

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

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MASTER BUILDERS)	Case No. 02-3-0010
ASSOCIATION OF PIERCE)	
COUNTY, TERRY L. BRINK,)	
EDWARD ZENKER, ASSOCIATED)	
GENERAL CONTRACTORS and)	
TACOMA-PIERCE COUNTY)	<i>(MBA and Brink)</i>
CHAMBER OF COMMERCE-)	
SOUTH COUNTY DIVISION,)	
)	
Petitioner,)	
)	
v.)	
)	ORDER ON MOTION TO DISMISS
PIERCE COUNTY,)	SEPA CLAIMS
)	
Respondent.)	

I. Procedural history

On August 28, 2002, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from the Master Builders Association of Pierce County, Terry L. Brink, Edward Zenker, Associated General Contractors and Tacoma-Pierce County Chamber of Commerce-South County Division (**Petitioners** or **MBA**). The matter was assigned Case No. 02-3-0010, and is hereafter referred to as *Master Builders and Brink, et al., v. Pierce County*. Board member Edward G. McGuire is the Presiding Officer (**PO**) for this matter. Petitioners challenge Pierce County’s adoption of Ordinance No. 2002-21s adopting the Parkland-Spanaway-Midland Communities Plan (**PSMCP**) and Ordinance No. 2002-22s adopting the PSMPC implementing development regulations (**IDRs**). The basis for the challenge is noncompliance with various provisions of the Growth Management Act (**GMA or Act**).

On August 19, 2002, the Board issued a “Notice of Hearing” setting September 12, 2002, as the date for a prehearing conference (**PHC**). Following the PHC, on September 16, 2002, the Board issued its “Prehearing Order” (**PHO**) setting forth the schedule and Legal Issues to be decided by the Board.

On September 27, 2002, the Board received “Pierce County’ Motion to Dismiss SEPA Claims” (**Co. Motion**), with five attached exhibits.

On October 10, 2002, the Board received “Petitioners’ Response to Motion to Dismiss SEPA Issues” (**MBA Response**), with four attachments.

On October 16, 2002, the Board received “Pierce County’s Reply to Petitioners’ Response to Motion to Dismiss SEPA Claims” (**Co. Reply**), with four attachments.

The Board did not hold a hearing on the motions.

II. Discussion of MOTION TO DISMISS SEPA CLAIMS^[1]

Applicable Law

The legal basis for SEPA standing before the Boards^[2] is found at RCW 43.21C.075(4), “. . . a person aggrieved by an agency action has the right to judicial appeal. . . .” On its face, this section of SEPA suggests that any ‘person aggrieved’ may challenge a jurisdiction’s SEPA determinations. However, the courts have narrowed this seemingly broad grant of the right to appeal by holding, “The term ‘person aggrieved’ was intended to include *anyone with standing* to sue under existing law.” *Trepanier v. Everett*, 64 Wn. App. 380 (1992), at 382, (emphasis supplied). The courts have gone on to establish,^[3] and this Board has adopted, a two-part test to determine SEPA standing.

The two-part SEPA standing test used by this Board is as follows:

First, the plaintiff’s supposedly endangered interest must be arguably *within the zone of interests protected by SEPA*. *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her *specific and perceptible harm*. The plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be “*immediate, concrete, and specific*”; a conjectural or hypothetical injury will not confer standing. *Leavitt*, at 679, *citing Trepanier*, at 382-83.

West Seattle Defense Fund v. City of Seattle (WSDF I), CPSGMHB Case No. 94-3-0016, Order Granting Seattle’s Motion to Dismiss SEPA Claim [Legal Issue 10], (Dec. 30, 1994), at 7, (emphasis supplied).

Additionally, the Board’s Rules of Practice and Procedure indicate how standing allegations must

be addressed when filing a PFR.

[The PFR must contain] a statement specifying the type and the basis of the petitioner's standing before the board pursuant to RCW 36.70A.280(2). Petitioners shall distinguish between participant standing under the act, governor certified standing, standing pursuant to the Administrative Procedures Act [Chapter 34.05 RCW], and *standing pursuant to the State Environmental Policy Act* [Chapter 43.21C RCW], as the case may be.

