IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

SHAW FAMILY LLC, Appellant/Cross Respondent, v. ADVOCATES FOR RESPONSIBLE DEVELOPMENT and JOHN E. DIEHL, Respondents/Cross Appellants, and WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD and MASON COUNTY, a political subdivision of the State of Washington, Respondents.	No. 38671-2-II PART PUBLISHED OPINION

Van Deren, J. — The Shaw Family LLC appeals a Growth Management Act (GMA), chapter 36.70A RCW, decision by the Western Washington Growth Management Hearings Board (WWGMHB), arguing that the WWGMHB lacked subject matter jurisdiction, applied incorrect law, and violated the Shaw Family's constitutional rights. The Shaw Family also argues that the administrative appeal by John E. Diehl and Advocates for Responsible Development (ARD) is moot. Diehl and ARD cross appeal, arguing, among other things, that the Lewis County Superior

Court judge abused his discretion in imposing CR 11 sanctions against Diehl.[1]

We hold that the WWGMHB had subject matter jurisdiction over this petition and did not err in ruling that Mason County's comprehensive plan amendment violated the GMA. Although it does not appear from the record before us that the Lewis County court abused its discretion in imposing CR 11 sanctions, the court did err in failing to enter written factual findings and legal conclusions to support its decision. Therefore, we affirm the WWGMHB's decision and remand only for the Lewis County Superior Court judge to determine whether CR 11 sanctions are appropriate and, if so, to enter written factual findings and legal conclusions.

FACTS

Background

For nearly a century, the Shaw Family owned a single parcel of more than 90 acres[2] in rural Mason County (County). The parcel was previously designated as "Long-Term Commercial Forest." Admin. Record (AR) at 432. While much of the surrounding area has traditionally been

[1] In a recent decision involving the same parties and underlying facts, we held that Diehl lacked personal participation standing under the GMA and thus could not appeal the WWGMHB's decision. *Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hearings Bd.*, noted at 154 Wn. App. 1051, 2010 WL 703267, at *1, *3-*4 (Mar. 2, 2010). We also held that Diehl, a nonlawyer, may not represent ARD in court. *Advocates*, 2010 WL 703267, at *1-*3. Therefore, we did not reach the merits of Diehl's appeal and dismissed ARD's appeal. *Advocates*, 2010 WL 703267, at *1.

Here, we dismissed ARD's cross appeal and limited Diehl's argument only to his cross appeal regarding the CR 11 sanctions. Order Dismissing Cross Appeal of Advocates for Responsible Development and Limiting Cross Appeal of John E. Diehl, *Shaw Family v. W. Wash. Growth Mgmt. Hearings Bd.*, No. 38671-2-II, at 2 (March 10, 2010). Diehl did not participate in oral arguments.

[2] The assessor's office listed the parcel as 97.80 acres, but the Shaw Family believes the property to be approximately 93 acres.

zoned as long term commercial forest, landowners have started to develop properties along the nearby Matlock-Brady Road corridor between Matlock and Brady, Washington. In June 2006, seeking to develop its own land, the Shaw Family applied to rezone this parcel as "Inholding"[3] and to amend the County's comprehensive plan and future land use map to permit the rezone. AR at 432.

ARD is an unincorporated nonprofit association that monitors Mason county land use decisions and Diehl is ARD's president. On December 19, 2006, Diehl submitted a letter to the County on behalf of ARD opposing the Shaw Family parcel's rezone and any amendment to the County's comprehensive plan. County staff also recommended against the Shaw Family's proposed rezone and comprehensive plan amendment, but on December 27, the County passed Mason County Ordinance 139-06 (Dec. 27, 2006), *rescinded in part by* Ordinance 19-08 (Feb. 5, 2008),[4] approving the proposal to amend the plan and its future land use map.

WWGMHB Review

On February 20, 2007, ARD challenged Ordinance 139-06 by submitting a petition for review to the WWGMHB, signed by Diehl as ARD's representative.[5] While ARD made a number of arguments, the only one relevant to the present appeal was that the County amended its

[3] The Inholding designation is similar to Rural Residential-10, which allows one residence per ten acres.

[4] Ordinance 19-08 rescinds specific portions of Ordinance 139-06 related to the Shaw Family property, to bring the Mason County Comprehensive Plan into compliance with the WWGMHB's decision. But, this dispute is not moot because the Mason County Board of Commissioners specifically retained jurisdiction in the event of a favorable resolution on appeal. Therefore, we do not refer to Ordinance 139-06 as "former."

