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SUPREME COURT
OF THE STATE OF WASHINGTON

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JOSEPH LEMIRE,

Respondent,

vs.

THE POLLUTION CONTROL
HEARINGS BOARD, ET AL.,

Appellants.

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2012

**BRIEF OF *AMICI CURIAE* WASHINGTON STATE
ASSOCIATION OF MUNICIPAL ATTORNEYS, WASHINGTON
ASSOCIATION OF PROSECUTING ATTORNEYS, AND
FUTUREWISE**

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I. INTRODUCTION

This Court should reform the Washington takings analysis if this case presents an opportunity to do so.

When building the Washington takings analysis from 1987 through 1993, this Court believed it had harmonized federal and Washington case law into a unified approach to applying equivalent federal and state takings provisions. No unique protection offered by the Washington Constitution motivated or shaped the Washington takings analysis.

The Washington takings analysis failed to meet its intended goal. After two decades of experience, little harmony exists: the federal and Washington takings analyses differ significantly, and the confused Washington approach has produced obscurity rather than light.

The most sensible way for this Court to achieve its goal of coordinating federal and Washington takings law is to adopt the federal analysis expressly. This step is appropriate for two reasons. First, where this Court applies equivalent federal and Washington constitutional protections, it typically uses the federal analysis. Second, the Washington takings analysis is constitutionally insufficient because it *lowers* the floor of protection that property owners enjoy under the federal takings analysis. Nothing would be lost by adopting the federal analysis because

each of the unique elements of the Washington takings analysis has either been discredited by the U.S. Supreme Court or offers little value.

II. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici curiae Washington State Association of Municipal Attorneys and Washington Association of Prosecuting Attorneys represent attorneys who advise and defend local governments. *Amicus curiae* Futurewise is a statewide nonprofit organization working to ensure that local governments manage growth responsibly. Even though the Washington takings analysis offers certain tactical advantages to local governments attempting to enforce salutary land use regulations, the Washington analysis is needlessly complex and constitutionally insufficient. *Amici* prefer to exchange any tactical advantage for the constitutional soundness and relative clarity and predictability offered by the federal takings analysis. Without addressing the merits or facts of the this case, *amici* respectfully ask this Court to reform Washington takings law if this case presents the opportunity to do so.

III. ARGUMENT

A. This Court created the Washington takings analysis to harmonize equivalent state and federal constitutional provisions and case law.

While crafting the Washington takings analysis, this Court intended to coordinate functionally identical constitutional protections into a unified test.

Decided in 1987, *Orion Corp. v. State*, 109 Wn.2d 621, 645, 747 P.2d 1062 (1987), resolved a takings claim based on both the U.S. and Washington Constitutions. *Orion* surveyed what was then a chaotic landscape of federal and Washington takings case law. *Id.*, 109 Wn.2d at 645–53. *Orion* ultimately concluded that “the breadth of constitutional protection under the state and federal just compensation clauses remains virtually identical,” and simply applied the federal takings analysis to resolve that case. *Id.* at 657-58.

Three years later, in *Presbytery of Seattle v. King County*, 114 Wn.2d 320, 333, 787 P.2d 907 (1990), this Court explained it was considering the same takings analysis used by both the U.S. and Washington Supreme Courts—one analysis that assesses whether a regulation effects a taking in violation of both the U.S. and Washington Constitutions. *Presbytery* portrayed *Orion* as having “coordinated” both analyses into the start of a “comprehensive formula” for resolving federal

and state takings challenges. *Id.*, 114 Wn.2d at 328. To improve that formula, *Presbytery* devoted six pages to restating the Washington approach described in *Orion* as a unified analysis comprising both federal and Washington case law. *Id.* at 329–30, 333–37.

In 1992, when faced with its next pair of takings cases—*Sintra v. City of Seattle*, 119 Wn.2d 1, 829 P.2d 765 (1992), and *Robinson v. City of Seattle*, 119 Wn.2d 34, 830 P.2d 318 (1992)—this Court determined that *Orion* and *Presbytery* had coordinated the federal and Washington takings analyses into a seamless whole in which federal and Washington authority coexist. *See, e.g., Sintra*, 119 Wn.2d at 13-14. Because both cases presented claims solely under the U.S. Constitution, this Court noted that “[s]tate law may provide useful guidance in this determination, but federal law is ultimately controlling.” *Id.* at 14. Nevertheless, because this Court believed that the Washington analysis implemented both federal and state takings provisions that “provide[] the same right,” *id.* at 13, this Court resolved the takings issues in both cases by applying the Washington analysis. *Id.* at 13-18; *Robinson*, 119 Wn.2d at 49-54.

