

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

SAN JUAN FLOATPLANE DEFENSE GROUP,	)	
WASHINGTON SEAPLANE PILOTS	)	No. 99-2-0005
ASSOCIATION, and KENMORE AIR, INC.,	)	
	)	ORDER DENYING
Petitioners,	)	MOTION TO DISMISS
	)	
v.	)	
	)	
SAN JUAN COUNTY and WASHINGTON	)	
DEPARTMENT OF ECOLOGY,	)	
	)	
Respondents,	)	
	)	
and	)	
	)	
FRIENDS OF THE SAN JUANS,	)	
	)	
Intervenors.	)	
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On April 5, 1999, San Juan County filed a motion to dismiss petitioners’ “State Environmental Protection Act (SEPA) claims for lack of standing.” Petitioners filed a response on April 14, 1999. The County filed a reply brief on April 15, 1999. A motions hearing was held in Friday Harbor on April 21, 1999.

The County based its motion upon dual contentions. First, the County noted that petitioners had not claimed any participation standing, but alleged in their petition for review that their standing was based upon RCW 34.05.530 (APA standing). Thus, the County contended, petitioners were required to demonstrate that their SEPA challenges, a sub-set of their general APA standing, involve a zone of interest and an injury in fact under *Trepanier v. Everett*, 64 Wn. App. (1992) (*Trepanier*). The County secondarily alleged that petitioners had failed to exhaust their administrative remedies because they had not appealed the adequacy of the final environmental impact statement (FEIS) and/or the supplemental FEIS.

Petitioners set forth a variety of responses, including: (1) a claim that no exhaustion of remedies

requirement existed because their appeal related only to the Shoreline Master Program (SMP) amendments; (2) actual compliance with the *Trepanier* standing requirements; and (3) the futility of appealing the FEIS and supplemental FEIS to the County Hearing Examiner.

Petitioners claimed that they were only challenging the FEIS and supplemental FEIS as those documents related to the State Department of Ecology (DOE) decision to approve the proposed county SMP amendments. Thus, petitioners reasoned, granting the County's motion would be a meaningless act because no similar motion had been brought by respondent DOE. We agree with this part of petitioners' argument and do not address the remainder of the claims of either party.

In *San Juan County and Yeager v. DOE*, #97-2-0002, we addressed, for the first time, a challenge to SMP amendments. We noted that under the 1995 amendments to RCW 36.70A.280 the Legislature had transferred jurisdiction to Growth Management Hearings Boards (GMHBs) to decide issues concerning amendments to local SMPs for GMA cities and counties. We specifically held in that case that it was the decision of DOE that we were reviewing. Under the applicable statutes the petitioner must persuade a GMHB by clear and convincing evidence that the DOE decision was inconsistent with the policy of RCW 90.58.020 and the applicable guidelines set forth in WAC 173-16 in order to reverse the DOE approval or disapproval of the proposed SMP amendments. Because of that ruling, petitioners here are correct in their assertion that granting the County's motion would be a meaningless act where the SEPA challenges are limited specifically to DOE's approval of the SMP amendments. We specifically limit petitioners' challenges to SEPA compliance, as they stated, to the DOE approval of the SMP amendment.

We deny the County's motion to dismiss.

So ORDERED this 3<sup>rd</sup> day of May, 1999.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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William H. Nielsen

Board Member

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Nan Henriksen  
Board Member