

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 JOHN CAMPBELL,

3 Petitioner,

4 v.

5 SAN JUAN COUNTY,

6 Respondent,

7 And

8 FRED KLEIN,

9 Intervenor.

10 **Case No. 09-2-0014**

11 **FINAL DECISION AND ORDER**

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15 **I. PROCEDURAL BACKGROUND**

16 Petition for Review

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18 On August 4, 2009, John Campbell (Petitioner) filed a Petition for Review (PFR) with the
19 Board. Petitioner's PFR challenged San Juan County's (County) adoption of Ordinance No.
20 16-2009 which amended various parts of the County's Comprehensive Plan related to
21 housing, including the Housing Element.
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23 Fred Klein was granted Intervenor status on September 24, 2009.
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25 Hearing on the Merits

26 The Hearing on the Merits was held on December 16, 2009, in Eastsound, Washington.
27 Board members William Roehl, Nina Carter and James McNamara, were present; Board
28 Member McNamara presiding. Petitioner and Intervenor appeared *pro se*; San Juan County
29 was represented by Jonathan Cain.
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1 **II. PRESUMPTION OF VALIDITY, BURDEN OF PROOF,**
2 **AND STANDARD OF REVIEW**

3 Pursuant to RCW 36.70A.320(1), comprehensive plans and development regulations, and
4 amendments to them, are presumed valid upon adoption.¹ This presumption creates a high
5 threshold for challengers as the burden is on the petitioner to demonstrate that any action
6 taken by San Juan County is not in compliance with the GMA.²
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8 The Board is charged with adjudicating GMA compliance and, when necessary, invalidating
9 noncompliant plans and development regulations.³ The scope of the Board's review is
10 limited to determining whether San Juan County has achieved compliance with the GMA
11 only with respect to those issues presented in a timely petition for review.⁴ The GMA directs
12 that the Board, after full consideration of the petition, shall determine whether there is
13 compliance with the requirements of the GMA.⁵ The Board shall find compliance unless it
14 determines that San Juan County's action is clearly erroneous in view of the entire record
15 before the Board and in light of the goals and requirements of the GMA.⁶ In order to find the
16 County's action clearly erroneous, the Board must be "left with the firm and definite
17 conviction that a mistake has been committed."⁷
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21 In reviewing the planning decisions of cities and counties, the Board is instructed to
22 recognize "the broad range of discretion that may be exercised by counties and cities" and
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25 ¹ RCW 36.70A.320(1) provides: [Except for the shoreline element of a comprehensive plan and applicable
26 development regulations] comprehensive plans and development regulations, and amendments thereto,
27 adopted under this chapter are presumed valid upon adoption.

28 ² RCW 36.70A.320(2) provides: [Except when city or county is subject to a Determination of Invalidity] the
29 burden is on the petitioner to demonstrate that any action taken by a state agency, county, or city under this
30 chapter is not in compliance with the requirements of this chapter.

31 ³ RCW 36.70A.280, RCW 36.70A.302.

32 ⁴ RCW 36.70A.290(1).

⁵ RCW 36.70A.320(3).

⁶ RCW 36.70A.320(3).

⁷ *City of Arlington v. CPSGMHB*, 162 Wn.2d 768, 778, 193 P.3d 1077 (2008)(Citing to *Dept. of Ecology v. PUD District No. 1 of Jefferson County*, 121 Wn.2d 179, 201, 849 P.2d 646 1993); See also, *Swinomish Tribe, et al v. WWGMHB*, 161 Wn.2d 415, 423-24, 166 P.3d 1198 (2007); *Lewis County v. WWGMHB*, 157 Wn.2d 488, 497-98, 139 P.3d 1096 (2006).

1 to “grant deference to counties and cities in how they plan for growth.”⁸ However, San Juan
2 County’s actions are not boundless; their actions must be consistent with the goals and
3 requirements of the GMA.⁹

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5 Thus, the burden is on Petitioner to overcome the presumption of validity and demonstrate
6 that the challenged action taken by San Juan County is clearly erroneous in light of the
7 goals and requirements of the GMA.

9 III. BOARD JURISDICTION

10 The Board finds that the Petition for Review was timely filed pursuant to RCW
11 36.70A.290(2). The Board finds that Petitioner has standing to appear before the Board
12 pursuant to RCW 36.70A.280(2). The Board finds that it has jurisdiction over the subject
13 matter of the petition pursuant to RCW 36.70A.280(1).

16 IV. ISSUES AND DISCUSSION

17 Challenged Action

18 On June 9, 2009, the San Juan County Council adopted Ordinance 16-2009. The
19 Ordinance amended the County’s Comprehensive Plan Housing Element (Section B,
20 Element 5) and two appendices to the Comprehensive Plan – Appendix 5 – Housing Data,
21 which includes the Housing Needs Assessment, and Appendix 1 – Population Projections,
22 Build-out Analysis, and Land Use Inventory.

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25 ⁸ RCW 36.70A.3201 provides, in relevant part: In recognition of the broad range of discretion that may be
26 exercised by counties and cities consistent with the requirements of this chapter, the legislature intends for the
27 boards to grant deference to counties and cities in how they plan for growth, consistent with the requirements
28 and goals of this chapter. Local comprehensive plans and development regulations require counties and cities
29 to balance priorities and options for action in full consideration of local circumstances. The legislature finds that
30 while this chapter requires local planning to take place within a framework of state goals and requirements, the
31 ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and
32 implementing a county’s or city’s future rests with that community.

