permitted on any lot having a single-family residence as the principal use of the lot . The ADU shall not be counted in the density calculations and shall not require a density unit in addition to that for the principal residence.

Section 18.40.240 A.

Other provisions in this section require that an ADU can not exceed 1000 square feet and must be owned by the owner of the principal residence, and make them subject to certain site location standards. Section 18.40.240 D.

Section 18.20.010 of the County Code includes this definition of ADUs:

Accessory Dwelling Unit (ADU) means a second structure or living unit that is accessory to the principal, single-family residential living unit and provides the basic requirements of sleeping quarters, heating, kitchen facilities, and sanitation, and which shares a lot with a principal residence. Types of ADUs include "internal ADU", "attached ADU", "freestanding ADU", and "guesthouse".

County Uniform Development Code, Section 18.20.010.

The County's Uniform Development Code also defines each one of the types of ADUs, including "freestanding ADU" (Section 18.20.60):

Freestanding ADU means an accessory dwelling unit that is physically distinct from the principal residence. To be freestanding, the ADU and the principal residential unit may not be connected or must be structurally independent per the Uniform Building Code.

The County's Uniform Development Code, Section 18.20.60.

Guesthouse (Section 18.20.70) is defined as follows:

Guesthouse means an accessory dwelling unit that is not rented, but is designed and most commonly used for irregular occupancy by family members, guests, and persons providing health care or property maintenance for the owner.

The County's Uniform Development Code, Section 18.20.70.

At argument, we asked the County to explain how a freestanding ADU differs from a single-family residence. The County responded that an ADU is limited in size to no more than 1,000 square feet. So, we asked, how is a freestanding ADU different from a single-family residence of 1,000 square feet? The County responded that there are certain site limitations that would apply to an ADU, although the County also conceded that the site limitations may be waived. Other than the size and potential site restrictions, the County acknowledged that a freestanding ADU is not *structurally* distinguishable from a single-family residence, since single ownership of the ADU and the main residence is not a structural characteristic.

We conclude that a freestanding ADU is a separate dwelling unit and has all the structural characteristics of a dwelling unit, whether it is owned by the owner of a principal residence or not. Also in areas where residential use is allowed in rural lands, allowing a freestanding ADU with a principal residence on lots of less than ten acres creates a density of greater than one dwelling unit to five acres. Densities of greater than one dwelling unit to five acres are not rural densities. Both this Board and the Central

Board have consistently said that densities of more than one unit per five acres constitute urban growth. (The Eastern Board has indicated that densities of more than one unit per *ten* acres of land is not a rural density.) Therefore, allowing freestanding ADUs together with a principal residence on lots of less than ten acres in rural areas constitutes inappropriate urban growth in a rural area.

Conclusion

Consistent with our previous decisions, we find that Ordinance 21-2002 as it pertains to internal and attached ADUs in Rural Residential designations is consistent with the GMA and fulfills the County's obligation to provide for ADUs in rural single-family (SF) neighborhoods pursuant to RCW 43.63A.215. However, we continue to find that a freestanding ADU should be considered as one dwelling unit. The effect of not counting a freestanding ADU as a dwelling unit would be the equivalent of permitting one dwelling unit a lot of less than 5 acres in a rural area. **The sections of Ordinance 21-2002 that allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, fail to prevent urban sprawl, contain rural development, and, instead, allow growth which is urban in nature outside of an urban growth area. These sections do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) and are clearly erroneous. The sections of the County Code that were amended by Ordinance 21-2002 that allow a freestanding accessory dwelling unit on every single-family lot without regard to the underlying density in rural residential districts, including shoreline rural residential districts, substantially interfere with Goal 2 of the Act and therefore, are found invalid.**

These provisions are invalid because they permit growth levels in rural areas that the Growth Management Hearings Boards have consistently found to constitute sprawl.

If a freestanding ADU is not counted as a dwelling unit when permitted with a principal residence in rural lands, it will create a density of more than one unit per five acres. Such densities substantially interfere with RCW 36.70A.020 (2). This GMA goal directs cities and counties to reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

With regard to internal and attached ADUs in rural areas, we find that the County's Uniform Development Code as now amended, complies with the GMA.