The following year, this Court issued a pair of takings decisions that finalized the Washington takings analysis. In each case, this Court manifest its belief that it had successfully coordinated Washington and federal takings law. *Guimont v. Clarke*, 121 Wn.2d 586, 604-08, 854 P.2d

1 (1993), involved “only the federal constitution” and, in using the Washington analysis to resolve the case, cited far more federal than Washington case law.¹ *Margola Associates v. City of Seattle*, 121 Wn.2d 625, 646-49, 854 P.2d 23 (1993), recited the Washington analysis then cited federal case law almost exclusively to find that no taking occurred.

In the wake of those decisions, the Washington Court of Appeals accepted the premise that the Washington analysis harmonizes federal and state takings provisions and case law. That court frequently applied the Washington analysis only after noting that federal takings law must control. *E.g.*, *Schreiner Farms, Inc. v. Smitch*, 87 Wn. App. 27, 33–35, 940 P.2d 274 (1997); *Guimont v. City of Seattle (Guimont II)*, 77 Wn. App. 74, 79 n.4, 896 P.2d 70 (1995).

Consistent with this Court’s belief that the Washington takings analysis coordinated *equivalent* state and federal constitutional protections and case law, and even though state courts may give independent meaning to their state constitutions, this Court has never concluded that the Washington Constitution offers greater protections to individuals against

¹ *Guimont* effectively capped the Court’s development of the Washington takings analysis. *See Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 676–77, 935 P.2d 555, 574 (1997) (Durham, C.J., concurring). Since 1993, this Court has either denied review of actual takings cases, resolved takings claims without resorting to (or even mentioning) the Washington analysis, or reviewed collateral takings issues unrelated to whether a government action constituted a taking for which compensation was due. *See* Roger D. Wynne, *The Path Out of Washington’s Takings Quagmire: The Case for Adopting the Federal Takings Analysis*, 86 WASH. L. REV. 125, 139-42 (2011).

uncompensated takings for public use.² That makes sense because no relevant differences are apparent in the texts of the federal and state takings clauses. The federal provision reads: “[N]or shall private property be taken for public use, without just compensation.” U.S. CONST. amend. V. Stripped to its essence, the Washington provision is equivalent: “No private property shall be taken or damaged for public or private use without just compensation having been first made....” WASH. CONST. art. I, § 16. Even though the Washington provision includes “or damaged,” this Court has noted that “no Washington decision has attached significance to the difference in language in the context of police power regulation,” and suggested that “or damaged” stems from tort law, not takings law. *Presbytery* at 328 n.10.³

² In a 2008 footnote, this Court suggested that the Washington takings analysis was supported by independent Washington constitutional language. *See Brutsche v. City of Kent*, 164 Wn.2d 664, 680 n.11, 193 P.3d 110 (2008). That suggestion proves unconvincing under closer inspection. *See Wynne* at 179-81.

³ A line of Washington authority relies on the “or damaged” language in the conceptually distinct situation of government road work substantially impairing access to one’s property. *See Wynne* at 183 n.300 (citing case law and an analysis of “or damaged” in other state constitutions).

B. Rather than harmonizing federal and state takings law, the Washington takings analysis differs starkly from the federal analysis.

1. The federal takings analysis comprises three, sequential elements.

In its landmark 2005 decision, *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005), a unanimous U.S. Supreme Court corrected the federal takings analysis by removing an element of the analysis: if government action does not substantially advance legitimate state interests, it is a taking. *Id.* at 548. The Court reasoned that this “substantially advances” element is “derived from due process, not takings, precedents,” and probes whether a regulation is effective, not whether it takes property. *Id.* at 540, 542.