⁹ *King County v. CPSGMHB*, 142 Wn.2d 543, 561, 14 P.2d 133 (2000)(Local discretion is bounded by the
goals and requirements of the GMA). See also, *Swinomish*, 161 Wn.2d at 423-24. In *Swinomish*, as to the
degree of deference to be granted under the clearly erroneous standard, the Supreme Court has stated: The
amount [of deference] is neither unlimited nor does it approximate a rubber stamp. It requires the Board to give
the [jurisdiction’s] actions a “critical review” and is a “more intense standard of review” than the arbitrary and
capricious standard. *Id.* at 435, Fn.8.

1 The County was required, pursuant to RCW 36.70A.130, to review its Comprehensive Plan
2 in 2005 so as to ensure compliance with the GMA. Although much of this was completed in
3 2005, the County failed to review its Housing Element during that time but completed this
4 duty with the adoption of Ordinance 16-2009.¹⁰
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7 Petitioner's nine issues focus primarily on the provision of housing for all economic
8 segments of the community but also question the consistency of the County's
9 Comprehensive Plan, both internally and externally, and implementation of Comprehensive
10 Plan goals. The Board will address each of Petitioner's issues in turn.
11

12 **A. Issue 1 – Adequate Housing Provisions for All Economic Segments**

13
14 Did San Juan County, in adopting Ordinance 16-2009 amending their
15 Comprehensive plan and Housing Element, Population Projections, Appendix 1 and
16 Housing Needs Assessment, Appendix 5, "make adequate provisions for existing and
17 projected needs of all economic segments of the community" as required by RCW
18 36.70A.070(2)?

19 Applicable Law

20 RCW 36.70A.070(2) requires that a comprehensive plan shall contain:

21 A housing element ensuring the vitality and character of established residential
22 neighborhoods that: (a) Includes an inventory and analysis of existing and
23 projected housing needs that identifies the number of housing units necessary
24 to manage projected growth; (b) includes a statement of goals, policies,
25 objectives, and mandatory provisions for the preservation, improvement, and
26 development of housing, including single-family residences; (c) identifies
27 sufficient land for housing, including, but not limited to, government-assisted
28 housing, housing for low-income families, manufactured housing, multifamily
29 housing, and group homes and foster care facilities; and (d) makes adequate
30 provisions for existing and projected needs of all economic segments of the
31 community.
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30 Discussion and Findings

¹⁰ See *Campbell v. San Juan County*, Case No. 08-2-0006, Order of Dismissing Issues, Finding Non-Compliance, and Setting Compliance Schedule (March 10, 2008) and Compliance Order (September 2, 2009).
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1 Petitioner argues that the requirement to “make[s] adequate provisions for existing and
2 projected needs of all economic segments of the community” requires a “balance of need,
3 local conditions, and ability.”¹¹ Although Petitioner labels this issue as “the big issue”,
4 Petitioner suggests the question of whether the County has made a good faith effort
5 commensurate with the need for housing can be answered by examining how the County
6 has dealt with the various aspects of the required and recommended process, as illustrated
7 by an examination of Issues 2 through 8.¹²
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10 Intervenor, on the other hand, bases his challenge on the argument that while the 2007
11 Eastsound Land Supply Analysis provides that sufficient land with residential development
12 capacity for 687 housing units exists in the Eastsound UGA, the Housing Needs Analysis
13 demonstrates a need for 1457 housing units.¹³
14

15 The Board finds Intervenor’s assumption that 90 percent of affordable housing must be
16 located within the UGAs¹⁴ is mistaken. Intervenor apparently bases this percentage on the
17 statement in the Housing Element that “[T]he rural residential cluster development concept
18 proposed in the Housing Element policies has the potential to provide units in the rural lands
19 [of] potentially 12 new affordable housing units per year in rural lands, but is unlikely to meet
20 even 10 percent of the identified need for very-low, low-, moderate- and middle-income
21 housing units”.¹⁵ As the County points out, the rural residential cluster concept is not the
22 only type of rural housing available.¹⁶ Other examples cited in the Housing Element and
23 Housing Needs Assessment include accessory dwelling units, housing in the County’s
24 villages, hamlets and activity centers and non-traditional residences.¹⁷
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30 ¹¹ Petitioner’s Brief at 3, filed November 13, 2009.

31 ¹² Id.

32 ¹³ Intervenor’s Brief at 7, filed November 13, 2009.

¹⁴ Intervenor’s Brief at 5.

¹⁵ Record at 1110.

¹⁶ County’s Brief, at 11, filed December 4, 2009.

¹⁷ Record at 1110, 1151-52.

1 Intervenor does raise an intriguing question about the County's need to meet the housing
2 requirements for that portion of the County's workforce that commutes to the islands by ferry
3 service from the mainland.¹⁸ In response, the County argues that its duty under RCW
4 36.70A.070(2)(d) is to provide for the existing and projected housing needs of the
5 community, not the housing needs of residents in adjacent communities who work in San
6 Juan County.¹⁹
7

8 Although the Housing Needs Assessment does indicate that the provision of affordable
9 housing may reduce the number of "working age" commuters, Intervenor does not cite any
10 GMA provision or case law to support his assertion that San Juan County is required to
11 address the needs of individuals who commute to the County and, hypothetically, would
12 relocate to the County if housing was available. Rather, RCW 36.70A.070(2) seeks to
13 address not only the County's existing needs but its housing needs "necessary to manage
14 projected growth." In GMA planning, "projected growth" is a product of the Office of
15 Financial Management (OFM), the state agency charged with maintaining population data
16 for the State [RCW 43.62.035]²⁰, and it is these numbers which serve as a foundation for
17 GMA planning.²¹
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20 Thus, the County's assessment of its housing needs is based on its 20-year projected
21 population growth as provided by OFM. OFM's numbers, of course, are not stagnant but
22 look at a variety of statistical trends in order to calculate *projected* growth for a community.
23 These trends are not limited to births and death occurring in the community but are also
24 based on various models which include migration rates due to employment.
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29 _____
30 ¹⁸ Intervenor's Brief, at 3-4; Intervenor's Reply Brief, at 4.