[5] ARD also challenged ordinances 112-06 and 138-06, which the County had recently adopted. Those challenges are not a part of this appeal.

comprehensive plan for the Shaw Family in violation of the GMA. The petition named only the County as a respondent. The WWGMHB issued a notice of hearing and preliminary schedule to ARD, Diehl, and the County. The Shaw Family was not notified of the appeal or the hearing.

On March 30, the County's deputy prosecuting attorney informally notified the Shaw Family's counsel of the appeal. A few days later, WWGMHB held a prehearing conference with Diehl, ARD, and the County; the Shaw Family was unaware of this conference.

On April 6, the Shaw Family moved to intervene in the WWGMHB administrative appeal. The WWGMHB granted the motion but limited the Shaw Family's ability to participate, consistent with standard conditions that the WWGMHB imposes on intervenors.[6]

The County unsuccessfully moved to dismiss the issue relating to Ordinance 139-06, which amended the comprehensive plan and made change to the future land use map. The County also unsuccessfully moved for reconsideration. The Shaw Family moved to dismiss Diehl because he did not meet the requirement for GMA participation standing. The Shaw Family also moved to dismiss ARD because it was not registered as a nonprofit association with either the Secretary of State's office or the Department of Revenue. The WWGMHB dismissed Diehl for lack of

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[6] GMA procedures provide that:

> If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:
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> (a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;
>
> (b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and
>
> (c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

WAC 242-02-270(3).

personal standing, but ruled that ARD had participation standing by virtue of Diehl's remarks, and permitted Diehl to represent ARD in the proceedings.[7]

The Shaw Family submitted a supplemental memorandum to the WWGMHB stating that the Shaw Family had administratively segregated its parcel. The Shaw Family argued that ARD's administrative appeal was, therefore, moot because the Mason County Code (MCC) required that a "Long Term Commercial Forest" designation be a minimum of 80 acres and the parcel no longer qualified for that zoning designation. AR at 736.

After a hearing on the merits, the WWGMHB ruled that the County's comprehensive plan amendment, Ordinance 139-06, violated both (1) the GMA's internal consistency requirement and (2) the County's planning policy requirement that applicants for an amendment to the comprehensive plan's future land use map must "demonstrate that the property can no longer be feasibly used as a commercial forest." AR at 799.

The Shaw Family moved for reconsideration, requesting a decision on the mootness issue. The WWGMHB denied this motion but amended its final order to reject the mootness argument.

Superior Court

The Shaw Family filed a petition for judicial review in Mason County Superior Court challenging the WWGMHB's decision under cause number 07-2-00860-1. Because Diehl was personally dismissed from the earlier proceedings, the Shaw Family named ARD, the County, and WWGMHB as respondents.

Diehl and ARD also filed a petition for review in Mason County Superior Court under

[7] A nonlawyer who is a member of a group may represent that group before the WWGMHB. *Miotke v. Spokane County*, No. 05-1-0007, 2005 WL 3477427, at *3 (E. Wash. Growth Mgmt. Hearings Bd. Nov. 14, 2005); *see* WAC 242-02-110(1).

cause number 07-2-00884-9, challenging the WWGMHB's ruling on Diehl's personal standing, as well as two unrelated issues arising from the WWGMHB's final ruling. Diehl filed the actions "pro se and for Petitioner ARD pro se." Clerk's Papers (CP) at 315. Diehl unsuccessfully moved to consolidate the two superior court cases.

The trial court precluded Diehl from representing ARD in the Shaw Family case because Diehl was not an attorney but denied the Shaw Family terms against Diehl. It also denied Diehl's motion to intervene or appear pro se in the Shaw Family case as a member of ARD. Diehl unsuccessfully moved to join himself and/or to extend time before a Lewis County Superior Court judge, hearing the motion on behalf of the Mason County Superior Court. He also unsuccessfully moved for revision. The Shaw Family asked for CR 11 sanctions. The Lewis County court also ordered $2,000 in CR 11 sanctions against Diehl. Diehl filed a response to the motion for sanctions.

The trial court issued a memorandum opinion,[8] jointly ruling on the merits of both the Shaw Family case and the other Diehl and ARD case. The court upheld the WWGMHB's rulings regarding both ordinance 139-06 and Diehl's dismissal for lack of standing.