Having weeded the “substantially advances” element out of the federal takings analysis, *Lingle* summarized the analysis’s three remaining elements. Two elements probe per se takings. *Id.* at 538. First, a taking occurs “where government requires an owner to suffer a permanent physical invasion of her property—however minor” *Id.* Second, government actions constitute takings where they “completely deprive an owner of ‘all economically beneficial us[e]’ of her property . . . except to the extent that ‘background principles of nuisance and property law’ independently restrict the owner’s intended use of the property.” *Id.* (alteration and emphasis in original) (quoting *Lucas v. S.C. Coastal*

Council, 505 U.S. 1003, 1027–32 (1992)). Federal courts refer to that element as a test for a “total regulatory taking” or “total taking.” *See, e.g., Lingle*, 544 U.S. at 538; *Lucas*, 505 U.S. at 1030.

Finally, in situations that do not present a per se taking, federal courts apply the factors established in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), such as the economic impact of the regulation, the extent to which the regulation has interfered with distinct investment-backed expectations, and the character of the governmental action. *Lingle*, 544 U.S. at 538–39. Although the *Penn Central* factors provide little real guidance or predictability and the U.S. Supreme Court understands that each of the factors “has given rise to vexing subsidiary questions,” the Court still embraces the factors as “the principal guidelines” for resolving takings claims left unresolved by the per se elements of the federal analysis. *Id.* at 539.

Graphically, the federal takings analysis comprises the physical invasion element, the “total [regulatory] taking” element, and the *Penn Central* factors in a simple, sequential order, as depicted in the Appendix.

2. The Washington takings analysis is based on the three federal elements, but adds three others to form a complex inquiry.

The elaborate Washington takings analysis is best conveyed graphically, as depicted in the Appendix.

Albeit with certain mischaracterizations of federal law, the Washington analysis employs the three elements that compose the federal analysis.⁴ Under the Washington analysis, and consistent with the first *per se* element of the federal analysis, courts begin by asking whether the government has physically invaded private property. *Margola*, 121 Wn.2d at 644; *Guimont*, 121 Wn.2d at 597. If the court finds no physical invasion, it poses a question nearly identical to the one raised by the second, federal *per se* element: whether the government has committed a “total [regulatory] taking” by denying the property owner “all economically viable use.” *Guimont*, 121 Wn.2d at 600, 602, 605. The Washington analysis ends with another element based on the federal *Penn Central* factors. *Guimont*, 121 Wn.2d at 596. What distinguishes Washington’s approach are three unique elements sandwiched between those endpoints.

The first unique Washington element asks whether the regulation destroys, denies, deprives, derogates, infringes on, or merely implicates some other fundamental attribute of property ownership, such as the right to possess, exclude others, or dispose. *See Guimont*, 121 Wn.2d at 601-02; *Presbytery*, 114 Wn.2d at 329-30, 333 & n.21. *See also Wynne* at

⁴ For a discussion how Washington case law often mischaracterizes the federal takings analysis and its elements, see *Wynne* at 170-77.

136 (exploring the range of verbs courts employ). In the Washington analysis, this “fundamental attribute” element plus the two per se elements from the federal analysis—the “physical invasion” and “total [regulatory] taking” elements—constitute the first “threshold question.” *Margola*, 121 Wn.2d at 643-45; *Guimont*, 121 Wn.2d at 594-95.⁵

The second “threshold question” is also the second unique Washington element. It asks whether the regulation “seeks less to prevent a harm than to impose on those regulated the requirement of providing an affirmative public benefit.” *Guimont*, 121 Wn.2d at 603; *Sintra*, 119 Wn.2d at 14. Under this element, government action designed primarily to prevent a harm is insulated from takings claims, but action that primarily seeks to provide a public benefit enjoys no such protection. *Guimont*, 121 Wn.2d at 603; *Presbytery*, 114 Wn.2d at 329-30 & n.13.⁶

If the government has not committed a per se taking, and if either of Washington’s threshold questions yields an affirmative answer, the

⁵ Washington courts are not always clear about whether this question consists of all three elements or just one. See *Wynne* at 137 n.55.

⁶ Clouding application of this element is a debate over whether it poses the relevant question. One faction of the this Court argued that the proper question initially was, and should have remained, whether the regulation is employed to enhance the value of publicly held property. *Guimont*, 121 Wn.2d at 617–20 (Utter, J., concurring) (citing *Presbytery*, 114 Wn.2d at 329; *Orion*, 109 Wn.2d at 651).

