

CENTRAL PUGET SOUND

GROWTH MANAGEMENT HEARINGS BOARD

STATE OF WASHINGTON

[NOTE: THIS IS THE PENULTIMATE VERSION; SEVERAL MINOR CHANGES WERE MADE IN THE FINAL VERSION WHICH WAS LOST DUE TO A VIRUS; CAREFULLY REVIEW THIS VERSION WITH THE HARD COPY VERSION TO VERIFY ACCURACY]

PILCHUCK-NEWBERG)

ORGANIZATION and ANDREA)Case No. **94-3-0018**

MOORE, ISABEL LOVELUCK,))

STEVEN THOMAS and)

BARBARA MILES,)ORDER DENYING

)DISPOSITIVE MOTIONS

Petitioners,))

)

v.)

)

SNOHOMISH COUNTY,))

)

Respondent,))

)

and)

)

WEYERHAEUSER REAL ESTATE)

COMPANY,))

)

Intervenor.)

)

On October 31, 1994, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review from the Pilchuck-Newberg Organization, Andrea Moore, Isabel Loveluck, Steven Thomas and Barbara Miles (hereafter collectively referred to as **PNO**).PNO challenges the adoption of that portion of Snohomish County (the **County**) Amended Motion 94-210 pertaining to the "Bosworth Block" property.A copy of Motion 94-210 was attached to the Petition for Review as Exhibit A.It is also identified as Exhibit 112 and Exhibit 125(n) in the

Snohomish County's Preliminary Exhibit List. For purposes of this order, Amended Motion 94-210 is Exhibit 125.

Following a November 30, 1994 prehearing conference, the Board entered an Order Granting Intervention to [Weyerhaeuser Real Estate Company] WRECO and Prehearing Order on December 1, 1994. The order established a schedule for filing dispositive and other motions, and listed six legal issues to be decided by the Board.

On December 23, 1994, "Snohomish County's Dispositive Motion" (the **County's Motion**) was filed with the Board. Two exhibits were attached to the County's Motion: Exhibit A, Snohomish County Ordinance 92-283; and Exhibit B, Snohomish County Amended Ordinance No. 92-101. "Weyerhaeuser Real Estate Company's Dispositive Motion" (**WRECO's Motion**) was also filed on the same day. A copy of *Federal Way v. King County*, 62 Wn. App. 530, 815 P.2d 790 (1991) was attached to WRECO's Motion. Copies of the numerous exhibits cited in WRECO's Motion were not filed until January 18, 1995. Both motions address Legal Issues Nos. 1 and 2 as set forth in the Board's Prehearing Order, and request that the Board dismiss the case with prejudice. Alternatively, WRECO requests that the Board determine that the County's re-designation of WRECO's property to interim forest reserve (**IFR**) from interim commercial forest (**ICF**), does not comply with the Growth Management Act (**GMA** or the **Act**) because the property does not meet the Act's definition of "forest land."

On January 12, 1995 PNO filed "Petitioners' Response to Snohomish County's and to WRECO's Motions to Dismiss" (**PNO's Response**). "Snohomish County's Response to WRECO's Dispositive Motion" (the **County's Response**) was filed on the same day. The County's Response contained one attachment, Exhibit 1, a March 9, 1994 memorandum from Steve Wells to Planning Directors.

On January 18, 1995, "Snohomish County's Reply Concerning Its Dispositive Motion" (**County's Reply**) was filed with the Board. WRECO also filed "Weyerhaeuser Real Estate Company's Reply Memorandum in Support of Dispositive Motions" (**WRECO's Reply**) on January 18, 1995.

The Board held a hearing on the two dispositive motions at 10:00 a.m. on Thursday, January 19, 1995 at 1225 One Union Square, Seattle. M. Peter Philley, presiding, and Chris Smith Towne were present from the Board. William Goldstein represented PNO; Gordon W. Sivley represented the County; and Mark C. McPherson and Thomas J. Ehrlichman represented WRECO. Court reporting services were provided by Marilyn Denker, CSR, of Eastside Reporters, Bellevue. No witnesses testified.

The Board's Prehearing Order (Part IV, at 3) required any party filing a dispositive motion to attach copies of exhibits referenced in its legal memorandum in support of a motion at the time the motion was filed. PNO objected to the admission of those exhibits cited in WRECO's Motion because they were not distributed to the parties or the Board until WRECO's Reply Brief was filed. Without ruling on the objection at that time, the Board's presiding officer nonetheless gave PNO and the County until noon on January 26, 1995 to file any submittals in response. Because all the exhibits referenced in WRECO's Motion are from the record below, because PNO has

been given additional time to submit a response and because the presiding officer concludes that PNO has not been prejudiced by WRECO's action, PNO's objection is **overruled**.