31 ¹⁹ County's Brief at 12.

32 ²⁰ It is noteworthy that RCW 43.62.030, which addresses how the Office of Financial Management determines the population of a city or county, states "Population determinations made under this section shall include only those persons who meet *resident population* criteria as defined by the federal bureau of the census." (emphasis added).

²¹ See eg. RCW 36.70A.110(2.) UGA sized based on OFM population projection; RCW 36.70A.040(5) OFM certifies population, etc.

1 Therefore, the Board finds no indication in the GMA that the County has a duty to address
2 the housing needs of individuals who commute to San Juan County for their jobs. The
3 foundation for all of the County's GMA analysis is OFM's population projections for the
4 County and the Housing Needs Analysis is based on the OFM's Middle Range Population
5 Projections.
6

7 Turning to the Petitioner's argument that the policies for affordable housing contained in the
8 Housing Element are inadequate to address the problems identified in the Housing Needs
9 Assessment, the Board notes that the Housing Element contains a number of newly
10 adopted affordable housing policies. Among them, the County has adopted policies to:
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- 12 • Carry out a study within 24 months of Comprehensive Plan Update adoption to
13 examine the viability of appropriate public land for affordable housing.
- 14 • Actively pursue the County's role in the provision of affordable housing by
15 further studying the potential benefits and harms of a joint San Juan County
16 and Friday Harbor Housing Authority and to offer support for non profit and for
17 profit housing providers.
- 18 • Study the potential of a permanent, voter approved, funding mechanism for
19 Affordable Housing such as levy lid lift, Real Estate Excise tax or through some
20 other means such as impact fees, property taxes, recoding fees and revenue
21 bonds.
- 22 • Review, within 24 months of the adoption of this update, all development
23 regulations for UGAs to ensure the regulations enhance and encourage
24 creation of denser, walking centered communities.
- 25 • Expand the existing tiered density bonus to provide further incentives for
26 creating affordable housing.
- 27 • Allow and encourage the rental of accessory dwelling units on a long-term
28 basis to provide opportunity for affordable housing.²²
29

30 The Board finds that where, as here, the County has adopted policies that support the
31 housing needs of the County it has met RCW 36.70A.070(2)'s requirement to "make[s]
32

²² Record at 1115-17.
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1 adequate provisions for existing and projected needs of all economic segments of the
2 community”.

3
4 **Conclusion**

5 The Board concludes that Petitioner and Intervenor have failed to carry their burden of proof
6 in demonstrating the County’s action in adopting Ordinance 16-2009 violated RCW
7 36.70A.070(2).
8

9 **B. Issue 2 – Consistency with UGA Boundaries²³**

10 On San Juan Island, is the county population projection and UGA land use analysis
11 consistent with the adopted UGA boundary as required by RCW 36.70A.110(1) and
12 (2) as well as RCW 36.70A.190(4)(b)?
13

14 **Applicable Law**

15 RCW 36.70A.110 (1) and (2) provide: (In relevant part)

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

20 (2) Based upon the growth management population projection made for the
21 county by the office of financial management, the county and each city within
22 the county shall include areas and densities sufficient to permit the urban
23 growth that is projected to occur in the county or city for the succeeding
24 twenty-year period, ...

25 Each urban growth area shall permit urban densities and shall include
26 greenbelt and open space areas. ... An urban growth area determination may
27 include a reasonable land market supply factor and shall permit a range of
28 urban densities and uses. In determining this market factor, cities and counties
29 may consider local circumstances. Cities and counties have discretion in their
30 comprehensive plans to make many choices about accommodating growth.
31
32

²³ Intervenor submits no argument in regards to this issue statement.

1 RCW 36.70A.190(4)(b) provides:

2 (4) The department shall establish a program of technical assistance:

3 * * *

4 (b) Adopting by rule procedural criteria to assist counties and cities in
5 adopting comprehensive plans and development regulations that meet the
6 goals and requirements of this chapter. These criteria shall reflect regional and
7 local variations and the diversity that exists among different counties and cities
8 that plan under this chapter.

9
10 Discussion and Findings

11 First, with regard to RCW 36.70A.190(4)(b), the Board construes this section of the GMA as
12 establishing requirements for the Department of Commerce to develop a technical
13 assistance program, not San Juan County. Consequently the Board finds that Ordinance
14 16-2009 does not violate this GMA provision as RCW 36.70A.190(4)(b) imposes no duty on
15 the County.

16
17 As for RCW 36.70A.110, Petitioner notes that in 2007 County Planning staff performed an
18 analysis of population projections on San Juan Island that found Friday Harbor would
19 account for 71 percent of the population growth on that island.²⁴ Petitioner further argues
20 that, with Ordinance 16-2009, 50 percent of the projected population growth was assigned
21 to the Friday Harbor UGA without analysis or support.²⁵

22
23 As noted *supra*, RCW 36.70A.110 is the GMA's primary provision for the establishment of
24 UGAs. However, as the County points out, Ordinance 16-2009 did not amend any of the
25 County's UGA boundaries, but merely amended the Comprehensive Plan Housing Element
26 and two of its appendices related to housing.²⁶ The Ordinance does not amend the Friday
27 Harbor UGA boundaries; it simply indicates that during the 2005-2025 planning period the
28 population of Friday Harbor will increase by 1,671 persons (a 50% increase), much smaller
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32 ²⁴ Petitioner's Brief at 4.

