

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2  
3 FRIENDS OF SAN JUANS, LYNN BAHRYCH and JOE  
4 SYMONS,

5 Petitioners,

6 v.

7  
8 SAN JUAN COUNTY,

9 Respondent.

No. 03-2-0003c

**COMPLIANCE ORDER**

10  
11 JAMES NELSON, ET AL

12 Petitioners,

13 v.

14 SAN JUAN COUNTY,

15 Respondent.

Case No. 06-2-0024c

**FINAL DECISION AND ORDER**

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19 **I. SYNOPSIS**

20 San Juan County is an exceptionally beautiful rural county made up of islands with magnificent  
21 vistas and miles of shoreline. The County is accessible only by ferry or air. Most of its land is  
22 devoted to rural or resource uses. These unique characteristics have long made it a destination for  
23 tourists and a location for seasonal second homes. For almost a decade, the County has struggled  
24 with how to provide detached accessory dwelling units (ADU)<sup>1</sup> that are used as a source of income  
25 for residents, accommodations for guest and caretakers, and as a source of affordable housing.  
26 The length of this decision reflects the length of the struggle. During this time the Board of County  
27 Commissioners form of government has been changed to a County Council, and the membership of  
28 San Juan County's legislative body has changed as well.  
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32 <sup>1</sup> The descriptor for these units has also evolved over time from guesthouse to freestanding ADU to now detached ADU.

1 The Friends of San Juan County (Friends) have long opposed the unrestricted allowance of  
2 detached ADUs in rural and resource lands and have challenged the County's previous attempts to  
3 adopt regulations to allow them. In our 2003 Final Decision and Order, we agreed with Friends that  
4 unrestricted numbers of detached ADUs in rural and resource lands created sprawl and urban  
5 growth in those areas, and violated the underlying residential densities. Now Friends supports the  
6 County's latest effort at amending its regulations for detached ADUs established by Ordinance 7-  
7 2006 (the Ordinance), amending SJCC 18.40.240 and other provisions of the County Code.  
8 However, Ordinance 7-2006 has not settled the controversy, and nine petitions challenged this  
9 ordinance.

10  
11 In April 2003 the Board found noncompliant the County's regulations for detached ADUs (then called  
12 freestanding ADUs) because they did not count a 1000 square foot detached ADU as a unit of  
13 density in rural and resource lands, in violation of RCW 36.70A.060(1), RCW 36.70A.070(5), RCW  
14 36.70A.110. The Board further found that the continued validity of those regulations for detached  
15 ADUs in rural and resource lands substantially interfered with the fulfillment of Goals 2 and 8 of the  
16 Growth Management Act (GMA) (RCW 36.70A. 020(2) and (8)).<sup>2</sup>

17  
18 To remedy these noncompliance and invalidity findings, the County adopted amendments to its  
19 regulations for detached ADUs. First, the new ADU regulations provide that a detached ADU is  
20 considered as a separate residential unit for purposes of calculating residential density. This  
21 amendment conforms to the Board's determination that a detached ADU should be counted as an  
22 additional residence for purposes of calculating density. Second, the regulations create a program  
23 for permitting a small number of detached ADUs in rural and resource lands in excess of the  
24 underlying zoning density annually. Under the permitting program, a small number of detached ADU  
25 permits will be issued with strict limitations on location, shared utilities, size, ownership, and impacts  
26 on open space features of the property. The purpose of these restrictions is to ensure that the new  
27 ADUs are accessory to the primary residence and do not negatively impact the rural character of the  
28 Islands or the use of designated resource lands for agriculture or timber production. The County  
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32 <sup>2</sup> The Board rescinded invalidity placed on the County's provisions regulating detached ADUs in Order Lifting  
Invalidity issued on August 18, 2006 based on the amendments adopted by Ordinance 7-2006

1 projects that the number of rural and resource detached ADUs will not come to more than 15  
2 annually.

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4 In this decision, the Board considers whether this permitting program disturbs the densities of  
5 existing compliant rural areas, creates urban growth in those areas or encourages sprawl. In rural  
6 lands, the Board finds that the small number of detached ADU permits issued annually under the  
7 conditions placed on them will not disturb the existing compliant scheme of rural densities. The  
8 Board determines that because of the limitations described in the regulations and the historical  
9 pattern of guesthouses, permitting a small number of such detached ADUs in rural lands will not  
10 upset the traditional rural pattern of development in San Juan County and will not alter its rural  
11 character. As a consequence, we also find that this limited exception to counting detached ADUs  
12 as additional residential density does not allow urban growth in rural areas (RCW 36.70A.110(1)),  
13 nor does it promote sprawl (RCW 36.70A.020(2)).  
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16 However, we find that where the regulations permit detached ADUs on substandard rural lots (of 1 to  
17 4 acres) they establish non-rural densities, creating urban growth and promoting sprawl. SJCC  
18 18.40.240(G)(4) allows detached ADUs on rural lots that are already of non-rural densities. By  
19 allowing additional residences on those lots, that regulation contributes to even more intense uses  
20 on nonconforming rural lots. With a second residence on a small rural lot, the regulations allow  
21 residential uses to predominate over rural uses and rural levels of development. We find that this  
22 amendment (SJCC 18.40.240(G)(4)) is not compliant with the County's own comprehensive plan  
23 and the definitions of rural uses and rural development in the GMA. Further, the intensive residential  
24 uses on substandard rural lots constitute urban growth in rural lands in violation of RCW  
25 36.70A0110(1).  
26

27 The problem of pre-existing substandard lots is not prevalent in designated resource lands.  
28 However, the question in those lands is not so much one of compliant densities as one of  
29 conservation of those lands for purposes of resource production. In resource lands, the Board finds  
30 the size and location requirements will ensure that permitted detached ADUs do not convert  
31 agricultural or timber land to other uses or create uses on resource lands that are incompatible with  
32 the production of agriculture or timber. Further, the small number of ADU permits issued annually

1 will be spread out over both rural and resource lands resulting in very few detached ADUs in  
2 resource lands.

3 Petitioners also challenge the public participation program followed by the County to adopt  
4 Ordinance 7-2006. Petitioners challenge that the process was flawed, in part because the County  
5 entered into settlement discussions with Friends which formed the basis for the first draft of the  
6 Ordinance. Petitioners believe that public input was disregarded as a result.

7  
8 Here, we find that the public process followed by the County in adopting Ordinance 7-2006 was well  
9 publicized and extensive. While Friends made recommendations for the new ADU regulations, there  
10 was extensive opportunity for the public as a whole to comment on proposals and to make their own  
11 suggestions. Changes made to the draft ordinance over the course of the public process reflect  
12 consideration of comments and alternative points of view.

13  
14 Petitioners also argue that the changes to the ADU regulations exceeded the scope of the remand  
15 from this Board and therefore should have been considered in the regular comprehensive plan  
16 amendment cycle. In this regard, the Board finds that the County had discretion to address the  
17 subject of the remand - regulation of ADUs – to resolve the appeal to the Board pursuant to RCW  
18 36.70A.130(2)(b) and 36.70A.140 and chose to do so in the approach adopted in Ordinance 7-2006;  
19 the County did not go beyond the scope of the remand such that it was required to adopt the  
20 amendments to its ADU ordinance in its annual amendment cycle.

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23 Petitioners assert a number of other challenges to the compliance of Ordinance 7-2006 with the  
24 GMA. They also argue that Ordinance 7-2006 fails to comply with the State Environmental Policy  
25 Act (SEPA) (Ch. 43.21C RCW), and the Shoreline Management Act (SMA) (Ch. 90.58 RCW), as  
26 well as claiming that the County's requirement for one ERU per detached ADU violates the County  
27 comprehensive plan, its development code, and state law. Several Petitioners also contend that the  
28 Ordinance places limitations on the construction or conversion of ADUs that are too restrictive,  
29 hinder the development of affordable housing, and interfere with economic development. One  
30 Petitioner claims that the permitting process created under the Ordinance is inefficient and unfair.  
31 The Board finds that Petitioners have not met their burden of proof that any of these violations have  
32 occurred here. Further, the Board notes that the County strategy as to ADUs harmonizes the

1 Housing (Goal 4), Economic Development (Goal 5), and Permitting (Goal 7) goals of the Act with the  
2 Sprawl Reduction (Goal 2) and Natural Resource Industries (Goal 8).

## 3 II. PROCEDURAL HISTORY

4 See Appendix A.

## 6 III. ISSUES TO BE DISCUSSED

### 7 COMPLIANCE ISSUE (CASE NO. 03-2-0003c)

8 Does the action that the County has taken to achieve compliance with the Board's April 17, 2003  
9 Final Decision and Order/Compliance Order that found the County's regulations that allow for a  
10 freestanding accessory dwelling unit (ADU) on single-family lots with a principal residence in rural  
11 lands and resource lands, without counting it as a unit of density for the purpose of calculating the  
12 underlying density, cause the County's regulations for regulating freestanding accessory dwelling  
13 units to no longer substantially interfere with the goals of the Growth Management Act and to comply  
14 with the goals and requirements of the Growth Management Act. See Corrected Final Decision and  
15 Order (April 17, 2003)?<sup>3</sup>

### 15 ISSUES IN CASE NO. 06-2-0024c

#### 16 SPRAWL

17 Issue 1: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) fail to comply with Growth Board  
18 orders dated April 17, 2003 and July 21, 2005 and RCW 36.70A.020(2) and (8) by allowing  
19 freestanding ADUs in rural and resource lands subject to an annual quota system? (Manning et al.,  
20 06-15c, Nelson, 06-20, and Wanda Evans, 06-17)

21 Issue 2: Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant with RCW 36.70A.020,  
22 Planning Goals 1 and 2, by allowing densities of greater than one unit per five acres in rural lands  
23 and Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

#### 23 AFFORDABLE HOUSING

24 Issue 3: Does the Ordinance 7-2006, Sections 18.40.240 A, C, G (1), G(4)(b), and G(4c) fail to  
25 encourage the availability of affordable housing to all economic segments of the population, promote  
26 a variety of residential densities and housing types, and encourage affordable housing in violation of  
27 RCW 36.70A.020(4)? (Manning et al., 06-15C)

28 Issue 4: Does the Ordinance 7-2006, Sections 6,7, 8, and 9 fail to encourage the availability of  
29 affordable housing to all economic segments of the population in violation of RCW 36.70A.020(4)  
30 and RCW 36.70A.540? (Gutschmidt, 06-20)

31 <sup>3</sup> This description of the April 19, 2003 Final Decision and Order reflects the January 9, 2004, Thurston  
32 County Superior Court decision that upheld the Board in regard to density requirements for accessory dwelling  
units in resource and rural lands, but overturned the Board's decision on requirements for location and  
occupancy requirements in resource lands.

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2 Issue 5: Does Ordinance 7-2006, Section 8, SJCC 18.40.270 C violate RCW 36.70A.011 by not  
3 allowing short-term rentals? (Wanda Evans, 06-17)

4 **PROPERTY RIGHTS**

5 Issue 6: Does the Ordinance 7-2006 as a whole fail to ensure that private property shall not be  
6 taken from public use without just compensation having been made and that the property rights of  
7 landowners shall be protected from arbitrary and discriminatory actions in violation of RCW  
8 36.70A.020(6)? (Manning et al., 06-15c)

9 **PERMITTING**

10 Issue 7: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3, 5 fail to further the  
11 goal of having applications for permits processed in a timely and fair manner to ensure predictability  
12 in violation of RCW 36.70A.020(7)? (Gutschmidt, 06-20, Manning et al., 06-15c)

13 **CITIZEN PARTICIPATION AND COORDINATION**

14 Issue 8: Did the County fail to develop Ordinance 7-2006 by not involving citizens in the planning  
15 process and ensuring coordination between communities and jurisdictions to reconcile conflicts as  
16 required by RCW 36.70A.020(11)? (Manning et al., 06-15c)

17 Issue 9: Did San Juan County violate the public participation requirements of RCW 36.70A. 130 and  
18 RCW 36.70A.140 by entering into the non-public development of a ‘Settlement Agreement’ with the  
19 Friends of the San Juans, and then enacting the substance of that Agreement against the advice  
20 from the Planning Commission and the Prosecuting Attorney, and without considering the potential  
21 improvements to the settlement draft that were offered by Petitioners and other public participants?  
22 (Baldwin et al., 06-16, Wiese 06-19)

23 Issue 10: Did the County’s actions in adopting Ordinance 7-2006 violate RCW 36.70A.  
24 035(2)(a)(ii)? (John Evans, 06-18, Wanda Evans, 06-17, Wiese 06-19)

25 Issue 11: Did the Ordinance 7-2006 violate RCW 36.70A. 035(1) (c) by not notifying Class A and  
26 Class B water systems of the legislation affecting private water systems established by Ordinance 7-  
27 2006? (Wanda Evans, 06-17)

28 Issue 12: Did Ordinance 07-2006 violate the San Juan County Code, by inserting “Lot Coverage”  
29 legislation in an ordinance that is advertised as an Accessory Dwelling Unit Ordinance without  
30 proper public process and without using the annual docket process? (Wanda Evans, 06-17)

31 Issue 13 : Did the County fail to use good faith to ensure public participation and consider public  
32 input in developing Ordinance 7-2006 in violation of RCW 36.70A.020(11) and RCW 36.70A.140?  
(Gutschmidt, 06-20)

Issue 14: Does the requirement for one equivalent residential unit (ERU) of water for any detached  
ADU contained on Ordinance 7-2006, Section 9, mislead the public process and is it contrary to the  
County’s stated goals, as stated in the Ordinance’s recitals, in violation of RCW 36.70A.020 (4) and  
(7), RCW 36.70A.540, and RCW 36.70A.011? (Gutschmidt, 06-20)

1 Issue 15: Does Ordinance 7-2006 violate the GMA public process requirements contained in RCW  
2 36.70A.130(2)(a) which allow amendments “no more frequently than once per year”? (Nelson, 6-20,  
3 Manning et al., 06-15c)

4 Issue 16: Does the public participation plan adopted for Ordinance 7-2006 comply with RCW  
5 36.70A.140 and does it substantially interfere with RCW 36.70A.020(11)? (Nelson, 06-20)

6 Issue 17: Did the “back door” negotiations with the Friends of the San Juans before and during the  
7 process that led to the adoption of Ordinance 7-2006 corrupt the public process to the point that the  
8 County failed to comply with the requirements of RCW 36.70A.020(11) and RCW 36.70A.140?  
9 (Nelson, 06-20)

10 Issue 18: Did the County’s failure to follow through with its representation to the Board that it would  
11 seek an Appeals Court decision before attempting to amend the Development Code corrupt the  
12 public process contrary to RCW 36.70A.020(11) and RCW 36.70A. 140 and therefore substantially  
13 interfere with the GMA? (Nelson, 06-20)

## 14 **PROCEDURAL ISSUES**

15 Issue 19: Did the County violate RCW 36.70A.106 by not properly notifying the Department of  
16 Community Trade and Economic Development of its intent to adopt Ordinance 7-2006 at least 60  
17 days prior to final adoption? (Manning et al., 06-15c)

18 Issue 20: Does Ordinance 7-2006 impermissibly address issues which were adequately addressed  
19 in the prior code provisions, and were not part of the Board’s earlier finding of noncompliance and  
20 invalidity in violation of RCW 36.70A.130 (1), (2)(a)(b) and (7)? (Baldwin et al 06-16)

21 Issue 21: Did the failure of Ordinance 7-2006 to set forth the goals and provisions of the GMA that  
22 were considered violate RCW 36.70A.130 and RCW 36.70A.140 by failing to afford the public an  
23 opportunity to comment at a public hearing on the rationale being considered? (Baldwin et al., 06-  
24 16)

25 Issue 22: Did the County violate RCW 36.70A.305, RCW 36.70A.330, and RCW 36.70A.140 by  
26 going well beyond the issues of noncompliance? (John Evans, 06-18)

27 Issue 23: Does Ordinance 7-2006 that includes provisions which were neither challenged or found  
28 by this Board to be noncompliant in the previous ordinance (21-2002), which the present Ordinance  
29 seeks to remedy, and which are unrelated to the issues of structural density, violate RCW  
30 36.70A.130(2)(b), RCW 36.70A.040, RCW 36.70A.040, and RCW 36.70A.100? (Wiese, 06-19)

31 Issue 24: Does Ordinance 7-2006 violate GMA procedural requirements contained in RCW  
32 36.70A.130 (1)(d) and (2)(a) and (b) by adopting new regulations which are unrelated to the  
compliance issues raised in the July 21, 2005 Order, and therefore should have been considered  
under the County’s annual docket process? (Nelson, 06-20)

Issue 25: Did the County’s failure to make the entire public record that was developed during the  
adoption process available by including it in the index provided to the Growth Board constitute a

1 violation of their duty to comply with RCW 36.70A.290(4) and therefore substantially interfere with  
2 RCW 36.70A.020(11). (Nelson, 06-20)

3 Issue 26: Did the County through the adoption of Ordinance 7-2006, Section 6, violate RCW  
4 36.70A.370 and RCW 36.70A.140, by failing to show in the record why 12 percent was chosen as  
5 the number of detached accessory dwelling units allowed in a given year, why there are no detached  
6 ADUs allowed on lots less than one acre, why there are no detached ADUs allowed on lots less than  
7 five acres in the shoreline, why there are limitations on proximity of ADUs to a principal residence,  
and why there is a prohibition of rentals of ADUs? (John Evans, 06-18)

8 Issue 27: Does Ordinance 7-2006 (at Sections. 6.F.3, 6.G.1.b, 6.G.2, and 8 and 9) establish new  
9 restrictions limiting construction and use of a main house after a guest house has been constructed,  
10 violate RCW 36.70A.302 (3-b-i) and substantially interfere with RCW 36.70A.020(6) and RCW  
11 36.70A.370(2) by depriving property owners who have complied with previously existing County  
12 regulations, and who have built guest houses in anticipation of later building a main dwelling, of their  
vested rights which were established when they lawfully secured a permit to build their guest  
house? (Wiese, 06-19)

#### 13 **ACCESSORY DWELLING UNITS (ADUs)**

14 Issue 28: Do the restrictions placed on ADUs in rural and resource lands by Ordinance 7-2006  
15 violate 43.63A.215, as well as RCW 36.70A.020, RCW 36.70A.540, and RCW 36.70A.400 by  
16 allowing ADUs attached to the principal residence while restricting ADUs attached to either an  
17 otherwise allowed or existing accessory structure when neither location of an ADU contributes to  
additional structural density on rural or resource lands? (John Evans, 06-18)

18 Issue 29: Does Ordinance 7-2006, Sections 1 and 2, violate RCW 36.70A.400 and RCW  
19 43.63A.215, by limiting the permitting of detached ADUs to 12 percent of the building permits from  
20 the previous year and allowing only two percent of these permits to be conversions of existing  
21 buildings and by not allowing ADUs to be attached to a garage or other accessory building? (Wanda  
Evans, 06-18)

#### 22 **SHORELINE MANAGEMENT ACT**

23 Issue 30: Did the passing of Ordinance 7-2006 violate the Shoreline Management Act, RCW  
24 90.58.130 and RCW 36.70A.480(1) by amending the County's Shoreline Master Program without  
25 proper notification and adoption process? (Wanda Evans, 06-17, Manning et al., 06-15c)

26 Issue 31: Did the passing of Ordinance 7-2006, Section 18.40.240 G(4)(c) violate WAC 173-26-100  
27 (1) and (2), RCW 90.58.090 because no notice was given that Ordinance 7-2006 amended  
28 Shoreline Density? (Wanda Evans, 06-17)

29 Issue 32: Did the County fail to adhere to the requirements of RCW 36.70A.480 (1) by adopting  
30 changes to the shoreline regulations in the Uniform Development Code without following the  
31 required public process and adoptions procedures and without considering the impact of the new  
32 regulations on shoreline properties and consistency with the regulations of the Shorelines Element  
of the CP? (Nelson, 6-20)



1 **STATE ENVIRONMENTAL POLICY ACT (SEPA)**

2 Issue 33: Did the County violate SEPA, RCW 42.21C, and WAC 197-11-560 when it adopted the  
3 Ordinance without SEPA review? (Manning et al.06-15c).

4 Issue 34: Did the County violate WAC 197-11-230 by conducting a SEPA process for the Ordinance  
5 that was reviewed by the Planning Commission, and by not conducting a new SEPA process for the  
6 new ordinance that was adopted by the County Council? (John Evans, 06-17, Wanda Evans, 06-18  
7 John Evans)

8 Issue 35: Did the County's adoption process for Ordinance 7-2006 fail to comply with the  
9 requirements of the SEPA and therefore violate RCW 43.21 C and WAC 197-11-080, -210, -330, -  
10 060, -158, -230, and -235 which requires SEPA compliance and consistency with the County's  
11 comprehensive plan, including its Shoreline Element? (Nelson, 06-20)

12 Issue 36: Is the SEPA Threshold Determination of DNS noncompliant with RCW 43.21C and the  
13 SEPA Rules, Chapter 197-11-060, -080, and -330 WAC? (Ludwig, 06-24)

14 Issue 37: Was the environmental evaluation and analysis required by the SEPA rules adequate and  
15 compliant with RCW 43.21C and Chapter 197-11 -030 and -031 WAC? (Ludwig, 06-24)

16 **HOUSING POLICY ACT**

17 Issue 38: Is the Ordinance consistent with the State's Housing Policy Act, RCW 43.185B.0009?  
18 (Manning et al, 06-15c).

19 **WATER SYSTEMS**

20 Issue 39: Does the requirement contained in Ordinance 7-2006 for one additional Equivalent  
21 Residential Unit (ERU) of water for an detached ADU violate RCW 36.70A.130(1)(d), RCW  
22 36.70A.070 and 36.70A.040(5) because it is inconsistent with the goals and policies of the  
23 Comprehensive Plan Section 4.2.B.1.6 and Development Regulations (UDC Section 18.60.020)  
24 contrary to state policy and water regulations that are regulated by WAC 246-290-100-4 and WAC  
25 246-290-100-4(b)(i) and (ii)? (Nelson, 06-20, Wanda Evans, 06-17).