I.FINDINGS OF FACT

No material facts were disputed by the parties. The Board enters the following undisputed facts:

1. For purposes of this appeal, the Bosworth Block of property located in Snohomish County, Washington, is defined as that property, including both lands owned and not owned by WRECO:

... as shown on Figure J of the "Staff Evaluation and Recommendation of Properties Evaluated Pursuant to Planning Policy 10 in Ordinance 92-101 Adopting Interim Regulations to Conserve Forest Lands, January 5, 1994." PNO's "Clarification of Petition for Review," at 1; *see also* Exhibit 39, at 49.

2. The Bosworth Block comprises approximately 2,885 acres of land of which WRECO owned "approximately 1,760 acres" as of November, 1993.^[1] Exhibit 39, at 45; *see also* Exhibit 4, at 2.^[1]

3. In 1988, the last commercial timber production activities by the Weyerhaeuser [Timber] Company on what would become WRECO's property took place. Exhibit 125, Amended Motion 94-210, Findings and Conclusions 11(e), at 6. Precommercial thinning and scarification ended in 1985. Exhibit 106, at Exhibit I, at 6.

4. As prior Findings of Fact by the Board have indicated regarding WRECO's property:

In 1990, the Weyerhaeuser Company conveyed property in the Bosworth Tract, in the vicinity of Granite Falls, to its subsidiary, Weyerhaeuser Real Estate Company (WRECO). The property had been designated as Rural-5 in 1984, as a part of the County's Granite Falls Comprehensive Plan. That designation permits low-density residential development of one dwelling unit per five acres. The County Zoning Code, SCC 18.12.040, designates the land as R-5, allowing single-family, mobile home and duplex dwellings.

In 1990, WRECO removed the property from the tax designation for timber lands, paying a compensating tax of "approximately \$460,000" to the County. In March, 1991, WRECO segregated the entire property into lots of approximately 20 acres; since that date, it has sold 27 lots and carried out minor road improvements. *Twin Falls et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), Order Granting WRECO's Petition for Reconsideration and Modifying Final Order; and Order Denying SNOCO PRA's Petition for Reconsideration, Findings of Fact 35(a) and (b), at 2 (citations to specific exhibits omitted).

5. Prior Board Findings of Fact also have reviewed the history of the forest land designation placed on the WRECO property:

In a memorandum from the [Snohomish County Planning] Department to the County Council, dated December 11, 1992, Figure A, attached to that transmittal, recommends that WRECO's property be designated as IFR....

The notice of the County Council's December 14, 1992 hearing to consider the proposed Motion [92-283] and Ordinances [92-101 and -102] included a map that showed that the

proposed designation of the WRECO property as IFR pursuant to proposed Alternative 3. On December 14, 1992, after public testimony had been received and that portion of the hearing closed, Councilmember Hurley proposed amending the Planning Department's recommended designation map proposing to designate the WRECO property ICF, even though it had been recommended as IFR.

...

During the County Council's consideration of the Motion and Ordinances, this amendment was discussed and passed. Consequently, when the Council adopted the Motion and Ordinances, the WRECO property was designated ICF instead of IFR, as previously recommended. *Twin Falls et al. v. Snohomish County*, CPSGPHB Case No. 93-3-0003 (1993), Order Granting WRECO's Petition for Reconsideration and Modifying Final Order; and Order Denying SNOCO PRA's Petition for Reconsideration, Findings of Facts 36(a) and (b) and 37(a) and (b), at 3 (citations to exhibits omitted).

6. On December 14, 1992, the Snohomish County Council passed Motion No. 92-283. Exhibit A to County's Motion, at 3. Section 3 of Motion 92-283 adopted the Interim Forest Land Conservation Plan (**the Interim Forest Plan**), which was attached as Exhibit A to the motion. Section 3 of Motion 92-283 also adopted forest land classifications and designations (**Interim Forest Designations**) as shown on maps attached to the motion as Exhibits B and C.

7. Also on December 14, 1992, the Snohomish County Council passed Amended Ordinance 92-101, entitled "Adopting Interim Regulations to Conserve Forest Lands..." (**Interim Forest Regulations**). Exhibit B to County's Motion.

8. Section 2(10) of Amended Ordinance 92-101, captioned "Planning Policy 10," established a mechanism for landowners, within six months of adoption of the Interim Forest Plan, to request that their property be excluded from an interim forest land designation. Exhibit B to County's Motion, at 5.

9. On March 9, 1993, the Board received a Petition for Review from WRECO challenging Motion 92-283, Amended Ordinance 92-101 and Ordinance 92-102 regarding the County's forest land designation of WRECO's property. The matter was consolidated with Case No. 93-3-0003, *Twin Falls et al. v. Snohomish County*.

10. In a June 11, 1993 letter, WRECO requested removal of its property from interim forest land designation. See Exhibit 39, at 45. Requests for exclusion were accepted by the County until June 15, 1993, six months after the Interim Forest Plan was adopted. Exhibit 39, at 2.

11. On July 28, 1993, WRECO filed a Request for Exclusion with the County's Planning Director from the County's interim forest land designation, pursuant to Planning Policy 10 of Amended Ordinance 92-101. See Exhibit 106, at Exhibit I, at 1.