Issue 10: *Does the Ordinance fail to preserve rural character as required by RCW 36.70A.030(14)? PFR, at 2.*

Because we have decided that allowing a freestanding ADU on every single-family lot without regard to the underlying density violates RCW 36.70A.020(2) and RCW 36.70A.110(1), we do not reach the rural character issue.

Issue 11: *Does permitting the rentals of ADUs fail to contain rural development? PFR, at 3.*

Applicable Law and Rules

Measures controlling urban development. The rural element should include measures that apply to rural development and protect the rural character of the area, as established by the county, by (i) Containing and otherwise controlling urban development, (ii) Assuring visual compatibility of rural development with the surrounding area, and (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area...

RCW 36.70A.070(5)(c)(i), (ii), (iii).

Planning goals. The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040... (4). Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

RCW 36.70A.020(4).

In general, smaller jurisdictions will not be expected to engage in extensive original research, but will be able to rely upon reasonable assumptions derived from available data of a statewide or regional nature or representative jurisdictions of comparable size and growth rates.

WAC 365-195-050(4).

Positions of the Parties

The Petitioners argue that the new ordinance is based on estimates and on no actual information about the actual numbers of long-term ADU rentals. They argue that the County should require registration of ADU rentals, which Ordinance 21-2002 does not do. They insist the County should not allow any rentals until the County begins monitoring their numbers and can analyze the impacts of short-and long-term rentals of all types of ADUs from data that contains the actual number of ADU rentals which would likely result from the amendments. Petitioner's Opposition Brief, at 14.

The County maintains that prohibiting the long-term rentals of new ADUs would eliminate an important component of San Juan County's affordable housing program. County's Brief, at 23. The County points out how it has shown its work in estimating the amount of short- and long-term rentals. County's Brief, at 28.

Discussion

The Final ADU Report states that the County has been issuing permits for transient rentals since 1998 and uses census data to develop an estimate of the number of ADUs that are generally rented long-term. There is very little in the Petitioner's Opposition or Reply Briefs that address the impacts of the rental of ADUs on rural development. We accept the County's methodology for estimating the amount of long and short-term ADU rentals in nonurban residential areas. WAC 365-195-050(4). The Final ADU Report estimates that 3.0 percent of nonurban residential parcels (including rural residential and resource land parcels) have ADUs that are rented long-term. Final ADU Report, at 20. Even if this percentage is doubled in the future, the impact of the long-term rentals of ADUs on population density will be minimal. Earlier in this order, we found internal and attached ADUs can be allowed on single-family lots with a principal residence in rural lands. We also found that allowing freestanding ADUs in conjunction with a principal residence without regard to the underlying density to be inconsistent with the GMA because it allowed non-rural levels of growth in rural areas.

Conclusion

We find that the County has not failed in its obligation to contain rural development by allowing long-term rentals of ADUs in rural residential areas so long as freestanding ADUs are counted as separate dwelling units for density purposes. In fact, long -term rentals of existing and new ADUs could help the County fulfill some of its affordable housing goals as required by RCW 36.70A.020(4).

Issue 12: Did the County properly analyze the impacts of ADUs on resource lands?

Issue 13: Does the Ordinance fail to protect resource lands from inconsistent uses under the GMA, as by required by RCW 36.70A.020(8)? PFR, at 20.

Applicable Law and Rules

Natural Resource Industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands and discourage incompatible uses.

RCW 36.70A.020(8).

Unless provided otherwise by the legislature, by December 31, 1994, local governments should incorporate into their development regulations, zoning regulations, or official controls the recommendations contained in subsection (1) of this section. The accessory apartment provisions shall be part of the local government's development regulation, zoning regulation, and official control. To allow for local flexibility, the recommendations shall be subject to such regulations, conditions, procedures, and limitations as determined by the local legislative authority.

RCW 43.63A.215(3).

Position of the Parties

The Petitioners maintain that the 2002 amendments allow construction of a new ADU on every parcel with a primary residence in more than 33,000 acres of resource lands. This, they urge, does not comply with GMA mandates to conserve resource lands. Petitioner's Reply Brief, at 12.