26 **CONSISTENCY**

27 Issue 40: Is all or part of Ordinance 7-2006 inconsistent or internally inconsistent with elements of  
28 the County's Comprehensive Plan and Development Code and does it therefore violate RCW  
29 36.70A.070, RCW 36.70A.040(4), RCW 36.70A.130(1)(a) –(d) and (2)(b), RCW 36.70A.060(3),  
30 WAC 365-195-630 and WAC 365-195-500 which require comprehensive plans and development  
31 regulations to be consistent and internally consistent? (Nelson, 06-20)

32 **IV. BURDEN OF PROOF**

For purposes of board review of the comprehensive plans and development regulations adopted by  
local government, the GMA establishes three major precepts: a presumption of validity; a "clearly  
erroneous" standard of review; and a requirement of deference to the decisions of local government.

1 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments  
2 to them are presumed valid upon adoption:

3       Except as provided in subsection (5) of this section, comprehensive plans and development  
4       regulations, and amendments thereto, adopted under this chapter are presumed valid upon  
5       adoption.

6 RCW 36.70A.320(1).

7 This same presumption of validity applies when a local jurisdiction takes legislative action in  
8 response to a noncompliance finding, that legislative action is presumed valid.

9 The statute further provides that the standard of review shall be whether the challenged enactments  
10 are clearly erroneous:

11       The board shall find compliance unless it determines that the action by the state agency,  
12       county, or city is clearly erroneous in view of the entire record before the board and in light of  
13       the goals and requirements of this chapter.

14 RCW 36.70A.320(3)

15 In order to find the County's action clearly erroneous, the Board must be "left with the firm and  
16 definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d  
17 179, 201, 849 P.2d 646 (1993).

18 Within the framework of state goals and requirements, the boards must grant deference to local  
19 government in how they plan for growth:

20       In recognition of the broad range of discretion that may be exercised by counties and cities in  
21       how they plan for growth, consistent with the requirements and goals of this chapter, the  
22       legislature intends for the boards to grant deference to the counties and cities in how they plan  
23       for growth, consistent with the requirements and goals of this chapter. Local comprehensive  
24       plans and development regulations require counties and cities to balance priorities and options  
25       for action in full consideration of local circumstances. The legislature finds that while this chapter  
26       requires local planning to take place within a framework of state goals and requirements, the  
27       ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter,  
28       and implementing a county's or city's future rests with that community.

29 RCW 36.70A.3201 (in part).

30 In sum, the burden is on the Petitioner to overcome the presumption of validity and demonstrate that  
31 any action taken by the County is clearly erroneous in light of the goals and requirements of Ch.  
32 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2). Where not clearly erroneous  
and thus within the framework of state goals and requirements, the planning choices of local  
government must be granted deference.

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**V. DISCUSSION OF COMPLIANCE ISSUE IN 03-02-0003c**

**COMPLIANCE – WWGMHB CASE NO. 03-2-0003C**

Positions of the Parties

**Participants’ Positions**

Petitioners Ludwig and Austin contend that the amendments made to the County’s ADU regulations by Ordinance 7-2006 still do not comply with RCW 36.70A.020(2) and RCW 36.70A.110(1) because they allow a detached ADU on less than 10 acres in rural areas.<sup>4</sup>

Petitioners Manning, Blanchard, Marshall, Baldwin, and Ziegler argue that the Ordinance allows for a detached ADU in rural and resource lands in direct contravention to the Board’s April 17, 2003 order.<sup>5</sup>

Petitioner James Nelson asserts that contrary to the Board’s order the County continues to allow freestanding ADUs in rural and resource lands. He says that the allowance of an unlimited but unknown number of freestanding (detached) ADUs subject to an annual quota system in Ordinance 7-2006 allows for higher than rural densities, does not conserve resource lands and does not comply with RCW 36.70A.110(1), RCW 36.70A. 070 (5)(b)(c), and RCW 36.70A.060.<sup>6</sup>

Mr. Nelson claims that these amendments attempt to cloud the distinction between a freestanding ADU and one that is attached to an outbuilding by describing freestanding ADUs now as detached. He declares that this change was made to prohibit combining a garage and an ADU in many cases, when in a number of cases property owners will be allowed a garage, a house, and an ADU. He says the approach allowed by the amendments is a greater assault on structural density than was allowed under the prior ordinance.<sup>7</sup> He claims that the ADU amendments, particularly those requiring the ADU to be within a 100 feet of the primary residence will have unintended negative

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<sup>4</sup> Ludwig, Participants’ Objections to a Finding of Compliance at 1 and 2; Austin, Participant’s Objections to a Finding of Compliance at 1 and 2.

<sup>5</sup> Manning and Blanchard, Opposition to Compliance Report and Motion to Lift Invalidity Filed by San Juan County and Objection to a Finding of Compliance at 2; Marshall, Baldwin, and Ziegler , Objection to Finding of Compliance and Motion to Supplement the Record at 3.

<sup>6</sup> Nelson, Participant’s Objection to a Finding of Compliance and Motion to Supplement the Record at 3, 8.

<sup>7</sup> Ibid at 7.

1 impacts on the shoreline and will cause a “cookie cutter” approach to development that does not  
2 protect the rural character of San Juan County.<sup>8</sup>

3 He claims that the Board should only find compliance if the Board reverses its April 17, 2003 order  
4 and that the County has not met its burden of proof that Ordinance 7-2006 is compliant with the  
5 Growth Board orders of April 17, 2003 and July 21, 2005.<sup>9</sup>

### 6 7 **County’s Position**

8 San Juan County asks that the Board find compliance because the amendments adopted by  
9 Ordinance 7-2006 now count detached ADUs as a unit of density in rural and resource lands with a  
10 limited exception. The exception is the allowance of a small number of ADUs located in close  
11 proximity to a primary residence subject to an annual cap. That cap is 12 percent of the number of  
12 building permits for new principal residences issued for the previous year, with two of the twelve  
13 percent reserved for conversion of existing accessory buildings. The County projects that this will  
14 result in about 15 detached ADUs annually in rural and resource lands.<sup>10</sup>

15  
16  
17 The County points out that this limitation on the number of detached ADUs in rural and resource  
18 lands is combined with strict environmental and visual protections, including a sharing of utilities and  
19 driveways between the ADU and principal residence, requiring a full ERU for water, prohibition of  
20 detached ADUs in natural or conservancy lands, and required minimum lot sizes.<sup>11</sup>

21 The County maintains that detached guesthouses have been part of the historic character of the San  
22 Juan Islands and are consistent with its present rural landscape, where the natural environment  
23 predominates over the man made, and is compatible the GMA’s requirements to preserve rural  
24 character.<sup>12</sup>

25  
26 Petitioner Friends of the San Juans supports a finding of compliance because Ordinance 7-2006  
27 allows only a very limited number of detached ADUs in the manner of historic guest houses to  
28 continue being developed while tightly restricting the environmental and structural impacts of those  
29

30 <sup>8</sup> Ibid at 9 and 10.

31 <sup>9</sup> Ibid at 3 and 6.

32 <sup>10</sup> Compliance Report and Motion to Rescind Invalidity at 3-4.

<sup>11</sup> Ibid at 5.

<sup>12</sup> Ibid at 5

1 detached ADUs. Friends says that adding 15 new detached ADUs a year will have a de minimus  
2 impact on the character of the County's rural lands and the effective use of the county's resource  
3 lands.<sup>13</sup>

4  
5 Board Discussion

6 The situation presented to the Board at this time is markedly different from that presented in 2003.  
7 The chief petitioner in the underlying case, Friends of San Juans (Friends), no longer challenges the  
8 compliance of the County's ADU development regulations with the goals or requirements of the  
9 Growth Management Act (GMA). In fact, Friends now supports a finding of compliance as to the  
10 new ADU adoptions in Ordinance 7-2006.

11  
12 The Board rescinded its determination of invalidity as to the ADU development regulations pertaining  
13 to detached ADUs on June 30, 2006. At that time, the Board determined that the County's new  
14 development regulations did not pose a significant risk that inconsistent development would occur  
15 during the compliance remand period such that proper GMA planning could not ultimately take  
16 place. Contrary to the arguments of Petitioner W. Evans, this ruling was not a determination of  
17 compliance but a determination that the County had reduced the scope of its detached ADU  
18 regulations so that their continued validity would not substantially interfere with the ultimate  
19 fulfillment of the goals of the GMA during the pendency of the compliance determinations.

20  
21  
22 On compliance, different but related issues are before the Board: whether the County's adoption of  
23 Ordinance 7-2006 fails to comply with Goal 2 (reduction of sprawl) (RCW 36.70A.020(2)), Goal 8  
24 (natural resource industries) (RCW 36.70A.020(8)), the requirements for rural densities (RCW  
25 36.70A.070(5)), and the prohibition against allowing new urban development outside of urban  
26 growth areas (RCW 36.70A.110(1)). The challenge to compliance with Goal 2, Goal 8 and RCW  
27 36.70A.110(1) was also raised in the new petitions for review by two remaining petitioners (Ludwig  
28 and Wanda Evans).<sup>14</sup> None of the new petitions challenge compliance with RCW 36.70A.070(5)  
29 (the rural element requirements). Therefore, we will decide the rural densities issue as part of the  
30

31  
32 <sup>13</sup> Petitioners' Response to Objections and Brief in Support of Lifting Invalidity at 7

<sup>14</sup> By "remaining petitioners", we mean those petitioners who briefed and argued their issues at the hearing on the merits. Those who did not brief and argue their issues are deemed to have abandoned them.

1 compliance case only. The challenges in the new petitions to compliance with Goal 2, Goal 8 and  
2 RCW 36.70A.110(1) will be decided together with those same challenges in the compliance case.

3  
4 A. Rural densities and rural character. RCW 36.70A.070(5)(b) discusses the requirements for rural  
5 development:

6 Rural development. The rural element shall permit rural development, forestry, and  
7 agriculture in rural areas. The rural element shall provide for a variety of rural densities,  
8 uses, essential public facilities, and rural governmental services needed to serve the  
9 permitted densities and uses. To achieve a variety of rural densities and uses, counties may  
10 provide for clustering, density transfer, design guidelines, conservation easements, and other  
11 innovative techniques that will accommodate appropriate rural densities and uses that are  
12 not characterized by urban growth and that are consistent with rural character.

13 RCW 36.70A.070(5)(c) sets requirements for rural development and protection of rural character:  
14 Measures governing rural development. The rural element shall include measures that apply  
15 to rural development and protect the rural character of the area, as established by the  
16 county, by:

- 17 (i) Containing or otherwise controlling rural development;
- 18 (ii) Assuring visual compatibility of rural development with the surrounding rural area;
- 19 (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-  
20 density development in the rural area;
- 21 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and  
22 ground water resources; and
- 23 (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource  
24 lands designated under RCW 36.70A.170.

25 In finding the prior detached ADU development regulations non-compliant with rural densities, the  
26 Board determined that the regulations essentially permitted a doubling of residential densities  
27 throughout the rural zones. This failed to comply with RCW 36.70A.070(5)(b) and (c). The present  
28 detached ADU regulations, however, allow a limited number (approximately 15) of rural and  
29 resource lot owners to add a new or converted detached ADU to the principal residence in those  
30 zones annually. The Board must consider whether the addition of approximately 15 detached  
31 ADUs<sup>15</sup>, under the restrictions placed upon them by County Code, will violate the requirement for  
32 rural densities in the rural zones.

---

<sup>15</sup> Although the development regulations limit the number of detached ADU permits to 12% of building permits issued in rural and resource lands the previous year, the unique circumstances and history of land development in the San Juans demonstrates that the absolute number of such building permits is and will remain extremely small.

1 Petitioners argue that the County has not addressed the Board's finding that its detached ADU  
2 regulations increased the structural density on rural lots.<sup>16</sup> It is true that the County did not amend  
3 its regulations to prohibit all detached ADUs unless they are counted as additional residences for  
4 purposes of conforming to the underlying densities. Instead, the County has provided that a  
5 detached ADU will count as additional residential density unless constructed pursuant to an ADU  
6 permit. The detached ADU permit requirements include regulations to strictly limit the number of  
7 detached ADUs that may be constructed in rural and resource zones, requirements that they share  
8 major utilities with the primary residence, locates them in proximity to the primary residence in ways  
9 that minimize intrusions on critical areas and open-space features such as orchards and pastures,  
10 and requires that a full ERU of water is available for use of the detached ADU. The Board must  
11 determine whether this alternative approach complies with the requirements for rural densities in  
12 RCW 36.70A.070(5).  
13

14 The County asks the Board to find compliance, arguing that the Board was wrong in its earlier  
15 determination that a detached ADU increases the structural density on a lot and that the Board  
16 should have focused on population density instead<sup>17</sup>. Whatever the merits of this argument, it is too  
17 late to bring it now. The Board's determination that the County's detached ADU regulations created  
18 noncompliant structural densities in the rural lands was decided, appealed to the superior court  
19 where it was affirmed, and then appealed to the court of appeals where it was dismissed by  
20 agreement of the parties. There was no reversal of the Board's determination and the Board, as  
21 well as the parties, is bound by it. Compliance in this case must be assessed, therefore, in light of  
22 the changes made to the prior noncompliant provisions of the ADU regulations.  
23

24  
25 In examining Ordinance 7-2006, the Board finds that first, that it now provides that "each detached  
26 accessory dwelling unit shall be counted as a separate dwelling unit for density calculations..."<sup>18</sup>  
27 This provision comports with the Board's 2003 decision. Ordinance 7-2006 then provides a program  
28 for exceptions to this principle:"...except when allowed pursuant to and ADU permit"<sup>19</sup>  
29

30  
31 <sup>16</sup> Nelson, Participant's Objection to Finding of Compliance at 8.

32 <sup>17</sup> San Juan County's Pre-Hearing Brief

<sup>18</sup> SJCC 18 40.240(A)

<sup>19</sup> Ibid

1 The program for detached ADU permits contains four major changes to the prior ADU regulations for  
2 detached ADUs: first, there has been a cap placed on the number of detached ADUs that may be  
3 constructed or converted in any year outside of an urban growth area or designated limited area of  
4 more intensive rural development (in San Juan County these are called activity centers)<sup>20</sup>; second,  
5 the detached ADU must be located within 100 feet of the principal residence (up to 150 feet away if  
6 “impact” would be greater); third, the detached ADU must now share its septic/sewer system with  
7 the principal residence (in addition to sharing a driveway and water system); and fourth, a detached  
8 ADU must obtain a full equivalent residential unit of water available for use for the detached ADU in  
9 addition to the water required for the principal residence.

10 1) The cap. New SJCC18.40.240(G)(1)(b) provides:

11 Outside of the boundaries of activity centers and urban growth areas, the number of  
12 detached ADU permits in any calendar year shall not exceed 12 percent of the total number  
13 of building permits for new principal residences issued for the previous calendar year outside  
14 the boundaries of activity centers and urban growth areas. Two of that 12 percent (10  
15 percent new, 2 percent conversions) of the permits released in any one year shall be  
16 restricted for the conversion of existing accessory structures that have legally existed for no  
17 less than five years. ADU permits shall be issued on a first come/first served basis under  
18 procedures established by the administrator. No unassigned ADU permits shall carry  
19 forward to the next year.

20 The County avers that the absolute number of ADU permits, based on historical numbers of building  
21 permits issued outside of activity centers and urban growth areas, is estimated to be about 15 per  
22 year. Of that amount, 1/6<sup>th</sup> of the ADU permits are allocated to conversions of existing structures  
23 that have been legal for at least 5 years.

24 2) Location of the detached ADU. Unlike the prior development regulations, Ordinance 7-  
25 2006 now expressly limits the location of the detached ADU to within 100 feet of the main residence:

26 Distance. The maximum distance between the closest vertical walls of the main house and  
27 any detached accessory dwelling unit shall be no more than 100 feet. If the 100 feet  
28 dimension would result in a greater impact, the administrator may allow up to 150 feet  
29 separation.

30 SJCC 18.40.240(G)(2).

31 \_\_\_\_\_  
32 <sup>20</sup> ADUs are prohibited in Rural Industrial, Rural Commercial, Natural, and Conservancy Land Districts, as well  
as in the Island Centers District.



1 The question of “greater impact” that authorizes the administrator to allow up to 150 feet is described  
2 in the subsequent section. The location impacts are to “avoid or minimize intrusion on the most  
3 sensitive open-space features of the site”:

4 Location. Locate every new detached ADU and its utilities and driveway to avoid or minimize  
5 intrusion on the most sensitive open-space features of the site, including but not limited to:

- 6 a. Existing orchard, meadows an pasture areas;
- 7 b. Ridgelines and contrasting edges between landscape types unbroken by structures;
- 8 c. Rolling, open or steep open slopes;
- 9 d. Critical areas.

10 SJCC 18.40.240(G)(3).

11 3) Shared utilities. Ordinance 7-2006 amends SJCC 18.40.240 to provide:

12 Driveway and Utilities. An accessory dwelling unit shall use the same driveway,  
13 septage[sic]/sewer system, and water system as the principal residence.

14 SJCC 18.40.240(F)(3).

15 The requirement for a shared septic system is new to this version of the ADU development  
16 regulations.

17 4) Water availability. Ordinance 7-2006 further amends SJCC 8.06.070 regarding water  
18 required for a new detached ADU:

19 A detached accessory dwelling unit shall include evidence of the availability on site of one  
20 equivalent residential unit [ERU] of water in addition to the water required for the principal  
21 residence.

22 SJCC 8.06.070 (definition of “Connection”, in pertinent part).

23 The requirement for a full ERU of water for a detached ADU is distinguished from the amount of  
24 water availability required for an attached ADU. An attached ADU requires one-half of an ERU  
25 unless the owner can demonstrate that water use in the attached ADU will be less (up to 1/3 of an  
26 ERU)<sup>21</sup> Petitioners Marshall, Zeigler and Baldwin argue that this distinction was a last minute  
27 addition to the ordinance and did not reflect meaningful consideration of the arguments against it.<sup>22</sup>

28 Friends argues that the water requirement is a further limitation on the number of detached ADUs  
29 that may be constructed.<sup>23</sup>

30  
31  
32 <sup>21</sup> SJCC 8.06.070

<sup>22</sup> Baldwin/Marshall/Ziegler Prehearing Brief at 6.

<sup>23</sup> Friends’ response to Board questions at the hearing on the merits.

1 With these changes, the County has altered its course of doubling the density potential in rural and  
2 resource lands and acknowledged that detached ADUs should count as additional density. The  
3 amendments enacted by Ordinance 7-2006 count a detached ADU as a unit of density with a limited  
4 exception.<sup>24</sup> This exception allows some detached ADUs on a permit basis.<sup>25</sup> In rural and resource  
5 lands, the number of detached ADUs which may be permitted in any year is limited to 12 per cent of  
6 the total number of building permits for new permanent residences issued outside of UGAs and  
7 LAMIRDs the prior year. This is estimated, by reference to the past history of building permits  
8 issued for single-family home construction in the rural and resource lands, to be about 15 per year.<sup>26</sup>  
9

10 In order to assess the impact of this exception to the density limitation for detached ADUs, we turn  
11 first to the County's Final Report on Accessory Dwelling Units.<sup>27</sup> According to this analysis, the total  
12 of "non-urban" parcels (excluding state and federal lands) is 13,991. The average parcels size in the  
13 rural and resource lands (excluding state and federal lands) is 7 acres.<sup>28</sup> The official land use maps  
14 for San Juan County show a majority of the lots on all of the islands as designated as rural or  
15 resource lands.<sup>29</sup> According to the official land use maps, rural densities vary from 1 dwelling unit  
16 per 5 acres (1du/5 acres) to 1 du/10 acres. While there are preexisting smaller lots in the rural  
17 zones, the general rule is that the maximum rural density is 1du/5 acres. This comports with general  
18 density guidelines articulated by the growth boards and this rural density scheme has been found  
19 compliant.<sup>30</sup>  
20

21  
22 Under Ordinance 7-2006, detached ADUs are permitted in the RFF (rural farm forest), RR (rural  
23 residential) and RGU (rural general use) zones.<sup>31</sup> Based on the history of building permits in the  
24 rural and resource zones, the County estimates that 12% of the building permits issued in those  
25 zones will be only 15 a year. Given the number of potential parcels upon which detached ADUs  
26

27 <sup>24</sup> SJCC 18.40.240(A)

28 <sup>25</sup> *Ibid.*

29 <sup>26</sup> SJCC18.40.240 (G)(1)(b).

30 <sup>27</sup> Exhibit 4, at 3

31 <sup>28</sup> *Ibid* at 21.

32 <sup>29</sup> Land Use Maps, Comprehensive Plan (San Juan County)

<sup>30</sup> *Michael Durland et al v. San Juan County*, Case No. 00-2-0062c and *Town of Friday Harbor, et al v. San Juan County*, Final Decision and Order/Compliance Order (May 7, 2001) at 20; *Michael Durland v. San Juan County*, Case No. 00-2-0062c, Order Finding Compliance and Rescinding Invalidity (October 11, 2001) at 2.

<sup>31</sup> SJCC 18.40.240(C).

1 may be constructed or converted, an annual limit of approximately 15 of such permits is unlikely to  
2 disturb the existing, compliant scheme of rural densities.