WAC 242-02-210(2)(d), (emphasis supplied). The Board has stated that to establish standing:

Petitioners must describe their standing in the PFR. Petitioners can make the necessary showing by: 1) including a narrative in the PFR itself; 2) attaching a declaration of affidavit to the PFR; or 3) incorporating by reference exhibits from the record below.

Pilchuck Audubon Society v. Snohomish County (Master Builders Association and Snohomish County Realtors Association – Intervenors) (Pilchuck II), CPSGMHB Case No. 95-3-0047c, Order Granting Snohomish County's Dispositive Motion to Dismiss SEPA Claims, (Aug. 17, 1995), at 3.

SEPA also contains a requirement for exhaustion of administrative remedies prior to seeking review. “[I]f an agency has an appeal procedure, such [aggrieved] person shall, prior to seeking any judicial review, use such procedure if any procedure is available, unless expressly provided otherwise by state statute.” RCW 43.21C.075(4). This Board has adopted the court derived four-part test for determining whether the exhaustion requirement bars a SEPA claim.

The four-part exhaustion test is as follows: “(1) whether administrative remedies were exhausted; (2) whether an adequate remedy was available; (3) whether adequate notice of the appeals procedure was given; and (4) whether exhaustion would have been futile. *Citizens for Clean Air v. Spokane*, 114 Wn. 2d, 26, 785 P.2d 447 (1990).” *WSDF I*, at 11.

Discussion

Position of the Parties:

The County contends: 1) the petition for review does not establish a *prima facie* case for SEPA standing for any of the Petitioners, citing *Pilchuck II* and WAC 242-02-210(2)(d); 2) petitioners' injury is merely conjectural and hypothetical, citing *WSDF I* re: *Leavitt* and *Trepanier*; and 3) GMA compliance claims do not provide SEPA standing, citing *Bremerton*; ^[4] and 4) *some* of the

named Petitioners have failed to exhaust administrative remedies, citing *WSDF I*. Co. Motion, at 5 - 11.

To support its motion, the County includes five attachments to its brief: 1) Pierce County Code 1.22.080 addressing the hearing examiners powers and duties; 2) an MBA comment letter on the DSEIS dated October 22, 2001; 3) a declaration of Terry Brink dated March 13, 2002; 4) two declarations submitted to the examiner, entitled: “Declaration of Terry Brink in Opposition to Motion to Dismiss” and “Declaration of Edward Zenker in Opposition to Motion to Dismiss; and 5) the examiner’s decision on the MBA/Brink appeal of the FSEIS dated May 9, 2002.

Petitioners do not dispute that the Associated General Contractors (**AGC**) and the Tacoma-Pierce County Chamber of Commerce – South County Division (**Chamber**) did not exhaust administrative remedies. MBA Response, at 2, fn. 2. Nor do Petitioners assert that Petitioners Brink or Zenker are members of the AGC or Chamber. MBA Response, at 1-20. However, Petitioners do argue that the PFR alleges sufficient facts to establish *prima facie* SEPA standing and it contains sufficient allegations of injury to establish SEPA standing. MBA Response, at 16-20 and 6-16.

To support its arguments, MBA includes four attachments to its brief: 1) “Pierce County’s Reply to Appellants’ Response to Motion to Dismiss” that was submitted to the Examiner; 2) an MBA comment letter on Ordinance Nos. 2202-21 and 2002-22 submitted to Pierce County Council Chair, Calvin Goings, dated March 27, 2002; 3) two letters regarding a comparisons analysis of the PSMCP from Leroy Engineering to Matt Sweeney, dated June 23, 2001 and June 25, 2001 [apparently attached to the 3/27/02 letter to Pierce County Councilmember Goings]; and 4) a comment letter regarding the “Adverse Impacts of Proposed Down-zone PSMCP” from Terry Brink to Councilmember Calvin Goings, dated March 20, 2002.

In reply, the County’s argument focuses on whether Petitioners have established that they have suffered an immediate, concrete and specific injury. The County argues that the alleged injuries are speculative, conjectural and undocumented. Co. Reply, at 4-9.