The County states that residential use of resource lands is not prohibited under the GMA, as long as the resource is adequately protected. This Board upheld the County's maximum densities for Agricultural Resource Lands (ARLs) and Forest Resource Lands (FRLs) in its November 30, 2000 Order on Recision of Invalidity and Compliance/Invalidity. The County argues that single-family residences are not prohibited on resource lands and that a single-family residence includes internal, attached, or free standing ADUs. The County contends that its restrictions on ADUs, including new site location standards, conserve the County's resource lands. County's Brief, at 21.

Discussion

In the November 30, 2000 Order on Recision of Invalidity and Compliance/Invalidity, the Board found that the densities that the County has designated for ARLs and FRLs complied with the GMA and were appropriate for conserving the County's resource lands. The Board also found noncompliant and invalidated the County's regulations pertaining to guesthouses in rural and resource lands. CTED's Model Accessory Dwelling Unit Ordinance Recommendations, referenced by RCW 43.63A.215, make a specific recommendation about ADUs in agricultural zones. The recommendation states, "Multiple detached ADUs may be created in agricultural zones, if one of the occupants of each unit is employed by the property owner." Department of Community Development, *Accessory Dwelling Unit Ordinance and Study* (January 1994), at 4.

In deciding whether ADUs are appropriate in agricultural and forest resource lands of long-term commercial significance, the County must harmonize the need to enhance resource production and discourage incompatible uses with the goal of providing affordable housing. The use of ADUs for farm workers and family members employed by the property owner could enhance commercial resource production. However, if these units are not appropriately located, they could interfere with resource production.

Regulations that allow a freestanding ADU on a natural resource land parcel can be made to be consistent with the GMA only under the following conditions: (1) The ADU can only be available for occupancy or rent on a long-term basis to family members or other workers employed by the property owner in resource production; (2) The regulations include specific locational standards that clearly do not allow interference with resource production; and (3) The freestanding ADU is counted as a dwelling unit for the purposes of calculating the appropriate density on a resource parcel.

Ordinance 21-2002 includes the following site locational standards:

1. Locate new freestanding ADUs outside of the most sensitive open space features,
2. Locate new freestanding ADUs and their utilities and driveways in order to minimize intrusion of the most sensitive open space features of the site. Use the same water system to serve the principal residence and the freestanding ADU unless separate system or driveway have fewer impacts on the environment,
3. Maintain existing orchards, meadows, and pasture areas,
4. Leave ridgelines and contrasting edges between landscape types unbroken by structures,
5. On rolling open or steep slopes, locate new freestanding ADUs so that buildings will be screened by existing vegetation, or terrain; and
6. Ensure the protection of features such as wetlands and wildlife habitat.

Section 18.40.240 D of the County's Uniform Development Code, Exhibit I.

These standards clearly are directed at protecting visual, rural character, and critical areas. They are not directed at conserving resource lands.

Conclusion

By the nature of their construction, internal and attached ADUs in resource lands are unlikely to interfere with the production of the natural resource. We find the County's ordinance as it pertains to the permitting of internal and attached ADUs in resource lands to be consistent with the GMA. RCW 36.70A.020(8).

We find that the County's decision to allow one freestanding accessory dwelling unit on any parcel in agricultural and forest resource lands fails to conserve resource lands and prevent interference with the conservation of the resource, and are not in compliance with RCW 36.70A.020(8). We find this decision is clearly erroneous, does not comply with RCW 36.70A.020(8) and substantially interferes with RCW 36.70A.020(8) pursuant to RCW 36.70A.302.

Regulations to protect resource lands must ensure that the housing densities allowed in resource lands do not impinge upon the use of the resource and conservation of

resource lands. Residences for resource owners and workers must be sited in such a way as not to interfere with resource production. The County's current regulations allow freestanding ADUs in natural resource lands in ways that do not ensure conservation of resource lands and interfere with natural resource production. This substantially interferes with Goal 8 of the GMA. RCW 36.70A.020(8). Goal 8 of the GMA directs counties to maintain and enhance natural resource-based industries, encourage the conservation of productive agricultural and forest resource lands, and discourage incompatible uses.