Washington analysis proceeds to the “takings analysis,”⁷ which begins with the third element unique to Washington takings law: Does the regulation substantially advance a legitimate state interest? *Presbytery*, 114 Wn.2d at 333. If the court answers that question in the negative, the regulation is a taking. *Margola*, 121 Wn.2d at 645. If the answer is affirmative, the court proceeds to the final element, which is based on the *Penn Central* factors adopted from the federal analysis. *Id.* at 645-46.⁸

Given the differences between the federal and Washington takings analyses, it is difficult to agree with *Presbytery*’s 1990 conclusion that the Washington analysis “coordinated” federal and state takings law into a “comprehensive formula” for resolving both federal and state takings challenges. *Presbytery*, 114 Wn.2d at 328. Although the Washington analysis is rooted in a worthy goal of achieving harmony, we are left today with uncoordinated and confusing formulas.

⁷ See *Guimont*, 121 Wn.2d at 594. A plurality of this Court later misstated the Washington analysis by concluding that merely demonstrating destruction of a fundamental attribute of property ownership is sufficient to establish a taking. *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 355, 13 P.3d 183 (2000). Cf. *Guimont*, 121 Wn.2d at 603 n.7 (“Not every infringement on a fundamental attribute of ownership will necessarily constitute a ‘taking’.”); *Presbytery*, 114 Wn.2d at 333 n.21 (same).

⁸ Connecting the factors recited in *Margola* to *Penn Central* involves several steps. See *Wynne* at 139 n.68.

C. This Court should adopt the federal takings analysis.

The most sensible way for this Court to achieve its goal of coordinating federal and Washington takings law would be to adopt the federal analysis expressly. This step is both required and easy to take.

1. A state court must employ the federal analysis when applying federal takings protections.

When a state court interprets the U.S. Constitution, the state court is not free to substitute its own analysis for that of the U.S. Supreme Court, which “acts as the final arbiter of controversies arising under the federal constitution.” *See, e.g., North Carolina v. Butler*, 441 U.S. 369, 375–76 (1979); *Oregon v. Hass*, 420 U.S. 714, 719–20, 719 n.4 (1975); *State v. Laviollette*, 118 Wn.2d 670, 673–74, 826 P.2d 684, 686 (1992).

Although this Court articulated this axiom in a different context, its words apply to a present-day analysis of takings claims:

These questions [of constitutional application] are by no means novel; they have often been raised, and the supreme court [of the United States] has often considered them, as an analysis of its cases will readily reveal. It scarcely needs be said that, with respect to matters involving the Federal constitution, we, as an inferior tribunal, must follow the pronouncements of that court no matter what our private views may be.

B.F. Goodrich Co. v. State, 38 Wn.2d 663, 676, 231 P.2d 325, 332

(1951). Through its frequent consideration of takings claims, the U.S.

Supreme Court has articulated a comprehensive federal takings analysis.

Although this Court intended to coordinate the Washington and federal analyses in the early 1990s, the analyses are instead notably uncoordinated. Because the U.S. Supreme Court has dictated the steps a court must take when analyzing a takings claim under the U.S. Constitution, this Court must follow the federal analysis. The Washington Constitution should provide no basis for deviating from the federal analysis because, even though this Court has the power to provide greater protection to individuals through the Washington Constitution, this Court has found the federal and Washington takings protections to be equivalent.

2. The Washington takings analysis is constitutionally insufficient because it lowers the floor of protection enjoyed by property owners under the federal takings analysis.

The problem is not merely that the Washington takings analysis differs from the federal analysis. The nature of those differences renders the Washington takings analysis constitutionally insufficient. Federal constitutional provisions set the floor—the minimum level of protection accorded individual rights against intrusion by the government. *Orion*, 109 Wn.2d at 652. The Washington takings analysis falls below that floor.