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Exhaustion of Administrative Remedies:

The Board’s review of the Pierce County Hearing Examiner’s decision (Attachment 5 to Co. Motion, at 9.) reveals that Petitioners MBA, Brink and Zenker^[5] exhausted the administrative appeal provided by the County by filing an appeal of the FSEIS with the Pierce County Hearing Examiner. *See: Findings of Fact (FoF) 1-5*. It is also undisputed that Petitioners AGC and Chamber did not participate in the appeal of the FSEIS before the Hearing Examiner. FoF 6.

Therefore, the AGC and Chamber challenge to Legal Issue 8 is **dismissed** for failure to exhaust administrative remedies.

SEPA Standing:

It is undisputed that Petitioners Brink and Zenker are members of the MBA and the parties agree, that for MBA to have standing, one of its members must demonstrate standing as an individual. Co. Motion, at 7, MBA Response, at 6, both citing *Suquamish Indian Tribe v. Kitsap County*, 92 Wn. App. 816, 830, 965 P.2d 636 (1998). The Board agrees. Petitioners do not assert that either Brink or Zenker are members of the AGC or Chamber. Consequently, the AGC and Chamber cannot establish SEPA standing.

The Board's Rules require a petitioner to allege and specify the type of standing being sought. WAC 242-02-21(2)(d). In *Tulalip II*, quoted *supra*, the Board explained that Petitioners can make the necessary showing by including a narrative, attaching a declaration or affidavit or incorporating by reference exhibits from the record *in the PFR*. The PFR narrative clearly alleges GMA participation standing and APA standing, but is silent regarding SEPA standing. No declarations are attached nor are references made to relevant exhibits regarding SEPA standing. PFR, at 19-20, *see also* 18-19. This deficiency alone is grounds for the Board to dismiss Petitioners SEPA claim. However, the *attachments* provided by the County and MBA with their briefing on SEPA standing remove this deficiency. Therefore, the Board will proceed with its review.

In 1994, this Board established in *Robison*, and has consistently held since, that establishing GMA standing does *not* automatically bestow SEPA standing upon a petitioner. To establish SEPA standing, petitioners must meet the Board's [and Court's] SEPA test for standing.

In *WSDF I*, the Board adopted, and has consistently applied the two-part standing test [1) zone of interest; and 2) injury in fact] from *Trepanier*. The Board will continue to adhere to that two-part test. ^[6] Therefore, the question for the Board is whether Petitioners Brink and/or Zenker have met the test to establish SEPA standing which would also confer SEPA standing upon the MBA. Recall, the two-part test is as follows:

First, the plaintiff's supposedly endangered interest must be arguably *within the zone of interests protected by SEPA*. *Second*, the plaintiff must *allege an injury in fact*; that is, the plaintiff must present sufficient evidentiary facts to show that the challenged SEPA determination will cause him or her *specific and perceptible harm*. The plaintiff who alleges a *threatened injury* rather than an existing injury must also show that the injury will be "*immediate, concrete, and specific*"; a conjectural or hypothetical injury will not confer standing. (Citation omitted.)

The principle alleged injury in fact offered by MBA alleges:

MBA Board member and officer Brink and MBA member Zenker own commercial and residential property in the Community Plan area. Their commercial property would be adversely impacted by the Community Plan and Regulations because the Community Plan and Regulations chill development on their properties and surrounding commercial properties, thereby increasing blight in the area. The absence of development and increasing blight will have adverse visual and aesthetic impacts on Brink's and Zenker's properties, adversely affect the land use character of the area in which the property is located, impede the goals of existing land use plans for healthy commercial uses in the area, and adversely impact the ability to provide governmental facilities and services in the area. (Citations omitted.)

In addition, the Community Plan and Regulations zone Brink's and Zenker's residential properties for lower density residential development than currently permitted and prohibit "cluster" housing. Accordingly, development of Brink's and Zenker's residential properties under the proposed zoning would result in increased impacts to housing supply, aesthetics, recreation, plants and animals and habitat on those properties. (Citation omitted.)

MBA Response, at 8-9.