12. On September 7, 1993, the Board issued a Final Decision and Order in *Twin Falls et al. v. Snohomish County* that found that Snohomish County Motion 92-283 and Ordinances 92-101 and 92-102 in compliance with the GMA and the State Environmental Policy 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.

13. County staff reviewed 21 sites owned by six landowners, including WRECO, for removal from, or change in, interim forest designation pursuant to Planning Policy 10 of Ordinance 92-101. Exhibit 39, at 2; *see also* Exhibit 125, findings and conclusions no. 1, at 2.

14. On November 11, 1993, WRECO's Ric Leir sent a letter to Joan Earl, Acting Director of the County's Planning Department, providing additional information for WRECO's July 28, 1993, Request for Exclusion. Exhibit 106, at Exhibit I, at 1.

15. On November 29, 1993, staff from the Snohomish County Planning Department conducted a field visit to WRECO's property within the Bosworth Block, Site 10. Exhibit 39, at 45.

16. On December 2, 1993, WRECO requested consideration of a change in designation from ICF to IFR in addition to its earlier request for removal. See Exhibit 39, at 45.

17. On January 5, 1994, County Planning Department staff issued a "Staff Evaluation and Recommendation of Properties Evaluated Pursuant to Planning Policy 10 in Ordinance 92-101 'Adopting Interim Regulations to Conserve Forest Lands.'" The staff evaluation "considers only those lands owned by WRECO on June 11, 1993, when its request for removal from designation was submitted to the County." Staff issued specific "Findings" regarding WRECO's property (Exhibit 39, at 45), and concluded that all but 20 acres of WRECO's property should be designated IFR instead of ICF. Staff concluded that the remaining 20 acres should be totally removed from forest land designation. Exhibit 39, at 48.

18. On January 25, February 22 and March 22, 1994, the Snohomish County Planning Commission (**Planning Commission**) studied the Planning Department's January 5, 1994 staff report and held public hearings on the staff's findings and conclusions. Exhibit 125, Finding of Fact 4, at 2.

19. On February 22 and March 22, 1994, the Planning Commission submitted its recommendations regarding the requests for re-designation. Exhibit 125, at 2.

20. 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).

21. On June 9, 1994, ESSB 6228 became effective.

22. On July 25, August 3 and August 31, 1994, the County Council held public hearings to consider the petitions for inclusion in and exclusion from ICF and IFR designations, and to consider the Planning Commission recommendations, and to take public testimony. Exhibit 125, Finding of Fact No. 5, at 3.

23. On August 31, 1994, the Snohomish County Council passed Amended Motion 94-210, amending Motion 92-283, relating to interim forest land designations. Exhibit 125. Finding of Fact No. 1 adopts and incorporates by reference the findings contained in the January 5, 1994 staff report. Exhibit 125, at 2.

24. Amended Motion 94-210 changed from ICF to IFR, the designation of all interim commercial forest land within the Lake Bosworth Island, including all of WRECO's property within the Bosworth Block, i.e., Site 10. Exhibit 125, Section 2(1)(h), at 8.

II.LEGAL ISSUES BEFORE THE BOARD

Indispensable Party

1.Should PNO's petition for review be dismissed for failure of the petitioners to join necessary and indispensable parties prior to the expiration of the applicable statute of limitations?

Quasi-judicial Actions

2.Does the Board have jurisdiction to consider an amendment to the County's designation of forest resource lands pursuant to RCW 36.70A.170 which pertains only to the Bosworth Block?

III.POSITIONS OF PARTIES

A.County's Motion

Quasi-judicial Actions

The County contends that its adoption of Amended Motion 94-210 was a quasi-judicial act and that the Board has jurisdiction only over legislative actions taken by local governments to comply with the GMA. Therefore, the County asks the Board to dismiss the entire case. County's Motion, at 5-11.

Indispensable Party

The County also incorporates by reference WRECO's arguments, discussed below, regarding indispensable parties.

B.WRECO's Motion

Indispensable Party

WRECO contends that the case should be dismissed because PNO failed to join indispensable parties: WRECO and other property owners in the Bosworth Block. WRECO contends that since it was a matter of public record that it owned property in the Bosworth Block, it constituted inexcusable neglect for PNO not to name WRECO. WRECO's Motion, at 3-5. WRECO also alleges that with the Legislature's 1994 amendments to the GMA's definition of "forest lands," it was crucial for the Board to know the landowner's intent for the property. Since PNO had failed to join the indispensable parties, WRECO contends that the Board cannot discharge its duty to

scrutinize the intent of the landowners in the Bosworth Block.WRECO's Motion, at 5.

Quasi-judicial Actions

During oral argument, WRECO repeated that it joins in the County's motion regarding Legal Issue No. 2.*See also* WRECO's Motion, at 1.