The Shaw Family appeals and Diehl cross appeals.

[8] A Kitsap County Superior Court judge, sitting for Mason County Superior Court, entered the memorandum opinion ruling on the Shaw Family's appeal. The record does not reflect why a Kitsap County Superior Court judge, a Lewis County Superior Court judge, and a Mason County Superior Court judge all made rulings in this case. Mason County Superior Court has two judges, one of whom recused herself from the final decision. The record does not indicate why Mason County Superior Court's other judge did not participate in the case.

ANALYSIS

Subject Matter Jurisdiction

The Shaw Family maintains that the WWGMHB had no subject matter jurisdiction here because the County enacted only a site specific rezone that did not affect the County's comprehensive plan.[9] Instead, the Shaw Family contends that the Land Use Petition Act (LUPA), chapter 36.70C RCW, alone, could have provided Diehl and ARD the relief they sought. We disagree.

We review the question of subject matter jurisdiction de novo. *Somers v. Snohomish County*, 105 Wn. App. 937, 941, 21 P.3d 1165 (2001). Although we give substantial weight to the WWGMHB's legal interpretation of the GMA, "we do not defer to an agency the power to determine the scope of its own authority." *US W. Commc'n., Inc. v. Utils. & Transp. Comm'n*, 134 Wn.2d 48, 56, 949 P.2d 1321 (1997); *see* former RCW 36.70A.280(1) (2003), *amended by* Laws of 2008, ch. 289, § 5; Laws of 2010, ch. 211, § 7;[10] *Lewis County v. W. Wash. Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 498, 139 P.3d 1096 (2006); *City of Redmond v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 136 Wn.2d 38, 46, 959 P.2d 1091 (1998). Finally, we interpret ordinances to achieve a local government's intent, harmonizing each provision in relation

[9] The Shaw Family appears to argue that an unchallenged ordinance actually rezoned the parcel but fails to explain why this defeats the WWGMHB's jurisdiction over the challenged comprehensive plan amendment. "[W]hen a zoning amendment is being contemplated, it is a common practice to amend the comprehensive plan just before adopting the zoning amendment." 17 William B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Property Law § 4.11, at 223 (2d ed. 2004). Here, the County decided to amend its comprehensive plan, perhaps by necessity, and this legislative action is what the WWGMHB properly reviewed.

[10] The legislature has amended sections of the GMA cited in this opinion nine times since this case began. None of these amendments included changes that affect our review.

to the others. *Jones v. King County*, 74 Wn. App. 467, 475, 874 P.2d 853 (1994).

For county planning under the GMA, land is characterized as urban, rural, or natural resource. *Karpinski v. Clark County*, No. 07-2-0027, 2008 WL 2783671, at *23, 40 (W. Wash. Growth Mgmt. Hearings Bd. Jun. 3, 2008); *see* former RCW 36.70A.030(16) (2005), *amended by* Laws of 2009, ch. 565, § 22; former RCW 36.70A.070(5)(b) (2005) *amended by* Laws of 2010, Spec. Sess., ch. 26, § 6); former RCW 36.70A.110(1) (2004) *amended by* Laws of 2009, ch. 121, § 1; Laws of 2009, ch. 342, § 1; Laws of 2010, ch. 211, § 1; *Woods v. Kittitas County*, 162 Wn.2d 597, 608-09, 174 P.3d 25 (2007). Redesignation or rezoning of land is commonplace within urban or rural areas, and appropriate redesignations do not change the category of those lands. *Town of Friday Harbor v. San Juan County*, No. 99-2-0010c, 2002 WL 599680, at *3 (W. Wash. Growth Mgmt. Hearings Bd. Mar. 28, 2002). But a change of designation from resource land to either urban or rural is a significant change, occasionally termed "de-designation." *City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 782, 795, 193 P.3d 1077 (2008); *Lewis County*, 157 Wn.2d at 505 n.15; *Town of Friday Harbor*, 2002 WL 599680, at *3. Although the parties have not clarified under which category the "Inholding" designation falls,[11] the Shaw Family's requested rezone appears to have required a comprehensive plan amendment. Even if this rezone did not compel the County to amend its

[11] Inholding and long term commercial forests are regulated under the County's comprehensive plan. The Shaw Family asserts without authority that (1) "the inholding designation is . . . a form of forest lands with slightly relaxed development criteria, but with significant protections for forest lands" and (2) "[t]he purpose of inholding lands is to permit limited development adjacent to [long term commercial forest] so that they remain viable." Amended Br. of Appellant/Cross Resp't at 25, 34. The County defined "Inholding lands" as "lands surrounded by long-term commercial forests, but which are not suitable due to parcel size or other constraint for that purpose. Inholding lands may be developed, but only in a manner which assures the viability of the abutting forest land." Ordinance 139-06, § 17.02.049.

comprehensive plan, it nevertheless chose to do so.