MBA notes that, "the County does not claim that the injuries alleged are outside the zone of interests protected by SEPA." MBA Response, at 2, fn. 1, *see also*: Co. Motion, 1-12. In reply, the County clarifies that it acknowledges, "*some* of the interests asserted in the Petition are arguably within the zone of interests to be protected by SEPA." However, the County contends that most of the alleged impacts, or injuries, are economic and are therefore not within the zone of interests protected by SEPA." Co. Reply, at 4, citing *Kucera v. State*, 140 Wn. 2d 200, 212, 995 P. 2d 63 (2000). The Board agrees that economic interests are not within the zone of interests protected by SEPA. However, Petitioners' supposedly endangered interests [blight and impacts on aesthetics, recreation, plants and animals and habitat of the properties] are arguably within the zone of interests protected by SEPA. Therefore, the Board's inquiry turns to the second part of the two-part test.

Here, Petitioners do not allege an existing injury; they do not allege that damage is presently occurring to their properties due to the County's action. They do allege threatened injury. MBA argues, the PSMCP and IDRs will "chill development on their [commercial] properties and surrounding commercial properties, thereby increasing blight in the area. The absence of development and increasing blight will have adverse visual and aesthetic impacts on Brink's and

Zenker's properties." And, the PSMCP and IDRs "zone Brink's and Zenker's residential properties for lower density residential development than currently permitted and prohibit "cluster" housing. . . . result[ing] in increased impacts to housing supply, aesthetics, recreation, plants and animals and habitat on those properties. *Supra*, at 6. Are these threatened injuries immediate, concrete, and specific, or are they conjectural or hypothetical?

The MBA argument is based upon the assumption that the PSMCP and IDRs will chill development and increase blight thereby causing adverse visual and aesthetic impacts on their commercial properties. If "chilled development" means difficulty in attracting new business to the area, the record does show the following: Brink Land L.L.C. was twice unsuccessful in selling or leasing some of his property for a mobile or manufactured home sales lot, and there has been some interest [but no commitment] in the property for a used car lot, all uses that were permitted *under the prior plan and regulations*; and that the new PSMCP and IDRs, as they affect the Brink properties, do not permit these uses but instead focus on office oriented uses. MBA Response, Attachment 4, at 2. While this may support the notion that Brink L.L.C.'s efforts were unsuccessful, *i.e.* perhaps development was chilled, under the prior plan; it offers nothing to support such a contention as it relates to the *new* plan and regulations. The PSMCP and IDRs permit and encourage different uses, their effectiveness is untested. Further, the record does not contain any factual support for the suggested blight that would occur due to the PSMCP and IDRs. The Board is not persuaded that the suggested "chilled development" under the prior plan and regulations provides any factual support for alleged "chilled development" under the PSMCP and IDRs, nor does the Board find any support for assumption that "blight" will occur or increase under the PSMCP or IDRs. Petitioners' have not shown immediate, concrete and specific injury.

As to the residential properties, the County contends that MBA's alleged prohibition of "cluster" development is mistaken. The County states that, "Pierce County GMA development regulations have always allowed clustering in all urban residential zones" and refers to the clustering provisions of Pierce County Code 18A.35.020.B.2. Co. Reply, at 6. Whether the County does or does not have clustering is a matter to be determined by the Board on the merits of the GMA challenge and the Board will not decide it here. However, the Board is not persuaded that the alleged threatened injuries from lower residential densities and clustering provisions, or lack thereof, demonstrate an immediate, concrete and specific harm to Petitioners' property.

The Board finds that the allegations and offerings of MBA [Brink and Zenker] merely suggest imagined and hypothetical circumstances in which Petitioners could be affected. Even if the impacts feared by Petitioners are conceivably possible, they are not necessarily impacts deriving from the adoption of the PSMCP and IDRs. Consequently, the Board concludes that the threatened injuries alleged by Petitioners Brink, Zenker and MBA are not immediate, concrete or specific, the threatened injuries are conjectural, speculative and hypothetical. Petitioners' have

not satisfied the second prong of the two-part test and have no standing to raise SEPA claims in this proceeding. Legal Issue 8 will be dismissed with prejudice from further consideration in the Board’s proceeding.

Finally, MBA invites the Board to either apply the *Trepanier* test “loosely,” as the Board hinted in might do *Pilchuck II*, ^[7] or “assume” SEPA standing for purposes of SEPA review. MBA Response, at 16. The Board declines the invitation. However, the Board notes that GMA arguments were just beneath the surface of many of the arguments made in relation to this motion to dismiss. Notwithstanding the Board’s dismissal of Legal Issue 8, numerous significant GMA issues remain for the parties to argue and for the Board to review and resolve as this case proceeds.