We find that the issue of short-term rental of ADUs in resource lands was not before the Board.

Issue 14: *Was Ordinance 21-2002 enacted without benefit of formal SEPA review? PFR, at 4.*

Applicable Law and Rules

Guidelines for state agencies, local governments -- Statements -- Reports -
- Advice – Information. The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) All branches of government of this state, including state agencies, municipal and public corporations, and counties shall...

...

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

- (i) the environmental impact of the proposed action;
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
- (iii) alternatives to the proposed action;
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and

- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

RCW 43.21C.030(2)(c).

Positions of the Parties

Petitioners complain that no SEPA review of the new designation of accessory dwelling units has taken place since 1997. The Petitioners contend that RCW 43.21C and WAC 197-11-560 require that SEPA review be completed before legislation is adopted. They argue that the adoption of an ordinance permitting a second freestanding residence on every parcel in rural and resource lands will have significant environmental impacts. PFR, at 4.

The County responds that it completed an Environmental Checklist which referenced the Final ADU Report and reiterated the report's major findings. The County states that the Final ADU Report is an integrated SEPA/GMA document and is an integral part of the County's overall SEPA analysis of the effects of ADUs and evaluates possible changes to the ADU ordinance. County's Brief, at 5, Exhibit C and Exhibit D.

Discussion

The Final ADU Report did analyze a wide range of impacts of ADUs based on the data extracted from assessor's records, a range of alternatives, and mitigating measures for those alternatives. The Draft ADU Report (Exhibit A) was circulated for public comments and those comments were responded to by the County in the Final ADU Report. Exhibit D.

The proposal for which an environmental determination was required is an amendment to the County's comprehensive plan and development regulations. The integrated document and checklist that incorporated information from the Final ADU Report provided enough

information about environmental impacts to guide policy makers in choosing among the alternatives for the adopted regulations. An analysis of SEPA compliance for GMA purposes is based upon the same “clearly erroneous” standard as established for compliance. *Durland. v. San Juan County*, Case No. 99-2-0010c (May 2, 2001). Petitioners have the burden of proof of showing that a mistake has been made in issuing a determination of nonsignificance.

Conclusion

Our review of the environmental checklist, including the Final ADU Report, does not convince us that a mistake has been made concerning the SEPA determination in this case and finds that the Petitioners have not sustained their burden of proof.

Issue 15: *Did the County adequately analyze the impact of ADUs on Shorelines?*

Issue 16: *Does the Ordinance unlawfully enlarge the exemption for single-family residences in the Shoreline Management Act, which is a goal of GMA? PFR, at 3, Petitioner’s Reply Brief, at 13.*

Both of these issues raise timeliness considerations:

Applicable Laws and Rules

For the shorelines of the state, the goals and policies of the shoreline management act are added as one of the goals of this chapter as set forth in RCW 36.70A.020. The goals and policies of a shoreline master program approved by a city or county approved under chapter 90.58 RCW shall be considered an element of a county or city’s comprehensive plan. For other portions of the shoreline master program for a city or county adopted under chapter 90.58 RCW, including use regulations, shall be considered part of the county or city’s development regulations.

RCW 36.70A.480(1).

All petitions relating to whether or not an adopted comprehensive plan, development regulation, or permanent amendment thereto, is in compliance with the goals and requirements of this chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days after publication by the legislative bodies of the county or city.

(a) Except as provided in (c) of this subsection, the date of publication for a city shall be the date the city publishes the ordinance, or summary of the ordinance, adopting the comprehensive plan or development regulations, or amendment thereto, as is required to be published.

(b) Promptly after adoption, a county shall publish a notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

Except as provided in (c) of this subsection, for purposes of this section the date of publication for a county shall be the date the county publishes the notice that it has adopted the comprehensive plan or development regulations, or amendment thereto.

(c) For local governments planning under RCW 36.70A.040, promptly after approval or disapproval of a local government's shoreline master program or amendment thereto by the department of ecology as provided in RCW 90.58.090, the local government shall publish a notice that the shoreline master program or amendment thereto has been approved or disapproved by the department of ecology. For purposes of this section, the date of publication for the adoption or amendment of a shoreline master program is the date the local government publishes notice that the shoreline master program or amendment thereto has been approved or disapproved by the Department of Ecology.