Under the GMA, the County adopted a comprehensive plan and various development regulations. *See* RCW 36.70A.040; MCC § 8.52.020(5). A "comprehensive plan" is the "generalized coordinated land use policy statement of the governing body of a county," former RCW 36.70A.030(4), that "consist[s] of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan." Former RCW 36.70A.070. This comprehensive plan must "be an internally consistent document and all elements shall be consistent with the future land use map." Former RCW 36.70A.070.

The legislature established three quasi-judicial growth management hearings boards to rule on challenges to local governments' land use planning.[12] RCW 36.70A.250; former RCW 36.70A.280(1)(a); *Lewis County*, 157 Wn.2d at 510-11. The WWGMHB has jurisdiction to review petitions challenging whether the County's comprehensive plan, development regulations, and permanent amendments to the plan comply with GMA requirements.[13] *See* RCW 36.70A.250(1)(c); former RCW 36.70A.280(1)(a); former RCW 36.70A.290(2) (1997), *amended by* Laws of 2010, ch. 211, § 8. The WWGMHB does "not have jurisdiction to decide challenges

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[12] The legislature recently consolidated these three boards into a single board. Laws of 2010, ch. 211, § 4.

[13] Asserting that the comprehensive plan is only a "'policy statement'" and its map is only "an appendix that is a reflection of decisions implemented by application of development regulations," the Shaw Family apparently claims that the WWGMHB had no authority to review amendments to such insignificant documents. Amended Br. of Appellant/Cross Resp't at 18 (quoting former RCW 36.70A.030(4)). But the legislature considered the map as a part of the comprehensive plan, not an appendix. Former RCW 36.70A.070 ("[t]he comprehensive plan . . . shall consist of a map or maps, and descriptive text"). This is why the legislature created these boards and the Shaw Family misapprehends that the GMA does not give these documents the force of law. Former RCW 36.70A.280(1)(a).

to site-specific land use decisions because site-specific land use decisions do not qualify as comprehensive plans or development regulations."[14] *Woods*, 162 Wn.2d at 610; *see* former RCW 36.70A.030(7); RCW 36.70B.020(4). LUPA governs site specific land use decisions and the superior court has exclusive jurisdiction over petitions regarding site specific land use challenges.[15] Former RCW 36.70C.030(1)(a)(ii) (2003), *amended by* Laws of 2010, Spec. Sess., ch. 7, § 38; *Woods*, 162 Wn.2d at 610.

Here, ARD's petition for review challenged Ordinance 139-06. The ordinance is titled: "AMENDMENTS TO THE MASON COUNTY COMPRHENSIVE PLAN AND MASON COUNTY PARKS AND RECREATION COMPREHENSIVE PLAN." CP at 73. The ordinance provides:

> AN ORDINANCE amending the Mason County Comprehensive Plan and development standards, which include Comprehensive Plan Chapter III-7 Water Resources Policies, Chapter VI Capital Facilities Element, and the Future Land Use Map as shown in Chapter IV Land Use (decision to approve the change in designation request by the Shaw Family LLC);[ ] and the revised Mason County Parks and Recreation Comprehensive Plan, under the authority of Chapters 36.70 and 36.70A RCW.

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[14] The statutory definition for "'[d]evelopment regulations'" excludes "project permit application[s] as defined by RCW 36.70B.020," even if a resolution or ordinance reflects the decision to approve a project permit application. Former RCW 36.70A.030(7). A "'project permit application'" excludes "the adoption or amendment of a comprehensive plan," as we have here. RCW 36.70B.020(4).