Conclusions

The record shows that Petitioners MBA and Brink filed an appeal of the FSEIS with the Pierce County Hearing Examiner. A declaration of Petitioner Zenker was among the materials reviewed by the Examiner as part of that appeal. The Examiner issued a decision on Petitioners’ challenge to the FSEIS. The Board concludes that Petitioners MBA, Brink and Zenker have exhausted their administrative remedies. However, the record also demonstrates, and it is not disputed, that Petitioners AGC and the Chamber did not participate in the appeal of the FSEIS before the Hearing Examiner. Consequently, the Board concludes that Petitioners AGC and Chamber and have not exhausted the administrative remedies provided by the County for SEPA appeals. Therefore the SEPA claims [Legal Issue 8] of AGC and the Chamber are **dismissed with prejudice** for failure to exhaust administrative remedies.

Petitioners AGC and Chamber have failed to assert or establish any basis for SEPA standing. Therefore, the AGC and Chamber challenge to the SEPA claim [Legal Issue 8] is **dismissed with prejudice**.

The threatened injuries alleged by Petitioners Brink, Zenker and MBA are not immediate, concrete or specific, the threatened injuries are conjectural, speculative and hypothetical. Petitioners’ have not satisfied the second prong of the Board’s two-part SEPA standing test and have no standing to raise SEPA claims in this proceeding. Petitioners’ SEPA claim [Legal Issue 8] is **dismissed with prejudice** for Petitioners’ lack of SEPA standing.

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Lois H. North
Board Member

Joseph W. Tovar, AICP
Board Member

Note: This Order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

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APPENDIX A

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Findings of Fact

1. RCW 36.70A.080(2) enables jurisdictions to include subarea plans [community plans] in their GMA comprehensive plans.
2. Pierce County authorized the development of the PSMCP in 1997. Pierce County Resolution R97-94, Co. Motion, Attachment 5 [5/9/01 Hearing Examiner decision], at 2.
3. Additionally, Pierce County: 1) prepared an integrated SEPA/GMA document entitled “Parkland-Spanaway-Midland Community Plan and Draft Supplemental Environmental Impact Statement” (**DSEIS**) on September 7, 2001; 2) provided a 30-day comment period and an additional 45-day comment period on the DSEIS; and 3) issued a Final Supplemental Environmental Impact Statement (**FSEIS**) on February 27, 2002. Co. Motion, Attachment 5, at 2.
4. On March 13, 2001 the County entertained an appeal of the FSEIS, filed with the county Hearing Examiner, by Petitioners MBA and Brink. Co. Motion, Attachment 5, at 2.
5. On May 9, 2001, the Examiner dismissed the MBA/Brink appeal of the FSEIS after reviewing materials including declarations by Brink and Zenker. The Examiner concluded:

“The appellants do not allege an existing injury, but allege a threatened injury. The appellants do not allege or demonstrate an immediate, concrete, and specific injury. Therefore, the appellants fail the second prong of the two-part standing test and have no standing to challenge the adequacy of the FSEIS or any portion of the SEPA process.” Co. Motion, Attachments 4 [Brink and Zenker Declarations] and 5, at 14-15.

6. “The AGC and Chamber will not contest these claims [that AGC and Chamber did not appeal the FSEIS before the Examiner] on the record before the [Board].” MBA Response, at 2, fn. 2.

7. On June 11, 2002, Pierce County adopted the PSMCP and IDRs when it adopted Ordinance Nos. 2002-21s and 2002-22s. PFR, at 2.

8. On August 8, 2002, Petitioners filed a PFR with the Board challenging the County’s adoption of the PSMCP and IDRs. PFR, at 1-20.

9. In their PFR, Petitioners allege GMA participation standing and standing pursuant to the Administrative Procedures Act. No allegations of SEPA standing are alleged in the PFR. PFR, at 19-20, paragraphs 63-67.

10. The PFR and briefing establish that Petitioners Brink and Zenker are members of the MBA, but none of these documents assert, or contend, that they are members of the AGC or Chamber. *See*: PFR, Co. Motion and MBA Response.