²⁵ Petitioner's Brief at 6

²⁶ County Brief at 14.

1 than the 2,928 (a 71% increase) population increase assumed in the 2007 staff analysis for
2 the Friday Harbor UGA.²⁷ Therefore, the County did not violate RCW 36.70A.110(1) and (2)
3 which pertains to the establishment of UGAs.

4
5 **Conclusion**

6 The Board concludes that Petitioner has failed to carry his burden of proof in demonstrating
7 the County's adoption of Ordinance 16-2009 violated RCW 36.70A.110(1) and (2) or RCW
8 36.70A.190(4)(b).

9
10 **C. Issue 3 – Consistency with Friday Harbor Comprehensive Plan²⁸**

11
12 On San Juan Island, is the county population projection and land use analysis
13 consistent with the Town of Friday Harbor population planning projection? That is,
14 are the Town and County Land use and Housing Elements consistent as required by
15 RCW 36.70A.100?

16 **Applicable Law**

17 RCW 36.70A.100 provides:

18 The comprehensive plan of each county or city that is adopted pursuant to
19 RCW 36.70A.040 shall be coordinated with, and consistent with, the
20 comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties
21 or cities with which the county or city has, in part, common borders or related
22 regional issues.

23 **Discussion and Findings**

24 Petitioner points out that, while the County assumes the Town of Friday Harbor will
25 experience a growth of 1,671 by the year 2025, the Town of Friday Harbor Housing
26 Element, at Table 4-7, assumes a growth rate of 1.4% which, according to Petitioner's
27 projection would result in a year 2025 population growth of 648.²⁹ Petitioner argues that
28 "the Town is simply ignoring the very substantial, and critical to affordable housing,
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32 ²⁷ Ordinance 16-2009 at 7.

²⁸ Intervenor submits no argument in regards to this issue statement.

²⁹ Petitioner's Brief at 7.

1 population requiring affordable housing allocated to the Friday Harbor UGA.”³⁰ Apparently
2 recognizing that his objection is to the Town of Friday Harbor’s population projection, not the
3 County’s, Petitioner argues that, based on the language of RCW 36.70A.110(2) which
4 requires that “The county shall attempt to reach agreement with each city on the location of
5 an UGA within which the city is located,” the County has the responsibility to “press this
6 issue.”³¹
7

8
9 Among the many tenets of the GMA is the requirement for neighboring cities and counties to
10 plan and coordinate their comprehensive plans. This is reflected in RCW 36.70A.100.
11 However, as this Board has held in *Petree v. Whatcom County*,³² and as Petitioner
12 concedes, “coordination and consistency does not equate to plans being mirror images”.
13 In addition, comprehensive plans can achieve the same goals or purpose even though they
14 may not be identical. With this issue, Petitioner’s argument is focused on the Town “simply
15 ignoring” the reality of appropriate population allocations and thus, in part, Petitioner’s
16 complaint is with the Town’s comprehensive plan, a challenge which is untimely and not part
17 of this appeal. As the County correctly points out, it has no authority to amend the Friday
18 Harbor’s Comprehensive Plan, a plan which was last amended in 2002 in contrast to the
19 County’s recent 2009 action.
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21
22 The Board does not discount RCW 36.70A.100’s consistency and coordination
23 requirements; however, Petitioner’s complaint is with the Town of Friday Harbor not the
24 County. The Town’s opportunity to update its Comprehensive Plan accordingly should be
25 addressed during its next review. Therefore, at this point in time, the Board finds that San
26 Juan County did not violate RCW 36.70A.100.
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28
29 **Conclusion**
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32 ³⁰ Id. at 8.

³¹ Id.

³² WWGMHB No. 08-2-0021c. Final Decision and Order at 35 (Oct. 13, 2008),

1 The Board concludes that Petitioner has failed to carry his burden of proof in demonstrating
2 the County's action in the adoption of Ordinance 16-2009 violated RCW 36.70A.100.

3
4 **D. Issue 4 – Housing Needs Analysis³³**

5 Has San Juan County made adequate provision notwithstanding failing to analyze
6 their housing needs in accordance with WAC 365-195-310(2)(c), (d), (f) and (j)(iii)
7 and (iv), and RCW 36.70A.070(2)(a) and (d)?

8
9 Applicable Law

10 RCW 36.70A.070(2)(a) and (d) provide that the comprehensive plan housing element shall

- 11 (a) Include(s) an inventory and analysis of existing and projected housing needs
12 that identifies the number of housing units necessary to manage projected
13 growth; * * * and (d) makes adequate provisions for existing and projected
14 needs of all economic segments of the community.

15 Discussion and Findings

16 As to the County's compliance with WAC 365-195-310(2)(c), (d), (f) and (j)(iii) and (iv), RCW
17 36.70A.320(3) states that the Board, when making a determination as to whether or not a
18 jurisdiction is in compliance with the GMA, "shall consider the criteria adopted by
19 [Commerce] under RCW 36.70A.190(4)." Those criteria are contained in WAC 365-195.
20 However, WAC 365-195-030 makes it explicit that while the Board is to consider the
21 procedural criteria, WAC 365-195:

22 ...makes **recommendations** for meeting the requirements of the act. The
23 recommendations set forth are intended as **a listing of possible choices**, but
24 compliance with the requirements of the act can be achieved without using all
25 of the suggestions made here or by adopting other approaches.³⁴ (emphasis
26 added).
27

28 Although the Board finds no provision in the GMA which requires that San Juan County
29 utilize the recommendations set forth in WAC 365-195, the Board notes that Petitioner
30 offered no argument to demonstrate that the criteria of WAC 365-195-310(2)(c), (d), (f) and
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³³ Intervenor submits no argument in regards to this issue statement.