3  
4 However, it is also important to examine the nature and scope of the detached ADUs in determining  
5 their potential impact upon rural densities. Detached ADUs are limited to no more than 1,000  
6 square feet in size.<sup>32</sup> They must share water and septic/sewer with the principal residence.<sup>33</sup> They  
7 must also share a driveway and be located within 100 feet of the principal residence.<sup>34</sup> Further  
8 restrictions include only minimal intrusion in critical areas and open spaces.<sup>35</sup>

9  
10 In addition, detached ADUs under the San Juan County scheme are not separate residences in that  
11 they cannot be sold separately from the primary residence.<sup>36</sup> They may be rented but the rental  
12 term must be at least 30 days.<sup>37</sup>

13  
14 Another important aspect of rural densities is that they conform to the rural character of the specific  
15 county. The GMA recognizes rural character is not the same among counties and regions and  
16 requires each county to define its specific rural character:  
17

18 Because circumstances vary from county to county, in establishing patterns of rural densities  
19 and uses, a county may consider local circumstances, but shall develop a written record  
20 explaining how the rural element harmonizes the planning goals of RCW 36.70A.020 and  
21 meet the requirements of this chapter.

RCW 36.70A.070(5)(a).

22 *The San Juan County Accessory Dwelling Units Final Report* (Final Report)<sup>38</sup> describes the special  
23 conditions that make San Juan County's situation with respect to detached ADUs different from  
24 other counties:

25 The specific conditions of San Juan County, including transportation limitations of the island  
26 environment, and the long history of the islands as a vacation and retirement location, have  
27

28  
29 <sup>32</sup> SJCC 18.40.240(F)(1)

30 <sup>33</sup> SJCC 18.40.240(F)(3)

31 <sup>34</sup> *Ibid*; SJCC18.40.240(G)(2)

32 <sup>35</sup> SJCC 18.40.240(G)(3)

<sup>36</sup> SJCC 18.40.240(F)(4)

<sup>37</sup> SJCC 18.40.270 (L)

<sup>38</sup> Exhibit 4.

1           resulted in a rural environment with characteristics that are different from those of many rural  
2           counties in the state.<sup>39</sup>

3           San Juan County's comprehensive plan's describes its rural character:

4           ...Rural lands are intended to retain the pastoral, forested, and natural landscape qualities of  
5           the islands while providing people with choices for living environments at lower densities or  
6           use intensities than those in Activity Centers.<sup>40</sup>

7           San Juan County's development code further describes rural character as:

8           ...a quality of landscape dominated by pastoral, agricultural, forested and natural areas  
9           interspersed with single-family homes and farm structures.<sup>41</sup>

10          San Juan County's isolation, recognition as a tourist destination, historic use of ADUs for vacationing  
11          family members or as a vacation residence before a main house is built, and rural lot development  
12          pattern are unique characteristics. A process which maintains the ability to develop a small number  
13          of detached ADUs, constructed in proximity to the main residence and situated to maintain the open  
14          space features central to the rural areas, is in keeping with San Juan County's rural character.

15  
16          Taken together, the Board finds that the small number of detached ADU permits in rural lands, the  
17          shared utilities and driveway, the requirement that the detached ADU be relatively close to the  
18          primary residence, the size limitation and the location restrictions within the lot will have a minimal  
19          physical impact on rural densities. The fact that the detached ADUs are also attached to the primary  
20          residence as part of common ownership also reduces the risk that the detached ADUs will become  
21          simply another house on the same lot. In sum, the new detached ADU regulations do not act to  
22          upset the existing compliant rural densities in San Juan County. Where the challenged regulations  
23          allow such a limited number of detached ADUs to be constructed or converted on rural lands of 5 or  
24          more acres per parcel, we find that they do not create non-compliant rural densities. However, San  
25          Juan County has gone beyond allowing a limited number of detached ADUs on rural lands with  
26          compliant rural densities. The County also allows detached ADUs to be constructed or converted on  
27          rural lots as small as one acre.<sup>42</sup> These small rural lots were established before the GMA was  
28          adopted and would not ordinarily reflect an appropriate rural density. The County Comprehensive  
29

30  
31          <sup>39</sup> Exhibit 4, *San Juan County Accessory Dwelling Units Final Report* (August 14, 2002) at 7

32          <sup>40</sup> Section 2.3C of Land Use Element

<sup>41</sup> San Juan County, Unified Development Code at SJCC 18.20, page 20.

<sup>42</sup> SJCC18.40.240(G)(4)(b)

1 Plan acknowledges the existence of lots in the RR (rural residential) zone that are below 5 acres in  
2 size but notes that this is because they were established in the 1979 comprehensive plan:

3 Existing parcels which were established under the greater densities of the 1979 plan may still  
4 be developed for residential use, but any further subdivision in these areas must meet the  
5 newly established density limits. Plan policies encourage the combination of existing lots in  
6 order to reduce the number of dwelling units that may be developed in rural areas where the  
7 existing parcel pattern would permit development at a density greater than that established  
8 by this Plan and the Official Maps.

9 San Juan County Comprehensive Plan, Land Use Element at 2.

10 Allowing an additional detached residence on a nonconforming rural lot is not consistent with the  
11 County's own plan for rural densities and preservation of rural character. In addition, the County's  
12 regulations allow an additional footprint of up to 2,000 square feet on a nonconforming rural lot if the  
13 ADU is combined with a garage.<sup>43</sup> Such structural intensity does not conform to policies on rural  
14 densities under either the County's comprehensive plan or the GMA.

15 **Conclusion:** Ordinance 7-2006, as it applies to detached ADUs in existing, compliant rural zones,  
16 does not alter the existing compliant residential densities in those zones to an extent that violates  
17 RCW 36.70A.070(5). The development regulations limit the number of detached ADU permits to  
18 12% of building permits issued in rural and resource lands the previous year; the unique  
19 circumstances and history of land development in the San Juans demonstrates that the absolute  
20 number of such building permits is and will remain extremely small. However, the regulations that  
21 permit a detached ADU to be constructed or converted on a nonconforming rural lot of less than 5  
22 acres fail to comply with RCW 36.70A.070(5) because they expand the structural intensity in rural  
23 zones beyond that which is set out in the County comprehensive plan and do not conform to rural  
24 densities as defined by the GMA.  
25  
26  
27  
28  
29  
30  
31  
32

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<sup>43</sup> SJCC 18.40.240(G)(4)(b)(ii)  
COMPLIANCE ORDER AND FINAL DECISION AND ORDER  
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February 12, 2007  
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1 **VI. ISSUES IN O6-2-0024c**

2 **A. Abandoned Issues**

3 No petitioner in WWGMHB 06-2-0024c briefed the following issues: 3, 6, 8, 15, 16, 17, 18, 19, 23,  
4 24, 25 27, 32, 33, 35, 38, and 40. "An issue not addressed in petitioner's brief is considered  
5 abandoned".<sup>44</sup>

6  
7 Conclusion: Petitioners have not carried their burden of proof pursuant to RCW 36.70A. 320(2)  
8 regarding Issues: 3, 6, 8, 15, 16, 17, 18, 19, 23, 24, 25 27, 32, 33, 35, 38, and 40.

9  
10 **B. Sprawl Issues**

11 Issue 1: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) fail to comply with Growth Board  
12 orders dated April 17, 2003 and July 21, 2005 and RCW 36.70A.020(2) and (8) by allowing  
13 freestanding ADUs in rural and resource lands subject to an annual quota system? (Manning et al.,  
14 06-15c, Nelson, 06-20, and Wanda Evans, 06-17)

15 Issue 2: Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant with RCW 36.70A.020,  
16 Planning Goals 1 and 2, by allowing densities of greater than one unit per five acres in rural lands  
17 and Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

18 Under this heading, we will discuss the challenges to compliance with Goal 2, Goal 8 and RCW  
19 36.70A.110(1). We will discuss Goal 4 in the Affordable Housing Section of this order.

20 Positions of the Parties

21 **Petitioners' Positions**

22 Petitioner Ludwig states that Ordinance 7-2006 allows freestanding ADUs on lots of less than 10  
23 acres.<sup>45</sup> Petitioner Ludwig cites Western Washington Growth Management Hearing Board cases,  
24 including the April 17, 2003 Corrected Final Decision and Order and decisions from the Central  
25 Growth Management Hearings Board that have held that allowing an ADU with a principal residence  
26 on a lot of less than 10 acres constitutes impermissible sprawl.<sup>46</sup> This Petitioner also declares that  
27 all three Boards have affirmed that one dwelling unit per five acres is the maximum permissible  
28

29  
30  
31 <sup>44</sup> *WEC v. Whatcom County*, WWGMHB Case No. 95-2-0007. Also see *OEC v. Jefferson County*, WWGMHB  
32 Case No. 94-2-0017.

<sup>45</sup> Petitioners' Objections to a Finding of Compliance (June 27, 2006) at 1.

<sup>46</sup> Petitioner's Prehearing Brief (November 8, 2006) at 2 citing *1000Friends IV*, CPSGMHB Case No. 04-3-  
0012 (Final Decision and Order, Date) at 13, and *PNA II*, CPSGMHB Case No. 95-3-0071.

1 density in rural areas.<sup>47</sup> Petitioner says that the official San Juan County maps show a large  
2 percentage of rural land platted on lots of five acres or smaller, and Ordinance 7-2006 would double  
3 the density on rural lots. <sup>48</sup> Petitioner argues that a study done as a part of the review of County's  
4 critical areas ordinance shows that all of San Juan County is a critical aquifer recharge area, and  
5 therefore no more density than one unit per five should be allowed until the critical areas ordinance  
6 is updated. <sup>49</sup> Because the County can't predict where new detached ADUs will be built, Petitioner  
7 Ludwig contends these new ADUs constitute unplanned and uncoordinated growth which the  
8 Growth Management Act (GMA) seeks to discourage.<sup>50</sup>

9  
10 Petitioner Austin makes many of the same arguments as Petitioner Ludwig.<sup>51</sup> Petitioners Manning  
11 and Blanchard and Marshall, Baldwin and Ziegler contend that the Ordinance still violates the  
12 Board's order that a detached ADU shall conform to the underlying density in rural and resource  
13 areas.<sup>52</sup>

14  
15  
16 Petitioner Wanda Evans alleges that because the Board has overturned its April 17, 2003 order, that  
17 it should now find Ordinance 21-2002, the ordinance that the Board's April 17, 2003 order found  
18 noncompliant and invalid, compliant. She argues that this ordinance is not much different than  
19 Ordinance 7-2006 except the County's regulations for detached ADUs now contains a 12 percent  
20 limit based on annual single-family development permits, rather than being based on the assumption  
21 that the number of residential lots containing ADUs would never exceed more than 16 percent. She  
22 contends that Ordinance 21-2002 is a better alternative because it was adopted with fairer public  
23 process and allowed for conversions of outbuildings to detached ADUs. <sup>53</sup>

24  
25 \_\_\_\_\_  
26 <sup>47</sup> Ibid at 3 citing *City of Moses Lake v. Grant County*, EWGMHB 99-1-0016 (Order on Remand, 4/17/02),  
27 *Bremerton/Port Gamble*, CPSGMHB 95-3-39c and 97-3-24c(9/8/97), *Butler v. Lewis County*, WWGMHB 99-2-  
28 27c (Final Decision and Order, 6/30/00), *Better Brinnon v. Jefferson County*, WWGMHB Case No. 03-2-0007  
(Compliance Order, 6-23-04), and *Dawes v. Mason County*, WWGMHB Case No. 96-2-23c(Compliance  
29 Order, 3-2-01)

30 <sup>48</sup> Ibid at 4.

31 <sup>49</sup> Ibid at 4.

32 <sup>50</sup> Ibid at 4.

<sup>51</sup> Austin, Participant's Objection to Finding of Compliance at 1-2

<sup>52</sup> Manning and Blanchard, Opposition to Compliance Report and Motion to Lift Invalidity Filed by San Juan  
County and Objection to a Finding of Compliance (July, 2006) at 2. Marshall et al, Objection to a Finding of  
Compliance and Motion to Supplement the Record ( July 5, 2006) at 2.

<sup>53</sup> Petitioner's Prehearing Brief (November 14, 2006) at 1

1 **County's Position**

2 The County maintains that detached ADUs are counted as a dwelling unit for the purposes of  
3 complying with underlying density in rural and resource zones with a limited exception. The County  
4 argues that Ordinance 7-2006 only allows a small number of detached ADUs in close proximity to a  
5 primary residence that can only be rented long-term to provide a source of affordable housing. The  
6 County states that the primary limitation on detached ADUs is only allowing permits for only 12  
7 percent of the residential building permits per year with two percent of the 12 percent reserved for  
8 conversion of existing buildings to detached ADUs.<sup>54</sup> The County also asserts that Ordinance 7-  
9 2006 contains strict visual and environmental limitations on the construction of detached ADUs  
10 including provisions for the sharing of all utilities, an obligation for one equivalent residential unit  
11 (ERU) of water, prohibition of detached ADUs in natural or conservancy designations, and a  
12 minimum lot size .<sup>55</sup>  
13

14 The County argues that detached ADUs are part of the historic character of San Juan County and  
15 consistent with the present rural landscape. The County contends the manner in which the County  
16 has chosen to permit detached ADUs assures that the natural environment with continue to  
17 predominate over the man made and is compatible the GMA's requirements to protect rural  
18 character.<sup>56</sup>  
19

20 Board Discussion

21 **Sprawl**

22 Goal 2 of the GMA calls for reduction of sprawling, low-density development:  
23 Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-  
24 density development.  
25 RCW 36.70A.020(2)

26 In the Corrected Final Decision and Order of April 17, 2003, this Board found that the regulations for  
27 detached ADUs violated Goal 2 by converting rural and resource lands to sprawling, low-density  
28 development.  
29

30  
31  
32 <sup>54</sup> Compliance Report and Motion to Rescind Invalidity (June 21, 2006) at 3 and 4.

<sup>55</sup> Ibid at 5

<sup>56</sup> Ibid at 5.



1 For the same reasons that we find that Ordinance 7-2006 does not alter the existing compliant  
2 residential rural densities, the Board finds that the new ADU regulations do not create sprawling,  
3 low-density development in the rural zones. The limited number of detached ADU permits coupled  
4 with the limitations on location, ownership, utilities and impact on the open-space features of the lot  
5 prevent the detached ADU regulations from creating sprawl in those rural zones.

6  
7 While we find that the provisions of SJCC 18.40.240(G)(4) fail to comply with the requirements for  
8 rural densities and rural character of RCW 36.70A.070(5)(b) and (c) by allowing expansion of the  
9 structural intensity in substandard rural lots, the Board does not find that they create sprawl at this  
10 time. The new ADU regulations allow the construction and conversion of detached ADUs in the rural  
11 residential zone on small rural lots of less than 5 acres. However, due to the limited number of such  
12 detached ADUs that may be permitted and the limitations on size, location and utilities, the  
13 Petitioners/Participants have not shown that this will create sprawl during the remand period. Since  
14 SJCC 18.40.240(G)(4) is remanded for compliance with RCW 36.70A.070(5)(b) and (c) and RCW  
15 36.70A0110(1), prompt compliance with those provisions will also cure the risk for sprawl.

16  
17 **Conclusion:** Ordinance 7-2006 adds only a limited number of detached ADUs in rural and resource  
18 lands every year. These detached ADUs are subject to strict controls and maintain close  
19 connections with the primary residence. They are not divisible from the primary residence and must  
20 share major utilities. Petitioners have not shown that this will create sprawl during the remand  
21 period. Therefore, Ordinance 7-2006 complies with Goal 2, RCW 36.70A.020(2), subject to a  
22 determination that continued validity of SJCC 18.40.240 may, if not made compliant during the  
23 remand period set in this order, substantially interfere with fulfillment of Goal 2..

24  
25 **Natural Resource Industries (RCW 36.70A.020(8))**

26 Goal 8 of the GMA is the natural resource industries goal:

27 Maintain and enhance natural resource-based industries, including productive timber,  
28 agricultural, and fisheries industries. Encourage the conservation of productive forest lands  
29 and productive agricultural lands, and discourage incompatible uses.  
30 RCW 36.70A.020(8).

31 Mr. Nelson argues that the new regulations concerning detached ADUs continue to allow an  
32 unlimited number of freestanding ADUs on lots of 10 acres in resource lands and therefore fail to

1 conserve resource lands.<sup>57</sup> However, the number of detached ADUs that may be constructed or  
2 converted annually in resource lands is extremely limited. All detached ADUs, whether in rural or in  
3 resource lands, are limited to an average of 15 per year. This is not an unlimited number; on the  
4 contrary, it is a very small absolute number. While it is true that the actual cap is a percentage of  
5 building permits issued in the rural and resource land zones, the configuration and development of  
6 land in San Juan County does not offer a significant likelihood that this will ever be significantly  
7 greater than 15.<sup>58</sup> That is, 15 detached ADUs in all rural and resource lands annually, not just in  
8 resource lands.

9  
10 Goal 8 pertains to the conservation and enhancement of natural resource lands so that they may be  
11 used for productive purposes. It also requires discouragement of incompatible uses. With the  
12 location requirements of Ordinance 7-2006, a detached ADU in resource lands must be located in  
13 the 100 foot vicinity of the main residence, with shared utilities and driveway. It also may not disturb  
14 orchards, meadows, and pastures, and may not interfere with the natural slopes and ridgelines of  
15 the property. The size of the detached ADU is limited to 1,000 square feet. Overall, there is no  
16 showing that a very small number of such detached ADUs would convert resource land to non-  
17 resource purposes, or would create an incompatible use.

18  
19 **Conclusion:** Petitioners/Participants have not met their burden of showing that the new detached  
20 ADU regulations will violate the natural resources industries goal by converting resource lands to  
21 non-resource purposes. Further, they have also failed to show that the limited number of detached  
22 ADUs located in close proximity to the main residence and situated to reduce any impact on the  
23 natural open space features of the property will constitute an incompatible use. The Board finds that  
24 no violation of Goal 8 has been proven.

25  
26 **Urban growth outside of urban growth areas (RCW 36.70A.110(1)).**

27 This provision of the GMA limits urban growth to urban growth areas:

28 Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an  
29 **urban growth area or areas within which urban growth shall be encouraged and**  
30 **outside of which urban growth can occur only if it is not urban in nature.** Each city that  
31 is located in such a county shall be included within an urban growth area. An urban growth

32  
<sup>57</sup> Nelson, Objection to Finding of Compliance and Motion To Supplement the Record at 6.

<sup>58</sup>Exhibit 4, *San Juan County Accessory Dwelling Units Final Report* (August 14, 2002)

1 area may include territory that is located outside of a city only if such territory is characterized  
2 by urban growth whether or not the urban growth area includes a city, or is adjacent to  
3 territory already characterized by urban growth, or is a designated new fully contained  
4 community as defined by RCW 36.70A.350.  
RCW 36.70A.110(1) (emphasis added)

5  
6 In our 2003 Corrected Final Decision and Order and Compliance Order in this case, the Board found  
7 that the sections of Ordinance 21-2002 “allowing a freestanding accessory dwelling unit on every  
8 single-family lot without regard to the underlying density in rural residential districts, including  
9 shoreline rural residential districts, fail to prevent urban sprawl, contain rural development, and,  
10 instead, allow growth which is urban in nature outside of an urban growth area.<sup>59</sup>

11 As discussed in the sections on rural densities and sprawl above, the new ADU regulations no  
12 longer allow a detached ADU on every single family lot. The question remains whether the  
13 exception for permitted detached ADUs in rural and resource lands allows growth which is “urban in  
14 nature” outside of urban growth areas.

15  
16 “Urban growth” is defined in the GMA as:

17 Growth that makes intensive use of land for the location of buildings, structures, and  
18 impermeable surfaces to such a degree as to be incompatible with the primary use of land  
19 for the production of food, other agricultural products, or fiber, or the extraction of mineral  
20 resources, rural uses, rural development, and natural resource lands designated pursuant to  
RCW 36.70A.170.

21 RCW 36.70A.030(17)(in pertinent part).

22  
23 In the *Quadrant* decision<sup>60</sup>, the Washington Supreme Court agreed with a King County  
24 determination that densities of one dwelling unit per acre constitute growth that is urban in nature. In  
25 general, residential densities of one dwelling unit per acre or per two acres are not rural densities.  
26 They are “incompatible with the primary use of land for the production of food, other agricultural  
27 products, or fiber, or the extraction of mineral resources, rural uses, rural development” because the  
28 residential uses dominate the parcel.

29  
30  
31  
32 <sup>59</sup> Corrected Final Decision and Order and Compliance Order, April 17, 2003 at 26.

<sup>60</sup> *Quadrant v. Central Puget Sound Growth Management Board*, 154 Wn. 2d 224 (2005)

1 As described in Ordinance 7-2006, the addition of a detached ADU on rural residential parcels less  
2 than 5 acres in size is inconsistent with rural development and rural uses.<sup>61</sup> The predominance of  
3 residential structures on a rural parcel makes it inconsistent with” ...a quality of landscape  
4 dominated by pastoral, agricultural, forested and natural areas interspersed with single-family homes  
5 and farm structures.”<sup>62</sup> It therefore creates growth that is “urban in nature”, contrary to RCW  
6 36.70A.110(1).

7  
8 Finding compliance in instances where the detached ADU is permitted on a rural parcel of a  
9 compliant rural density of 5 acres in size is a much closer call for the Board. Allowance of a  
10 detached ADU on five acre rural parcels actually creates a structural density that is neither rural nor  
11 urban. All three boards have considered that a rural density is generally at least one dwelling unit  
12 per five acres.<sup>63</sup> However, local circumstances must be considered in determining whether that  
13 general principle should apply. In determining whether a detached ADU on a rural parcel of 5 acres  
14 creates urban growth here, the Board has looked carefully at the historical pattern of guesthouses in  
15 the rural areas on the San Juan Islands. Because of that historical pattern, a detached ADU may  
16 not create urban growth in San Juan County, that is, it may not impinge upon rural uses and rural  
17 character. Where the residential structures are not “incompatible with the primary use of land for the  
18 production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural  
19 uses, rural development” in the rural areas, urban growth is not created. Giving due deference to  
20 the County Commissioners’ determination of the importance of detached ADUs in the rural areas,  
21 the Board finds that the size and location restrictions on detached ADUs through the permit process  
22 limit residential uses from dominating over the rural uses of the property where the parcel is 5 acres  
23 or greater in size. The small number of such permits restrains the extent of such development in  
24

25  
26  
27 <sup>61</sup> We distinguish between “urban growth” and “urban densities”. “Urban growth” exceeds rural and resource  
28 land intensities. However, urban growth is not necessarily an appropriate urban density as a result. As in the  
29 *Quadrant* case, urban growth may be at only suburban levels of density.