RCW 36.70A.290(2).

Position of the Parties

The Petitioners argue that the redefinition of accessory dwelling unit which allows freestanding ADUs to be considered a normal appurtenance to a residence is an attempt to avoid the need for a substantial development permit under the Shoreline Management Act

The Petitioners also state that issues surrounding the construction and rental of ADUs have been before this Board since the Petitioners filed the first Petition for Review in this case in 1999. They contend that these issues have been reserved by the Board for a hearing as a package when the County has appropriately analyzed and adopted a final ADU ordinance.

The County argues that it adopted the regulation defining “normal appurtenance” to include one freestanding ADU on any lot in 1998, so the Petitioner’s challenge of this item is not timely. The County also argues that shorelines will be protected through their Shoreline Master Program.

Discussion and Conclusion

We note that Ordinance 21-2002 did amend the County’s Shoreline Master Program, Chapter 18.50, by replacing the definition of guesthouse to accessory dwelling unit. Exhibit I, Ordinance 21-2002, at 13. Amendments to the County’s Shoreline Master Program are, at this writing, pending before the Department of Ecology. Pursuant to RCW 36.70A.290(2)(c), appeals of Shoreline Master Program amendments to this Board are not ripe until the Department of Ecology has approved or disapproved the amendments, and notice of that decision is published. **To the extent that these issues raise questions regarding the Shoreline Master Program amendments, they are not yet before us. To the extent that these issues do not implicate the Shoreline Master Program amendments, we incorporate our findings with respect to rural and resource lands.**

V. FINDINGS OF FACT

1. On December 10, 2002, the County adopted Ordinance 24 -2002 which redesignated the northern portion of the Sandwith property to Forest Resource Land (FRL) “except as provided for in the settlement agreement entered into with the Sandwith family on December 24, 1984”.
2. On December 2, 2002, the San Juan County Board of County Commissioners (BOCC) adopted Ordinance 21-2002, which amends the regulations for the construction of accessory dwelling units (“ADUs”); and Resolution 120-2002, which establishes a monitoring program for new ADUs.
3. Ordinance 21-2002 defines four types of accessory dwelling units (“ADUs”): internal ADUs; attached ADUs; freestanding ADUs and guesthouses. The Ordinance provides that any type of ADU may be constructed on any single-family lot and resource parcel in rural and resource designations [on a lot] that allowed for residential uses where there is a principal residence.
4. The provisions in Ordinance 21-2002 do not require any ADUs, including freestanding ADUs, to be counted as a single-family dwelling unit for the purposes of calculating maximum density allowed in zoning designations.
5. Petitioners challenged the provisions in Ordinance 21-2002 for allowing and renting of ADUs in rural and resource lands.
6. Petitioners have standing in this case by being a member of the County ADU Advisory Committee and through commenting at various stages in the process on ADU amendments.
7. The County published a draft ADU Analysis Report in June 2002 and circulated it for public review. The report examined existing conditions and impacts of the projected number of ADUs.
8. The County published a Final ADU Report on August 14, 2002 and responded to public comment in the final report.

