BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
WESTERN WASHINGTON REGION
STATE OF WASHINGTON

FRIENDS OF THE SAN JUANS, Petitioner, v. SAN JUAN COUNTY, Respondent, and BRET and KATHRYN THURMAN, Intervenors.	**CASE No. 16-2-0001** **ORDER FINDING COMPLIANCE AND CLOSING CASE**

I. INTRODUCTION

On June 30, 2016, the Board issued its Final Decision and Order. The Board ruled that Ordinance No. 20-2015, which de-designated Orcas Island acreage owned by the Thurmans from designated forest lands to a rural category, failed to comply with the requirements of RCW 36.70A.170 and RCW 36.70A.130(1)(d). The matter was remanded to San Juan County for compliance.

On compliance the San Juan County Council passed Ordinance 11-2016[1] and subsequently filed a Statement of Actions Taken to Comply.[2] The County also filed the index to the compliance record. Ordinance 11-2016 repealed Ordinance No. 20-2015, thus returning the Thurman property to its previous RCW 36.70A.170 designation as forest resource land.

[1] Adopted November 8, 2016.
[2] Filed November 14, 2016.

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Pursuant to RCW 36.70A.330(1) and (2), the Board conducted a telephonic compliance hearing on February 10, 2017. Board members Nina Carter and Raymond Paolella attended the hearing. William Roehl convened the hearing as the Presiding Officer. Friends of the San Juans appeared through its attorney, Kyle Loring. San Juan County appeared through its attorney, Amy Vira. Stephanie Johnson O'Day appeared on behalf of Intervenors Bret and Kathryn Thurman.

II. STANDARD OF REVIEW

After the Board has entered a finding of noncompliance, the local jurisdiction is given a period of time to adopt legislation to achieve compliance.[3] After the period for compliance has expired, the Board is required to hold a hearing to determine whether the local jurisdiction has achieved compliance.[4] For purposes of Board review of the comprehensive plans and development regulations adopted by local governments in response to a non-compliance finding, the presumption of validity applies and the burden is on the challenger to establish that the new adoption is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of the GMA.[5]

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made."[6] Within the framework of state goals and requirements, the Board must grant deference to local governments in how they plan for growth.[7] Thus, during compliance proceedings the burden remains on the Petitioner to overcome the presumption of validity and demonstrate that **any action** taken by the County is clearly erroneous in light of the goals and requirements of chapter 36.70A RCW (the Growth Management Act).[8]

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[3] RCW 36.70A.300(3)(b).
[4] RCW 36.70A.330(1) and (2).
[5] RCW 36.70A.320(1), (2), and (3).
[6] *Department of Ecology v. PUD1*, 121 Wn.2d 179, (1993).
[7] RCW 36.70A.3201.
[8] RCW 36.70A.320(2).

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III. DISCUSSION

The Board found the de-designation of the Thurman real property failed to comply with the analysis and methodology required by the GMA for the de-designation of natural resource lands, as interpreted by the appellate courts and the Board, including the need to conduct a county-wide or regional analysis pursuant to WAC 365-190-040 and WAC 365-190-060.

While the Intervenors argued the County had failed to achieve compliance, their argument is without merit. The County repealed the challenged ordinance which de-designated the Thurman's designated forest land. In this instance, a lack of compliance cannot be based upon a subsequently repealed ordinance. Repeal rendered the challenges presented in the Friends of the San Juans Petition for Review moot. The Board has no ability to provide relief. There is no currently effective County legislation subject to the challenges presented and consequently the Board lacks the authority to grant any relief.[9]

The Board is a tribunal of limited jurisdiction. It is authorized to hear challenges to the adoption and amendment of comprehensive plans and development regulations.[10] The Board is limited in the level of relief it is authorized to provide: findings of non-compliance and determinations of invalidity.[11]

"A case is moot if a court can no longer provide effective relief."[12] In *Harbor Lands*, the Court of Appeals determined the case was moot because the City of Blaine had rescinded the challenged land use decision prior to entry of the Superior Court's judgment.[13] Repeal of an ordinance renders an appeal to the Board moot "because there is no currently effective legislative action to challenge."[14]

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[9] *Kent Cares, et al. v. City of Kent*, CPSGMHB No. 02-3-0019 (Order on Motions, March 14, 2003) at 8; *McVittie, et al. v. Snohomish County*, CPSGMHB No.99-3-0016c (FDO, February 9, 2000) at 14; *Gawenka,et al. v. Bremerton*, CPSGMHB No. 00-3-0011 (Order on Dispositive Motion, October 10, 2000) at 3.
[10] RCW 36.70A.280(1)(a).
[11] RCW 36.70A.300; RCW 36.70A.302.
[12] *Orwick v. Seattle*, 103 Wn.2d 249 (1984).
[13] *Harbor Lands, LP v. City of Blaine*, 146 Wn. App. 589, 595 (2008).
[14] *Gawenka*, at 3.

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The Board explained in *ARD v. Mason County* that when a county rescinds the challenged ordinances, "jurisdiction to continue the case is lost. Where there are no DRs [development regulations] for which a finding of compliance or noncompliance could be made, a board must dismiss the case."[15] Similarly, in *Hazen v. Yakima County* the Board pointed out when a challenged provision has been amended or repealed, "the amendment/repeal provides the relief requested by petitioner," and the matter is moot.[16] Here, San Juan County repealed the challenged ordinance, the case is moot, and must be dismissed.

IV. ORDER

Based upon review of the June 30, 2016, Final Decision and Order, San Juan County's Statement of Actions Taken to Achieve Compliance and Ordinance No. 11-2016, the Growth Management Act, prior Board orders and case law, having considered the arguments of the parties offered in briefing and at the compliance hearing, and having deliberated on the matter, the Board Orders:

- The action of San Juan County in repealing Ordinance No. 20-2015 achieved compliance with the Final Decision and Order;
- The matter of Friends of the San Juans v. San Juan County is dismissed;
- Case No. 16-2-0001 is **closed**.

SO ORDERED this 21st day of February, 2017.

_____
William Roehl, Board Member

_____
Nina Carter, Board Member

[15] WWGMHB No. 01-2-0017 (Order on Motions, October 12, 2001).
[16] WWGMHB No. 08-1-0008c, (FDO, April 5, 2010), at 13-14.

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Raymond L. Paolella, Board Member

Note: This is a final decision and order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300.[17]

[17] Should you choose to do so, a motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840. A party aggrieved by a final decision of the Board may appeal the decision to Superior Court within thirty days as provided in RCW 34.05.514 or 36.01.050. The petition for review of a final decision of the board shall be served on the board but it is not necessary to name the board as a party. See RCW 36.70A.300(5) and WAC 242-03-970. It is incumbent upon the parties to review all applicable statutes and rules. The staff of the Growth Management Hearings Board is not authorized to provide legal advice.

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