[15] LUPA provides the "exclusive means" of obtaining judicial review of "land use decisions," excluding review of local land use decisions "that are subject to review by a quasi-judicial body created by state law, such as . . . the growth management hearings board." Former RCW 36.70C.030(1)(a)(ii) (2003). A "'land use decision'" is a final local determination on an "application for a project permit or other governmental approval required by law before real property may be improved developed, modified, sold, transferred, or used," but not "applications for legislative approvals such as area-wide rezones and annexations." Former RCW 36.70C.020(1)(a) (1995).

CP at 73. The Shaw Family itself applied for this comprehensive plan amendment.

ARD's petition explicitly challenged, among other things, whether this ordinance complied with the GMA:

> 3.15. In rezoning land designated as [long term commercial forest] land without showing that its continued use for the production of timber resources is not reasonable or that it no longer satisfies the criteria for designations as [long term commercial forest] land, has the County in Ordinance 139-06 failed to maintain the internal consistency of its Comprehensive Plan and Future Land Use Map required by [former] RCW 36.70A.070 and does its action interfere substantially with the goal of conserving productive forest lands and discouraging incompatible uses (RCW 36.70A.020(8))?

AR at 6.

Ordinance 139-06 explicitly amended the County's comprehensive plan and ARD's petition challenged this ordinance's GMA compliance. Thus, we hold that the WWGMHB had jurisdiction to review this petition.

We affirm the WWGMHB's decision. For reasons we address in the unpublished portion of this opinion, we remand to the Lewis County Superior Court judge for the limited purpose of determining whether CR 11 sanctions are appropriate and, if so, to enter written factual findings and legal conclusions.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Mootness

Next, the Shaw Family argues that ARD's administrative appeal to the WWGMHB was moot because, between the WWGMHB's accepting ARD's petition for review and issuing a final

ruling, the Shaw Family administratively segregated the disputed parcel into two lots. Claiming that hearings board decisions have only prospective effect, the Shaw Family argues that its parcels cannot return to their former "long term commercial forest" designation because they are now are too small to qualify under the County's comprehensive plan. Amended Br. of Appellant/Cross Resp't at 41-42. We hold that the WWGMHB did not err in ruling that the parcel's segregation did not render the appeal moot.

Statutory interpretation is a question of law that we review de novo. *Post v. City of Tacoma*, 167 Wn.2d 300, 308, 217 P.3d 1179 (2009). When the meaning of statutory language is plain on its face, we give effect to that meaning, reading the statute in its entirety and harmonizing it with other provisions. *Post*, 167 Wn.2d at 310. We avoid interpretations that lead to strained or absurd results. *Post*, 167 Wn.2d at 310.

"An appeal is moot when it presents purely academic issues and where it is not possible for the court to provide effective relief." *Klickitat County Citizens Against Imported Waste v. Klickitat County*, 122 Wn.2d 619, 631, 860 P.2d 390, 866 P.2d 1256 (1993). Ordinance 139-06, section 17.01.060(A)(2) provided, "The following criteria . . . shall be used in classifying Long-Term Commercial Forest Lands: . . . . Minimum block size is 5000 acres (2015 hectares) which shall consist[ ] of a minimum parcel size of 80 acres within said block, and which can be in multiple ownerships."

The Shaw Family misconstrues the prospective effect of WWGMHB decisions. Under former RCW 36.70A.302 (1997), *amended by* Laws of 2010, ch. 211, § 10:

> (1) A board may determine that part or all of a comprehensive plan or development regulations are invalid if the board [acts in one of three ways]:
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> . . . .
>
> (2) A determination of invalidity is prospective in effect and does not

> extinguish rights that vested under state or local law before receipt of the board's order by the city or county. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the county or city or to related construction permits for that project.

For this statute to impact their case, the Shaw Family would have needed to submit an unrelated development permit application that vested before the WWGMHB's decision. *See* former RCW 36.70A.302(2). But this did not occur. Despite the Shaw Family's maneuvering during the administrative appeal, the WWGMHB nevertheless had jurisdiction over a comprehensive plan amendment. Although this evidence does not otherwise appear in the record, the superior court noted that "Mason County Ordinance 19-08 rescinded Ordinance 139-06 effectively returning the Shaw Family property to its original land use designation in light of the Board's decision." CP at 14. Even with a valid administrative division of the Shaw Family's plot, their land could still be validly classified as Long Term Commercial Forest Land.[16] Ordinance 139-06, § 17.01.060(7). We hold that the WWGMHB did not err.

The WWGMHB's Decision

Without authority, the Shaw Family claims that the WWGMHB erroneously applied the County planning policies, instead of GMA planning goals, and that it failed to give the County adequate deference. We disagree.