9. The County issued a Determination of Nonsignificance regarding the amendments to its Unified Development Code (Title 18) and Health and Safety Code on August 13, 2002.
10. The County has adopted valid critical areas protection as part of the San Juan County Code.
11. The County has adopted a concurrency ordinance, provisions for regulating storm drainage, and health and safety codes for the permitting of on-site systems.
12. Ordinance 21-2002 adopted amendments to the County's Shoreline Master Program.
13. The WWGMHB and the CPSGMHB have found that one dwelling unit per five acres is the maximum density that can be allowed in areas that allow for residential use outside of LAMIRDs. *Yanisch v. Lewis County*, Case No. 02.-2-0007c, FDO (December 11, 2002) and *PNA II*, Case No. 95-3-0071, FDO (March 20, 1996).
14. The WWGMHB and the CPSGMHB have both found that allowing more than one unit per five acres constitute sprawl and violate RCW 36.70A 020(2) and RCW 36.70A.110(1). *Yanisch et al v. Lewis County*, Case No. 02.-2-0007c, FDO (December 11, 2002) and *PNA II*, Case No. 95-3-0071, FDO (March 20, 1996).
15. A guesthouse can be a freestanding ADU. County Uniform Development Code, Section 18.20.40.
16. A freestanding ADU is not any different structurally than any other single-family dwelling unit.
17. The only difference between a dwelling that is defined in the County Uniform Development Code and a freestanding ADU is that it must be owned by the owner of the principal residence and could be subject to some site location standards.
18. The County Uniform Development Code as amended by Ordinance 21-2002 allows a freestanding ADU with a principal residence on lots of less than ten acres in rural residential areas. This effectively would allow a dwelling unit on a lot of less than five acres.
19. RCW 36.70A.020(8) discourages incompatible uses in resource lands.

20. A freestanding ADU is an incompatible use in resource lands unless it is occupied by family members and workers in resource production employed by the property owner, subject to site location standards that prevent interference with resource production, and is counted as a dwelling unit for the purpose of calculating the appropriate density on a resource parcel.
21. Internal and attached ADUs because they are integral to the structure and do not interfere with resource production.
22. Long-term rental of ADUs in rural residential areas, if freestanding ADUs are counted as density unit for purposes of calculating density, do not constitute rural development.

VI. ORDER

We find that Ordinance 21-2002 as it amends sections of the County's Code to allow for a freestanding ADU on single-family lots with a principal residence in rural lands, that allow for residential uses, without counting it as a unit of density for the purpose of calculating the underlying density is not compliant with RCW 36.70A.020(2) and RCW 36.70A.110(1). We find that these regulations substantially interfere with RCW 36.70A.020(2) and are invalid according to RCW 36.70A.302(1).

We find that Ordinance 21-2002, as it amends sections of the County's Code to permit and to rent on a long-term basis a freestanding ADU on a resource parcel, is not compliant with RCW 36.70A.020(8) without the following limitations: (1) limiting the occupants to family members and workers employed by the property owner in resource production, (2) imposing site location standards that ensure that the ADU does not interfere with resource production, and (3) counting the freestanding ADU as a dwelling unit for the purposes of calculating the appropriate underlying density on a resource parcel. These sections of the County's Code substantially interfere with RCW 36.70A.020(8) and are invalid according pursuant to RCW 36.70A.302(1).

We find that the County's action in redesignating the northern portion of the Sandwith property to RFL is in compliance with the GMA. By this action, the County has removed substantial interference with the goals of the GMA. Our previous finding of invalidity is rescinded. In regard to the contract entered into with the Sandwiths by the County, we find there is no authority in the GMA for a Growth Management Hearings Board to issue a ruling on the terms of any individual contract between the County and a property owner.

We find that the Ordinance 21-2002 as it amends sections of the County's Code for the permitting of internal and attached ADUs in rural lands that allow for residential uses and in resource lands is in compliance with the GMA.

We find that the long-term rental of ADUs in rural lands if the ADUs are otherwise consistent with this Order, is compliant with the GMA.

San Juan County must bring its code regarding accessory dwelling units into compliance with the GMA within 180 days of this Order. The due date for compliance is **September 16, 2003**. A **progress report** on the County's efforts to comply with this Order is due **July 1, 2003**. A **Compliance Hearing** on this Order is scheduled for **October 22, 2003**. In the event of earlier compliance efforts by the County, the County may request an earlier hearing date. Because this Order contains a finding of invalidity, the County may, by motion, request an expedited hearing in accordance with RCW 36.70A.302(6).

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

So ORDERED this 17th day of April, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Holly Gadbaw
Board Member

Nan A. Henriksen
Board Member

Margery Hite
Board Member

Appendix A

Procedural History

On July 21, 1999, the Western Washington Growth Management Hearings Board (WWGMHB) issued a Final Decision and Order in Case No. 99-2-0010c that found, along with other findings, that San Juan County (County) had failed to analyze the impacts of allowance of attached or freestanding guesthouses for each single-family residence (SFR) and that, therefore, the County had failed to comply with the Growth Management Act (GMA, Act). The Board ordered that the County analyze current and potential new guesthouse use and rentals in light of the GMA goals and requirements and the new density designation. The Board also found that the densities designated for agricultural and forest resource lands were invalid.