30 <sup>62</sup> San Juan County, Unified Development Code, SJCC at 18.20, page 20.

31 <sup>63</sup> See *Durland v. San Juan County*, WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7,  
32 2001); *Sky Valley v. King County*, CPSGMHB Case No. 95-3-0068c (Final Decision and Order, March 12,  
1996); *Yanisch v. Lewis County*, WWGMHB Case No. 02-2-0007c (Final Decision and Order, December 11,  
2002); but see *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c (Final Decision and Order,  
October 23, 1995); and *City of Moses Lake v. Grant County*, EWGMHB Case No. 99-1-0016 (Final Decision  
and Order, May 23, 2000) (holding that rural densities should be no greater than one dwelling unit per *ten*  
acres).

1 any one area so it is most likely that detached ADU permits will be issued in different locations,  
2 rather than establishing a pattern of growth. Along with San Juan County's unique rural character  
3 and historical pattern of guesthouse development, these limitations help guard against creating  
4 growth that is urban in nature. While the Board has concerns about the potential for the creation of  
5 urban growth with detached ADUs on 5-acre rural parcels, we find that the ordinance has addressed  
6 many of them and is not clearly erroneous on the grounds of RCW 36.70A.110(1).

7  
8 **Conclusion:** SJCC 18.40.240(G)(4) allows the creation of urban growth in rural areas by permitting  
9 detached ADUs in parcels of substandard rural density. On such nonconforming lots, two  
10 residences predominate over the rural character and use of the land. This fails to comply with RCW  
11 36.70A.110(1).

12  
13 Where the parcels in question are 10 acres in size, the addition of a detached ADU does not create  
14 the specter of urban growth. Adding a detached ADU on a 5-acre parcel in rural lands is a much  
15 closer question. However, in light of the County's historical pattern of guesthouse construction, the  
16 limited number of detached ADUs that may be placed on rural lands of compliant 5-acre rural  
17 densities, and the restrictions on size and location, we find that the County's decision to allow  
18 permits for detached ADUs on some 5 acre rural parcels is not clearly erroneous as prohibited by  
19 RCW 36.70A.110(1)  
20

### 21 C. ADUs and Affordable Housing

22 Issue 2 (in part): Is Ordinance No 7-2006, Section 18.40.240 A – G noncompliant  
23 Goal 4, by increasing land values in rural lands? (Ludwig, 06-24)

24 Issue 4: Does the Ordinance 7-2006, Sections 6,7, 8, and 9 fail to encourage the availability of  
25 affordable housing to all economic segments of the population in violation of RCW 36.70A.020(4)  
26 and RCW 36.70A.540? (Gutschmidt, 06-20)

27 Issue 5: Does Ordinance 7-2006, Section 8, SJCC 18.40.270 C violate RCW 36.70A.011 by not  
28 allowing short-term rentals? (Wanda Evans, 06-17) Issue 28: Do the restrictions placed on ADUs in  
29 rural and resource lands by Ordinance 7-2006 violate 43.63A.215, as well as RCW 36.70A.020,  
30 RCW 36.70A.540, and RCW 36.70A.400 by allowing ADUs attached to the principal residence while  
31 restricting ADUs attached to either an otherwise allowed or existing accessory structure when  
32 neither location of an ADU contributes to additional structural density on rural or resource lands?  
(John Evans, 06-18)

1 Issue 29: Does Ordinance 7-2006, Sections 1 and 2, violate RCW 36.70A.400 and RCW  
2 43.63A.215, by limiting the permitting of detached ADUs to 12 percent of the building permits from  
3 the previous year and allowing only two percent of these permits to be conversions of existing  
4 buildings and by not allowing ADUs to be attached to a garage or other accessory building? (Wanda  
Evans, 06-18)

5 We will discuss these issues together, but not necessarily in the order above.

6 Position of the Parties

7 **Petitioners Positions**

8 Most of these parties object to the conditions placed on detached ADUs and argue that they are  
9 excessive restrictions on ADUs. They claim that the restrictions do not comply with the GMA's  
10 Housing Goal or requirements to allow for ADUs, as well as various other statutes. In contrast,  
11 Petitioner Ludwig contends that allowing detached ADUs on rural and resource lands without  
12 counting them as additional density should not be allowed since it works to increase rental rates and  
13 raise property values.  
14

15  
16 Petitioner Gutschmidt charges that the restrictions on detached ADUs imposed by Ordinance 7-2006  
17 that limits their development and adds to the expense of development. This, he claims, is in  
18 violation of the GMA's Housing Goal.<sup>64</sup>  
19

20  
21 Petitioner John Evans states that San Juan County has focused on structural density to protect rural  
22 character. For this reason, he argues that it makes no sense to place restrictions on ADUs attached  
23 to an existing structure, as the County has done. Since these types of ADUs do not increase  
24 existing structural densities, he argues that they unnecessarily impinge upon the rights of property  
25 owners to create additional affordable housing stock, housing for returning children, and  
26 opportunities for additional income.<sup>65</sup> He also argues that the limitations will have the effect of  
27 deterring the County's economic development since they contribute to the lack of affordable housing  
28 for workers in conflict with the GMA's economic development goal. He further contends that RCW  
29 36.70A.400 serves as recognition by the State and the GMA that ADUs separate from the main  
30

31  
32 <sup>64</sup> Brief (November 14, 2006) at 1-3.

<sup>65</sup> Petitioner's [J. Evans] Prehearing Brief at 3.  
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February 12, 2007  
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1 residence play an important role in providing affordable housing. Finally, he argues that the  
2 limitations placed on ADUs have no basis in the record.<sup>66</sup>

3  
4 Petitioner Wanda Evans makes many of the same arguments as Mr. Evans about ADUs attached to  
5 accessory buildings, and asserts that the Central Puget Sound Growth Management Hearings  
6 Board's (Central Board) March 19, 1996 Final Decision and Order in *Peninsula Neighborhood*  
7 *Association v. Pierce County*, CPSGMHB Case No. 95-2-007(PNII) supports allowing ADUs to be  
8 attached to existing buildings.<sup>67</sup>

9  
10 The argument of Petitioner Wanda Evans suggests that by not allowing ADUs to be attached to  
11 accessory buildings without counting that as a detached ADU, the County is curtailing its ability to  
12 provide for tourist activities. She says that San Juan County has in the past allowed for "farm stays".  
13 She states that this activity has provided property owners with extra income to keep property in  
14 agriculture. She says that these activities should not be made illegal and by citing RCW 36.70A.011  
15 she seems to imply that not allowing short-term rentals of all detached ADUs for this tourist business  
16 violates this statute.<sup>68</sup>

17  
18  
19 Petitioner Ludwig, on the other hand, claims that the additional detached ADUs to be permitted  
20 pursuant to Ordinance 7-2006 will make San Juan County's affordable housing stock less affordable  
21 and inconsistent with the GMA's Housing Goal for two reasons. First, because ADUs can be rented  
22 for as little as 30 days, this rental timeframe will make market rate and vacation rentals cost more  
23 than 30 percent of a certain income, thus tending to make ADUs unaffordable. Secondly,  
24 Ordinance 7-2006's allowance for a detached ADU on a parcel with another residence will create  
25 greater density and make these properties 50 to 75 percent more expensive. He says that these are  
26 notorious facts that the Board can consider pursuant to WAC 242-02-670 (2) and (3) and also cites  
27 an article by Peter Wolf called "Land In America: Its Value, Use, and Control".<sup>69</sup>

28  
29  
30  
31 <sup>66</sup> Ibid at 4.

32 <sup>67</sup> Petitioner's [W. Evans] Prehearing Brief at 3.

<sup>68</sup> Petitioners Prehearing Brief at 2.

<sup>69</sup> Petitioner's Prehearing Brief at 5

1 **County's Position**

2 Ordinance 7-2006 expands the base of affordable housing. Ordinance 21-2002 was found  
3 compliant with the GMA's affordable housing requirements, the County points out, and Ordinance 7-  
4 2006 expands the allowable development of ADUs as compared to the noncompliant and invalid  
5 provisions of Ordinance 21-2002.<sup>70</sup> The County maintains that a wide range of regulatory options  
6 exist and the County has the final choice among the options. The County asserts that all of the  
7 issues raised by the Petitioners John and Wanda Evans were discussed throughout the public  
8 process, staff reports, and studies.<sup>71</sup>

9  
10 The County explains that attached and internal ADUs can be rented without restriction, as can  
11 primary residences with an associated detached ADU. The County states that its only prohibition on  
12 the rental of detached ADUs is the rental of a detached ADU for less than 30 days without the rental  
13 of the primary residence. The County says its reason for this rental limitation is short-term rentals of  
14 detached ADUs would move away from the County's concept that detached ADUs are part of the  
15 primary residence. The County argues that this provision is necessary to curtail "development  
16 abuse" so that property owners cannot construct detached ADUs as separate structures to create  
17 free standing rental units.<sup>72</sup> At argument, Friends contended that this regulation was also instituted  
18 to preserve detached ADUs for permanent residents of the islands, who have in the past been  
19 evicted from such units during the tourist season, when higher rents could be charged to tourists  
20 who are visiting the islands on a short-term basis.

21  
22  
23 Board Discussion

24 **Background and Applicable Laws**

25 Petitioners challenge the compliance of the Ordinance with RCW 36.70A.011; Goal 4 (affordable  
26 housing) (RCW 36.70A.020(4); Goal 5 (economic development), (RCW 36.70A.020(5)); RCW  
27 36.70A.400 (which requires compliance with RCW 43.63A.215(3)); and RCW 36.70A.540.

31  
32 <sup>70</sup> San Juan county's Prehearing Brief at 11

<sup>71</sup> Ibid at 21.

<sup>72</sup> San Juan County's Prehearing Brief at 11 and 12.



1 The Housing Element of the comprehensive plan must address the need for housing at various  
2 income levels but it was not amended with the adoption of Ordinance 7-2006 and therefore there  
3 can be no challenge to it in this case.

4  
5 RCW 36.70A.540 authorizes a local jurisdiction to create an optional “affordable housing incentive  
6 program”:

7 Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing  
8 incentive programs providing for the development of low-income housing units through  
9 development regulations.

10 RCW 36.70A.540.

11 However, there is no evidence that San Juan County has elected to create such a program and  
12 therefore this provision does not apply here.

13  
14 RCW 36.70A.011 does not create any requirements for counties but provides guidance for  
15 developing their rural elements. San Juan County has a compliant Rural Element and it is not the  
16 subject of this challenge. Therefore, Petitioner Wanda Evans’ challenge that rental limitations on  
17 detached ADUs cannot be inconsistent with this statute.

18  
19 The three challenges related to affordable housing properly before the Board, therefore, are the  
20 challenge to compliance with Goal 4, Goal 5 and RCW 36.70A.400. We will discuss them in reverse  
21 order.

22  
23 Through RCW 36.70A.400, the County has an obligation to comply with RCW 43.63A.215(3). It  
24 provides:

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

31 The recommendations referred to in subsection (1) of RCW 43.63A.215 are those developed by the  
32 Department of Community, Trade and Economic Development (CTED):

1 ...designed to encourage the development and placement of accessory apartments in areas  
2 zoned for single-family residential use.  
3 RCW 43.63A.215(1)(b) (in pertinent part).

4 No Petitioner cites to any portion of the CTED recommendations that the County is alleged to have  
5 violated. The Board cannot consider an argument that has not actually been made Further, RCW  
6 43.63A.215(3) expressly provides that the County may place conditions, procedures and limitations  
7 upon accessory dwelling units to allow "local flexibility". No evidence in the record is presented that  
8 the County's limitations on attaching ADUs to accessory buildings or limiting detached ADUs in rural  
9 and resource lands nor limiting building permits to 12 percent of the annual residential permits in  
10 rural and resource lands show that the County's new ADU regulations exceed the scope of such  
11 local flexibility. The Board finds that no violation of RCW 43.63A.215(3) and RCW 36.70A.400 has  
12 been shown.

13  
14 Mr. Evans challenges compliance with Goal 5. Goal 5 of the GMA encourages economic  
15 development:

16 Encourage economic development throughout the state that is consistent with adopted  
17 comprehensive plans, promote economic opportunity for all citizens of this state, especially  
18 for unemployed and for disadvantaged persons, promote the retention and expansion of  
19 existing businesses and recruitment of new businesses, recognize regional differences  
20 impacting economic development opportunities, and encourage growth in areas experiencing  
21 insufficient economic growth, all within the capacities of the state's natural resources, public  
22 services, and public facilities.

23 Many factors are needed for successful economic development and the County allows various kinds  
24 of ADUs as source of some of its affordable housing. Therefore, the likelihood of the limitations on  
25 County's ADU regulations on detached ADUs in rural and resource lands impeding economic  
26 development are small and do not cause these regulations to be inconsistent with RCW 36.70A.020  
27 (5), the Economic Development Goal of the GMA.

28 Finally, there are two sets of challenges to compliance with Goal 4. On the one hand, Mr. Evans,  
29 Ms. Evans and Mr. Gutschmidt argue that the restrictions placed on ADUs will restrict the supply of  
30 affordable housing. On the other hand, Mr. Ludwig argues that the provisions for new detached  
31 ADUs will simply increase the value of existing housing and drive up housing prices further.  
32

1 Goal 4 of the GMA seeks to:

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

5 RCW 36.70A.020(4)

6 Absent an order of invalidity, now rescinded in this case, the burden of proof is upon Petitioners to  
7 show that Ordinance 7-2006 is not in compliance with the GMA.<sup>73</sup>

8  
9 Petitioners have not cited to any evidence that the County's ADU regulatory scheme will reduce the  
10 affordability of housing in San Juan County. Instead, Petitioner Ludwig refers us to the text "Land  
11 In America: Its Value, Use, and Control". However, that contains nothing relevant to the specifics of  
12 ADUs in San Juan County, but instead reaches the not surprising conclusion that rezoning property  
13 can increase its value.

14  
15 Nor is it sufficient to allege that we can take official notice of notorious facts pursuant to WAC 242-  
16 02-670 (2) to conclude that Ordinance 7-2006's rather modest allowance of ADU's will "result in all  
17 land in SJC becoming 50-75 percent more expensive."<sup>74</sup> Such a conclusion is well outside those  
18 facts "so generally and widely known to all well-informed persons as not to be subject to reasonable  
19 dispute or specific facts which are capable of immediate and accurate demonstration by resort to  
20 accessible sources of generally accepted authority".<sup>75</sup>

21  
22 Encouraging affordable housing is one of the thorniest problems facing local jurisdictions today. The  
23 factors affecting the cost of housing are numerous and there is no certainty that any one policy  
24 choice will result in more market-based affordable housing. For example, there is nothing to assure  
25 that developers will not respond to market forces by providing high-end housing for which there is  
26 substantial demand, whether on five acre rural lots or on high-density urban lots.

27  
28 Here, the County has studied the situation in which it finds itself and determined that ADUs can be a  
29 source of more affordable housing. In 2002, only 3 percent of residentially developed parcels rented  
30

31  
32 <sup>73</sup> RCW 36.70A.320

<sup>74</sup> Petitioner Ludwig's Prehearing Brief at 5.

<sup>75</sup> WAC 242-02-670(2).

1 ADUs on a long-term basis.<sup>76</sup> The Housing Element of the comprehensive plan estimates that over  
2 time ADUs will provide about 20 percent of the County's low and moderate income population  
3 affordable housing.<sup>77</sup> The Housing Element does not distinguish how many of these affordable  
4 ADUs will be internal, detached, or detached. The County allows unlimited numbers of ADUs in  
5 Activity Centers (LAMIRDs) and urban growth areas; unlimited numbers of internal and attached  
6 ADUs in rural and resource areas; and, with the adoption of Ordinance 7-2006, a limited number of  
7 detached ADUs in rural and resource lands. The County's development regulations clearly utilize  
8 ADUs as a potential source of affordable housing.

9  
10 Moreover, Goals 4 and 5 do not apply in isolation. The County also has an obligation to harmonize  
11 the GMA's Housing Goal and Economic Development Goal with the Sprawl Prevention and Natural  
12 Resource Industry Goals of the GMA. While Ordinance 21-2002, allowed for unlimited detached  
13 ADUs with fewer restrictions, the Board found this ordinance noncompliant and invalid because it did  
14 not comply and substantially interfered with GMA's goals and requirements for preventing sprawl  
15 (Goal 2) and conserving natural resource industries (Goal 8). Ordinance 7-2006 addresses these  
16 concerns and balances all four goals.

17  
18 **Conclusion:** Based on the foregoing, we find that the limitations placed on detached ADUs in rural  
19 and resource lands adopted by Ordinance 7-2006 are within the County's discretion pursuant to  
20 RCW 43.63A.215. We also find that the County's balancing of Goals 4 and 5 with other goals and  
21 requirements of the GMA fits within the parameters set by the GMA. The Board further finds that  
22 Ordinance 7-2006 is not inconsistent with RCW 36.70A.020(4), RCW 36.70A.020(5), RCW  
23 36.70A.400, RCW 43.63A.215, RCW 36.70A.011 and RCW 36.70A. 540.

#### 24 25 **D. Permitting**

26 Issue 7: Does Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3, 5 fail to further the  
27 goal of having applications for permits processed in a timely and fair manner to ensure predictability  
28 in violation of RCW 36.70A.020(7)? (Gutschmidt, 06-20, Manning et al., 06-15c)

29  
30  
31  
32 <sup>76</sup>Gutschmidt, Exhibit 4, San Juan County Accessory Dwelling Units Analysis, Final Report at 20.

<sup>77</sup> Comprehensive Plan's Housing Element at 5.

1 Positions of the Parties

2 Petitioner Gutschmidt argues that the restrictions on detached ADUs imposed by Ordinance 7-2006  
3 that include compelling the use of the same driveway and utilities, the 12 percent annual limitation  
4 on the number of ADUs outside of urban growth areas, avoiding or minimizing intrusion in sensitive  
5 open space areas, requiring one equivalent residential unit (ERU) for a detached ADU limit the  
6 development of ADUs and adds to the expense of their development. These costly expenses and  
7 limitations, he argues, reduce opportunities for affordable housing and make the permit process time  
8 consuming, unpredictable and unfair. <sup>78</sup>

10 The County maintains that Ordinance 7-2006 does not interfere with the fair and timely processing of  
11 permits. The County says it requires a new type of "ADU permit" and a site plan so that the  
12 Administrator can determine if the applicant can meet the requirements for detached ADUs. The  
13 County maintains that issuing permits on a "first come, first served" basis is a universally accepted  
14 method of allocating a limited supply, certainly fairer than skill or chance, and another method has  
15 not been proposed. The County points out that it has provided written procedures for applications  
16 for ADU permits, allowance for telephone reservations, and ministerial review to ensure fairness and  
17 efficiency in the permit process. Additionally, the County states that it does not require engineering  
18 drawings for showing the location of detached ADUs avoidance of sensitive open space features,  
19 but simply requires a site plan so the County can evaluate this requirement. Finally, the County  
20 contends that the requirement for additional ADU of water is within the discretion of the County  
21 Council and consistent with state law. <sup>79</sup>

24 Board Discussion

25 Petitioner Gutschmidt also contends that many of the same provisions that make detached ADUs  
26 unaffordable also make the permitting process unpredictable and unfair. Petitioner Gutschmidt does  
27 not give evidence to support his claim that these requirements are inequitable, nor do we find that  
28 requiring an application for the limited number of detached ADUs permits available in a calendar  
29 year gives an advantage to any applicant. The County has taken steps to make the permit process  
30

31 \_\_\_\_\_  
32 <sup>78</sup> Brief (November 14, 2006) at 1-3.

<sup>79</sup> Ibid at 12 and 13.

1 more efficient and equitable by promptly publishing guidelines on how to apply for an ADU permit  
2 and for allowing for telephone reservations for ADUs to help make the permit system more  
3 accessible for those who must travel long distances to the permit office and nonresident applicants.

4 <sup>80</sup>

5  
6 Our examination of SJCC 18.40. 240 (G)(3) shows that the code provides criteria to use when  
7 issuing a building permit, which are issued on a case by case basis. ADUs on lands with critical  
8 areas also would have to meet San Juan County's critical area protection measures, Further, our  
9 examination of this code provision with regard to local conditions shows that the County is  
10 harmonizing its obligations for predictable and efficient permitting with its obligation to protect its  
11 rural character, defined in the San Juan County Code as "a quality of landscape dominated by  
12 pastoral, agricultural, forested and natural areas interspersed with single-family homes and farm  
13 structures".

14  
15 **Conclusion:** Based on the foregoing, that Ordinance 7-2006, Section 18.40.240 G(1)(b) and  
16 Sections 1, 3,5 comply with RCW 36.70A.020 (7).

## 17 18 **E. Citizen Participation and Coordination**

### 19 **1. Public Process Challenges**

20  
21 Issue 9: Did San Juan County violate the public participation requirements of RCW 36.70A.130 and  
22 RCW 36.70A.140 by entering into the non-public development of a "Settlement Agreement" with the  
23 Friends of San Juans, and then enacting the substance of that Agreement against the advice from  
24 the Planning Commission and the Prosecuting Attorney, and without considering the potential  
25 improvements to the settlement draft that were offered by Petitioners and other public participants?  
(Baldwin et al, 06-16, Wiese 06-19)

26 Issue 10: Did the County's actions in adopting Ordinance 7-2006 violate RCW 36.70A.  
27 035(2)(a)(ii)? (John Evans, 06-18, Wanda Evans, 06-17, Wiese 06-19)

28 Issue 13 : Did the County fail to use good faith to ensure public participation and consider public  
29 input in developing Ordinance 7-2006 in violation of RCW 36.70A.020(11) and RCW 36.70A.140?  
(Gutschmidt, 06-20)

30 We discuss these issues together.  
31  
32

---

<sup>80</sup> Exhibit 24.

