

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

FREDERICK E. ELLIS, JR., )  
 )  
 ) Petitioner, ) No. 97-2-0006  
 )  
 ) vs. ) FINAL DECISION  
 ) AND ORDER  
 )  
 )  
 ) SAN JUAN COUNTY, )  
 )  
 ) Respondent. )

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 ) FRIENDS OF THE SAN JUANS, et. al., )  
 )  
 ) Petitioners, ) No. 97-2-0007  
 )  
 ) vs. ) FINAL  
 )  
 ) DECISION ) AND ORDER  
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 )  
 ) SAN JUAN COUNTY, )  
 )  
 ) Respondent. )

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 ) JOHN D. GOEKLER, )  
 )  
 ) Petitioner, ) No. 97-2-0008  
 )  
 ) vs. ) FINAL  
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 ) DECISION ) AND ORDER  
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 )  
 ) SAN JUAN COUNTY, )  
 )  
 ) Respondent. )

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 ) L.E. HENDEL, )  
 )  
 ) Petitioner, ) No. 97-2-0009  
 )  
 ) vs. ) FINAL  
 )  
 ) DECISION ) AND ORDER  
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 )  
 ) SAN JUAN COUNTY, )  
 )  
 ) Respondent. )

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 ) JAN CHAMBERLIN-LEA, et. al., )  
 )  
 ) Petitioners, ) No. 97-2-0010  
 )  
 ) vs. ) FINAL DECISION  
 ) AND ORDER  
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 )  
 ) SAN JUAN COUNTY, )  
 )  
 ) Respondent. )

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GARY FRANCO, )  
Petitioner, ) No. 97-2-0011  
vs. ) FINAL DECISION  
AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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MICHAEL W. CARLSON, et. al., )  
Petitioners, ) No. 97-2-0012  
vs. ) FINAL DECISION  
AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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KENNETH & MICAELA BROSTROM, )  
Petitioners, ) No. 97-2-0013  
vs. ) FINAL DECISION  
AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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SKYE BURN, et. al., )  
Petitioners, ) No. 97-2-0014  
vs. ) FINAL DECISION  
AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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TOWN OF FRIDAY HARBOR, )  
Petitioner, ) No. 97-2-0015  
vs. ) FINAL DECISION  
AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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ONa BLUE, et. al., )  
Petitioners, ) No. 97-2-0016  
)  
vs. ) FINAL DECISION  
) AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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FRED R. KLEIN, )  
Petitioner, ) No. 97-2-0017  
)  
vs. ) FINAL DECISION  
) AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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JACK W. CORY, )  
Petitioner, ) No. 97-2-0018  
)  
vs. ) FINAL DECISION  
) AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

\_\_\_\_\_)  
RICHARD B. BARNES, )  
Petitioner, ) No. 97-2-0019  
)  
vs. ) FINAL DECISION  
) AND ORDER  
SAN JUAN COUNTY, )  
Respondent. )

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On December 31, 1996, the Board of County Commissioners (BOCC) of San Juan County adopted Ordinance 20-1996 which included the goals, policies, and map designated as the County's Comprehensive Plan (CP). A notice of adoption of the CP was published January 22, 1997. A lawsuit was filed in Superior Court challenging the methodology of adoption of

Ordinance 20-1996. Commencing March 14, 1997, through March 21, 1997, the fourteen above-listed petitions were filed with our office. The petitions all challenged Ordinance 20-1996.

On April 29, 1997, the BOCC adopted Ordinance 3-1997 which repealed Ordinance 20-1996. A lawsuit was filed in Superior Court on May 8, 1997, which challenged the authority of the County to repeal Ordinance 20-1996. In anticipation of the repeal, Petitioner Carlson, *et. al.*, (#97-2-0012) (Carlson) filed an amended petition and a dispositive motion on April 14, 1997. The thrust of the amended petition and dispositive motion was a request that we find San Juan County had failed to comply with the Growth Management Act (GMA, Act) because of the repeal of Ordinance 20-1996.

