

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

PILCHUCK-NEWBERG)
ORGANIZATION and ANDREA) **Case No. 94-3-0018**
MOORE, ISABEL LOVELUCK,))
STEVEN THOMAS and))
BARBARA MILES,) **FINDING OF**
) **NONCOMPLIANCE**
Petitioners,))
) **(No Recommendation of**
v.) **Sanctions)**)
))
SNOHOMISH COUNTY,))
))
Respondent,))
))
and))
))
WEYERHAEUSER REAL ESTATE))
COMPANY,))
))
Intervenor.))
))

I.BACKGROUND

RCW 36.70A.170, entitled “Natural resource lands and critical areas--Designations,” provides in part:

(1) On or before September 1, 1991, each county, and each city, shall designate where appropriate:

...

(b) Forest lands that are not already characterized by urban growth and that have long-term significance for the commercial production of timber....

In addition, RCW 36.70A.060, captioned “Natural resource lands and critical areas--Development regulations,” provides in part:

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170....

On December 14, 1992, Snohomish County (the **County**) enacted Motion No. 92-283, “Adopting the Interim Forest Land Conservation Plan and Designating Interim Forest Lands.”

On December 14, 1992, the County also enacted Amended Ordinance No. 92-101, “Adopting Interim Regulations to Conserve Forest Lands.”

In early March, 1993, the Central Puget Sound Growth Planning Hearings Board (the **Board**) received three petitions for review challenging the County’s forest land designations and regulations. The three cases were consolidated into *Twin Falls v. Snohomish County*, CPSGPHB Case No. 93-3-0003.

On September 7, 1993, the Board issued a Final Decision and Order in *Twin Falls v. Snohomish County* that found Snohomish County Motion No. 92-283 and Ordinance 92-101 in compliance with the Growth Management Act (**GMA** or the **Act**). Subsequently, on October 6, 1993, the Board entered an "Order Granting WRECO's Petition for Reconsideration and Modifying Final Decision and Order; and Order Denying SNOCO PRA's Petition for Reconsideration." However, this order did not change the Board's ultimate conclusion that the challenged actions complied with the Act.

On April 2, 1994, Governor Lowry signed ESSB 6228 (Laws of 1994, Chapter 307) which amended the GMA's definition of "forest lands" at RCW 36.70A.030(8).

On June 9, 1994, ESSB 6228 became effective.

On August 31, 1994, the Snohomish County Council passed Amended Motion No. 94-210. Amended Motion No. 94-210 amended Motion No. 92-283, by revising certain interim forest land designations that had been reviewed pursuant to Planning Policies 10 and 11 of Amended Ordinance No. 92-101. The County did not apply the 1994 definition of “forest land” when it adopted Amended Motion No. 94-210.

On October 31, 1994, the Board received a Petition for Review in this case from the Pilchuck-Newberg Organization, Andrea Moore, Isabel Loveluck, Steven Thomas and Barbara Miles (hereafter collectively referred to as **PNO**). PNO challenged the adoption of that portion of Amended Motion No. 94-210 pertaining to the "Bosworth Block" property. The redesignation of the Bosworth Block by Amended Motion No. 94-210 permitted more intensive development on that property.

On April 28, 1995, the Board entered a Final Decision and Order in this case which provided as follows (emphasis in original):

IV. ORDER

Having reviewed and considered the above-referenced exhibits and documents, the parties' briefs and the oral arguments of the parties, and having deliberated on the matter, the Board finds that Snohomish County Amended Motion 94-210 is **not in compliance** with the requirements of the Growth Management Act.

1. Amended Motion 94-210 is **remanded** with instructions for the County to apply the 1994 definition of "forest land" before redesignating forest lands or to repeal Motion 94-210 in its entirety in order for the GMA's original definition of "forest land" to remain in effect until the County adopts its comprehensive plan and implementing development regulations.

2. The Pilchuck-Newberg Organization is **dismissed with prejudice** from this case for lack of standing. The individual petitioners remain parties to the case.

3. Legal Issues Nos. 3 and 4 are **dismissed with prejudice**.

4. Pursuant to RCW 36.70A.300(1)(b), the County is given until **5:00 p.m. on Friday, June 2, 1995**, to bring Amended Motion 94-210 into compliance with the Board's Final Decision and Order and the requirements of the Act. The County shall file by **5:00 p.m. on Friday, June 9, 1995**, one original and two copies with the Board and serve a copy on PNO of a statement indicating what attempts it made to comply with this Final Decision and Order.

The Board will promptly schedule a compliance hearing sometime thereafter.

Subsequently, the Board's Final Decision and Order was not appealed to superior court.

On May 31, 1995, the Snohomish County Council passed Motion No. 95-188. Section 1 of Motion No. 95-188 states:

The Snohomish County Council enters the following findings:

1. The County lacks sufficient time and resources to reevaluate the sites affected by Motion 94-210 under the 1994 forest land definition, conduct public hearings and revise Motion 94-210 by the deadline of June 2, 1995 imposed by the Board.