1  
2 Positions of the Parties

3 **Petitioners' Positions**

4 Petitioners Marshall, Baldwin and Ziegler in their Reply Brief abandoned the argument put forth in  
5 their opening brief that asked the Board to apply the procedural requirements in *Smith v. Skagit*  
6 *County*<sup>81</sup> to encourage greater concern for the appearance of fairness in public hearings. They  
7 acknowledge Friends' response that the appearance of fairness doctrine as codified in RCW  
8 43.36.010 does not apply to legislative decisions on comprehensive plan and development  
9 regulations.<sup>82</sup> Even so, these Petitioners argue that the GMA demands a meaningful and fair public  
10 process. They contend that the San Juan County Council did not have an open mind when  
11 considering amendments to comply with the Board decisions after the County Council had entered  
12 into a settlement agreement with Friends. Also, these Petitioners say that ignoring the advice of the  
13 County Prosecutor, as well as the Planning Commission show that County Council was not open to  
14 public comments.<sup>83</sup> They assert that allowing two minutes per participant did not allow for  
15 meaningful public discussion and that the County Council members appeared to have their minds  
16 made up.<sup>84</sup>  
17

18  
19 Petitioner Wanda Evans' statement for Issue 10 appears to address a failure of the County to  
20 discuss Friends' proposal with the Planning Commission before presenting it to the public.<sup>85</sup>  
21 However, her argument does not address how this violated RCW 36.70A.035(2)(a)(ii) as alleged.  
22

23 Petitioner Gutschmidt contends that Ordinance 7-2006 was a result of "back door" negotiations with  
24 Friends and the County Council did not act in good faith when it ignored the public outcry over the  
25 far reaching land use restrictions and the negative effect these restrictions would have on rural  
26 lifestyles, encouraging economic prosperity, and opportunities for small scale, rural based  
27 employment.<sup>86</sup>  
28

29  
30 <sup>81</sup> *Smith v. Skagit County*, 75 Wn.2a.715(1969)

31 <sup>82</sup> Petitioner' Reply to Intervenor's Response Brief at 1 -2

32 <sup>83</sup> Ibid at 3

<sup>84</sup> Prehearing Brief of Baldwin, Marshall, and Ziegler at 4.

<sup>85</sup> Petitioner's Prehearing Brief at 2.

<sup>86</sup> Brief at 5.

1  
2 Petitioner John Evans did not brief the issue that he raised in Issue 10.

3 **County's and Friends' Position**

4 The County and Friends argue that the circumstances surrounding the adoption of Ordinance 7-  
5 2006 is similar to the situation discussed in the August 8, 1998 Final Decision and Order in *City of*  
6 *SeaTac v. City of Burien*, CPSGMHB Case No. 98-2-0010 (*Burien*). There, appellants argued that  
7 the City of SeaTac adopted comprehensive plan and zoning ordinance amendments in conjunction  
8 with an interlocal agreement between the City of SeaTac and the Port of Seattle for expansion of the  
9 airport. Friends points out that the Court of Appeals, Division 2, upheld the City and found the  
10 amendments were influenced by, but were not the result of, a settlement.<sup>87</sup>

11  
12 The County and Friends acknowledge that County met with Friends to receive recommendations  
13 that the County agreed to review, but declare there was no formal agreement on the  
14 recommendations.<sup>88</sup> The County asserts that meeting with litigants does not violate the public  
15 participation requirements of the GMA. Friends insists that the settlement discussions were not a  
16 "done deal" and point out that the County adopted Ordinance 7-2006 after following a public  
17 participation plan that included three public workshops and hearings before the Planning  
18 Commission and the County Council.<sup>89</sup> Friends states that it submitted comments during this public  
19 process, just as every other participant. Both the County and Friends maintain that the amendments  
20 changed various times in response to public comments, and were adopted after extensive public  
21 participation.<sup>90</sup>

22  
23  
24 Friends interprets Wanda Evans' issue as a challenge to the County Council considering a proposed  
25 amendment to ADU ordinance that were different from Planning Commission's without having the  
26 Planning Commission consider it again.<sup>91</sup> At argument, Friends maintained that the amendments  
27 that the County Council made were among the alternatives considered by the Planning Commission  
28 before it made its recommendation to the County Council. Therefore, Friends asserts the County  
29

30 \_\_\_\_\_  
31 <sup>87</sup> Ibid at 15 and Response Brief of Intervenor Friends of San Juans at 6.

32 <sup>88</sup> Ibid at 4 and San Juan County's Prehearing Brief at 14.

<sup>89</sup> Response Brief of Intervenor Friends of San Juans at 4.

<sup>90</sup> Ibid at 6 and San Juan County's Prehearing Brief at 14.

<sup>91</sup> Response Brief of Intervenor Friends of San Juans at 6-7.



1 was not even obligated by RCW 36.70A.035(2)(ii) to hold the June 6, 2006 hearing, let alone to refer  
2 the amendments back to Planning Commission before considering them.

3  
4 Board Discussion

5 The public oarticipation requirements for cities and counties planning pursuant to RCW 36.70A.040  
6 are contained in RCW 36.70A.130(2)(a) . That subsection requires that counties and cities establish  
7 public participation program for annual amendments to comprehensive plans and periodic review of  
8 comprehensive plans. This subsection does not apply to actions taken to resolve an appeal brought  
9 to the growth hearings boards. RCW 36.70A.130(2)(b) provides an exception to the regular public  
10 participation program under those circumstances, so long as there is “appropriate public  
11 participation”. Petitioners argue that many of the amendments the County made to its ADU  
12 regulations should have been considered as annual amendments; we discuss that challenge under  
13 Procedural Issues. However, we consider whether there was “appropriate public participation”  
14 here.

15  
16 The provision of the GMA that does apply to Petitioners’ public participation challenge is RCW  
17 36.70A.140, which requires counties and cities “to establish and broadly disseminate to the public a  
18 public participation program for early and continuous public participation in the development of  
19 comprehensive plans and development regulations”. This provision also delineates what types of  
20 measures the public participation program needs to include. In cases where a jurisdiction is acting  
21 in response to a remand from the Board, this provision states that the County “shall provide for  
22 public participation appropriate and effective under the circumstances presented by the board’s  
23 order”. San Juan County has outlined its public participation program in its comprehensive plan.<sup>92</sup>  
24 Moreover, the County adopted a public participation program specifically for consideration of the  
25 amendments to its ADU regulations. This program included workshops, hearings before the  
26 planning commission, and opportunities for written comment.<sup>93</sup>  
27

28  
29 **Friends’ Involvement in the Public Process**

30  
31  
32 <sup>92</sup> San Juan County Comprehensive Plan, Section D, Administration, at 6.

<sup>93</sup> Record at 00268 – 000272.

1 Evidence in the record shows that Friends communicated with the County Commissioners and made  
2 recommendations for amendments to the ADU Ordinance before the County proposed  
3 recommendations to its ADU regulations. We agree with the County and Friends that meeting with  
4 challengers to settle a GMA dispute is not a violation of the GMA. In fact, the Board is authorized to  
5 extend its deadline for issuing a decision for specifically this purpose (RCW 36.70A.300(2)(b)), and  
6 has done so several times in this case.

7  
8 The record shows that there was full public participation here and that it was not an abbreviated  
9 process. The Commissioners sent the Planning Commission a September 1, 2005 draft version of  
10 amendments that allowed for a limited number of detached ADUs subject to restrictions. This draft  
11 was the subject of several workshops, as well as hearings before the Planning Commission and  
12 June 6, 2006 County Council public hearing.<sup>94</sup> During this time the amendments changed several  
13 times. The Planning Commission rejected the September 1, 2005 draft and recommended that  
14 detached ADUs be allowed only if the lot contained the underlying density for a second dwelling unit.  
15 The letters in the record from Friends indicate that it supported the September 1, 2005 draft  
16 recommended amendments and gave qualified support to the County Council's proposed  
17 amendments with suggested changes to the Planning Commission's recommendations, which  
18 became the subject of the County Council June 6, 2006 public hearing.<sup>95</sup> However, Friends also  
19 supported the Planning Commission's recommendations.<sup>96</sup> The evidence shows nothing more than  
20 that Friends participated in the public process to ensure their views were heard.  
21

## 22 **Enactment Against the Advice of the Planning Commission and Prosecuting Attorney**

23 In regard to the claim that the County Council did not follow the advice of the County Prosecutor or  
24 the Planning Commission, public participation does not dictate a particular outcome or that the  
25 County Commissioners must accept the views of staff. As we said in an earlier decision:

26           The mere fact that the BOCC reached a different decision than one recommended by staff,  
27           the planning commission, and the citizens advisory committee did not ipso facto show a  
28           violation of public participation.<sup>97</sup>

29  
30  
31 <sup>94</sup> Record at 00312, 000349, 000351, 000497, 0000664, Legal Advertisement for the June 6,, 2006 public  
32 hearing

<sup>95</sup> Record 000383 -000388 and 00082

<sup>96</sup> Record at 000820

<sup>97</sup> *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September 20, 1995).  
COMPLIANCE ORDER AND FINAL DECISION AND ORDER  
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1  
2 **Violation of Public Process Requirements of RCW 36.70A.035**

3  
4 Petitioner Wanda Evans' challenge to the County's adherence to the public participation  
5 requirements of RCW 36.70A and the timing of the Planning Commission's involvement is not  
6 supported by evidence, citation to authority or by argument. While she alleges that Ordinance 7-  
7 2006 "did not come before the public through the proper process"<sup>98</sup> she does not identify any  
8 particular deficiency in that process. If her argument is that the County Council was required to  
9 send its draft amendments back to the Planning Commission for additional review, this is not what  
10 RCW 36.7A.035(2) requires. The statute provides only that if the legislative body chooses to  
11 consider a change that is proposed after the opportunity for review and comment has passed, then  
12 an opportunity for review and comment on the change shall be provided before the body votes.  
13 Here, it is clear that the changes made by County Council were before the public from the onset of  
14 the process.<sup>99</sup> The Council did hold a public hearing on its changes.<sup>100</sup>

15  
16 **Predetermination of the Issues**

17 In regard to Petitioners Marshall, Baldwin, and Ziegler's allegation that the County Council had made  
18 up its mind and added requirements without discussing them with the public at the hearing, the GMA  
19 does not require the County to demonstrate how the County Commissioners were thinking. We  
20 have said:

21       However, the GMA does not give the boards authority to probe the internal thought  
22 processes of a local decision-maker. It is not the task of the Board to judge how open a  
23 legislative body or individual member of that body is to an advisory committee's or a staff  
24 member's recommendation. The Board has the authority to decide whether the County  
25 follows their established public process, whether their decision is within the alternatives  
26 considered by the public, and whether their decision is consistent with the GMA. ...<sup>101</sup>

27 Thus, we will review the process by which an ordinance is adopted, as well as the ordinance itself,  
28 for consistency with the GMA, but we will not second guess the motivations of the legislative body.

29  
30 \_\_\_\_\_  
31 <sup>98</sup> Petitioner W. Evans Brief at 2.

32 <sup>99</sup> 0000312, 000349, 000351, 000497.

<sup>100</sup> 000664, Legal advertisement for the June 6, 2006 public hearing.

<sup>101</sup> *Diehl v. Mason County*, WWGMHB Case No. 95-2-0023 (Order Denying Petitioner's Request to Supplement the Record, April 2, 2003)-

1 Unless Petitioners can demonstrate that the process or product are in in violation of the GMA, our  
2 inquiry ends.

3  
4 **Adequate Opportunity to Testify**

5 At argument, the County responded to Petitioners' assertion that two minutes per participant did not  
6 provide enough time for meaningful public comment at the June 6, 2006 public hearing. The County  
7 pointed out that after the initial public comment period was finished, participants were invited to add  
8 comments. The County also invited written comments<sup>102</sup>. Additionally, staff reports and the Planning  
9 Commission findings indicate extensive public participation throughout the entire public participation  
10 process on the alternative that was eventually adopted.<sup>103</sup> We find that, in light of the entire record,  
11 and the fact that the County also allowed written comments in conjunction with the June 6, 2006  
12 public hearing, the County's limitation on the length of testimony did not violate RCW 36.70A.140.  
13 See *Achen v. Clark County*, WWGMHB Case No. 95-2-0067 (Final Decision and Order, September  
14 20, 1995)

15  
16 **Adequate Consideration of Public Comments**

17 Finally, as to Petitioner Gutschmidt's charge that the County Council ignored residents' views on the  
18 limitations on the location and size of parcel and the dwelling unit requirements for detached ADUs,  
19 the GMA does not require the legislative body to agree with those who testify. This Board's  
20 previous ruling applies here:

21 The GMA requires that a public participation process be provided, but does not require the  
22 decision-maker to agree with the positions urged by its citizens.<sup>104</sup>

23 **Conclusion:** Based on the foregoing, Petitioners have not carried their burden of proof that the  
24 County's public participation process was clearly erroneous and in violation of RCW 36.70A.140,  
25 RCW 36.70A.130, RCW 36.70A.035, or RCW 36.70A.020(11).  
26

27  
28 **2. Notice Challenges**  
29  
30

31  
32 <sup>102</sup> Record at 00064, Legal Advertisement for June 6, 2006 Public Hearing

<sup>103</sup> Record at 000495 and 000579

<sup>104</sup> *Wells v. Whatcom County*, WWGMHB Case No. 97-2-0030(Final Decision and Order, January 15, 1998).  
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1 Issue 11: Did the Ordinance 7-2006 violate RCW 36.70A. 035(1) (c) by not notifying Class A and  
2 Class B water systems of the legislation affecting private water systems established by Ordinance 7-  
3 2006? (Wanda Evans, 06-17)

4 **Petitioner's Position**

5 Petitioner Evans argues that the more than 300 private Class A and Class B water systems were not  
6 notified of the provision in the Ordinance 7-2006 that would affect their plans, policies and bylaws  
7 and this lack of notice violates RCW 36.70A.035(1)(c).<sup>105</sup>

8  
9 **County's Position**

10 The County replies that the amendment that requires one ERU of water for a detached ADU did not  
11 affect water plans, their policies or bylaws, and only impacts persons who want to apply for an ADU  
12 permit, a generalized group. The County says that this change does not affect whether the water  
13 system has enough water to provide an ERU, but sets the requirement that a detached ADU needs  
14 one ERU of water. The County points out that notifying public or private groups is only one possible  
15 notification method recommended by RCW 36.70A.035(1) and that is not required by the GMA. For  
16 these reasons, the County maintains that newspaper notification was adequate notice for water  
17 system members.<sup>106</sup>

18  
19 Board Discussion

20 RCW 36.70A.035(c) lists as an example of reasonable notice methods the notification of public or  
21 private groups with a known interest in a certain proposal or the type of proposal being considered.  
22 RCW 36.70A.035(1) does not require that every example be utilized in the County's notice methods.  
23 Also see WAC 365-195-600(2) and (2)(v). The County established a specific publication  
24 participation process for consideration of its ADU amendments that included a provision for public  
25 notice. The method of public notice that the County chose was notification by newspaper.<sup>107</sup>  
26 Specific notification to water systems users or Board members was not required.  
27

28 **Conclusion:** The County's provided notification by newspaper of its workshops and public hearings  
29 as specified in its public participation process for considering its ADU amendments. The GMA does  
30

31 <sup>105</sup> Petitioner's Prehearing Brief at 2

32 <sup>106</sup> San Juan County's Prehearing Brief at 18-19

<sup>107</sup> Record at 000271

1 not require specific notice to private water systems, in this circumstance. The County's method of  
2 public notification for consideration of its ADU amendments complies with RCW 36.70A.035 (1).

3  
4 Issue 12: Did Ordinance 07-2006 violate the San Juan County Code, by inserting "Lot Coverage"  
5 legislation in an ordinance that is advertised as an Accessory Dwelling Unit Ordinance without  
6 proper public process and without using the annual docket process? (Wanda Evans, 06-17)

7 Without Petitioner specifying what part of the County's code or specific statute is alleged to have  
8 been violated, the Board can not decide this issue.

9  
10 **Conclusion:** Petitioner has not carried her burden of proof in demonstrating that the County's  
11 inclusion of lot coverage provisions in Ordinance 7-2006 was a clearly erroneous violation of the  
12 GMA.

#### 13 14 **F. PROCEDURAL ISSUES**

15  
16 Issue 20: Does Ordinance 7-2006 impermissibly address issues which were adequately addressed  
17 in the prior code provisions, and were not part of the Board's earlier finding of noncompliance and  
18 invalidity in violation of RCW 36.70A.130 (1), (2)(a)(b) and (7)? (Baldwin et al. 06-16)

19 Issue 22: Did the County violate RCW 36.70A.305, RCW 36.70A.330, and RCW 36.70A.140 by  
20 going well beyond the issues of noncompliance? (John Evans, 06-18)

21 We will discuss these two issues together.

#### 22 Positions of the Parties

#### 23 **Petitioners' Positions**

24 Petitioners declare that, except for regulations for detached ADUs, the County's ADU regulations  
25 have withstood compliance challenges. In spite of that, Petitioners Marshall, Baldwin, and Ziegler  
26 assert that the County Council impermissibly revised or added to compliant sections of the ADU  
27 regulations for parking, locating detached ADUs to avoid sensitive areas such as orchards,  
28 meadows, pastures ridgelines and critical distance from the main building, and providing of water  
29 supply.<sup>108</sup> These Petitioners contend that these regulations create odd policy implications because  
30  
31  
32

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<sup>108</sup> Prehearing Brief of Baldwin, Marshall, and Ziegler at 10.  
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1 the revised regulations apply to all ADUs in all zones, even urban zones. Petitioners say that there  
2 is no apparent reason for the County to establish different restrictions that do not apply to similar  
3 housing such as duplexes.<sup>109</sup>

4  
5 These Petitioners state RCW 36.70A.130(2) requires that updates, proposed revisions, and  
6 amendments to comprehensive plans and development regulations should be considered no more  
7 frequently than once per year so that the cumulative effect of proposals can be ascertained.

8 Petitioners point out the Prosecuting Attorney advised the Council and the Planning Commission  
9 that the changes to ADU regulations could not go beyond the order of invalidity and were subject to  
10 the annual amendment process. Petitioners affirm that the Planning Commission followed the  
11 Prosecutor's advice, but the County Council did not.<sup>110</sup>

12  
13 Petitioners also argue that this Board has previously ruled in its November 30, 2000 Order on  
14 Rescission of Invalidity and Compliance/Invalidity in *Town of Friday Harbor v. San Juan County*,  
15 WWGHMB Case No 99-2-0010c (*Friday Harbor*) that, in a similar situation, the County could not go  
16 beyond the issue on remand in its compliance proceedings.<sup>111</sup>

17  
18 Petitioner John Evans argues the same issues raised by Petitioners Baldwin, Marshall, and Ziegler  
19 and also contends that shoreline issues are changes that are not within the scope of the remand.<sup>112</sup>  
20 He says that RCW 36.70A.140 directs that a more limited process be followed to address remand  
21 orders. He contends that a response to a Growth Board order is not license for the County to make  
22 wholesale amendments beyond the scope of the Growth Board's order. He asserts that RCW  
23 36.70A.330 and RCW 36.70A.305 describes an abbreviated and limited process, which the County  
24 exceeded here.  
25  
26

## 27 **County and Friends' Positions**

28 The County and Friends respond that many of the requirements that the Petitioners allege were  
29 changed, including parking rules, requirements to locate detached ADUs to avoid or minimize  
30

31 <sup>109</sup> Ibid at 10.

32 <sup>110</sup> Ibid at 11.

<sup>111</sup> Ibid at 9.

<sup>112</sup> Petitioner's Prehearing Brief at 1 and 2.

1 intrusion on sensitive areas, and ownership requirements, actually did not change.<sup>113</sup> Friends points  
2 out that these conditions also applied in both urban and rural areas under Ordinance 21-2002.<sup>114</sup>  
3 Both the County and Friends emphasize that the new conditions only apply to detached ADUs.  
4 Friends acknowledges that the requirement to locate the detached ADUs within a certain distance  
5 from the principal residence is new, and applies in both urban and rural areas, but argues that this  
6 requirement would have little impact in an urban area, and does not rise to the clearly erroneous  
7 standard.<sup>115</sup> Friends maintains that the limitations are necessary to prevent the significant potential  
8 for abuse caused by the County's original policy of allowing freestanding ADUs on all lots within rural  
9 and resource lands without taking them into account when calculating residential densities.<sup>116</sup>  
10  
11 Friends disputes the applicability of *Friday Harbor v. San Juan County*.<sup>117</sup>  
12

### 13 Board Discussion

14 We dispose of Mr. Evans assertion that exceeding the scope of the remand order violated with RCW  
15 36.70A.305. RCW 36.70A.305 applies to judicial review of invalidity orders issued by growth boards  
16 and does not apply here.  
17

18 Petitioners also contend that the limitations on detached ADUs went beyond the scope of the  
19 compliance order, which does not comply with RCW 36.70A.130 (1), (2)(a)(b) and (7), RCW  
20 36.70A.140, and RCW 36.70A. 330. RCW 36.70A.130 states that comprehensive plans and  
21 development regulations shall be subject to periodic review and evaluation by the county or city that  
22 adopted them. RCW 36.70A.130 sets out the requirements for both annual amendments to the  
23 comprehensive plan as well as the periodic review required every several years for cities and  
24 counties on a schedule established in RCW 36.70A.130 (4). RCW 36.70A.130 (2)(a) specifies the  
25 requirements for public participation for annual comprehensive plan updates and for periodic view.  
26 RCW 36.70A.140 requires the counties and cities to develop and publish a public participation  
27 program that provides for early and continuous public participation and to broadly disseminate that  
28

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29  
30 <sup>113</sup> San Juan County's Prehearing Brief at 20, Intervenor Friends of San Juans' Response to Prehearing Brief  
of Baldwin, Marshall, and Ziegler at 4 and 5.