^[1] The only SEPA claim included in this matter is Legal Issue 8 in the PHO, which provides as follows:

Did the County fail to comply with the environmental review requirements of RCW 43.21C.030 (EIS requirement), RCW 43.21C.031 (significant impacts), RCW 43.21C.034 (use of existing documents), WAC 197-11-060 (content of environmental review), WAC 197-11-210 through 235 (GMA/SEPA integration), WAC 197-11-400 (purpose of EIS), WAC 197-11-402 (general requirements for EIS), WAC 197-11-440 (EIS contents), WAC 197-11-443 (use of non-project EIS) when it adopted the PSMCP and IDRs, because the Supplemental Environmental Impact Statement (SEIS) fails to adequately evaluate the probable adverse impacts, cumulative impacts, and evaluate alternatives? [Intended to cover Issue J, from PFR, at 18.]

PHO, at 9

^[2] In *Robison v. City of Bainbridge Island (Robison)*, CPSGMHB Case No. 94-3-0025, Order on Dispositive Motions, (Feb. 16, 1995), this Board stated:

The Board holds that obtaining GMA appearance [participation] standing does not automatically bestow SEPA standing upon a petitioner. The GMA and SEPA are two distinct statutes with their own

standing requirements that each must be met by petitioners if they intend to challenge actions for not complying with both statutes.

Robison, at 6-7.

[3] *See: Leavitt v. Jefferson County (Leavitt)*, 74 Wn. App. 668, 678, 875 P.2d 681 (1994) citing *Trepanier v. Everett (Trepanier)*, 64 Wn. App. 380, 382-83, 824 P.2d 524, *review denied*, 119 Wn. 2d 1012 (1992).

[4] The Board notes that *Robison* is cited and applied in *Bremerton v. Kitsap County (Bremerton)*, CPSGMHB Case No. 95-3-0039c, Order on County's Dispositive Motions, (Jul. 5, 1995).

[5] The Board recognizes that Zenker was not a named party in the appeal to the Examiner; however, Zenker's declaration was among the materials reviewed by the Examiner in rendering his decision. Consequently, Zenker's interests were aired, reviewed and resolved by the Examiner through the administrative appeal.

[6] Although the Board has opined that the *Trepanier* test is inappropriate for nonproject actions in the GMA context, neither the Legislature nor the Courts have seen fit to alter it. Therefore, the Board must continue to apply the *Trepanier* two-part SEPA standing test strictly. Further, in light of the durability of the *Trepanier* test, the Board now rejects the suggestion offered in *Pilchuck II*, that the Board might apply the *Trepanier* test more "loosely" or "assume" standing when certain GMA actions are challenged. However, the Board notes that a petitioner that challenges a nonproject action that shifted land from one of the GMA's three fundamental and significant land use categories – Resource, Rural or Urban – to a more intensive land use category, could arguably satisfy a strict application of the *Trepanier* SEPA standing test.

For example, the continuum of intensity and diversity of uses moves from the least intense on Resource lands (agriculture, forestry and mining) to Rural, then possibly to limited areas of more intense rural development (LAMIRDs), and finally to Urban. Shifts from limited and *less* intensive uses to diverse and *more* intensive uses, logically raises the potential for increases in significant adverse environmental impacts. It is a reasonable conclusion to draw that when such shifts occur the *threatened injuries* to protected environmental interests fall within the zone of interests protected by SEPA. Further, assuming the shift involved a concurrent, complete and consistent plan, regulatory and mapping [designation] change, the impact could arguably be: *immediate* [upon the effective date], *concrete* [the intensity and diversity of permitted uses is significantly altered and environmental threats arguably increased], and *specific* [depending upon the relationship of the petitioner to the affected area]. In these limited situations the Board would not be applying the *Trepanier* test "loosely" or "assuming" standing, but merely appropriately applying the test for significant nonproject actions. However, even in these limited situations the Board would continue to require petitioners to demonstrate that any administrative remedies have been exhausted.

[7] In essence, the Board suggested it might consider applying the *Trepanier* test more loosely when the protection of the environment is not the specific objective of the underlying nonproject action such as different elements of the comprehensive plan. *See: Pilchuck II*, at 6-7.