³⁴ WAC 365-195-030 (1).

1 (j)(iii) and (iv) were *not* considered. Rather, the Board finds that: (1) the County evaluated
2 the extent to which the market can provide housing at various costs and for various income
3 levels, as recommended by WAC 365-195-310(2)(c);³⁵ (2) the County estimated the present
4 and future extent of population in the planning area which requires assistance to obtain
5 housing they can afford, as recommended by WAC 365-195-310(2)(d)³⁶; (3) the County
6 has county-wide planning policies regarding affordable housing as recommended by WAC
7 365-195-310(2)(f)³⁷; and, (4) the County Housing Element identifies the land needed for
8 additional housing units³⁸ and the capacity of local private and public entities to meet that
9 need³⁹ as recommended by WAC 365-195-310(2)(j).
10

11 **Conclusion**

12 The Board concludes that Petitioner has failed to carry his burden of proof in demonstrating
13 the County's action in adopting Ordinance 16-2009 violated RCW 36.70A.070(2)(a) and (d).
14 The Board further concludes that WAC 365-195-310 provides recommendations intended to
15 assist San Juan County in its GMA planning process. As recommendations, the County is
16 not mandated to utilize the suggestions provided; therefore, under these circumstances, no
17 violation of WAC 365-195 can be found.
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19

20 **E. Issue 5 – Sufficient Land for Housing – Eastsound**

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22 In the process of identifying sufficient land for housing including government
23 assisted housing, as required by RCW 36.70A.070(2)(c), did San Juan County
24 analyze the demographics of the population that is allocated to Eastsound, i.e.
25 very low, low and moderate income and consider the land characteristics
26 necessary to produce housing for that population in their land use/development
27 capacity analysis?

28 **Applicable Law**

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31 ³⁵ Record at 1145-53.

³⁶ Record at 1145-49.

³⁷ Record at 1534.

³⁸ Record at 1109 and 1134.

³⁹ Record at 1154-1199.

1 RCW 36.70A.070(2)(c) provides that the Housing Element shall:

2 Identifies sufficient land for housing, including, but not limited to, government-
3 assisted housing, housing for low-income families, manufactured housing,
4 multifamily housing, and group homes and foster care facilities

5 Discussion and Findings

6 Petitioner states that the Eastsound land supply analysis fails to contain an inventory and
7 analysis of projected housing needs;⁴⁰ an assessment of the needs for housing in the
8 planning area, including the number of very low, low, moderate and middle income persons
9 in the projected growth;⁴¹ the extent to which the existing and projected market can provide
10 housing at various costs for various income levels;⁴² estimation of the present and future
11 extent of populations in the planning area which require assistance to obtain housing they
12 can afford;⁴³ or an identification of the share of affordable housing to be provided by the
13 planning jurisdiction and how it will be provided.^{44,45} Because Issue 5 deals exclusively with
14 an alleged violation of RCW 36.70A.070(2)(c), only allegations pertaining to that statute will
15 be addressed.
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19 Petitioner acknowledges that he has “no illusion that the County can solve its housing needs
20 or initiate the millennium.”⁴⁶ The Board recognizes too that the County is not obligated to
21 add to the stock of low income housing but instead to set the framework in which the market
22 can provide housing for all segments of the population.
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24 Goal 4 of the GMA provides:

25 Encourage the availability of affordable housing to all economic segments of the
26 population of this state, promote a variety of residential densities and housing
27 types, and encourage preservation of existing housing stock.⁴⁷

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29 ⁴⁰ See, RCW 36.70A.070(2)(a).
30 ⁴¹ See, WAC 365-195-310(2)(b).
31 ⁴² See, WAC 365-195-310(2)(c).
32 ⁴³ See, WAC 365-195-310(2)(d).
⁴⁴ See, WAC 365-195-310(2)(f).
⁴⁵ Petitioner’s Brief at 10.
⁴⁶ Petitioner’s Brief at 18.
⁴⁷ RCW 36.70A.020(4).

1 In order to implement this goal, cities and counties are directed to do the necessary
2 planning to perform an inventory and analysis of existing and projected needs,⁴⁸ make
3 adequate provisions for the needs of all economic segments of the community,⁴⁹ and
4 identify sufficient land for low income housing.⁵⁰ The Board found, above, that the County's
5 affordable housing policies make adequate provisions for existing and projected needs of all
6 economic segments of the community (Issue 1) and that the County has complied with
7 RCW 36.70A.070(2)(a)'s requirement for an inventory and analysis of housing needs (Issue
8 4). The question presented in Issue 5 is whether the County has complied with the GMA
9 requirement that a comprehensive plan contain a housing element that identifies sufficient
10 land for housing, including, but not limited to, government-assisted housing, housing for low-
11 income families, manufactured housing, multifamily housing, and group homes and foster
12 care facilities. The Board finds that the County's housing element determined there would
13 be 2,969 new households by the year 2025.⁵¹ Further, the Housing Element found that "the
14 County appears to have the capacity for a further 8,935 housing units."⁵² Thus, as stated in
15 the Housing Element, "the County is far from exhausting the total land needed for all
16 population groups".⁵³ As for those of very low, low, moderate and middle income, the
17 Affordable Housing Inventory for San Juan County, included as Addendum 1 to the Housing
18 Needs Assessment,⁵⁴ identifies 170 single family homes built or currently under
19 development and an additional 140 proposed housing units for this segment of the housing
20 market.
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25 Petitioner argues that the County has failed to acknowledge that the population allocated to
26 Eastsound is entirely very low to middle income and entirely unable to afford market rate
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30 ⁴⁸ RCW 36.70A.070(2).
31 ⁴⁹ RCW 36.70A.070(2)(d).
32 ⁵⁰ RCW 36.70A.070(2)(c).
⁵¹ Record at 1103, Table 5-B.
⁵² Record at 1109.
⁵³ Id.
⁵⁴ Record at 1154.