31 <sup>114</sup> Intervenor Friends of San Juans' Response to Prehearing Brief of Baldwin, Marshall and Ziegler at 4 and 5.

32 <sup>115</sup> Ibid at 5.

<sup>116</sup> Response Brief of Friends of San Juans at 2.

<sup>117</sup> Intervenor Friends of San Juans' Response to Prehearing Brief of Baldwin, Marshall, and Ziegler at 5.



1 program to the public. RCW 36.70A.140 also allows a County subject to an order of invalidity to  
2 modify its public participation program to fit the circumstances presented by the Board's order.  
3 RCW 36.70A.330 requires cities and counties subject to a remand order achieve compliance at time  
4 set for complying in the Board's remand order. At issue here is whether the County went beyond the  
5 scope of the Board's order and added regulations that should have been addressed in the County's  
6 annual amendment process pursuant to RCW 36.70A.130(2)(b).

7  
8 From our comparison of Ordinance 7-2006 and Ordinance 21-2002, the Board concludes that the  
9 provisions that Petitioners denote as being new, including requirements for parking, locating or  
10 minimizing the intrusion of ADUs on sensitive areas, and ownership requirements were substantially  
11 present in Ordinance 21-2002.<sup>118</sup>

12  
13 The County and Friends point out that the rest of the changes only pertain to detached ADUs. The  
14 Board finds that the limitations on location and services to new detached ADUs are important to the  
15 Board's determination that Ordinance 7-2006 does not alter the existing, compliant scheme of rural  
16 densities. Similarly, the County's concern as stated in its brief that detached ADUs would more  
17 likely use more water than attached or internal ADUs is a legitimate concern to address in light of  
18 San Juan County's water sources.<sup>119</sup>

19  
20  
21 As for the Petitioners' argument that applying the same restrictions to detached ADUs in urban  
22 areas as to ADUs in rural and resource lands is beyond the scope of this order, the Board finds that  
23 the subject of the Board's remand order is detached ADUs. How the County chooses to reach  
24 compliance on that subject is not limited by the Board's analysis, but is within the County's discretion  
25 so long as it falls within the parameters set by the GMA.<sup>120</sup>

26  
27  
28  
29 <sup>118</sup> Ordinance 21-2002 at SJCC 18.40.240(B), 18.40.240 (D)(1-4), and 18.40.240 E vs. Ordinance 7-2006  
30 18.40.240(F)(2), 18.20.240(4), and 18.40.240 (G)(3).

31 <sup>119</sup> San Juan County Comprehensive Plan at 4.1.

32 <sup>120</sup> Further, the Board reminds Petitioners that the County has very few urban designations. The Board also  
notes that that the urban growth areas in the County's jurisdiction have yet to be found compliant. While it  
might make sense to have less restrictions in urban growth areas where urban growth is to be encouraged,  
these restrictions are within the County's discretion pursuant to RCW 43.63A.215.

1 Finally, we agree with Friends that *Friday Harbor* does not apply in this circumstance. Here the  
2 County is addressing how to make their regulations for detached ADUs compliant, the issue  
3 remanded in the Board's April 17, 2003 order, while in *Friday Harbor*, the County was working under  
4 a remand order that did not include noncompliant resources lands. In that instance, the County went  
5 beyond the scope of the compliance order when it re-designated 1000 acres of resource lands.<sup>121</sup>  
6

7 **Conclusion:** The Board finds that in light of the entire record the County did not go beyond the  
8 scope of the remand order and the amendments to the County's ADU regulations were not clearly  
9 erroneous violations of RCW 36.70A.130 (2)(b), RCW 36.70A. 330(1), or RCW 36.70A.140.  
10

11 Issue 21: Did the failure of Ordinance 7-2006 to set forth the goals and provisions of the GMA that  
12 were considered violate RCW 36.70A.130 and RCW 36.70A.140 by failing to afford the public an  
13 opportunity to comment at a public hearing on the rationale being considered? (Baldwin et al, 06-  
14 16)

#### 15 Positions of the Parties

##### 16 **Petitioner's Position**

17 The Petitioners Marshall, Baldwin, and Ziegler ask that the Board interpret the GMA's public  
18 participation provisions to clarify that the body of land use ordinances and public notices of city and  
19 county councils be required to contain the provisions of the GMA or the rationale that is being  
20 considered to provide for meaningful public comment. Petitioners contend that this is an implicit  
21 GMA requirement.<sup>122</sup>  
22

23  
24 These Petitioners state the Planning Commission recommendation was substantially altered, even  
25 after there was much public testimony objecting to changing this recommendation. Petitioner  
26 Marshall attests that citizens had to testify on the final draft of the ordinance without knowing the  
27 rationale and that this hindered their testimony.<sup>123</sup> Petitioners argue that by taking action on these  
28 changes without explanation the County violated that portion of RCW 36.70A.130(1) that states (in  
29 part):  
30

31 <sup>121</sup> Order on Rescission of Invalidation and Compliance/Invalidity in *Town of Friday Harbor v. San Juan County*,  
32 WWGHMB Case No 99-2-0010c at 10.

<sup>122</sup> Prehearing Brief of Petitioners Baldwin, Marshall, and Ziegler

<sup>123</sup> Ibid at 15.

1 Legislative action means the adoption of a resolution or ordinance following notice and a  
2 public hearing indicating at a minimum, a finding that a review and evaluation has occurred  
3 and identifying the revisions made, or that a revision was not needed and the reasons  
4 therefor.<sup>124</sup>

#### 5 **County and Friends' Position**

6 The County maintains that it has complied with RCW 36.70A.140 requirements, although in the  
7 circumstance where a regulation has been remanded to the Board for compliance, strict adherence  
8 to its public participation program is not required.<sup>125</sup> Friends adds almost the complete text for  
9 changes proposed by the County Council was included in the public notice for the June 6, 2006  
10 public hearing.<sup>126</sup> Other pertinent arguments are included in the County's and Friends' position  
11 statements under Public Process Challenges.

#### 12 Board Discussion

13 In the Discussion Section of Issues 20 and 21, the Board explained that RCW 36.70A.130 sets out  
14 requirements for annual updates and periodic review and RCW 36.70A.140 establishes the public  
15 participation program requirement. Petitioners claim that the County Council did not comply RCW  
16 36.70A.130 (1) by not providing a rationale for the changes it made to the Planning Commission's  
17 recommendations. Thus, they allege, they were denied the opportunity to provide meaningful public  
18 comment. However, nowhere does RCW 36.70A.130(1) require a local jurisdiction to explain the  
19 reasons for its amendments. While this a good practice and often appears in the "Whereas"  
20 sections of an ordinance, it is not required specifically by RCW 36.70A.130(1). That section applies  
21 to the periodic review requirement required by RCW 36.70A.130(1) rather than to comprehensive  
22 plan amendments generally. The "legislative action" referred to in RCW 36.70A.130(1)(b) that  
23 requires 'a finding that a review and evaluation has occurred and identifying the revisions made, or  
24 that a revision was not needed, and the reasons therefore" is a requirement that applies to periodic  
25 updates that counties and cities planning according RCW 36.70A.040 are required to undertake and  
26 complete according to the schedule set out RCW 36.70A.130(4). It does not apply to annual  
27 amendments and development regulations or to amendments made in response to a Board order.  
28 Therefore, Petitioners' challenge that the County's lack of explanation about reasons for their  
29  
30

31  
32 <sup>124</sup> Ibid at 17.

<sup>125</sup> San Juan County's Prehearing Brief at 14.

<sup>126</sup> Response Brief of Friends of San Juans at 6.

1 changes to the Planning Commission's recommendations does not comply with RCW 36.70A.130(1)  
2 fails.

3  
4 As for Petitioners argument that the County did not comply with RCW 36.70A.140, we found above  
5 the County's public process for adopting Ordinance 7-2006 complied with RCW 36.70A.140. We  
6 also note that the amendments that the County Council eventually adopted were among the range of  
7 alternatives that were before the public and discussed at workshops and in staff reports.<sup>127</sup> These  
8 workshops were advertised.<sup>128</sup> We find that adequate, if not ample, opportunity for public  
9 participation was provided . While RCW 36.70A.140 allows for an abbreviated process for  
10 compliance actions, the County's process was not abbreviated. The County published a public  
11 participation process and followed it for eight months.  
12

13 The text of the ordinance that was adopted was similar to the September 1, 2005 version of the  
14 ordinance presented at workshops and at the Planning Commission hearing, as well as the version  
15 that accompanied the notice of the final public hearing.<sup>129</sup> While we agree with the Petitioners that  
16 providing a rationale in public notices and in the body or recitals of land use ordinances adopted  
17 according to the GMA would be an useful addition to the public process for all the reasons given by  
18 the Petitioners, we can find no explicit or implicit requirement that this is required by the RCW  
19 36.70A.140. The Board cannot prescribe a solution that might be better, but can only find  
20 compliance or noncompliance.  
21

22  
23 **Conclusion:** Petitioners have not carried their burden of proof that the County's failure to provide a  
24 rationale for the changes to the Planning Commission's recommendations either in the body of the  
25 Ordinance 7-2006 or in the public notice for the final public hearing on June 6, 2006 does not comply  
26 with RCW 36.70A.130(1)(b) or RCW 36.70A.140.  
27

28 Issue 26: Did the County through the adoption of Ordinance 7-2006, Section 6, violate RCW  
29 36.70A.370 and RCW 36.70A.140, by failing to show in the record why 12 percent was chosen as  
30 the number of detached accessory dwelling units allowed in a given year, why there are no detached  
31

32  

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<sup>127</sup> Record at 000262 at 3, 000311, 000349

<sup>128</sup> Record at 000270, 000271

<sup>129</sup> Record at 00064, Legal Advertisement for June 6, 2006 Public Hearing  
COMPLIANCE ORDER AND FINAL DECISION AND ORDER  
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1 ADUs allowed on lots less than one acre, why there are no detached ADUs allowed on lots less than  
2 five acres in the shoreline, why there are limitations on proximity of ADUs to a principal residence,  
3 and why there is a prohibition of rentals of ADUs? (John Evans, 06-18)

4 Position of the Parties

5 Petitioner John Evans contends that the County has failed to demonstrate that the extent and nature  
6 of the regulations were necessary for compliance with the Growth Board order and the GMA. He  
7 maintains that a fundamental tenet of the GMA and its public participation program requirements is  
8 that local governments be able to “show their work”; he alleges that the County has failed to do that  
9 here.. Because regulations are actions taken by local government that limit existing rights of citizens  
10 from what they have previously been allowed, citizens have a right to expect that the government to  
11 show the reason behind new regulations.<sup>130</sup>  
12

13 The County responds that all the various issues that Petitioner Evans raises were addressed  
14 throughout the public process in staff reports, previous studies, and discussions.<sup>131</sup>  
15

16 Board Discussion

17 RCW 36.70A.370 requires the State Attorney General to establish a process to assist state agencies  
18 and local government in evaluating proposed regulations to assure that those actions do not result  
19 in a regulatory takings of public property. It does not require that the local jurisdiction give its  
20 reasons for every aspect of the regulations in the ordinance itself.

21 Petitioner Evans asserts that the County did not “show its work” and should have done so when it  
22 adopted restrictions on detached ADUs. In a similar situation, in Whatcom County, the Board held:

23 While it is true that the Act imposes on the County the obligation to “show its work” in some  
24 contexts, such as in the creation of its urban growth areas, the GMA does not require the  
25 County to demonstrate that it harmonized all of its planning documents when it undertakes  
26 an amendment of them. This does not mean that the County is free to enact legislation that  
27 is inconsistent with the requirements of the GMA and its own planning policies; it just means  
28 that the burden is on any petitioners to show that the inconsistency exists.<sup>132</sup>  
29  
30

31 <sup>130</sup> Petitioner’s Prehearing Brief at 4

32 <sup>131</sup> San Juan’s Prehearing Brief at 21

<sup>132</sup> *Cal Leenstra v. Whatcom County*, WWGMHB Case No.03-2-0011 (Final Decision and Order, September 26, 2003) at 14 and 15.

1 The “show your work” requirement arises when the GMA expressly requires the local jurisdiction to  
2 undertake particular foundation analysis prior to adopting a regulation or policy. It arises in the  
3 context of the creation of UGA boundaries, for instance, so that a reviewing growth board can  
4 determine whether “areas and densities sufficient to permit the urban growth that is projected to  
5 occur in the county or city for the succeeding twenty-year period” forms the basis for those  
6 boundaries, as required by RCW 36.70A.110(2). Another example arises for limited areas of more  
7 intensive rural development (LAMIRDs) under RCW 36.70A.070(5)(d). Because the logical outer  
8 boundaries of such LAMIRDs must reflect, among other things, the state of development in those  
9 areas as of July 1, 1990, the counties must “show their work:” so that that assessment may be  
10 evaluated. The GMA does not impose a generalized requirement to explain the rationale for every  
11 comprehensive plan amendment, although the wise jurisdiction will often ensure that that is done to  
12 avoid unnecessary challenges.  
13

14 As a matter of public participation as we discussed in the issue directly above, the record shows that  
15 these amendments were the subject of workshops and hearings and discussed with at those noticed  
16 meetings with the public. That is what RCW 36.70A.140 requires.  
17

18 **Conclusion:** Petitioner has not carried his burden of proof pursuant to RCW 36.70A.320 (2) to  
19 demonstrate that County has not complied with RCW 36.70A.370 or RCW 36.70A.140 by failing “to  
20 show its work”.  
21

## 22 **G. Shoreline Management Act**

23 Issue 30: Did the passing of Ordinance 7-2006 violate the Shoreline Management Act, RCW  
24 90.58.130 and RCW 36.70A.480(1) by amending the County’s Shoreline Master Program without  
25 proper notification and adoption process? (Wanda Evans, 6-17, Manning et al., 06-15c)

26 Issue 31: Did the passing of Ordinance 7-2006, Section 18.40.240 G(4) (c) violate WAC 173-26-100  
27 (1) and (2), RCW 90.58.090 because no notice was given that Ordinance 7-2006 amended  
28 Shoreline Density? (Wanda Evans, 06-17)

### 29 Position of the Parties

30 With regard to Issue 30, Petitioner Wanda Evans argues that San Juan County failed to provide the  
31 proper notice and review opportunity to the Department of Ecology as prescribed by the statute. As  
32 to Issue 31, she argues that the County expanded the adoption of new regulations and controls

1 beyond what was necessary to respond to this Board's prior order, and that the proper public  
2 process was not followed. Petitioner does not provide detailed argument or cite to any prior court or  
3 Board opinions in support of her position.

4  
5 The County replies that, because Ordinance 7-2006 adopts uniform rules for ADUs throughout the  
6 County, it was not necessary to follow the procedure for amendments to its Shoreline Master  
7 Program. The County argues that the parcel size limitation of 18.40.240 G(4) (c) pertains generally  
8 to the construction of detached ADUs; just as it is not necessary to amend the Shoreline Master  
9 Program SMP for a change to zoning in shoreline jurisdiction, it was not necessary when it adopted  
10 a generalized ADU siting ordinance.

11  
12 Board Discussion

13 There is only one section of Ordinance 7-2006 that appears to have the potential to affect the  
14 establishment of ADUs in lands subject to the County's Shoreline Management Program. Section  
15 18.40.240 G(4) (c) provides:

16 **The minimum parcel size for the construction of a detached accessory dwelling unit is**  
17 **five acres for any parcel with waterfront.** 10 acres for parcels located in the agricultural  
18 district, and 20 acres for parcels located in the forest district and one acre for all parcels  
19 located in a rural land use district. This restriction does not apply to parcels located in urban  
20 growth areas or activity centers. (emphasis added).

21 Aside from this provision affecting the placement of ADUs on parcels with waterfront, there is no  
22 reference or other connection between Ordinance 7-2006 and San Juan County's SMP. The relation  
23 of the County's ADU ordinance to the County's SMP exists solely in that Ordinance 7-2006  
24 establishes a 5 acre minimum parcel size for the placement of lots that have waterfront, and that  
25 therefore are also regulated by the SMP.

26 This Board has previously held that "a change in zoning does not *de facto* amend the SMP."  
27 *Storedahl & Sons, v. Clark County*, WWGMHB 96-2-0016 (Order on Motion for Reconsideration,  
28 9/15/97). In that case this Board noted that the Clark County Code provided that designated  
29 shoreline areas of the County are "to be combined with zoning that has been applied to such areas."  
30 Under the Clark County legislative scheme then under review, the designated shoreline areas and  
31 the SMP regulations, were subject to and independent of, the zoning districts established by Clark  
32

1 County's GMA actions. A similar legislative scheme is in place in San Juan  
2 County Code (SJCC) 18.50.010 C<sup>133</sup>.

3  
4 SJCC section 18.50.020 A. provides in part: "If a conflict occurs between this chapter and other  
5 sections of this code, this chapter shall prevail." In addition, SJCC 18.50.010 C. 3. provides, in part,  
6 "Unless specifically provided otherwise, in the event that provisions of the Shoreline Master Program  
7 conflict with other applicable state or local policies or regulations, the SMA and Shoreline Master  
8 Program shall control. Where the Shoreline Master Program is more restrictive than other applicable  
9 state or local policies or regulations, the SMA and Shoreline Master Program shall control." Thus,  
10 whatever restrictions the SMP placed on ADU's prior to the adoption of Ordinance 7-2006 are still in  
11 place.  
12

13  
14 **Conclusion:** The County's adoption of Ordinance 7-2006 was not an amendment of the County  
15 SMP. Whatever regulations the SMP imposed on construction in shoreline jurisdiction prior to the  
16 adoption of Ordinance 7-2006 remain unaltered. We therefore conclude that the County was not  
17 required to comply with the notice and adoption procedures applicable to an amendment of its SMP.  
18

#### 19 **H. State Environmental Policy Act (SEPA)**

20 Issue 34: Did the County violate WAC 197-11-230 by conducting a SEPA process for the Ordinance  
21 that was reviewed by the Planning Commission, and by not conducting a new SEPA process for the  
22 new ordinance that was adopted by the County Council? (John Evans, 06-17, Wanda Evans, 06-18  
23 John Evans)

24 Issue 36: Is the SEPA Threshold Determination of DNS noncompliant with RCW 43.21C and the  
25 SEPA Rules, Chapter 197-11-060, -080, and -330 WAC? (Ludwig, 06-24)

26 Issue 37: Was the environmental evaluation and analysis required by the SEPA rules adequate and  
27 compliant with RCW 43.21C and Chapter 197-11 -030 and -031 WAC? (Ludwig, 06-24)

#### 28 Positions of the Parties

##### 29 **Petitioners' Positions**

30 Both Petitioners Wanda Evans and Stephen Ludwig argue that the County failed to conduct a proper  
31 SEPA process. Wanda Evans points out that the SEPA checklist was dated April 5, 2006, while the  
32

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<sup>133</sup> Chapter 18.50 of the San Juan County Code is the County's Shoreline Management Program.



1 County Council did not propose the changes that it eventually adopted until April 25, 2006.<sup>134</sup>  
2 Petitioner Ludwig describes the regulations for which the checklist was prepared as regulations that  
3 prohibited detached ADUs in parcels of less than 10 acres citing answers to Questions one and two  
4 on the checklist. For these reasons, Petitioner Ludwig maintains that no threshold determination  
5 was made for the Ordinance that was eventually adopted as required by 43.21C.030(2)(c) –(e) and  
6 WAC 197-11-310 and -330.<sup>135</sup>

7  
8 Petitioner Ludwig contends that not only was the process conducted improperly, but the DNS issued  
9 by the County was clearly erroneous. He says that the impacts from the amendments to the  
10 County's ADU regulations adopted by Ordinance 7-2006 are significant for the following reasons:  
11 (1) the amendments allow for a near doubling of the number of dwelling units in SJC, (2) the County  
12 has already experienced an increasing level of nitrates in groundwater caused from drain fields in  
13 several areas, (3) the County's own consultant has recommended that all of San Juan County be  
14 designated a critical aquifer recharge area, and (4) all the County's shorelines are critical fish and  
15 wildlife habitat areas.<sup>136</sup>

### 16 17 **County's Position**

18 The County replies that amendments to the County's ADU regulations adopted by Ordinance 7-2006  
19 reduce the environmental impacts from those caused by the regulations adopted by Ordinance 21-  
20 2002. The County maintains that the threshold determination for Ordinance 21-2002 survived a  
21 previous challenge, where the potential impacts were thoroughly discussed. These documents were  
22 clearly referenced and incorporated in the April 5, 2006 Determination of Non-significance (DNS).<sup>137</sup>

### 23 24 Board Discussion

25 The April 17, 2003 Final Decision and Order found that the DNS issued for Ordinance 21-2002 that  
26 incorporated the Final ADU report was not clearly erroneous.<sup>138</sup> Both Petitioners Wanda Evans and  
27 Stephen Ludwig are correct in their assertion that the DNS was prepared for the planning  
28 commission's version of ADU amendments that did not allow for detached ADUs. Petitioners  
29

30 <sup>134</sup> Petitioner's Prehearing Brief at 4.

31 <sup>135</sup> Petitioner's Prehearing Brief at 5 – 7.

32 <sup>136</sup> Ibid at 7

<sup>137</sup> San Juan County's Prehearing Brief at 23 -24.

<sup>138</sup> Corrected Final Decision and Order at 34.