The Washington analysis was designed to offer state and local governments an opportunity to defeat a takings claim and avoid paying

compensation, albeit in exchange for facing a substantive due process challenge.⁹ Therefore, to enhance protection for state and local government, the Washington analysis diverts property owners from the Fifth Amendment remedy of compensation and toward the Fourteenth Amendment remedy of invalidating the challenged government action.¹⁰

In an analogous situation, the U.S. Supreme Court held that a state court's attempt to substitute invalidation for compensation was "constitutionally insufficient." *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304 (1987), considered whether the government owed compensation for the time during which it applied a regulation ultimately found to effect a taking, or whether invalidation of the regulation was sufficient. *Id.* at 306–07. A California court had decided invalidation was the appropriate remedy by

⁹ See generally Wynne at 151-56. See, e.g., *Presbytery*, 114 Wn.2d at 332–33 ("Invalidation of the ordinance (instead of compensation) also avoids intimidating the legislative body Accordingly, many challenges to land use regulations will most appropriately be analyzed under a due process formula rather than under a 'taking' formula."); *Orion*, 109 Wn.2d at 649 ("Undoubtedly, the specter of strict financial liability will intimidate legislative bodies from making the difficult, but necessary choices presented by the most sensitive environmental land-use problems.").

¹⁰ For example, governments have defeated a takings claim under the Washington analysis by demonstrating only that a challenged regulation is designed more to prevent a harm than to provide an affirmative public benefit. See, e.g., *Conner v. City of Seattle*, 153 Wn. App. 673, 700, 223 P.3d 1201 (2009); *Paradise, Inc. v. Pierce Cnty.*, 124 Wn. App. 759, 773–74, 102 P.3d 173 (2004). This Court likewise casts a negative answer to the other threshold question—whether the regulation infringes on a fundamental attribute of property ownership—as potentially freeing the regulation from a takings challenge. *Guimont*, 121 Wn.2d at 603-04; *Presbytery*, 114 Wn.2d at 329-30.

reasoning that the threat of paying compensation would inhibit salutary land use regulation. *Id.* at 317. The U.S. Supreme Court disagreed and held that where government action amounts to a taking, invalidation of the action cannot relieve the government of “the duty to provide compensation for the period during which the taking was effective.” *Id.* at 321. The Court concluded that a desire to shield government from the risk of compensation cannot trump the Fifth Amendment. *Id.*

The Washington takings analysis suffers from the same constitutional infirmity. Like the California court reined in by *First English*, this Court shielded government policy-makers from the specter of the compensation remedy by channeling property owners toward the invalidation remedy. Under *First English*, this is constitutionally insufficient. If government action constitutes a taking under the federal analysis, compensation is due. Washington may not lower that floor of constitutional protection.

3. Each of the unique elements of the Washington takings analysis has either been discredited by the U.S. Supreme Court or offers little value.

Adopting the federal takings analysis would mean abandoning the three elements unique to the Washington analysis. Jettisoning them constitutes no loss because each either has been discredited by the U.S. Supreme Court or offers no real value.

a) **The “substantially advances a legitimate state interest” element has been rejected by the U.S. Supreme Court.**

Little more need be said about Washington’s “substantially advances a legitimate state interest” element than what the U.S. Supreme Court said in *Lingle* when removing that element from the federal takings analysis. *Lingle* abandoned the same federal case law on which this Court relied when including the “substantially advances” element in the Washington analysis. *Compare Orion*, 109 Wn.2d at 647 (quoting *Agins v. Tiburon*, 447 U.S. 255, 260 (1980)) with *Lingle*, 544 U.S. at 548 (expelling *Agins* from the federal takings analysis).

b) **The “fundamental attribute” element can be subsumed into the *Penn Central* factors.**

Asking whether a government action destroys, denies, deprives, derogates, infringes on, or merely implicates some other fundamental right of property ownership explores the definition of “property” within the meaning of takings protections. That is a necessary question because, “[b]efore engaging in a takings analysis,...it must first be determined if ‘property’ has actually been taken.” *Manufactured Housing*, 142 Wn.2d at 363-64.

This need not be a separate inquiry. The question could be addressed through the *Penn Central* factors. The first factor requires a

court to consider the regulation’s impact on the property owner—an exercise that must include evaluating the owner’s underlying property interest. *See Penn Cent.*, 438 U.S. at 124-25 (discussing failed takings challenges mounted against regulations that “did not interfere with interests that were sufficiently bound up with the reasonable expectations of the claimant to constitute ‘property’ for Fifth Amendment purposes”). Elevating this to a separate, “threshold” inquiry is redundant. *See also Wynne* at 164-66 (reasons to question the origin of the “fundamental attribute” element).