Definition of "Forest Lands"

Alternatively, WRECO contends that the 1994 amendment of the "forest land" definition permits only land "primarily devoted" to long term commercial timber production from being designated forest land.Because WRECO maintains that its property has not been devoted to commercial timber production since 1988 and is therefore not currently devoted to such a use, WRECO argues that its property cannot be designated forest land.Accordingly, WRECO alleges that the County's designation of WRECO's property as IFR does not comply with the GMA.WRECO's Motion, at 5-9.

C.PNO's Response

Quasi-judicial Actions

PNO contends that the County's action in adopting Amended Motion 94-210 was legislative, not quasi-judicial, and therefore the Board does have jurisdiction in this case.PNO's Response, at 5-8. PNO points out that Amended Motion 94-210 affected the forest land designation status of many parcels of land within the County owned by many different landowners and that Amended Motion 94-210 was nothing more than the culmination of a series of legislative actions taken by the County.In particular, PNO argues that the County merely re-applied the same criteria for designating forest lands as utilized when the County took its initial legislative action in 1992. PNO also pointed out that in the controlling case on the question of legislative versus judicial action, *Raynes v. Leavenworth*, the Washington Supreme Court determined that a zoning amendment that likely would affect only two parcels of property (but no more than five) was a legislative action.PNO's Response, at 5.During oral argument, PNO asked the Board to establish a "bright line" test for legislative actions: if the challenged action involves more than five parcels of land, the action should be deemed legislative rather than quasi-judicial.

PNO claims that if the County's argument prevails, counties could enact legislation that complies with the GMA's forest land requirements, but then alter the designation in noncompliance with the Act under the guise of a quasi-judicial action.Under the County's theory, this later alteration would then not be reviewable by a growth management hearings board for lack of jurisdiction. PNO's Response, at 7.Instead, PNO maintains that RCW 36.70A.280(1)(a) controls, and because Amended Motion 94-210 is an amendment to the Interim Forest Plan and Interim Forest Designations, the Board has jurisdiction.PNO's Response, at 8.

Indispensable Party

PNO alleges that neither the GMA, the state administrative code, or decisions of a growth management hearings board, nor any Washington appellate decisions indicate that indispensable parties must be joined in an appeal to a growth management hearings board. Although conceding that the indispensable part rule exists in a non-GMA land use context involving quasi-judicial decisions, PNO contends that applicable court rules do not necessarily apply to appeals to hearings boards. PNO's Response, at 1-2.

PNO also alleges that it would be impractical, unwieldy and unduly burdensome to require petitioners in appeals to the Board to join all the affected property owners. PNO's Response, at 3. As an alternative, PNO suggests that the Board could give all affected landowners notice of appeals so that those persons could obtain intervenor status. PNO also suggests that the Board could adopt its own "relation back rule" that allows indispensable parties to be added to a case after the sixty day statute of limitations for filing an appeal has run, if at least one indispensable party was named during the sixty day appeal period. PNO's Response, at 4.

Definition of Forest Lands

PNO states that WRECO's interpretation of the new forest land definition would make the landowner's unilateral decision regarding the future use of property the determinative factor as to whether property should be designated as forest land. PNO contends that making a landowner's intention the controlling factor, for instance the intent to convert forest land into more profitable higher density uses, would undermine the GMA by permitting the spread of massive low density sprawl across now rural and natural resource areas. PNO's Response, at 9.

Instead, PNO argues that the Act's definition specifically requires an evaluation of four factors unrelated to a landowner's intent. Nothing in the record indicates, PNO contends, that one of these factors, local economic conditions, has "seriously adversely affected the ability to manage the lands" of the Bosworth Block as commercial forest. PNO's Response, at 10-11. PNO also maintains that the Board's discussion as to the meaning of "primarily devoted to" in its *Twin Falls* case was only non-binding dicta. Furthermore, PNO contends that if the Board were to impose its prior interpretation to the new definition of "forest lands," the Board would severely undermine the Act's purposes. PNO's Response, at 12-14.

PNO concludes by stating that significant factual questions remain as to why WRECO's property, which is no longer used for commercial timber production by the Weyerhaeuser Company, can nonetheless no longer economically and practically be so managed. PNO's Response, at 16.

D. County's Response to WRECO

First, the County contends that WRECO cannot now challenge Amended Motion 94-210, after the applicable statute of limitations has run, when it could have done so during the appropriate period to file appeals. County's Response, at 2. Second, the County claims that the Board cannot

review this case because Amended Motion 94-210 is a quasi-judicial action involving specific parcels of property over which the Board lacks jurisdiction. County's Response, at 2. Finally, the County alleges that WRECO's interpretation of the amendment to the definition of forest lands is premature since the legislation specifically indicated in Section 1 of ESSB 6228 that, for County's that had already taken action, the new definition did not apply until the County adopted its comprehensive plan and implementing development regulations. County's Response, at 3-4.