On May 9, 1997, the County filed motions against all petitioners for dismissal on the basis of mootness and lack of jurisdiction. The County also filed a response to the dispositive motion. Petitioners were provided an opportunity to respond to the County's motion and Carlson replied to the dispositive motion response. A motions hearing was held on June 3, 1997, in Friday Harbor.

We are called upon to decide two issues. First, are the petitions which challenged Ordinance 20-1996 moot? Second, is the County in compliance with the GMA under the circumstances presented here?

We grant the County's motion to dismiss the original petitions because the issues presented by those petitions are moot. There simply is no adopted CP. Under the provisions of RCW 36.70A.040(3), San Juan County was required to adopt a CP by January 1, 1995. Two years past the deadline, the County attempted to comply with this requirement by adopting Ordinance 20-1996. Section 3 of the ordinance specified that it would not become effective until "the effective date of the final development regulations for the Comprehensive Plan. . . ." All parties acknowledged that Ordinance 20-1996 was not being used as a "generalized land use policy statement of the governing body of a county" (RCW 36.70A.030 (4)), nor would it have been used until the adoption of final development regulations (DRs). A local government does not comply with the Act by adopting a CP or DRs that do not go into effect until a time beyond a GMA deadline.

Under the record in this case there is no CP for us to review. As recognized by the parties, we do not have authority under the GMA to direct that a local government adopt an identified ordinance such as 20-1996. While we may strongly urge adoption or repeal of certain ordinances, the ultimate authority to take that action rests with the local government. Our authority is limited to reviewing the action of the local government to determine whether or not it is in compliance with the Act. *Port Townsend v. Jefferson County*, Case #94-2-0006.

We also grant Petitioner Carlson's dispositive motion to find that San Juan County is not in compliance with the GMA. In the motion, Carlson requested that we find that the BOCC's action "to repeal the San Juan County Final Comprehensive Plan is out [of] compliance with the Growth Management Act, including RCW 36.70A.130 and WAC 365-195-630." The County acknowledged that it was not in compliance with the GMA because it had not adopted a CP by the statutory deadline. We grant the motion on that basis.

We disagree with Carlson's contention that the provisions of RCW 36.70A.130(2) were violated by the repeal. Subsection .130(2) requires the establishment and broad dissemination of a public participation program identifying procedures for proposed "amendments or revisions" of the CP. It also prohibits, except in limited circumstances, consideration of "amendments or revisions" more frequently than once every year. WAC 365-195-630 merely restates those provisions.

The purpose of Section .130 is to place all proposed "amendments or revisions" before a local government at one specific time so the cumulative effect of those proposals can be ascertained. The effect is to change the often sporadic individualized rezone application hearings that were so prevalent prior to passage of the GMA. We do not conclude, as contended by Carlson, that the repeal ordinance (3-1997) is either an "amendment or revision" as contemplated by Section .130. We see nothing in the Act that prohibits repeal of a CP. One consequence of such repeal would be a finding of failure to comply with the Act and could lead to a finding of invalidity under the test set forth in RCW 36.70A.300.

A concern expressed by many petitioners involved the second Superior Court lawsuit challenging Ordinance 3-1997. Whether the Court rules in favor or against the County does not affect this

case. San Juan County has never adopted a CP as required by RCW 36.70A.040(3) that complies with the Act. Ordinance 20-1996 does not comply because it never become effective and implemented irrespective of the repeal. Ordinance 3-1997 is, as characterized by the County, "compliance-neutral" because it did not change the noncompliance status of San Juan County.

**ORDER**

We grant San Juan County's motion to dismiss the original petitions without prejudice.

We grant Carlson's dispositive motion finding that San Juan County is not in compliance with the Act because of its failure to adopt a CP by January 1, 1995. The County shall adopt a CP within 180 days of the date of this Order.

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

So ORDERED this 19th day of June, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS  
BOARD

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William H. Nielsen  
Board Member

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Nan A. Henriksen  
Board Member

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Les Eldridge

Board Member