2. The council is currently considering the adoption of a GMA comprehensive plan which will include final forest resource land designations replacing the county's Interim Forest Land Conservation Plan. The final forest land designations were prepared utilizing the 1994 forest land definition.

3. The county's GMA comprehensive plan has been tentatively scheduled for adoption by the council on June 28, 1995.

4. The adoption of the county's GMA comprehensive plan will repeal the interim forest land designations established by Motion 94-210 and Motion 92-283.

Subsection 1 of Section 2 of Motion 95-188 indicates that the Snohomish County Council enters the following decision:

1. The county shall exercise the option of repealing Motion 94-210 as provided by the decision of the Central Puget Sound Growth Management Hearings Board. This option shall be exercised concurrently with the adoption of the county's GMA comprehensive plan. The ordinance adopting that plan shall expressly repeal Motion 94-210.

On June 8, 1995, the Board received "Snohomish County's Statement of Compliance." Exhibit

A, a Declaration of Sheila McCallister, and a copy of Snohomish County Motion No. 95-188 were attached to the statement.

A compliance hearing was held at 10:00 a.m. on Friday, June 16, 1995 with several of the participants taking part telephonically. M. Peter Philley, presiding, and Chris Smith Towne appeared for the Board. William Goldstein represented PNO; Gordon W. Sivley represented the County; and Thomas J. Ehrlichman represented the Weyerhaeuser Real Estate Company (**WRECO**). Court reporting services were provided by Robert H. Lewis of Tacoma. No witnesses testified.

On June 28, 1995, the Snohomish County Council adopted Amended Ordinance No. 94-125, which adopted the County's comprehensive plan. Pursuant to Section 5 of that ordinance, Amended Motion No. 94-210 was repealed as was the County's earlier forest land enactment, Motion 92-283.

On July 10, 1995, the Board received "Snohomish County's Supplemental Statement of Compliance." A copy of Amended Ordinance No. 94-125 was attached to the supplemental statement.

II. DISCUSSION

Prior to adopting Amended Motion No. 94-210, the County's designation of its forest lands had been found by this Board to fully comply with the Act's requirements. *See Twin Falls v. Snohomish County*. Under the GMA, the County was not required to "revisit" these interim forest land designations until it adopted its comprehensive plan and development regulations to implement that plan. However, the County elected to reconsider certain designations pursuant to a procedure established in Amended Ordinance No. 92-101. In considering the appeal filed in this case, the Board determined that the County erred by redesignating certain parcels of forest land without applying the new definition of "forest land" that had been established by the legislature in 1994.

The Board gave the County until June 2, 1995, to either repeal Amended Motion No. 94-210, or to amend it by applying the 1994 definition of "forest land." The County did neither and instead, passed Motion No. 95-188 that indicated that the County was scheduled to repeal Motion 94-210 on June 28, 1995. Although the County now claims that it did not have "... sufficient time to reevaluate the sites affected by Motion 94-210 under the 1994 forest land definition..." it could have done one of two things besides passing Motion No. 95-188. The County could have requested reconsideration of the Board's Final Decision and Order and specifically asked for more time in which to achieve compliance. Alternatively, the County could have repealed Amended Motion No. 94-210 when it held its public hearing on May 31, 1995 so that the prior version of its forest lands designations would have gone back into effect -- a version that this Board had already determined in *Twin Falls* complied with the Act.

Although the Board has not ruled on the merits of the County's decision to redesignate the Bosworth Block, the Board has determined that any such redesignation must apply the 1994

definition of forest land. By redesignating the Bosworth Block and the other properties affected by Amended Motion No 94-210 without applying the new definition, and then failing to comply with the Board's order to either repeal or amend Amended Motion 94-210 by June 2, 1995, the County has permitted more intensive development on the affected properties to continue despite a Board order to the contrary.

III.FINDING

The Board, having reviewed the above-referenced documents and having considered the arguments of the parties, concludes that the County **has not complied** with the Board's Final Decision and Order. Therefore, the Board issues a **Finding of Noncompliance** to the County in this case.

RCW 36.70A.330(3) requires that the Board transmit its finding of noncompliance to the Governor, and authorizes the Board to recommend to the Governor that sanctions be imposed. The Board recommends that the Governor not impose sanction upon the County. Although the County failed to comply with the Board's Final Decision and Order in this case because it did not amend or repeal Amended Motion No. 94-210 by June 2, 1995, it did adopt its comprehensive plan on June 28, 1995. As part of that action, the County repealed Amended Motion No. 94-210. Therefore, the County did ultimately come into procedural compliance with the Board's Final Decision and Order within 26 days of the deadline specified by the Board.^[1]

So ordered this 24th day of July, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley, Presiding Officer

Chris Smith Towne

[\[1\]](#)

The Board's determination that the County ultimately came into procedural compliance with the Board's Final Decision and Order in this case by repealing Amended Motion No. 94-210 is limited to that specific question. The Board has not determined whether the County's comprehensive plan or its designation of the Bosworth Block substantively complies with the requirements of the Act or whether the County has appropriately applied the 1994 definition of forest lands.