E. County's Reply to PNO

The County contends that under its theory, i.e., that the Board lacks jurisdiction to review Amended Motion 94-210 because it was a quasi-judicial action, appeals could still be filed with the courts. County's Reply, at 2. Therefore, PNO is in a position no different than petitioners who challenge any quasi-judicial land use action of a local government in superior court. As for PNO's "one transaction" claim that Amended Motion 94-210 was merely a continuation of Amended Ordinance 92-101, the County contends that if the Board accepts this argument, the Board would nonetheless still have to dismiss the appeal because PNO failed to timely challenge the process established in Amended Ordinance 92-101, e.g., Planning Policy 10, within the applicable period for appealing that ordinance. County's Reply, at 3.

F. WRECO's Reply

WRECO contends that PNO is asking the Board to exercise its authority to conduct quasi-judicial review of the County's actions "as applied" to specific parcels of property, even though PNO failed to name even one of the very property owners whose rights are affected by the appeal. WRECO's Reply, at 2. WRECO maintains that if the Board decides to accept review over quasi-judicial actions of local governments, then the Board must also protect the rights of the landowners who are affected by the local jurisdiction's quasi-judicial actions. Furthermore, WRECO alleges that in such instances, as a matter of public policy, the burden of obtaining a title report to ascertain the identity of the affected property owners, and of naming the affected property owners in the action, should be upon the petitioner, rather than the affected property owners. WRECO's Reply, at 4.

WRECO responds to the County's argument that the statute of limitations expired without WRECO appealing the County's action, by contending that Legal Issue No. 5 was framed by the parties and the Board, and that the Board cannot determine that issue without deciding whether the Bosworth Block was properly designated as forest land.^[1] WRECO's Reply, at 5.

WRECO contends that the uncodified language of Section 1 of ESSB 6228 simply means that only counties that have interim forest land designations in compliance with the Act need not comply with the new definition until the adoption of comprehensive plans and implementing development regulations.

However, petitioners contend that the County's interim designations do not comply with the GMA. The Board must decide whether the County's interim designations comply with the GMA or not.... WRECO's Reply, at 5.

... The Board has been asked to scrutinize the interim forest land designations in Motion 94-

210 and in doing so must now determine compliance. Nothing in the language of the 1994 amendment to Section 030(8) states that the Board should not use the new definition when petitioners ask the Board to review interim regulations for compliance. WRECO's Reply, at 6.

IV. DISCUSSION

Legal Issue No. 2(Quasi-judicial Actions)

For convenience, the Board will address Legal Issue No. 2 before Legal Issue No. 1. In *Twin Falls*, the Board held:

This Board perceives its quasi-judicial role as being limited to determining whether the legislative actions taken by local legislative authorities actually comply with the requirements of the GMA. *Twin Falls*, at 55 (emphasis in original).

Thus, an "as applied" challenge of an ordinance must be done by the local jurisdiction that adopted the legislation in the first place (i.e., wearing its judicial "hat" instead of its legislative one). This Board's role is limited to reviewing the legislative decisions of cities and counties pursuant to the GMA, not their quasi-judicial determinations. *Twin Falls*, at 56 (footnote omitted).

As the Board's conclusion indicated:

... This Board's primary function is to review the legislative enactments of the legislative bodies of cities and counties for compliance with the GMA. Although this Board may on occasion admit supplemental evidence that may show how such a legislative enactment applies to particular parcels of property, such evidence will be used solely to assist the Board in determining whether the local jurisdiction's legislative action complies with the Act. This Board will not utilize "as applied" supplemental evidence to usurp the quasi-judicial authority of a local government. "As applied" challenges must first be made with the local jurisdiction, triggered by a permit application submittal; appeals of quasi-judicial decisions made by cities and counties then must be filed with the superior court and not with this Board. *Twin Falls*, at 58 (emphasis in original).

The Board affirms its *Twin Falls* decision that it will not review quasi-judicial actions of local jurisdictions. In essence, the Board interprets RCW 36.70A.280(1)(a) to say that the Board will only hear and determine petitions alleging that a county or city's legislative action does not comply with the requirements of the Act, or chapter 43.21C RCW as it relates to GMA actions. This conclusion is bolstered by an argument raised by the County. The County pointed out that, at first glance, RCW 36.70A.280(1)(a) seemingly applies to challenges of both legislative and quasi-judicial actions because it refers to "development regulations" and amendments to them. In turn, "development regulations" are defined at RCW 36.70A.030(8) as:

... any controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, official controls, planned unit development

ordinances, subdivision ordinances, and binding site plan ordinances.