1 housing there.⁵⁵ The County disputes that assertion. The Board finds that the portions of
2 the record cited by Petitioner do not support his assertion.⁵⁶ Nor does the Board find any
3 support in the Record for Petitioner’s statement that the only option for the population
4 allocated to Eastsound is government assisted housing.⁵⁷
5

6 Conclusion

7 The Board concludes that Petitioner has failed to carry his burden of proof in demonstrating
8 the County’s action in adopting Ordinance 16-2009 violated RCW 36.70A.070(2)(c).
9

10
11 **F. Issue 6 – Adequate Provisions for All Economic Segments⁵⁸**

12 Has San Juan County “made adequate provision”, as required by RCW
13 36.70A.070(2)(d), notwithstanding the failure to implement their historic Housing
14 Policy 5.2.B.2 (now Policy 5.2.C.5)⁵⁹ to establish an independent Housing Trust Fund
15 with a funding source within the County?

16 Applicable Law

17 RCW 36.70A.070(2)(d) provides the Housing Element shall:

18 [M]ake(s) adequate provisions for existing and projected needs of all economic
19 segments of the community.
20

21 Former County Affordable Housing Policy 5.2.B.2 provided, in part:

22 Establish an independent Housing Trust Fund with a funding resource within
23 the county to support development and conservation of affordable housing.
24

25 Discussion and Findings

26 Petitioner notes the Board previously found San Juan County non-compliant in providing for
27 affordable housing and directed the County to “complete the work necessary to encourage
28

29 _____
30 ⁵⁵ Petitioner’s Brief at 11.

31 ⁵⁶ Petitioner has cited to Record at 1153 and 1109, neither of which support Petitioner’s allegation.

32 ⁵⁷ Petitioner’s Brief at 11.

⁵⁸ Intervenor submits no argument in regards to this issue statement.

⁵⁹ Current Policy 5.2.C.5 provides: Provide the most up to date information on critical environmental areas and natural resource lands to identify potential land development constraints.

1 affordable housing.”⁶⁰ Petitioner argues the Board later found the County had achieved
2 compliance, in part by the adoption of measures such as Policy 5.2.B.2. He notes that while
3 the County sought to obtain voter approval for a one-half of one percent real estate excise
4 tax to support affordable housing, that measure failed at the polls. Petitioner argues that
5 because the County has adopted a policy establishing a Housing Trust Fund, it is obligated
6 to implement this policy.⁶¹
7

8 In response, the County acknowledges that the voters did not pass a 2006 proposition that
9 would have funded the Housing Trust through a real estate excise tax.⁶² However, the
10 County noted at the HOM that this single failure does not foreclose the possibility of
11 establishing a trust in the future, as the County may seek to bring the matter to another vote
12 in the future. The County also points out that the Housing Needs Assessment adopted by
13 Ordinance 16-2009 explains that no single strategy can address the housing needs in the
14 County.⁶³ The County’s amendments to the Housing Element in Ordinance 16-2009 enact
15 several new policies that acknowledge the housing need and provide new tools to address
16 those needs.
17
18

19 The Board finds that the County has adopted a number of policies to foster affordable
20 housing,⁶⁴ such as policies supporting the delivery of housing support services, expansion
21 of density bonus programs, residential clustering, and accessory dwelling units, and that the
22 failure to implement *former* Policy 5.2.B.2 does not constitute a failure to make adequate
23 provisions for existing and projected needs of all economic segments of the community.
24
25

26 **Conclusion**
27
28
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31 ⁶⁰ *Town of Friday Harbor, et al., v. San Juan County*, 99-2-0010c, FDO at 10, (10/2/99).

32 ⁶¹ Petitioner’s Brief at 13.

⁶² County Brief at 23.

⁶³ Record at 1153.

⁶⁴ See, Record at 1115-1117.

1 The Board concludes that Petitioner has failed to carry his burden of proof in demonstrating
2 the County's failure to establish a Housing Trust Fund, as envisioned by former Policy
3 5.2.B.2 violated RCW 36.70A.070(2)(d) as the County has adopted a variety of goals and
4 policies which seek to make adequate provisions for all housing needs.
5

6 **G. Issue 7 – Consistency with the County's Vision**
7

8 Are the County Housing Needs Assessment and Housing Element consistent with
9 the Comprehensive Plan Vision Statement as required by RCW 36.70A.190(4)(b)
10 which authorizes the procedural criteria for internal consistency spelled out in WAC
11 365-195-210 and -500?

12 Applicable Law

13 RCW 36.70A.190(4)(b) provides:

14 (4) The department shall establish a program of technical assistance:
15

16 * * *
17 (b) Adopting by rule procedural criteria to assist counties and cities in
18 adopting comprehensive plans and development regulations that meet the
19 goals and requirements of this chapter. These criteria shall reflect regional and
20 local variations and the diversity that exists among different counties and cities
21 that plan under this chapter.