1 contend that the County should have issued a new threshold determination when the County  
2 Council amended the Planning Commission's recommendation that allowed for no detached ADUs,  
3 eliminated many of the restrictions on placement of ADUs and changed the ERU requirement. WAC  
4 197-11-600 (2)(b) says this about the County's obligation in this situation:

5 For DNSs and EISs, preparation of a new threshold determination or supplemental EIS is  
6 required if there are: i) Substantial changes to a proposal so that the proposal is likely to  
7 have significant adverse environmental impacts (or lack of significant adverse impacts, if a  
8 DS is being withdrawn); or (ii) New information indicating a proposal's probable significant  
9 adverse environmental impacts. (This includes discovery of misrepresentation or lack of  
10 material disclosure.) **A new threshold determination or SEIS is not required if probable  
11 significant adverse environmental impacts are covered by the range of alternatives  
12 and impacts analyzed in the existing environmental documents.**

13 WAC 197-11-600(2)(b)(emphasis added).

14 The April 5, 2006 DNS was accompanied by an environmental checklist clearly incorporates the  
15 environmental checklist that was issued for Ordinance 21-2002.<sup>139</sup> RCW 43.21C.030 allows the  
16 incorporation of existing documents:

17 Lead agencies are authorized to use in whole or in part existing environmental documents for  
18 new project or nonproject actions, if the documents adequately address environmental  
19 considerations set forth in RCW 43.21C.030. The prior proposal or action and the new  
20 proposal or action need not be identical, but must have similar elements that provide a basis  
21 for comparing their environmental consequences such as timing, types of impacts,  
22 alternatives, or geography.

23 While the changes that allowed a limited number of detached ADUs would most likely have had  
24 more environmental impacts than the Planning Commission's version, the Council's changes would  
25 not have caused more environmental impacts than Ordinance 21-2002 which did not include any  
26 limitations on ADUs. Those impacts were analyzed and commented upon in the Final ADU Report  
27 that was incorporated into the DNS that was issued for Ordinance 21-2002.<sup>140</sup> The April 17, 2003  
28 Corrected Final Decision and Order found that the DNS issued for Ordinance 21-2002 that  
29 incorporated the Final ADU report was not clearly erroneous.<sup>141</sup>

30  
31 <sup>139</sup> Exhibit C, attached Ludwig Petitioner's Brief at 2.

32 <sup>140</sup> .Exhibit C, DNS (August 13,2002) attached to San Juan County, Motion to Rescind Invalidity and Find  
Compliance (Accessory Dwelling Units)(December 19, 2002)

<sup>141</sup> Corrected Final Decision and Order at 34.

1 Petitioner Ludwig argues that the impacts of the amendments made by Ordinance 7-2006 are  
2 significant. His argument that the amendments could cause doubling of density were arguments  
3 made by Petitioners in opposing Ordinance 21-2002 and were analyzed in the accompanying  
4 environmental documents to Ordinance 21-.2002.<sup>142</sup> The County has a compliant Fish and Wildlife  
5 Habitat Conservation Critical Area designations and compliant regulations to protect them. The  
6 rising level of nitrates from some drain fields and recommendations from a County consultant that all  
7 of San Juan County should be designated a CARA may be new information. However, Petitioner  
8 Ludwig does not present us sufficient information concerning these allegations to determine whether  
9 it pertains to the ADU regulation amendments nor does he provide any analysis of how the County's  
10 current regulations for CARAs are inadequate for protecting these critical areas from the limited  
11 number of ADUs that will result from the adoption of Ordinance 7-2006.  
12

13  
14 An analysis of SEPA compliance for GMA purposes is based upon the same "clearly erroneous"  
15 standard as established for compliance.<sup>143</sup> Petitioners carry the burden of proof in showing that a  
16 mistake has been made in issuing the DNS.  
17

18 **Conclusion:** Therefore, the Board finds that the County was not required to issue a new threshold  
19 determination pursuant WAC 197-11-600(2)(b) because the environmental impacts caused by the  
20 Council's changes were not more significant than similar impacts that were previously analyzed by  
21 the County for Ordinance 21-2002 and incorporated in the April 5, 2006 checklist.  
22

23 Additionally, these previous environmental documents were challenged and found to be compliant  
24 by the April 17, 2003 Corrected Final Decision and Order. Our review of the environmental checklist  
25 issued for the April 5, 2006 DNS and Petitioner Ludwig's arguments does not convince us that a  
26 mistake was made in issuing the April 5, 2006 DNS. Petitioner has not sustained his burden of proof  
27 pursuant to RCW 36.70A.320(2).  
28

## 29 I. Water Systems

30

31  
32 <sup>142</sup> Friends of San Juans, Opposition to San Juan County's Motion to Rescind Invalidity and Find Compliance  
and Request for SEPA Review (January 1, 2003) at 9.

<sup>143</sup> *Durland v. San Juan County*, WWGMHB Case No. 99-2-0010c (May 2001).

1 Issue 14: Does the requirement for one equivalent residential unit (ERU) of water for any detached  
2 ADU contained on Ordinance 7-2006, Section 9, mislead the public process and is it contrary to the  
3 County's stated goals, as stated in the Ordinance's recitals, in violation of RCW 36.70A.020 (4) and  
(7), RCW 36.70A.540, and RCW 36.70A.011? (Gutschmidt, 06-20)

4 Issue 39: Does the requirement contained in Ordinance 7-2006 for one additional Equivalent  
5 Residential Unit (ERU) of water for an detached ADU violate RCW 36.70A.130(1)(d), RCW  
6 36.70A.070 and 36.70A.040(5) because it is inconsistent with the goals and policies of the  
7 Comprehensive Plan Section 4.2.B.1.6 and Development Regulations (UDC Section 18.60.020)  
8 contrary to state policy and water regulations that are regulated by WAC 246-290-100-4 and WAC  
246-290-100-4(b)(i) and (ii)? (Nelson, 06-20, Wanda Evans, 06-17).

9 Positions of the Parties

10 **Petitioner's Position**

11  
12 Petitioner Ralph Gutschmidt contends that requiring one ERU of water for a detached ADU is  
13 contrary to Ordinance 7-2006's stated goals, will eliminate ADUs by doubling the water requirement,  
14 and misleads the public into believing that these requirements will provide affordable housing for  
15 moderate income people. Petitioner Gutschmidt also claims that the County failed to consider  
16 property rights when it imposed doubling the water requirements for detached ADUs and imposed  
17 an impossible burden of proof on applicants that detached ADUs will not interfere sensitive areas  
18 and open spaces.

19 Petitioner Wanda Evans asserts that the County changed the "water buildout" within water systems'  
20 service areas without consideration of an individual water system's plan. This, she claims violates  
21 RCW 36.70A.130(1)(d).  
22

23 **County's Position**

24 The County argues that no evidence in the record exists to support to Petitioner Gutschmidt's  
25 contention that requirement for one ERU for a detached ADU will eliminate a large number of  
26 affordable ADUs. Even if this new requirement makes one type of housing less affordable, the  
27 County maintains that it is up to the County to reconcile the GMA's affordable housing goal with  
28 other GMA goals. The County says that the requirement rose from the County Council's concern  
29 from the onset of the public participation process that a detached ADU would operate more like an  
30 independent living unit. The County says that RCW 19.27.097 gives it the responsibility to assure  
31  
32

1 that adequate water is available for planned development uses and authorizes the Council's action  
2 to require one ERU of water for detached ADUs.<sup>144</sup>

3  
4 The County asserts that its comprehensive plan does not prohibit the County Council from taking  
5 this action, and this action does not interfere with WAC provisions governing private water  
6 systems.<sup>145</sup>

7  
8 Board Discussion

9 Even though both the Petitioner Gutschmidt and the County's argument on Issue 14 address the  
10 County's alleged violation of the property rights goal of the GMA, the issue statement does not  
11 allege a violation of the property rights goal (RCW 36.70A.020(6), but violations of RCW  
12 36.70A.020(7) (Permitting) and the RCW 36.70A.020(4) (Housing). Because the issue statement  
13 does not allege violations of the property rights goal, the Board cannot address it. Pursuant to RCW  
14 36.70A.290(1), the Board is limited to issues that were raised in the issue statement:

15 The Board shall not issue advisory opinions on issues not presented to it in the statement of  
16 issues, as modified by the prehearing order".

17 The Presiding Officer issued a prehearing order to which Petitioners had seven days to respond.  
18 Several Petitioners, but not Mr. Gutschmidt, did respond with objections and their issues were  
19 amended. On September 18, 2006, the Presiding Officer entered an Amended Prehearing Order  
20 and it does not contain a claim that the requirements for an ERU for a detached ADO violates Goal 6  
21 of the GMA (RCW 36.70A.020(6)). It is therefore not before the Board.

22  
23 Petitioner Gutschmidt contends that the County has mislead the public because the County's  
24 restrictions on detached ADUS will not let the County realize some of the goals expressed in  
25 Ordinance 7-2006. Ordinance 7-2006 recites objectives of the legislation, including goals to provide  
26 rental income, to add affordable housing to existing housing, and to make housing available to  
27 moderate income people who are having trouble finding homes. Petitioner Gutschmidt says the  
28  
29  
30  
31

32  

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<sup>144</sup> San Juan County's Prehearing Brief at 16 – 18.

<sup>145</sup> San Juan County's Prehearing Brief at 16 and 17.

1 conflict between the stated goals in Ordinance 7-2006 and what it actually allows violates the  
2 housing and permitting GMA goals, as well RCW 36.70A. 011.<sup>146</sup>

3  
4 However, in these issues, Petitioners allege that violations of Goals 4 and 7 of the GMA arise from  
5 the imposition of a requirement for a full ERU of water availability to a permitted detached ADU.  
6 There is simply nothing before the Board to show that this requirement will have the impact of  
7 interfering with the County's efforts to promote affordable housing or to provide a timely, fair and  
8 predictable permitting process.

9  
10 In Issue Statement 39 Petitioner Wanda Evans claims that requiring one ADU for water is not  
11 consistent with Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60.020. This  
12 inconsistency in turn, she claims, does not comply with RCW 36.70A.130(4) which requires  
13 comprehensive plan and development regulation amendments to be consistent with the County's  
14 existing comprehensive plan and development regulations.<sup>147</sup>

15  
16 The Board's examination of Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60.020  
17 finds that both this section of the Comprehensive Plan and the section of the Unified Development  
18 Code authorize the County to ensure that each development permit has adequate and available  
19 water and establishes methods for doing this. We find no inconsistency between the requirements  
20 of one ERU of water for a detached ADU and the cited comprehensive plan policy and development  
21 regulation.<sup>148</sup>

22  
23 Finally our examination of WAC 246-290-100-4 and WAC 246-290-100-4(b)(i) and (ii) confirm that  
24 these WACs set out the requirements for water system plan. They do not set the parameters for  
25 cities and counties to establish the adequacy of water for building permits. Additionally, determining  
26 compliance with these requirements of the WAC is not within the jurisdiction of a growth  
27 management hearings board. See RCW 36.70A.280.

28  
29  
30 <sup>146</sup> Prehearing Brief at 5-7. Issue 14 alleges a violation of RCW 36.70A.570, but Petitioner's Brief does not  
offer any arguments on how Ordinance 7-2006 violates this statute.

31 <sup>147</sup> Petitioner's Prehearing Brief at 4 and 5. Issue Statement 39 contains the allegation that the requirement  
for one ERU is not consistent with RCW 36.70A.070 and RCW 36.70A.040 (5), however Petitioner's  
32 Prehearing Brief does not address this violation.

<sup>148</sup> Comprehensive Plan, Element 4, Water Resources at 2 and UDC Section 18.60.20(A) – (C) at 1 – 2.

1  
2 **Conclusion:** Based on the foregoing, Petitioners have not carried their burden of proof that the  
3 amendment to require one ERU of water for an attached ADU violates RCW 36.70A.020(4) and (7),  
4 RCW 36.70A.570, RCW 36.70A. 011, RCW 36.70A.130(4), and RCW 36.70A. 070. The Board  
5 finds that it has no jurisdiction to determine compliance with WAC 246-290-100-4 and WAC 246-  
6 290-100-4(b)(i) and (ii) pursuant to RCW 36.70A.280(1).

7  
8 **J. Invalidity**

9 Petitioner's Position

10 Petitioner Ludwig asks that the Board impose invalidity and request that the Governor impose  
11 sanctions because the County has disregarded the consequences of its noncompliance and has  
12 been out of compliance for at least seven years.<sup>149</sup>

13  
14 Board Discussion

15 The only provision of the amendments established by Ordinance 7-2006 that the Board has found  
16 noncompliant is SJCC 18.40. 240(G) (4)[it is ALL of 18.40.240(G)(4)]. Prior to imposing a  
17 determination of invalidity, the Board must make a finding of noncompliance. RCW  
18 36.70A.302(1)(a). Therefore, the only provision of Ordinance 7-2006 that is subject to an invalidity  
19 determination is SJCC 18.40. 240(G) (4).

20  
21 The Board has held that it will impose invalidity when the continuance of the regulation would  
22 interfere with the County's ability to properly plan during the remand period.<sup>150</sup> Here, the limited  
23 number of potential detached ADU permits that might be issued during the remand period makes it  
24 unlikely that continued validity of SJCC 18.40. 240(G) (4) will substantially interfere with the  
25 fulfillment of the goals of the GMA generally and Goal 2 specifically. However, if the County does  
26 not act to achieve compliance on this provision within the remand period, the Board would consider  
27 a properly supported motion for invalidity at that time.

28  
29  
30 \_\_\_\_\_  
31 <sup>149</sup> Ludwig, Prehearing Brief at 8.

32 <sup>150</sup> See *Lake Cavanaugh Association v. Skagit County*, WWGMHB 04-2-0011 (Order on Dispositive Motion ,  
September 21, 1994), *Butler, et. al v. Lewis County*, WWGMHB Case No. 99-2-0027c and *Panesko v. Lewis  
County*, WWGMHB Case No. 00-2-0031c (Order Finding Noncompliance and Imposing Invalidity, February  
13, 2004)

1 Conclusion: As long as the County acts within the remand period set in this order, the Board finds it  
2 unlikely that the continued validity of SJCC 18.40. 240(G) (4) will substantially interfere with the  
3 fulfillment of the goals of the GMA. Therefore, we decline to enter a finding of invalidity at this time.  
4 As for sanctions, the Board finds that Ordinance 7-2006 represents good progress in bringing San  
5 Juan County's detached ADU regulations into compliance with the GMA. There is no basis for  
6 seeking sanctions at this time.  
7

## 8 VII. FINDINGS OF FACT

- 9 1. San Juan County is located west of the crest of the Cascade Mountains and is required to  
10 plan according to RCW 36.70A.040.
- 11 2. Margaret Manning and Timothy Blanchard (Case No. 06-2-00013), Donna Gavora (Case No.  
12 06-2-0015), Wanda Evans (Case No.06-2-0017), John Evans (Case No.06-2-0018), Brian  
13 and Orgelina Wiese(Case No. 06-2-0019), Ralph Gutschmidt (Case No. 06-2-0020), James  
14 Nelson (Case No. 06-2-0021), and Stephen Ludwig (Case No. 00-2-0024) filed timely  
15 Petitions for Review.
- 16 3. Case No. 06-2-0013 and Case No. 06-2-0015 were consolidated as Case No. 06-2-0015c.  
17 Case No. 06-2-0015c was consolidated with Case Nos. 06-2-0017, 06-2-18. 06-2-0019, 06-  
18 2-0020. 06-2-0021, and 06-2-0024 and captioned as James Nelson et al v. San Juan  
19 County, Case No. 06-2-0024c..
- 20 4. Friends of San Juans was an original petitioner in Case No. 03-2-0003c and was granted  
21 intervention in Case No. 06-2-0024c.
- 22 5. All the Petitioners and Intervenor Friends of San Juans participated orally and in writing in  
23 the process to adopt Ordinance 7-2006.
- 24 6. San Juan County adopted Ordinance 7-2006 on June 8, 2006.
- 25 7. Ordinance 7-2006 was adopted to achieve compliance with the Board's Final Decision and  
26 Order/Compliance Order in WWGMHB Case No. 03-2-0003c. That decision found that the  
27 County's prior ADU regulations allowed unlimited detached ADUs throughout rural and  
28 resource lands without counting those detached ADUs as additional residential density. The  
29 Board found this violated GMA requirements for rural densities (RCW 36.70A.070(5)), GMA  
30 prohibitions against creating urban growth in rural and resource lands (RCW 36.70A.110(1))  
31 and the GMA's goal for reduction of sprawl (RCW 36.70A.020(2)) and conservation of  
32 resource lands (RCW 36.70A.020(8)).
8. The Board rescinded its determination of invalidity placed on the County's provisions  
regulating detached ADUs on August 18, 2006 in its Order Lifting Invalidity, based on the  
amendments adopted by Ordinance 7-2006.
9. The chief petitioner in the compliance case (WWGMHB Case No. 03-2-0003c), was Friends  
of San Juans (Friends). Friends no longer challenges the compliance of the County's ADU  
development regulations with the goals or requirements of the Growth Management Act  
(GMA) and now supports a finding of compliance.
10. Pursuant to SJCC 18.20.010, an "accessory dwelling unit (ADU)" is defined as a living area  
that is accessory to the principal residence, located on the same lot, and that provides for  
sleeping quarters, kitchen, and sanitation facilities.



- 1 11. Pursuant to SJCC 18.20.040, a “detached ADU” is defined as an ADU that is physically
- 2 distinct from the principal residence.
- 3 12. The amendments enacted by Ordinance 7-2006 count a detached ADU as a unit of density
- 4 in rural and resource lands unless allowed pursuant to an ADU permit. SJCC 18.40.240(A).
- 5 13. SJCC 18.40.240 establishes a program to allow a small number of permits for detached
- 6 ADUs in resource and some rural lands annually.
- 7 14. Detached ADUs are limited to no more than 1,000 square feet in living area. SJCC
- 8 18.40.240(F)(1).
- 9 15. SJCC 18.240(F)(4) requires the accessory dwelling unit to be owned by the owner of the
- 10 principal residence.
- 11 16. New SJCC 18.40.240(G)(1)(b) provides that outside of the boundaries of activity centers and
- 12 urban growth areas, the number of detached ADU permits in any calendar year shall not
- 13 exceed 12 percent of the total number of building permits for new principal residences issued
- 14 for the previous calendar year outside the boundaries of activity centers and urban growth
- 15 areas.
- 16 17. New SJCC 18.40.240 (G)(2) restricts the maximum distance between the
- 17 closest vertical walls of the main house and any detached accessory dwelling unit to no
- 18 more than 100 feet, unless the 100 feet distance would result in a greater impact on the
- 19 open space features of the property.
- 20 18. SJCC 18.40.240(G)(3) requires the location impacts to “avoid or minimize
- 21 intrusion on the most sensitive open-space features of the site” including existing orchard,
- 22 meadows an pasture areas; ridgelines and contrasting edges between landscape types
- 23 unbroken by structures; rolling, open or steep open slopes, and critical areas.
- 24 19. Ordinance 7-2006 amends SJCC 18.40.240 to provide that an accessory
- 25 dwelling unit shall use the same driveway, septage[sic]/sewer system, and water system as
- 26 the principal residence.
- 27 (SJCC 18.40.240(F)(3)).
- 28 20. The requirement for a shared septic system is new to this version of the ADU development
- 29 regulations.
- 30 21. The absolute number of ADU permits, based on historical numbers of building permits issued
- 31 outside of activity centers and urban growth areas, is estimated to be about 15 per year. Of
- 32 that amount, 1/6<sup>th</sup> of the ADU permits are allocated to conversions of existing structures that
- have been legal for at least 5 years.
22. The Official Maps of the County’s Comprehensive Plan establish rural densities at one
- dwelling unit per five acres and one dwelling unit per ten acres. These rural densities have
- been found compliant with RCW 36.70A.070(5)(b) and (c).
23. San Juan County’s comprehensive plan describes its rural character as:
- “...Rural lands are intended to retain the pastoral, forested, and natural landscape qualities
- of the islands while providing people with choices for living environments at lower densities
- or use intensities than those in Activity Centers”.
24. San Juan County’s development code further describes rural character as: “...a quality of
- landscape dominated by pastoral, agricultural, forested and natural areas interspersed with
- single-family homes and farm structures....”
25. San Juan County’s isolation, recognition as a tourist destination, historic use of ADUs for
- vacationing family members or as a vacation residence before a main house is built, and
- rural lot development pattern are unique characteristics.