The County points out that this definition does not include rezones but instead addresses adoption of the zoning ordinance itself. In *Raynes*, the court acknowledged the distinction between rezoning a specific site and amending the text of a zoning ordinance. Actions are rezones when there are "specific parties requesting a classification change for a specific tract." *Raynes*, at 248. Citing the *Raynes* decision, which indicates that zoning ordinances are generally legislatively adopted while rezones are generally quasi-judicial, the County contends that the same is true for subdivisions. Although adoption of a subdivision ordinance is a legislative action, the approval of individual plat or subdivision applications is quasi-judicial. The County contends that a close analogy exists between site specific amendments made by Amended Motion 94-210 and quasi-judicial rezones. County's Brief, at 11. The Board finds the County's argument persuasive. Having again concluded that it will not review quasi-judicial actions taken by local governments, the question remains whether the County's action in adopting Amended Motion 94-210 constitutes a legislative or quasi-judicial action. The Board concludes that it was a legislative action. The Board concedes that the distinction between legislative and quasi-judicial actions is readily blurred. Furthermore, the Board has turned to other statutes and common law interpretations for assistance and concluded that these other sources do not readily clarify things. The Board is reminded of the Washington Supreme Courts admonition in *Raynes*:

No clear line can be drawn between judicial, legislative and administrative functions of local decision-making bodies. Judicial actions have no single essential attribute. Instead, a number of factors are important to the determination. If a proceeding of a decision-making body has a sufficient number of relevant characteristics, it may be considered quasi judicial in nature. Thus, no test should be rigidly applied. Rather, a flexible approach should be employed which gives ample consideration to the functions being performed by the decision-making body. *Raynes*, at 243 (emphasis added).

First, the Board examined Chapter 42.36 RCW, the statutory appearance of fairness doctrine. Under it, quasi-judicial actions of local decision-making bodies such as a county council are defined at RCW 42.36.010 as:

... those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance.

It is not particularly helpful that the statute requires a hearing since the County Council holds a hearing regardless of whether its action is legislative or quasi-judicial. However, the reference to "contested case" does shed more light on the matter. Although Chapter 42.36.010 does not define "contested case," [VERIFY] it implies a quasi-judicial hearing where witnesses are placed under oath or affirmations, and parties have the ability to call, examiner and cross examine witnesses

rather than a public policy debate associated with legislative hearings.

Importantly, RCW 42.36.010 does indicate that quasi-judicial actions cannot include actions of legislative bodies to adopt or amend zoning ordinances of area-wide significance. The Board concludes that the County's adoption of Amended Motion 94-210 was precisely such an amendment of area-wide significance. Staff conducted a review of just WRECO's property, i.e., Site 10. However, when the County Council actually adopted Amended Motion 94-210, it included all lands within the Bosworth Block in its redesignation, regardless of whether the property owner had sought an exclusion. Thus, the County Council went beyond the request for exclusion to include the entire area of the Bosworth Block. The Board interprets "area-wide" to mean generally more than one individual parcel but less than an entire city or county. Although the Bosworth Block clearly does not include either all of Snohomish County nor, for that matter, even all forest lands within Snohomish County, it does comprise a large parcel of land that is affected by the council's action. Significantly, the Board also cannot ignore that, although PNO has focused its appeal on the Bosworth Block, the County's adoption of Amended Motion 94-210 applied to more than just WRECO's property or even more than the Bosworth Block. Amended Motion 94-210 changed the status of forest land designations on at least 2,778 acres of other property, outside the Bosworth Block. [calculation based on adding the acreage of all sites listed in Section 2 of Amended Motion 94-210, except Site 10.]

Because RCW 42.36.010 refers to hearing examiners, the Board also independently reviewed the Snohomish County Code (SCC) and takes official notice of some of its provisions. Chapter 2.02 of the SCC is entitled "Hearing Examiner." Pursuant to SCC 2.02.010, "Purpose":

The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings and will provide an efficient and effective hearing process for quasi-judicial matters. (Ord. 80-115 §2, adopted December 29, 1980; emphasis added).

SCC 2.02.020 provides in part:

... The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform such other quasi-judicial functions as are delegated by ordinance.... (Ord. 80-115 §1, adopted December 29, 1980; emphasis added)

The remainder of Chapter 2.02 SCC sets forth the procedures for appeals to the hearing examiner (*see* SCC 2.02.125, .140) and subsequent appeals of hearing examiner decisions (*see* SCC 2.02.150) to the Snohomish County Council (*see* SCC 2.02.171) acting in a quasi-judicial appellate review capacity. *See* SCC 2.02.180. In turn, appeals of the County Council's decisions are subject to a writ of review by superior court. *See* SCC 2.02.190. Importantly, the hearing examiner system was not utilized in the process that culminated in passage of Amended Motion 94-210. This strongly suggests that the County Council was acting in a legislative, policy making capacity rather than in a quasi-judicial role when it adopted Amended Motion 94-210.