On October 2, 2000, the San Juan Board of County Commissioners adopted ordinances that amended their comprehensive plan (CP), development regulations (DRs), official maps, Shoreline Master Program (SMP), and the Eastsound Subarea Plan.

On November 30, 2000, the Board found that the provisions of the 2000 amendments that allowed for new guesthouse construction in rural and resources lands failed to comply with the GMA and were invalid because the Board found the analysis of the impacts of freestanding Accessory Dwelling Units (ADUs) continued to be inadequate to demonstrate compliance with the GMA. The Board also found that the County's redesignation of approximately 1,000 acres of resource lands (RLs) continued to substantially interfere with Goal 8 of the GMA and ordered the County to redesignate resource lands only after complying with previously adopted county processes. It should be noted that the Board reviewed these ordinances under the timelines imposed by RCW 36.70A.330(2). Because of the tight timelines imposed by RCW 36.70A.330(2), the Board only addressed the county's request for rescission of invalidity, the redesignation of RLs, and the guesthouse issue.

In November 2000, the Board received several petitions for review (PFRs), including a PFR from Michael Durland, that challenged the County's October 2000 Comprehensive Plan amendments. The Board also received a motion for intervention from the Opal Community Land Trust and several other parties. On January 23, 2001, the Board granted the motions to intervene and captioned the case as Michael Durland, et al. v. San Juan County, No. 00-2-0062c.

On January 3, 2001, the Board removed the determination of invalidity from one specific RL property.

On January 16, 2001, the County filed a petition for a declaratory ruling. The County posed the question whether the order of invalidity "prohibits the issuance of building permit to construct the main house when the property owners have previously constructed a guesthouse on the property." On April 6, 2001, the Board issued an Order Clarifying Invalidity. In this Order, the Board declared that property owners that have previously constructed or have a permit-vested guesthouse that met the definition of a guesthouse in the County Uniform Development Code 18.40.240 could construct a main house.

On April 18, 2001, the Board rescinded the Order of Invalidity for redesignation of the 292-acre Eagle Lake Property from forest resource land to rural farm forest. With this order, the Board began to consider the issues raised in Case Nos. 99-2-0010c and 00-2-0062c together.

On May 7, 2001, the Board found that allowing transient or short-term rentals in rural zones complied with the GMA. The Board also found that allowing transient and long-term rentals in resource lands was not in compliance with the GMA, and substantially interfered with RCW 36.70A.020(8) and was invalid.

The County and one property owner appealed this decision to the Thurston County Superior Court. The parties were able to reach settlement on two RL designated properties. Those properties were dismissed from the appeal and the Board rescinded its findings of invalidity, but maintained noncompliance for those properties.

On July 23, 2001, the Superior Court reversed the Board's determination that the RL redesignations went beyond the scope of the remand order, but affirmed the Board's decision because of the lack of public participation.

On October 11, 2001, the Board found that in regards to transient and long-term rentals in resource lands, the County regulations were now in compliance and no longer invalid. On October 11, 2001, the Board found that the County no longer allowed transient and long-term rentals in resource lands.

On December 4, 2001, the County adopted Ordinance 14-2001. On December 14, 2001, the County filed a motion for the Board to rescind invalidity and to determine that the County had achieved compliance. The Board held a Compliance and Recision of Invalidity hearing on March 7, 2002. The Board reviewed the redesignation of the Lawrence, Bond, Eagle Lake, Griffin Bay, Sandwith (southern portion) and Alex Bay properties and found that the County had removed substantial interference and that the new designations complied with the GMA. In regard to the Sandwith (northern portion), Wood, and Bell properties, the Board found continued noncompliance and declined to modify previous determinations of invalidity for these properties.