- c) **The unworkable “seeks less to prevent a harm than provide a public benefit” element is premised on due process law, not takings law.**

The “seeks less to prevent a harm than provide a public benefit” element is undermined by its conceptual roots. This Court developed that element from substantive due process law. *See Presbytery*, 114 Wn.2d at 329; *Orion*, 109 Wn.2d at 650-51. The Washington Court of Appeals has referred to this element as an incongruous “due process takings analysis.” *Conner*, 153 Wn. App. at 700. But as explained by the U.S. Supreme Court in *Lingle* in 2005, due process law has no place in a takings analysis. *See Lingle*, 544 U.S. at 531-45, 548.

As a practical matter, the harm-benefit element is unworkable. When announcing it, this Court acknowledged “that the determination of whether a given regulation seeks to protect the public from harm will not always be an easy decision. Both the conferral of benefit and the prevention of harm are often present in varying degrees.” *Presbytery*, 114 Wn.2d at 329 n.13. By contrast, the U.S. Supreme Court made a similar observation two years later, but used it to bar a harm-benefit element from entering federal takings law. *Lucas* observed that such an element would call for a distinction that is “often in the eye of the beholder” and “difficult, if not impossible, to discern on an objective, value-free basis.” *Lucas*, 505 U.S. at 1024, 1026.

Although this Court altered its takings analysis in *Guimont* to embrace the “total [regulatory] taking” element introduced by *Lucas* a year earlier, *Guimont*, 121 Wn.2d at 594–604, this Court opted not to heed *Lucas*’s rejection of a harm-benefit element, reasoning that “it would be premature to begin dismantling our takings framework...without more definitive guidance on this issue from the United States Supreme Court.” *Id.* at 603 n.5. Because that guidance apparently has not been forthcoming, the impractical harm-benefit element remains an unworkable fixture of the Washington takings analysis.

4. This Court can correct course consistent with the doctrine of *stare decisis*.

The doctrine of *stare decisis* presents no bar to correcting course by adopting the federal takings analysis. This Court will abandon an established rule of law “when reason so requires” upon a “clear showing” that the rule is “incorrect and harmful.” *In re Rights to Use Waters of Stranger Creek*, 77 Wn.2d 649, 653, 466 P.2d 508 (1970). Nearly two decades of experience with the Washington takings analysis prove it is both incorrect and harmful. Although well-intentioned, the Washington analysis is based on the incorrect premise that it harmonizes and coordinates federal and Washington law. This has left Washington with a constitutionally insufficient doctrine that harms property owners by lowering the floor of protection offered by the federal takings analysis.

Reason dictates abandonment of the unique Washington takings analysis. It consistently befuddles attorneys and federal and lower Washington court judges, who must struggle to make sense of a convoluted body of law. *See Wynne* at 142-46. As one lower court observed, judges lament needing to wade through “the complex, confusing and often-ethereal realm of theoretical law that has developed in Washington under the taking clause of the 5th and 14th Amendments to

the United States Constitution.” *Guimont II*, 77 Wn. App. at 79. Reason favors clarity. Clarity requires a course correction.

IV. CONCLUSION

“Today we correct course.” With those words in 2005, a unanimous U.S. Supreme Court surveyed twenty-five years of established federal takings law, admitted an error, and clarified federal takings law. *Lingle*, 544 U.S. at 548.

Amici respectfully ask this Court to likewise examine Washington’s twenty-year-old takings analysis, concede its now-evident flaws, and correct course by adopting the federal analysis.

Respectfully submitted October 12th, 2012.