As it did in its *Twin Falls* decision, the Board also turns to the four-part test discussed in *Raynes v. Leavenworth* for determining whether an action is legislative or quasi-judicial:

A 4-part test has been developed to determine when a given action is quasi-judicial or

legislative. Examination of the following factors is useful in deciding if the actions taken are functionally similar enough to court proceedings to warrant judicial review:

(1) whether the court could have been charged with the duty at issue in the first instance; (2) whether the courts have historically performed such duties; (3) whether the action of the municipal corporation involves application of existing law to past or present facts for the purpose of declaring or enforcing liability rather than a response to changing conditions through the enactment of a new general law of prospective application; and (4) whether the action more clearly resembles the ordinary business of courts, as opposed to those of legislators or administrators. *Raynes v. Leavenworth*, 118 Wn.2d 237, 243-45, 821 P.2d 1204 (1992) citing *Standow v. Spokane*, 88 Wn.2d 624, 631, 564 P.2d 1145, *appeal dismissed* 434 U.S. 992 (1977); *see also Williams v. Seattle Sch. Dist. 1*, 97 Wn.2d 215, 218, 643 P.2d 426 (1982).

The factors themselves are anything but clear. First, it is undisputed that enactment of the underlying document, Motion 92-283 (which included the Interim Forest Plan and Interim Forest Designations) was anything but a legislative action taken by the County's legislative body, the Snohomish County Council. The duty to amend Motion 92-283 appears to this Board to be an action reserved solely to a legislative body acting in a legislative capacity, particularly in light of RCW 36.70A.280's grant of Board jurisdiction over amendments to GMA regulations. No court is charged with amending a legislative action nor have courts historically performed such a function. The duty of a legislative body is to exercise its *discretion* in making the appropriate public policy decisions. The duty of courts is to interpret those legislative actions, not to enact them.

Here, the Snohomish County Council exercised its discretion in reviewing an earlier enactment, Motion 92-283, and electing to amend that earlier action. Although the County's review was triggered by WRECO's letter requesting exclusion, the County Council could have achieved the same result on its own initiative, or based on a mere telephone call from a constituent, without such a written request.^[1] The County Council further utilized its discretion by adopting a motion that went beyond WRECO's specific property, and instead, included the entire Bosworth Block. As for the third *Raynes* factor, it does appear that the County Council was applying existing law (i.e., Motion 92-283 and Amended Ordinance 92-101) to the specific factual circumstances of WRECO's property to determine whether WRECO's property should be redesignated or designated forest land at all. However, as the Board has already indicated, although WRECO's Request for Exclusion may have triggered County staff and Council review, ultimately when the County Council acted, it redesignated more than the property involved in WRECO's request -- it redesignated the entire Bosworth Block. Furthermore, WRECO's request involved a request for exclusion from being designated any type of forest land, or, alternatively, a request that its forest land designation be changed from ICF to IFR. Thus, the County's action did not involve "declaring or enforcing liability" as enunciated by the *Raynes* court.

Turning to the fourth *Raynes* factor, it appears that the members of the County Council acted more like legislators than judges when adopting Amended Motion 94-210. Again, as indicated above, County Council members were not conducting quasi-judicial review of the hearing examiner's decision. Nor does the record indicate that any persons speaking at the County

Council's public hearing were placed under oath or that witnesses were examined or cross examined. Although Amended Motion 94-210 does include findings and conclusions, normally telltale signs of quasi-judicial activities, the Board notes that Motion 92-283 contained similar findings and conclusions. Yet, it is uncontested that the earlier adoption of Motion 92-283 constituted a legislative action. Including similar findings and conclusions to Amended Motion 94-210 does not make the adoption of amendments quasi-judicial. In addition, the Board notes that nothing in the record "clearly" indicates that the action of adopting Amended Motion 94-210 resembles the ordinary business of courts. Yet the fourth factor of the *Raynes* test demands precisely such clarity. Thus, for instance, a specific indication in the record that the County Council was acting in a quasi-judicial capacity would have been useful.

Without such a clear indication, and based upon a review of the record, Chapter 42.36 RCW, Chapter 2.02 SCC and appellate court decisions, the Board concludes that the Snohomish County Council was acting in a legislative capacity, where it could and did exercise its discretion, in adopting Amended Motion 94-210. Accordingly, the Board does have jurisdiction to determine whether Amended Motion 94-210 complies with the GMA. As a consequence, PNO initially has the burden of proving to this Board, rather than to a superior court, that Amended Motion 94-210 does not comply with the requirements of the Act.

The Board does reject PNO's argument that because the County set up the mechanism for seeking exclusion, responses to those requests constitute legislative action. This argument ignores the fact that legislative bodies routinely establish quasi-judicial processes, for instance the traditional procedures for property owners to file development permit applications. The fact that a legislative body takes a legislative action to create a quasi-judicial process does not make that quasi-judicial process legislative. Nonetheless, nothing in this case indicates the County Council's intent to waive the discretion it normally is afforded when taking legislative actions by instead, creating a quasi-judicial process for amending Motion 92-283.

Finally, as for PNO's request for the Board to adopt a "bright line" test that any action involving more than five properties is legislative, the Board is reminded of the *Raynes* court's advice about the difficulty of drawing bright lines. Nonetheless, this Board will attempt to draw such a line, albeit not the one urged by PNO. The Board will not adopt PNO's proposal. Determining whether an action is legislative or quasi-judicial based on the number of properties involved is ripe for abuse and not an acceptable test. However, if a development permit application has been sought, the local legislative body's decision to either grant or deny that permit is a quasi-judicial action by that legislative body. If subsequently the granting or denial of the development permit is appealed to the Board for not complying with the requirements of the GMA, this Board will not take jurisdiction over that clearly quasi-judicial action.