The GMA gives local governments broad discretion in planning for growth. *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 348, 190 P.3d 38 (2008). The growth management hearings boards defer to county action only if it complies with the GMA and

[16] The Shaw Family does not address this statement on appeal and, were it before the court, we would agree with the superior court's analysis.

is not clearly erroneous. RCW 36.70A.320; former RCW 36.70A.3201 (1997), *amended by* Laws of 2010, ch. 211, § 12; *see Thurston County*, 164 Wn.2d at 336. If a board affords the county's action proper deference under the "'clearly erroneous'" standard, we in turn defer to the board's decision. *Quadrant Corp. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 154 Wn.2d 224, 238, 110 P.3d 1132 (2005).

Because a board presumes that county action is valid, petitioners must establish invalidity. *See* RCW 34.05.570(1)(a); RCW 36.70A.320(3); *Thurston County*, 164 Wn.2d at 340-41. We review board decisions under the Administrative Procedure Act, chapter 34.05 RCW, applying the standards directly to the administrative record. *Thurston County*, 164 Wn.2d at 341; *Superior Asphalt & Concrete Co. v. Dep't of Labor & Indus.*, 112 Wn. App. 291, 296, 49 P.3d 135 (2002).

We grant relief from a decision if the WWGMHB "erroneously interpreted or applied the law." RCW 34.05.570(3)(d). Because the WWGMHB has subject matter expertise, we give its legal interpretations of the GMA substantial, though not binding, weight. *Lewis County*, 157 Wn.2d at 498; *City of Redmond*, 136 Wn.2d at 46.

The various parts of a local government's comprehensive plan must be internally consistent and local governments must follow their own planning policies. *See* former RCW 36.70A.070; former RCW 36.70A.210(1) (1998), *amended by* Laws of 2009, ch. 121, § 2; *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176-77, 979 P.2d 374 (1999). The internal "'consistency' requirement appears to mean that the parts of the plan must fit together so that no one feature precludes the achievement of any other." WAC 365-195-070(7).

The County's comprehensive plan provides the following planning requirements. First, under Mason County plan policy RE-205,

> Long Term Commercial Forest may be reclassified to Inholding Lands provided that all the following conditions are met:
> A. The property meets the classification criteria for In[]holding Lands.
> B. The property owner removes the property from open space or forest land tax classification pursuant to RCW Chapters 84.33 or 84.34 within three years of the effective date of redesignation, and any taxes, interest and penalties are [paid] in full upon removal.
> C. The applicant has demonstrated that reasonable use of the property as Designated Long-Term Commercial Forest Land is not possible and the inability to make a reasonable use of the property is not due to action or inaction of the applicant.
> D. The amount of property removed from Long-Term Commercial Forest Land is the minimal amount necessary to meet the conditions of "C" above.

AR at 745; *see also* Mason County, Comprehensive Plan § III-4, RE-205, *available at* http://www.co.mason.wa.us/code/comp_plan/CH3-4.pdf (last visited July 12, 2010). Second, Mason County plan policy RE-206 provides that "[p]rior to redesignation out of the Long Term Commercial Forest classification, the property owner shall demonstrate that the property can no longer be feasibly used for Long Term Commercial Forest purposes for reasons not caused by the property owner." AR at 745; *see also* Mason County, Comprehensive Plan § III-4, RE-206, *available at* http://www.co.mason.wa.us/code/comp_plan/CH3-4.pdf (last visited July 12, 2010).

Here, when considering Ordinance 139-06, the County made the following pertinent finding of fact:

> 6. Comprehensive Plan policies RU 500a to 503 and RE 205 to 209 state that residential development should preserve rural character, be compatible with adjacent land uses, and minimize infrastructure needs; and permit reclassification of Long Term Commercial Lands to Inholding Lands with certain conditions about available services, intensity of nearby land uses, and growing conditions. The proposed redesignation lands would be nearby to other Inholding Lands and adjacent to [an] existing pattern of residential development, and future

development would not cause a marked increase of demand for services.

AR at 690. At the hearing before the WWGMHB, ARD claimed that the County amended its comprehensive plan without following the above planning policies and thus created an inconsistency.