- 1 26. Given the number of potential parcels upon which detached ADUs may be constructed and
- 2 the limitations on their size, location, and ownership, an annual limit of approximately 15 of
- 3 such permits is unlikely to disturb the existing, compliant scheme of rural densities, that is,
- 4 densities of 1 dwelling unit per 5 acres or 1 dwelling unit per 10 acres.
- 5 27. The limited number of detached ADU permits coupled with the limitations on location,
- 6 ownership, utilities and impact on the open-space features of the lot also prevent the
- 7 detached ADU regulations from creating sprawl in rural zones of compliant rural densities.
- 8 28. The small number of such permits issued for detached ADUs in rural and
- 9 resource lands restrains the extent of such development in any one area so it is most likely
- 10 that detached ADU permits will be issued in different locations, rather than establishing a
- 11 pattern of growth.
- 12 29. However, Ordinance 7-2006 also allows detached ADUs to be constructed or converted on
- 13 rural lots that are less than 5 acres in size, if the lots are at least 1 acre in size. (SJCC
- 14 18.40.240 (G)(4)(b)).
- 15 30. The County Comprehensive Plan acknowledges the existence of lots in the RR (rural
- 16 residential) zone that are below 5 acres in size but notes that this is because they were
- 17 established in the 1979 comprehensive plan.
- 18 31. The Comprehensive Plan also encourages combination of existing lots in order to reduce the
- 19 number of dwelling units that may be developed in rural areas "where the existing parcel
- 20 pattern would permit development at a density greater than that established by this Plan and
- 21 the Official Maps".
- 22 32. Where the rural lots are nonconforming (under 5 acres in size), the addition of a second
- 23 residence causes residential uses to predominate over rural uses and to exceed a rural level
- 24 of development.
- 25 33. Allowing an additional detached residence on a nonconforming rural lot is not consistent with
- 26 the County's own plan for rural densities and preservation of rural character.
- 27 34. Intensive residential uses on these substandard rural lots constitute urban growth in rural
- 28 lands.
- 29 35. The County's estimate of 15 detached ADUs annually applies to all rural and resource lands,
- 30 not just to resource lands.
- 31 36. In resource lands, the location, size and ownership requirements for detached ADUs
- 32 together with the limit on numbers of such detached ADUs minimize the conversion of
- resource lands to non-resource purposes, and do not create an incompatible use.
- 37 37. No evidence exists in the record that San Juan County has elected to
- create an affordable housing incentive program pursuant to RCW 36.70A.540.
- 38 38. No Petitioner cites to any portion of the CTED recommendations for providing ADUs that the
- County is alleged to have violated.
- 39 39. No evidence has been presented that either Ordinance 7-2006's limitations on
- attaching ADUs to accessory buildings or limiting building permits for detached ADUs to 12
- percent of the annual residential permits in rural and resource lands exceed the scope of
- local flexibility allowed by RCW 43.63A.215.
- 40 40. Petitioners have not offered any evidence that the County's ADU regulatory scheme will
- reduce the affordability of housing in San Juan County.
- 41 41. Petitioners have not demonstrated that the limitation on detached ADUs in rural and resource
- lands will have a significant impact upon economic development in the San Juan Islands.
- 42 42. SJCC 18.40. 240 (G)(3) provides criteria to use when issuing a building permit for a

- 1 detached ADU. Building Permits are issued on a case by case basis.
- 2 43. The County promptly published guidelines on how to apply for an ADU permit and allows for
- 3 telephone reservations for ADU permits to help make the permit system more accessible for
- 4 those who must travel long distances to the permit office and nonresident applicants.
- 5 44. The County adopted a public participation program specifically for consideration of the
- 6 amendments to its ADU regulations. The public participation program included workshops,
- 7 hearings before the planning commission, opportunities for written comment, and public
- 8 hearings before the County Council.
- 9 45. The County followed its adopted public participation program for eight months.
- 10 46. The County held several public workshops and three public hearings
- 11 47. The record shows that there was full public participation here and this was not an
- 12 abbreviated process
- 13 48. The Commissioners developed a September 1, 2005 draft version of amendments to the
- 14 County's ADU regulations that allowed for a limited number of detached ADUs subject to
- 15 certain restrictions. These or similar recommendations were the subject of several
- 16 workshops, as well as hearings before the Planning Commission and a County Council
- 17 public hearing on June 6, 2006.
- 18 49. Letters in the record from Friends indicate that it supported the September 1, 2005 County
- 19 draft recommendations that allowed for an exception to requiring detached ADUs as a unit of
- 20 density in rural and resource lands with strict conditions.. Friends also supported the
- 21 Planning Commission's recommendations that detached ADUs should not be allowed in rural
- 22 or resource lands without counting them as a unit of density.
- 23 50. The County invited written public comments on the draft amendments presented at the June
- 24 6, 2006 public hearing, as well as allowing public testimony.
- 25 51. The subject of the Board's remand order was the County's ADU regulations.
- 26 52. The subject of Ordinance 7-2006 is an amendment to the County Code concerning ADU
- 27 construction and permitting.
- 28 53. The amendments that the County Council eventually adopted were among the range of
- 29 alternatives that were before the public and discussed at workshops and in staff reports. .
- 30 54. The recommendations in the September 1, 2005 draft were discussed at workshops, before
- 31 the planning commission, and at the June 6, 2006 public hearing. These recommendations
- 32 were very similar to those eventually adopted by the County Council.
55. The County's adoption of Ordinance 7-2006 affects lots in the shoreline that seek to add a detached ADU but did not amend its shoreline master program.
56. The April 5, 2006 Determination of Nonsignificance was accompanied by the environmental checklist which clearly incorporates the environmental documents that were issued for Ordinance 21- 2002.
57. The changes to Ordinance 21-2002 adopted by Ordinance 7-2006 are not likely to cause more environmental impacts that the regulations adopted by Ordinance 21-2002, since the regulations in Ordinance in 21-2002 did not include any limitations on ADUs.
58. Comprehensive Plan Section 4.2.B.1.6 and UDC Section 18.60 authorize the County to ensure that each development permit has adequate and available water.
59. Any Finding of Fact hereafter determined to be a Conclusion of Law is hereby adopted as such.

**VIII. CONCLUSIONS OF LAW**

- 1 A . The Board has jurisdiction over the parties and subject matter of this consolidated case.
- 2
- 3
- 4 B. The petitions were timely brought and the petitioners have standing to raise the issues in their
- 5 petitions for review (now consolidated).
- 6
- 7 C. The petitions challenge the County’s adoption of San Juan County Ordinance 7-2006.
- 8
- 9 D. Ordinance 7-2006, as it applies to permitted detached ADUs in existing, compliant rural zones,
- 10 does not alter the existing compliant residential densities in those zones to an extent that violates
- 11 RCW 36.70A.070(5).
- 12
- 13 E. Ordinance 7-2006, as it applies to permitted detached ADUs in existing, compliant rural zones,
- 14 does not violate the prohibitions against urban growth in rural areas in RCW 36.70A.110(1) or Goal
- 15 2 of the GMA (sprawl reduction) (RCW 36.70A.020(2)).
- 16
- 17 F. The regulations that permit a detached ADU to be constructed or converted on a nonconforming
- 18 rural lot of less than 5 acres (SJCC 18.40.240(G)(4)) fail to comply with RCW 36.70A.070(5) by
- 19 expanding the structural intensity in rural zones beyond that which is set out in the County
- 20 comprehensive plan and/or is consistent with the GMA.
- 21
- 22 G. SJCC 18.40.240(G)(4) also creates urban growth in rural zones and promotes sprawl, thus not
- 23 complying with RCW 36.70A.110(1) and RCW 36.70A.020(2).
- 24
- 25 H. The limited provision for detached ADU permits in resource lands under the strict constraints of
- 26 SJCC 18.40.240(F) and (G)(1),(2) and (3) complies with Goal 8 of the GMA (the natural resource
- 27 industries goal)(RCW 36.70A.020(8)).
- 28
- 29 I. The nature and scope of the limitations placed on detached ADUs in rural and resource lands as
- 30 adopted by Ordinance 7-2006 are within the County’s “local flexibility” pursuant to RCW 43.63A.215
- 31 and therefore comply with RCW 36.70A.400.
- 32
- 33 J. Ordinance 7-2006 complies with RCW 36.70A.020(4), RCW 43.63A.215, RCW 36.70A.011 and
- RCW 36.70A.540.
- 34 K. Ordinance 7-2006, Section 18.40.240 G(1)(b) and Sections 1, 3,5 of the Ordinance comply with
- RCW 36.70A.020 (7).
- 35
- 36 L. The public participation process followed to adopt the amendments to the County’s ADU
- 37 regulations by Ordinance 7-2006 were not clearly erroneous violations of RCW 36.70A.130 (2)(b),
- 38 RCW 36.70A.130(1), or RCW 36.70A.140.
- 39
- 40 M. The County’s method of public notification for consideration of its ADU amendments in Ordinance
- 41 7-2006 complies with RCW 36.70A.035 (1).
- 42

1 N. The adoption of Ordinance 7-2006 did not violate the Shoreline Management Act (Ch. 90.58  
2 RCW).

3 O. The adoption of Ordinance 7-2006 did not violate the State Environmental Policy Act (SEPA) (Ch.  
4 43.21C RCW).

5 P. The Board has no jurisdiction over the regulation of private water systems or deciding compliance  
6 with WAC 246-290-100-4 and WAC 246-290-100-4(b)(i) and (ii) pursuant to RCW 36.70A.280(1).

7 Q. Any Conclusion of Law hereafter determined to be a Finding of Fact is hereby adopted as such.  
8

9 **IX. ORDER**

10 San Juan County is ordered to bring ICC SJC 18.40.240(G)(4) into compliance with the GMA in  
11 accordance with this decision within 180 days. **Compliance shall be due no later than July 12,**  
12 **2007.** The following schedule shall apply:  
13

14 Compliance Due	July 12, 2007
15 Compliance Report and Index to 16 Compliance Record (County to file 17 and serve on all parties)	July 23, 2007
18 Any Objections to a Finding of 19 Compliance and Record 20 Additions/Supplements Due	August 6,, 2007
21 County's Response Due	August 20, 2007
22 Compliance Hearing (location to be 23 determined)	August 27, 2007

24 Any requests for an extension of the period for compliance must substantiate that compliance could  
25 not reasonably be achieved within the time period set herein and must be filed with the Board no  
26 later than **June 30, 2007.**

27 Entered this 12<sup>th</sup> day of February 2007.  
28

29 \_\_\_\_\_  
30 Holly Gadbow, Board Member

31 \_\_\_\_\_  
32 Margery Hite, Board Member

James McNamara, Board Member

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

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

**Judicial Review.** Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

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

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

#### Appendix A<sup>151</sup>

In its final decision and order on the consolidated case, the Board found the County's regulations that allowed freestanding accessory dwelling units (ADUs) in rural and resource lands to be noncompliant and invalid. *Friends of San Juans, et al. v. San Juan County*, WWGMHB Case No. 03-2-0003c (Corrected Final Decision and Order, April 17, 2003). Both the County and Petitioners appealed this decision, which was heard in Thurston County Superior Court.

<sup>151</sup> For procedural history in this case previous to April 17, 2003, see Order Lifting Invalidity (August 18, 2006)  
COMPLIANCE ORDER AND FINAL DECISION AND ORDER  
Case Nos. 03-2-0003c; 06-2-0024c  
February 12, 2007  
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1  
2 On October 7, 2003, the Board divided the issues in the consolidated case, *Friends of San Juans v.*  
3 *San Juan County*, WWGMHB Case No. 03-2-0003c, because the issues consolidated in these  
4 cases were on two different compliance schedules. The issues regarding ADUs remained in Case  
5 No. 03-2-0003c.<sup>152</sup> The issues regarding the designation of urban growth areas (UGAs) for Lopez  
6 Village and Eastsound were kept in their original case, *Michael Durland v. San Juan County*,  
7 WWGMHB Case No. 00-2-0062c. That case is being heard with *Fred Klein v. San Juan County*,  
8 WWGMHB Case No. 02-2-0008.

9  
10 On October 31, 2003, the Board granted the County an extension of time.

11 On January 9, 2004, the Thurston County Superior Court issued a decision that upheld the Board's  
12 decision on density requirements for freestanding ADUs in rural and resource lands.<sup>153</sup>

13  
14 On January 30, 2004, the County submitted a progress report to the Board. The report stated that  
15 the County has appealed the superior court decision and that the County is not accepting any  
16 applications for freestanding ADUs that do not conform to the Board's April 17, 2003, decision as  
17 modified by the superior court decision.

18  
19 A telephonic hearing was held on May 21, 2004. After the compliance hearing, the County  
20 participated in two mediation sessions with Friends. Neither of these mediation sessions was  
21 successful in resolving the issues. The County requested in its June 21, 2004, letter that the Board  
22 exercise its discretion and not issue an order until the appellate court issues its decision.

23  
24 On June 30, 2004, the Board issued an order finding continuing noncompliance and invalidity and  
25 ordering the County to take official action to comply with the Board's April 17, 2003, order and to  
26 notify the public of that action.

27  
28  
29  
30 <sup>152</sup> ADU issues were originally heard in *Town of Friday Harbor, Fred R. Klein, John M. Campbell, and Lynn*  
*Bahrych, et al. v. San Juan County*, WWGMHB Case No. 99-2-0010c.

31 <sup>153</sup> However, the superior court ruled that the occupants of ADUs in resource lands did not have to be limited  
32 to family members or farm workers as required by the Board's decision and upheld the County's siting  
requirements.

1 On July 9, 2004, the Board received Petitioners' Motion for Clarification or Reconsideration.

2 Petitioners alleged that the County is permitting a second single-family residence on lots in rural and  
3 resource lands that contain a single family dwelling unit of 1000 square feet or less. Therefore,  
4 Petitioners asked the Board to:

5 (1) direct the County immediately to discontinue its policy of permitting a second single-family  
6 dwelling unit on all lands with existing dwelling units smaller than 1000 square feet, and

7 (2) direct the County to amend its ordinance within a specific time period to bring its  
8 ordinances and policies into compliance with the GMA.  
9

10 On December 3, 2004, the Board found that Ordinance 21-2002 had not been amended and that the  
11 Board could no longer accept, pending resolution of the County's appeal to the courts, the County's  
12 "practice" of not issuing building permits that did not conform to the Board's order as interim  
13 compliance in lieu of amending its ordinance because now Petitioners dispute whether the County in  
14 fact is complying with this order when issuing building permits for ADUs. Order on Issues for  
15 Reconsideration (December 3, 2004). Therefore, the Board found Ordinance 21-2002 in continuing  
16 noncompliance and invalidity and ordered the County to bring that ordinance into compliance within  
17 120 days. *Ibid.*  
18

19 The County adopted Ordinance 3 – 2005 on April 14, 2005. After a compliance hearing , the Board  
20 issued an order that found because Ordinance 3-2005 was an interim ordinance, it could not find  
21 compliance. Further, the Board found that this ordinance did not cure invalidity of the County's  
22 regulations for detached ADUs because the regulations adopted by this ordinance did not restrict  
23 ADUs in resource lands to the underlying density. Compliance Order (2005) (July 21, 2005).  
24

25 On September 15, 2005, the Board received the County's motion to amend the compliance schedule  
26 followed by a response from the Petitioners in support of amending the schedule. The parties had  
27 jointly filed a motion with the Court of Appeals to stay the issuance of a decision of the County's  
28 appeal of the Thurston County Superior Court's decision in this case in order to craft regulations for  
29 detached ADUs acceptable to both parties. On September 29, 2005, the Board issued an order  
30 amending the compliance schedule. Order Granting Extension (September 2005).  
31  
32



1 On March 3, 2005 the County requested another extension, supported by the Petitioners to  
2 complete the public participation process. The Board granted this extension on March 23, 2006.  
3 Order Granting Extension (March 2006). The County asked for a 60 day extension of the  
4 compliance deadline on May 10, 2006 in order to have a second public hearing on changes the  
5 county council has made to the planning commission draft. Petitioners objected to a 60 day  
6 extension. Later, in a conference with Petitioners, the County, and the Presiding Officer, the  
7 Petitioners and the County agreed to an expedited compliance schedule. On May 25, 2006, the  
8 Board issued an order that extended the compliance period to June 14, 2006 and scheduled a  
9 compliance hearing for June 30, 2006. Order Extending the Compliance Period (May 2006).

10  
11 On June 8, 2006 the San Juan County adopted Ordinance 7-2006.

12  
13 In response to Stephen Ludwig's May 24, 2006 request to intervene, the Board issued an order on  
14 June 13, 2006 adding Mr. Ludwig as a participant.

15  
16 After the May 25, 2006, Order Extending the Compliance Period, the Board received numerous  
17 letters objecting to the expedited compliance schedule and requests to become participants in the  
18 compliance proceedings. In response the Board held a compliance prehearing conference on June  
19 13, 2006 with the County, original petitioners, and parties requesting to be added as participants.

20 On June 21, 2006, the Board issued an order rescheduling the compliance hearing to July 21, 2006  
21 and issued a new briefing schedule. The order also added the following people to the case as  
22 participants: Dorothy Austin, Thomas Baldwin, Miriam M. Ziegler, Howard Tollefson, John B. Evans,  
23 Wanda Evans, Ri Warren, James E. Nelson, Timothy P. Blanchard, Margaret Manning, Donna  
24 Gavora, Jay Kimball, Brian Wiese, Margot Shaw and Doug Marshall. Order Rescheduling the  
25 Compliance Hearing and Adding Parties. Later, on June 30, 2006, the Board added Ralph  
26 Gutschmidt as a participant, and on July 12, 2006, Fred Munder.

27  
28 Also, on June 21, 2006, San Juan County filed its compliance report and a motion to rescind  
29 invalidity. Compliance Report and Motion to Rescind Invalidity.

30  
31 On July 28, 2006, the Board received Request for Reconsideration and Motion to Reschedule  
32 Deadline for Parties to Submit Objections to a Finding of Compliance and Motions to Supplement

1 the Record from James Nelson, and a motion making the same requests from Margaret Manning  
2 and Timothy Blanchard on June 30, 2006. Douglas Marshall filed Motion for Reconsideration of  
3 Scope, and Motion for Extension of Deadlines on June 29, 2006. On July 3, 2006, the Board issued  
4 Order Denying Motions and Requests to Reschedule the Compliance Hearing, Readjust the  
5 Compliance Schedule, and Broaden the Compliance Hearing.

6  
7 Stephen Ludwig filed objections to a finding of compliance on June 27, 2006. The following  
8 participants filed written objections to a finding of compliance and motions to supplement the record  
9 on July 6, 2006: Margaret Manning, Douglas Marshall, James Nelson, John Evans, and Wanda  
10 Evans. Dorothy Austin also filed objections to a finding of compliance on that date. Thomas  
11 Baldwin and Miriam Ziegler filed objections and a motion to supplement the record on July 10, 2006.

12  
13 On July 17, 2006, the County filed San Juan County's Response to Objections to Compliance  
14 Finding and Friends filed Petitioners' Response to Objections and Brief in Support of Lifting Invalidity  
15 and Opposition to Motions to Supplement the Record.

16  
17 The Board held a compliance hearing in Anacortes on July 21, 2006. Deputy Prosecutor Cameron  
18 Carter represented San Juan County; Lynn Bahrych and David Mann represented Petitioners.  
19 James Nelson, Douglas Marshall, John Evans, Timothy Baldwin, Fred Munder, Stephen Ludwig, Ri  
20 Warren, and Ralph Gutschmidt spoke in opposition to a finding of compliance and lifting invalidity.  
21 Board members Gayle Rothrock, Margery Hite, and Holly Gadbow attended.

22  
23 On August 8, 2006, the Board received Motion to Clarify and /or Modify Previous Orders of Invalidity  
24 and for Other Relief along with Memorandum in Support of Motions Regarding Ordinance 11-2006 .

25 On August 29, 2006 the Board issued Order on County's Motion Regarding Ordinance 11-2006.

26 On August 18, 2006, the Board issued Order Lifting Invalidity.

27  
28 On August 22, 2006 Order on Supplementing the Record was issued on the motions to supplement  
29 the record in response to motions to supplement the record filed by Douglas Marshall, James  
30 Nelson, Ri Warren, John Evans, Wanda Evans, Thomas Baldwin, Miriam Ziegler, and Ralph  
31 Gutschmidt.

32 **Case No. 6-2-0024c**

1 Between July 17, 2006 and August 14, 2007, the Board received petitions for review from the  
2 following people: Margaret Manning and Timothy Blanchard, Donna Gavora, Thomas Baldwin,  
3 Douglas Marshall, and Miriam Ziegler, Wanda Evans, John Evans, Brian and Orgelina Wiese, Ralph  
4 Gutschmidt, James Nelson, and Stephen Ludwig. Donna Gavora's case was consolidated with  
5 Margaret Manning and Timothy Blanchard's case.

6  
7 A telephonic prehearing conference was held on August 23, 2006 with all petitioners attending as  
8 well as San Juan County Deputy Prosecuting Attorney Cameron Carter, and Presiding Officer Holly  
9 Gadshaw. The Prehearing Order was issued on August 31, 2006. Several petitioners objected to  
10 the issues statements as presented. On September 18, 2006, the Presiding Officer issued an  
11 Amended Prehearing Order.

12  
13 On August 31, 2006, an order consolidated these cases, which captioned it as *James Nelson et al v.*  
14 *San Juan County*, Case No. 06-2-0024c.

15  
16 Friends of San Juans filed a motion to intervene on September 8, 2006. An order granting Friends  
17 of San Juans intervention was issued on September 20, 2006.

18  
19 Petitioners Stephen Ludwig, Ralph Gutschmidt, John Evans, Wanda Evans, and Thomas Baldwin,  
20 Douglas Marshall, and Miriam Ziegler filed Prehearing Briefs. The Baldwin, Marshall, and Ziegler  
21 brief was not served on Intervenor Friends until December 11, 2006. Intervenor Friends filed its  
22 brief on December 7, 2006.

23  
24 In response to motions for from the County, the Board extended the County's briefing schedule  
25 deadline until December 11, 2006. The Presiding Officer also adjusted the time for Intervenor  
26 Friends to respond to the Baldwin Marshall, and Ziegler Prehearing Brief, for Petitioners to respond  
27 to the County's Brief, and for Baldwin, Marshall, and Ziegler to respond to Friends' Response Brief in  
28 an order issued on December 13, 2006.

29  
30 A Hearing on the Merits was held at the Eastsound Fire Station on January 4, 2006. The County  
31 was represented by Special Deputy Prosecutor Craig Magnusson. David Mann and Lynn Bahrych  
32 represented Friends. John Evans, Wanda Evans, Ralph Gutschmidt, and Stephen Ludwig

1 represented themselves. Douglas Marshall represented himself, Thomas Baldwin and Miriam  
2 Ziegler. Board Members James McNamara, Margery Hite, and Holly Gadbow attended.

3  
4 At the hearing after receiving no objection from the County or Friends, the Board granted the  
5 Baldwin, Marshall, and Ziegler motion to supplement the record with the following items with the  
6 following index numbers, with the stipulation that the Board will give these items the appropriate  
7 weight:

- 8 • 1501 – August 30, 2005 e-mail from Commissioner Lichter to Commissioner Richter
- 9 • 1502 – August 20, 2005 e-mail from Prosecuting Attorney Randall Gaylord to County  
10 Commissioners
- 11 • 1503 – August 31, 2005 e-mail from Stephanie Buffum Filed to Commissioner Lichter that  
12 forwarded an earlier e-mail from Lynn Bahrych
- 13 • 1504 – 1507 – Cover memo from Friends to the San Juan Board of Commissioners,  
14 including a three page 3-page document executed by Lynn Bahrych and Stephanie Buffum  
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