In instances like that presently before us, where no development permit is at issue, the Board will conduct similar analysis as above to determine whether an amendment to a development regulation was the result of a legislative or quasi-judicial action. However, potential parties are warned that simply because a person has requested that a designation be changed does not mean that the resulting action taken by the local legislative body was quasi-judicial. If the Board were to

adopt such a rule, the discretion granted to legislative bodies to undertake legislative actions would be seriously eroded. Instead, clear indications must exist in the record that the local legislative bodies' actions were quasi-judicial, rather than legislative, for this Board not to accept jurisdiction over amendments to comprehensive plans and development regulations.

Legal Issue No. 1 (Indispensable Party)

Had the Board concluded above that the County Council's adoption of Amended Motion 94-210 constituted a quasi-judicial action, this issue would be moot as all parties concede that all indispensable parties must be joined in appeals to superior court of quasi-judicial actions. However, because the Board concluded above that the County's adoption of Amended Motion 94-210 constitutes a legislative action, the Board must address whether the indispensable party rule applies here.

The Board concludes that persons appealing matters to a growth management hearings board are not required to name any parties other than the city, county or state agency taking the underlying challenged action. Consequently, PNO's petition for review will not be dismissed for failure to join necessary and indispensable parties prior to the expiration of the GMA's statute of limitations for bringing appeals.

As indicated above, the Board only has jurisdiction over the legislative acts of local legislative bodies, or of administrative actions the office of financial management. As PNO points out, nothing in the GMA, the Board's Rules of Practice and Procedure or other Washington Administrative Code provisions, nor published court decisions require a petitioner in an appeal to a growth management hearings board to name any party other than the jurisdiction that took the challenged action. The Board agrees with PNO that to invoke such a rule would be overly prohibitive and violative of the legislature's intent, as expressed by RCW 36.70A.010, .020 (11), .140 and .280(2), to permit full and continuous public participation in the GMA process, including the right to appeal. The action being reviewed by this Board is a legislative action -- not quasi-judicial. Thus, the protections afforded property owners by the indispensable party rule do not apply here. Nonetheless, interested persons, whether they own property or not, are readily permitted to participate in an appeal to the hearings boards as either an amicus or intervenor. See WAC 242-02-270 and -280.

V. ORDER

Having reviewed the above-referenced documents, having considered the parties' arguments, and having deliberated on the matter, it is ORDERED that:

The County's and WRECO's Motion relating to Legal Issue Nos. 1 and 2 are **denied**. The Board has fully resolved those two legal issues. Accordingly, the case will proceed as scheduled with the remaining legal issues.

The Board will not determine the correct interpretation of the 1994 amendment to the definition

of "forest land" at this time. It is an issue that goes to the heart of Legal Issue No. 5 that the Board currently has insufficient time to resolve. Because the parties have already briefed their positions on the new definition of "forest lands", they are not required to re-argue their positions when addressing Legal Issue No. 5 but instead can simply incorporate by reference their prior arguments. However, any party may supplement prior arguments on the question when filing prehearing briefs.

So ordered this 1st day of February, 1995.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

M. Peter Philley, Presiding Officer

Joseph W. Tovar, AICP

Chris Smith Towne

Note: This Order Granting Dispositive Motions constitutes a **final order** as specified by RCW 36.70A.300 unless a party files a Petition for Reconsideration pursuant to WAC 242-02-830.

[\[1\]](#) WRECO owned 2,400 acres of property near Lake Bosworth in 1992. Exhibit 4, at 1. Subsequently, WRECO sold 29 twenty-acre parcels (totaling 580 acres). Exhibit 4, at 7. WRECO owned "approximately 1,750 acres" of land within the Bosworth Block as of January 25, 1995. Exhibit 4, at 2.

[\[1\]](#) The exact acreage of the Bosworth Block is unclear as Findings and Conclusions No. 10 of Amended Motion 94-210 indicates the Bosworth Block comprises 2,317 acres. Exhibit 125, Findings and Conclusions 11(e), at 5.

[\[1\]](#) Legal Issue No. 5, as set forth in the Prehearing Order, asks:

Does that portion of Snohomish County Motion 94-210 that relates to the Bosworth Block comply with the requirements of the Growth Management Act, specifically, RCW 36.70A.020, .030(8), .060, .110 and .170?

[\[1\]](#) WRECO simply submitted a letter requesting exclusion from forest land designation. In contrast, the Snohomish County Code contains provisions for submitting a formal application for rezone (*see* SCC 18.73.025), accompanied by a filing fee (*see* SCC 18.73.120) pursuant to a formalized procedure. *See* SCC 18.73.045, .050 *et seq.*