22 Discussion and Findings

23 Petitioner argues there is an internal inconsistency between the County Housing Needs
24 Assessment and the Comprehensive Plan Vision Statement. While the Vision Statement
25 provides that "The supply of affordable housing is adequate to the needs of our diverse
26 population" and "There is housing for people of all incomes", the Housing Needs
27 Assessment describes a bleaker reality:

28 . . . the price of land in San Juan County is likely to remain beyond
29 the reach of many economic sectors for the foreseeable future. . . . It is
30 clear that the market is not capable of addressing the housing needs of
31 many very low to middle income residents.⁶⁵
32

⁶⁵ Record at 1152-1153.
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1 Petitioner asks the Board to find the Housing Element and Needs Assessment
2 are inconsistent with the Vision Statement of the Plan, fail to implement the Plan,
3 and are therefore noncompliant.⁶⁶
4

5 Intervenor makes a similar argument, pointing out that despite the Vision Statement's ideal
6 of "housing for people of all incomes", the Housing Needs Assessment projects a future of
7 3,400 daily workforce commuters from the mainland who cannot afford to rent or own in San
8 Juan County.⁶⁷
9

10 The County points out that "consistency" is defined by WAC 365-195-210 to mean that "no
11 feature of a plan or regulation is incompatible with any other feature of a plan or regulation."
12 The County points out that its Housing Needs Assessment is a compilation of demographic
13 and economic information designed to provide a projection of the County's housing needs
14 during the planning period.⁶⁸ It argues that the Assessment simply identifies the County's
15 housing needs and does not prevent the vision statement from being implemented. While
16 the Board agrees that the vision statement is not prevented from being implemented,
17 despite the reality expressed in the Needs Statement, the Petitioner and Intervenor's
18 argument suffers from a more fatal defect.
19
20

21 As noted elsewhere in this Order, RCW 36.70A.190(4)(b) does not create mandates for
22 local jurisdictions. Instead, it is directed at the Department of Commerce (formerly CTED).
23 Likewise WAC 365-195 contains "recommendations" for meeting the requirements of the
24 GMA. "The recommendations set forth are intended as a listing of possible choices, but
25 compliance with the requirements of the act can be achieved without using all of the
26 suggestions made here or by adopting other approaches."⁶⁹ WAC 365-195-210 is a
27 definitional section, and thus further incapable of being "violated". WAC 365-195-500 does
28 provide that a comprehensive plan shall be an internally consistent document. It then
29
30

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32 ⁶⁶ Petitioner's Brief at 14.

⁶⁷ Intervenor's Brief at 11.

⁶⁸ County Brief at 25, citing Record at 1102.

⁶⁹ WAC 365-195-030

1 clarifies that this means all elements shall be consistent with the future land use map, each
2 part of the plan should be integrated with all other parts, and all should be capable of
3 implementation together. This WAC section provides that internal consistency involves at
4 least two aspects:

5
6 (1) Ability of physical aspects of the plan to coexist on the available land.

7
8 (2) Ability of the plan to provide that adequate public facilities are available
9 when the impacts of development occur (concurrency).

10 Even assuming that compliance with WAC 365-195-500 was mandatory, neither Petitioner
11 nor Intervenor have demonstrated that a failure to presently attain the vision laid out in the
12 Plan rises to this level of inconsistency.
13

14 **Conclusion**

15 The Board concludes that Petitioner and Intervenor failed to carry their burden of proof in
16 demonstrating the County's action in adopting Ordinance 16-2009 violated RCW
17 36.70A.190(4)(b), WAC 365-195-210 or -500.
18

19 **H. Issue 8 – Eastsound Subarea Plan**

20 **I.**

21 Does the Eastsound Subarea Plan, a stand- alone Plan and Development Regulation
22 for the Eastsound UGA on Orcas Island without a Housing Element and not
23 mentioned in the County CPP's, meet the requirements of 36.70A.210(3)(e)?
24

25 **Applicable Law**

26 RCW 36.70A.210(3)(e) provides that a countywide planning policy shall at a
27 minimum address, among other items:

28 Policies that consider the need for affordable housing, such as housing for all
29 economic segments of the population and parameters for its distribution
30

31 **Discussion and Findings**

1 Petitioner asserts that the Eastsound Subarea Plan violates RCW 36.70A.210(3)(e)
2 because it does not contain a housing element and is not mentioned in the County's
3 County-wide Planning Policies (CPPs). He argues that, when the Subarea Plan was
4 adopted, the object was to maintain the rural village character and no thought was given to
5 curbing residential sprawl or providing affordable housing.⁷⁰ With the Eastsound area the
6 present focus of population growth on Orcas Island, Petitioner maintains that the Eastsound
7 Subarea Plan must contain a housing element, with a population analysis, and a policy for
8 affordable housing.
9

10
11 Intervenor also points out that the Eastsound Subarea Plan is silent on the issue of
12 affordable housing, absent an allowable density bonus.⁷¹
13

14 In response, the County points out CPPs are "used solely for establishing a county-wide
15 framework from which county and city comprehensive plans are developed and adopted".⁷²
16

17 The Board notes that RCW 36.70A.210(3) sets out the minimum requirements for CPPs but
18 these are not requirements for subarea plans. Subarea plans are optional elements of a
19 comprehensive plan.⁷³ While a jurisdiction has discretion to utilize subarea plans, RCW
20 36.70A.080(2) requires that subarea plans be consistent with the comprehensive plan and
21 are subject to the goals and requirements of the GMA. Subarea plans are, as the prefix
22 "sub" implies, a subset of the comprehensive plan of a jurisdiction and they typically
23 augment or amplify policies contained in the comprehensive plan. There is no GMA
24 requirement that a subarea plan contain *all* the mandatory elements required by RCW
25 36.70A.070. Thus, the Eastsound Subarea Plan is not required to contain a housing
26 element since the goals, objectives, and policies of the Housing Element in the County's
27 Comprehensive Plan apply and govern in the Eastsound area.
28
29
30

31
32 ⁷⁰ Petitioner's Brief at 14.