The WWGMHB agreed:

> While listing the applicable comprehensive plan policies in the staff analysis, the staff did not address either the requirement that the applicant demonstrate reasonable use of the property is not possible under the present designation (RE-205(C); or that the property[owner] shall demonstrate that the property can no longer be feasibly used for Long Term Commercial Forest Designation (RE-206). The Board of County Commissioners adopted the designation map change from [Long Term Commercial Forest] to In[h]olding without making any findings with respect to either of these plan policies (RE-205(C) and RE-206).

AR at 797 (footnote omitted).

To review whether the County passed this ordinance in a manner consistent with its comprehensive plan, the WWGMHB must necessarily discuss and evaluate County planning policies. *See* RCW 36.70A.100. Because ARD called on the WWGMHB to review County procedure, the WWGMHB had no need to resort to the thirteen GMA goals guiding the County's substantive decisions, as the Shaw Family asserts. *See* RCW 36.70A.020. Therefore, we hold that the WWGMHB did not err.

Constitutional Challenges

The Shaw Family makes various claims that the WWGMHB's decision violated procedural and substantive due process.[17] We reject these arguments.

We review constitutional challenges de novo. *Hale v. Wellpinit Sch. Dist. No. 49*, 165

[17] The Shaw Family also presented a regulatory takings argument in its brief but conceded that this claim has no merit at oral argument.

Wn.2d 494, 503, 198 P.3d 1021 (2009). The Shaw Family seems to argue that the WWGMHB's rules violate procedural due process in instances where the WWGMHB reviews a comprehensive plan amendment affecting only a single parcel, as was the case here, because the WWGMHB's

rules do not provide for notice to the individual landowner.[18]

The Fourteenth Amendment's due process clause provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Where a party asserts that the government deprived a protectable interest, we employ the *Matthews v. Eldridge*, 424 U.S. 319, 334-35, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) balancing test to insure that due process requirements are met. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009). "The three factors of the *Mathews* test are (1) the potential affected interest; (2) the risk of an erroneous deprivation of that interest through the challenged procedures, and probable value of additional procedural safeguards; and (3) the government's interest, including the potential burden of additional procedures." *Lee*, 166 Wn.2d at 585 (citing *Matthews*, 424 U.S. at 335).

Here, the Shaw Family cannot show that it had a protectable liberty or property interest in individual notice of the WWGMHB's review of the amended comprehensive plan. At the outset, the Shaw Family concedes that the WWGMHB's administrative rules[19] "do not provide for notice to an individually affected property owner." Amended Br. of Appellant/Cross Resp't at 26. The Ninth Circuit rejected an argument similar to that advanced in *Buckles v. King County*, 191 F.3d 1127 (9th Cir. 1999). There, King County proposed new zoning designations as part of

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[18] While "conced[ing that] its property was not individually targeted," the Shaw Family also argues that the County originally designated their parcel as [long term commercial forest] without notification and thus violated their procedural due process rights. Amended Br. of Appellant/Cross Resp't at 43, 46. But the Shaw Family provided no citation to support any factual assertions about the notice the County provided when it adopted its first comprehensive plan, and we "decline to consider facts recited in the briefs but not supported by the record." *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 615 n.1, 160 P.3d 31 (2007); *see* RAP 10.3(a)(6). Accordingly, we do not consider this argument.

[19] Chapter 242-02 WAC.

implementing the GMA. *Buckles*, 191 F.3d at 1131. The landowners objected to the proposed designation for their parcel and hired counsel who successfully lobbied the county for a different designation that the adopted comprehensive plan included. *Buckles*, 191 F.3d at 1131. Others parties challenged the plan and one of those claims was that the redesignation of the Buckles's parcel ran afoul of the GMA. The petitions requesting review of the comprehensive plan were consolidated into a single proceeding before the Central Puget Sound Growth Management Hearings Board (CPSGMHB). *Buckles*, 191 F.3d at 1131-32. The CPSGMHB agreed and invalidated that particular redesignation. *Buckles*, 191 F.3d at 1132.

"The Buckles were not parties to, and did not received notice of, this . . . proceeding before the CPSGMHB." *Buckles*, 191 F.3d at 1132. They sued King County under 42 U.S.C. section 1983, alleging, among other things, that the CPSGMHB's failure to notify them violated their procedural and substantive due process rights. *Buckles*, 191 F.3d at 1132. The court granted summary judgment for King County. *Buckles*, 191 F.3d at 1132.