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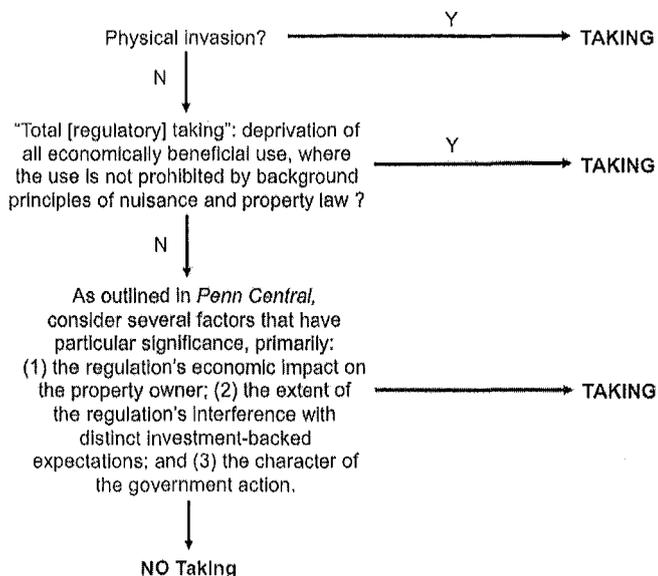
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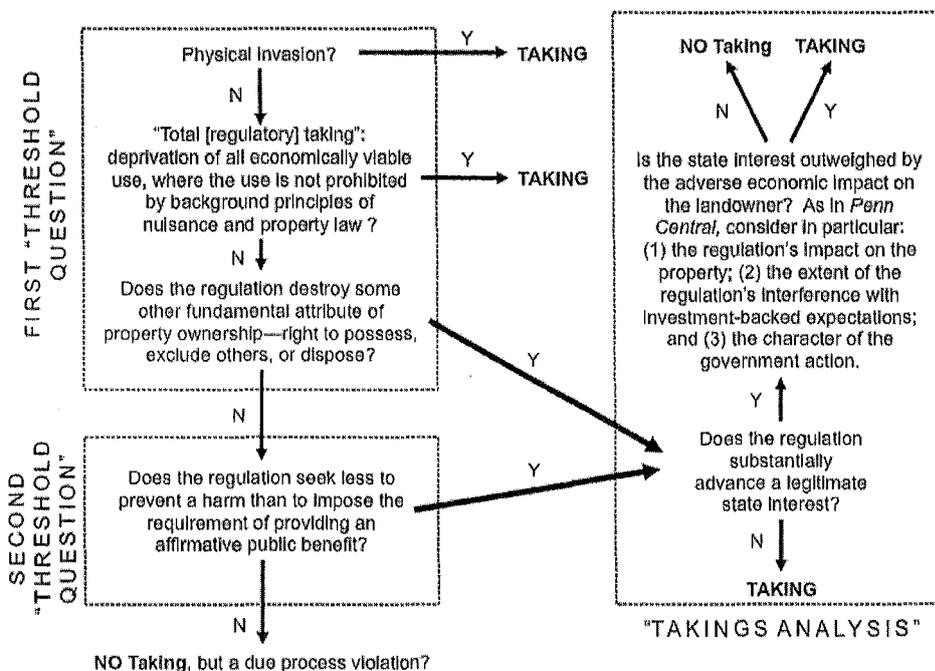
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APPENDIX

THE FEDERAL TAKINGS ANALYSIS



THE WASHINGTON TAKINGS ANALYSIS



CERTIFICATE OF SERVICE

I certify that on the 12th day of October, 2012, I sent a copy of this document to the following parties via email & U.S. Mail:

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DEBRA HERNANDEZ

OFFICE RECEPTIONIST, CLERK

To: Hernandez, Debra
Subject: RE: Lemire, No. 87703-3: Motion to file amici curiae brief

Received 10-12-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Hernandez, Debra [<mailto:Debra.Hernandez@seattle.gov>]
Sent: Friday, October 12, 2012 11:09 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'SettR@foster.com'; Spitzer, Hugh; eustis@aramburu-eustis.com; 'darren.carnell@kingcounty.gov'; 'Tim@futurewise.org'
Subject: Lemire, No. 87703-3: Motion to file amici curiae brief

Dear Sir or Madam:

Regarding *Lemire v. The Pollution Control Hearings Board* (No. 87703-3), please accept the attached motion and proposed *amici curiae* brief on behalf of the applicants: WSAMA, WAPA, and Futurewise.

If more convenient for the Court, please feel free to treat me as the primary contact for all three *amici*.

Thank you very much,

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