⁷¹ Intervenor's Brief at 12.

⁷² RCW 36.70A.210(1).

⁷³ RCW 36.70A.080(2).

1 The section of the GMA relevant to Issue 8 is RCW 36.70A.210(3)(e), which as noted
2 above, sets forth the minimum requirements for county-wide planning policies that consider
3 the need for affordable housing. This GMA provision does not set forth any requirements in
4 relationship to a subarea plan. In addition, as the County points out, and the Board finds,
5 San Juan County's CPPs were not amended by Ordinance 16-2009 but instead were last
6 amended on December 2, 2008.⁷⁴ A challenge to the County's CPPs is untimely.
7

8 **Conclusion**

9 The Board concludes that Petitioner and Intervenor have failed to carry their burden of proof
10 in demonstrating the County's action in adopting Ordinance 16-2009 violated RCW
11 36.70A.210(3)(e) and a challenge to the sufficiency of the County's CPPs is untimely.
12

13
14 **J. Issue 9 – Internal Consistency: Elements and Appendices**

15 Are the county Land Use and Housing Elements, i.e. the plan to make adequate
16 provision for affordable housing, consistent with the Comprehensive Plan Appendix
17 5, Needs Assessment, as required by RCW 36.70A.070(2)(d) and RCW
18 36.7A.190(4)(b) which authorizes the procedural criteria for internal consistency
19 spelled out in WAC 365-195-210 and -500?

20 **Applicable Law**

21 The relevant provisions of the GMA have been quoted above.
22

23 **Discussion and Findings**

24 Issue 9 asks whether the Land Use and Housing Elements are consistent with the Needs
25 Assessment. Petitioner notes that, according to the Housing Needs Assessment, the
26 housing market is foreclosing new opportunities for households which depend on wage or
27 salary incomes and that the ability to expand water and sewer service constrains the
28 number of units that can be constructed in the Town of Friday Harbor and the Eastsound
29 and Lopez Village UGAs.⁷⁵ Petitioner argues that the General Housing Policies provide no
30
31

32

⁷⁴ Record at 1526.

⁷⁵ Petitioner's Brief at 16, citing Housing Needs Assessment, Record at 1110-11.

1 substantive actions to meet the objectives of the Housing Element, such as “Maintain the
2 demographic variety of our community by supporting the availability of housing for the very
3 low, low, moderate middle, and low-upper income earners in the County.”⁷⁶ In particular,
4 Petitioner points out that there is no policy to develop a Capital Facilities Plan to provide
5 utilities for the projected population growth in the Friday Harbor UGA or to undertake a
6 population projection analysis for Eastsound.
7

8 The County responds that the internal consistency requirement of WAC 365-195-500 means
9 all parts of the plan “should be capable of implementation together”, and that the Housing
10 Needs Assessment is a compilation of demographic and economic information designed to
11 provide a projection of the County’s housing needs during the planning period.⁷⁷ As the
12 Housing Needs Assessment is just that – an assessment, and not a plan to be implemented
13 - the County argues that it and the housing element are not incompatible. ⁷⁸
14
15

16 The Board agrees with the County’s position. The Housing Needs Assessment is a
17 demographic and economic analysis of the County’s housing stock. While it may inform
18 County policy decisions made elsewhere in the Plan, it does not set that policy.
19 Furthermore, the Board finds that the Petitioner has not set forth any aspect of the Needs
20 Assessment that would thwart implementation of the Housing or Land Use elements.
21

22 Neither Petitioner nor Intervenor make any arguments regarding inconsistencies between
23 the Needs Assessment and the Land Use Element and the Board finds they have failed to
24 carry their burden of proof regarding that portion of Issue 9.
25
26

27 As noted above, with regard to RCW 36.70A.190(4)(b), this section of the GMA establishes
28 requirements for the Department of Commerce, not counties. Consequently the Board finds
29 that Ordinance 16-2009 does not violate this section.
30

31 _____
32 ⁷⁶ Housing Element, Section 5.2.A.

⁷⁷ County Brief at 27.

⁷⁸ Id.

1 **Conclusion**

2 The Board concludes that Petitioner and Intervenor have failed to carry their burden of proof
3 in demonstrating the County's action in adopting Ordinance 16-2009 violated RCW
4 36.70A.070(2)(d) and RCW 36.7A.190(4)(b).
5

6 **V. ORDER**

7 Based on the foregoing, the Board determines that San Juan County's adoption of
8 Ordinance No. 16-2009 complies with the Growth Management Act. The matter of
9 *Campbell v. San Juan County*, Case No. 09-2-0014, is closed.
10

11 So ORDERED this 27th day of January, 2010.
12

13
14 _____
James McNamara, Board Member

15
16 _____
William Roehl, Board Member

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18 _____
Nina Carter, Board Member
19
20
21

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

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

28 RCW 34.05.010(6), WAC 242-02-240, WAC 242-020-330. The filing of a motion for
29 reconsideration is not a prerequisite for filing a petition for judicial review.

30 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the
31 decision to superior Court as provided by RCW 36.70A.300(5). Proceedings for judicial
32 review may be instituted by filing a petition in superior Court according to the procedures
specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The
petition for judicial review of this Order shall be filed with the appropriate Court and served
on the Board, the Office of the Attorney General, and all parties within thirty days after

1 service of the final order, as provided in RCW 34.05.542. Service on the Board may be
2 accomplished in person or by mail, but service on the Board means actual receipt of the
3 document at the Board office within thirty days after service of the final order. A petition for
4 judicial review may not be served on the Board by fax or by electronic mail.
5 Service. This Order was served on you the day it was deposited in the United States mail.
6 RCW 34.05.010(19).
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Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975