The Ninth Circuit affirmed the dismissal of the lack of notice claim. *Buckles*, 191 F.3d at 132-36. The landowners cited the absence of three procedural safeguards that gave rise to their claim: (1) notice of proceedings before the CPSGMHB, (2) the indispensable party doctrine, and (3) the right to appeal. *Buckles*, 191 F.3d at 1135. The Ninth Circuit found that "[t]he first and last of these procedural safeguards are built into the Board's proceedings but do not apply here because the [landowners] were not a party to the proceedings." *Buckles*, 191 F.3d at 1135. Even in judicial proceedings, the indispensible party doctrine is not absolute and "[b]ecause so many procedural safeguards are built into the CPSGMHB's proceedings, we conclude that the absence of the doctrine of indispensable party is not grounds" to reverse the CPSGMHB. *Buckles*, 191

F.3d at 1135-36. The court further rejected the landowners' claim because they had a right to appeal the CPSGMHB's decision. *Buckles*, 191 F.3d at 1136.

Here, the WWGMHB similarly determined that the County's comprehensive plan amendment violated the GMA. *See Buckles*, 191 F.3d at 1135. The WWGMHB did not zone or rezone the Shaw Family's property.

Even if there had been a notice requirement, the Shaw Family cannot show a due process violation here. Unlike the landowners in *Buckles*, the Shaw Family participated at every stage of the review process. *Buckles*, 191 F.3d at 1132. In *Manke Lumber Co. v. Central Puget Sound Growth Management Hearings Board*, 113 Wn. App. 615, 631, 53 P.3d 1011 (2002), we rejected a landowner's argument that, absent personal notice, Kitsap County's adoption of a comprehensive plan violated his procedural due process rights. We held that this argument failed because the landowner was involved in the matter before Kitsap County, the CPSGMHB, the superior court, and our court. *Manke Lumber Co.*, 113 Wn. App. at 631. The Shaw Family intervened at the WWGMHB level and received a full hearing. We hold that the claim of procedural due process fails.

The Shaw Family also claims that the WWGMHB violated its substantive due process rights by reviewing ARD's petition and ordering the County to comply with the GMA. But the Shaw Family discusses an unspecified regulation, failing to name its harm or to connect the WWGMHB's review to any substantive due process violation. Because "[w]e do not address constitutional arguments that are not supported by adequate briefing," we do not review this claim. *Peste v. Mason County*, 133 Wn. App. 456, 469 n.10, 136 P.3d 140 (2006); *see* RAP 10.3(a)(5).

CR 11 Sanctions

In addition to the Shaw Family's appeals, Diehl cross appeals, arguing that the Lewis County Superior Court judge abused his discretion in imposing CR 11 sanctions without entering written factual findings and legal conclusions in support of the sanction. We agree.

The trial court may impose CR 11 sanctions against a pro se litigant if the litigant's motion lacks a factual or legal basis and the signing litigant failed to conduct a reasonable inquiry. CR 11; *N. Coast Elec. Co. v. Selig*, 136 Wn. App. 636, 649, 151 P.3d 211 (2007); *Harrington v. Pailthorp*, 67 Wn. App. 901, 910, 841 P.2d 1258 (1992). "[T]he [trial] court must make explicit findings as to which pleadings violated CR 11 and as to how such pleadings constituted a violation of CR 11. The court must specify the sanctionable conduct in its order." *Selig*, 136 Wn. App. at 649 (footnote omitted). Although findings need not be written, the trial court must orally detail its reasoning and specifically incorporate those findings in an order. *See Johnson v. Mermis*, 91 Wn. App. 127, 136, 955 P.2d 826 (1998).

Here, the Lewis County Superior Court judge made detailed oral findings but did not incorporate or express them in its written order. Accordingly, we hold that the Lewis County Superior Court judge's decision is not reviewable until it has entered factual findings and legal conclusions in support of any sanction it imposes.[20]

[20] Diehl also challenges the imposition of a $2,000 sanction when counsel stated that he incurred a little more than $1,977.00 in attorney fees. But this amount is well within the superior court's discretion to determine sanctions, once it enters factual findings detailing its rationale.

Therefore, we affirm the WWGMHB's decision and remand only for the Lewis County Superior Court judge to determine whether CR 11 sanctions are appropriate and, if so, to enter written factual findings and legal conclusions.

Van Deren, J.

We concur:

Hunt, J.

Penoyar, C.J.