On June 4, 2002, the Board held a compliance hearing on the adoption of Ordinance 2-2002, which adopted the "San Juan Heritage Plan". This plan included 3300 acres in the San Juan Valley that contain a special area involving Agricultural Resource Lands

(ARLs) that are one of the few remaining areas of noncompliance and invalidity regarding ARLS. The Board found that through the adoption of Ordinance 2-2002, the County was in compliance. The Board rescinded the previous determination of invalidity and found that the designation of this area in compliance.

On May 16, 2002, the Board received a motion from the County to rescind the finding of invalidity for the Bell and Wood properties and to find compliance with the GMA, because these properties have now been designated Forest Resource Land (FRL). On June 12, 2002, the Board held a telephonic Compliance Hearing. On June 13, 2002, the Board found compliance and rescinded invalidity for the Bell and Wood properties.

On December 10, 2002, the County adopted Ordinance 24-2002 which redesignated the northern portion of the Sandwith property to FRL “except as provided for in the settlement agreement entered into with the Sandwith family on December 21, 1984” to comply with the Board’s March 28, 2002 Order on Compliance and Invalidity. On December 19, 2002, the Board received a motion from the County to rescind invalidity and find compliance for this property.

On December 3, 2002, after a consultant’s analysis of ADUs, which was published and subject to public review and comment, the County considered changes to their Uniform Development Code and shoreline regulations regarding ADUs. After public hearings held by both the Planning Commission and the Board of County Commissioners (BOCC) and a recommendation from the Planning Commission, the BOCC adopted Ordinance 21-2002, which amended the regulations for the construction of ADUs and Resolution 120-2002, which proposed monitoring of the construction of new ADUs. Notice of adoption of these ordinances was published on December 11, 2002.

On December 19, 2002, we received a motion from the County to rescind our findings of invalidity for the construction of ADUs in rural and resource lands and find that the recently adopted amendments to the UDC and the SMP regulating ADUs comply with the GMA.

On February 7, 2003, we received a Petition for Review (PFR) from Friends of San Juans, Lynn Bahrych and Joe Symons challenging Ordinance 21-2002 on the basis of amendments to the regulations for the construction of ADUs. The basis for the challenge is noncompliance with the GMA, the State Environmental Protection Act (SEPA), and the Shoreline Management Act (SMA). The Board issued a Notice and Preliminary Schedule to deal with this PFR on February 7, 2003, and assigned number 03-2-0003 to the case.

On February 18, 2003, the Board held a Compliance Hearing at the Office of Environmental Hearings in Lacey, Washington. In attendance were Board Members Nan Henriksen, Margery Hite, and Holly Gadbow. Alan A. Marriner, San Juan Deputy Prosecuting Attorney represented the County and was assisted by Richard Rutz. Lynn Bahrych, Attorney, represented the Petitioners, and was assisted by Stephanie Buffum, President of the Friends of San Juans. At the hearing, the Petitioners, the Board and the County discussed whether the issues raised in the PFR were before the Board in the Compliance Hearing. That discussion was inconclusive.

On February 25, 2003, the Board held a telephonic Prehearing Conference. Board Members Nan Henriksen and Holly Gadbow, San Juan Deputy Prosecuting Attorney Alan Marriner, and Attorney for the Petitioners Lynn Bahrych, participated and discussed whether the issues outlined in the February 3, 2003 PFR had been adequately argued before the Board.

Later on February 25, 2003, the Board received a stipulation from Friends of San Juan, Lynn Bahrych, Joe Symons and San Juan County in which the parties stipulated that issues regarding ADUs raised in Petition 03-2-0003 were heard at the Compliance Hearing on February 18, 2003. The parties also stipulated: (1) that no additional briefing or argument is needed for Board to decide these issues in its compliance order to be issued in March 2003, and (2) that all of these issues will be decided in the March 2003 Order, subject to the usual rights of appeal. The Petitioners and the County stipulated to a consolidation of Case No. 03-2-0003 with Case Nos. 99-2-0010c and 00-2-0062c.

Finally, on February 25, 2003, the Board issued a Consolidation Order that consolidated Case No. 03-2-0003 with Case Nos. 99-2-0010c and 00-2-0062c. The case is now known as Case No. 03-2-0003c.