

**BEFORE THE WESTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD**

SHERILYN C. WELLS, et al.,)	
)	No. 97-2-0030c
Petitioners,)	
vs.)	ORDER RE: MOTIONS
)	TO RECONSIDER THE
WHATCOM COUNTY,)	FINAL DECISION AND
)	ORDER ENTERED
Respondent,)	JANUARY 16, 1998,
)	AND AMENDED
and)	JANUARY 22, 1998
)	
MICHAEL and JEAN FREESTONE, et al.,)	
)	
Intervenors.)	
_____)	

PROCEDURAL HISTORY

Subsequent to our entry of the final decision and order (FDO) in the above-captioned case, we received the following:

Facsimile transmissions from Petitioner Sherilyn Wells (January 20, January 27, 1998) regarding the Board's inclusion of Summit View in the Geneva urban growth area (UGA).

A letter from the City of Bellingham (January 26, 1998) regarding the Board's inclusion of the Summit View plat in the Geneva UGA.

Letters from Kurt Denke (January 27, January 30, 1998) regarding the communications from Wells and Bellingham.

(See our memorandum dated January 22, 1998, to Ms. Wells requiring post-FDO communications to be framed as motions for reconsideration).

A motion from the representative of the parties referred to as Whatcom Resource Watch (WRW) for reconsideration regarding mineral resource lands (MRL) (January 26, 1998).

A response to WRW's motion from Intervenors Freestone (January 27, 1998).

Notification from Intervenors Trillium Corporation and Semiahmoo that they would not respond unless so required (January 27, 1998).

A letter from Alexander W. Mackie (February 12, 1998) posing questions of a procedural nature.

A motion for reconsideration from the City of Blaine (January 26, 1998) requesting clarification of the boundary of the Blaine UGA.

As we have previously stated, letters requesting clarification are not properly before the Board. We decline to respond to them.

Pursuant to WAC 242-02-832, parties have an option to respond to motions for reconsideration unless the Board requires such a response. We did not so require. Aside from Intervenors Freestone, the parties opted not to respond.

With regard to the questions posed by Mr. Mackie:

1. A decision regarding motions for reconsideration becomes a FDO for purposes for appeal.
2. Pursuant to WAC 242-02-060, if no action were taken by the Board within 20 days (February 17, 1998) the request for reconsideration would be deemed denied.
3. The FDO was served on parties in the above-captioned case and cases #96-2-0008 and #94-2-0009. The final-decision status of the latter-two cases will be determined subsequent to this order.
4. Owing to the provisions of RCW 34.05.470(3), WAC 242-02-832 no longer needs refer to suspending the FDO.

We find the petition for reconsideration of the City of Blaine to be persuasive and modify the FDO as follows:

On page 2 (FDO), line 16, modify as follows: “...including the road right-of-way and the short-term planning area (STPA)....”

On page 2 (FDO), line 20, modify as follows: “found noncompliant the ~~short-term planning area (STPA)~~”

On page 2 (FDO), lines 15 and 16, modify as follows: “...findings of invalidity are rescinded and they comply with the GMA.”

On page 7 (FDO), line 25, modify as follows: “including the road right-of-way and the STPA”

Also on page 22 (FDO), line 17, “1. The Blaine UGA, including the road right-of way and the STPA, and excluding the aquifer....”

Conclusion of Law 1, (the 26th page, line 4) modify as follows: “The Blaine UGA, including the road right-of-way and the STPA, and excluding the aquifer....”

We find WRW’s argument that the APA requires a detailed explanation for each and every argument within a case to be unpersuasive. Nonetheless, upon careful review of WRW’s motion, we conclude the following:

The decision by the County to exempt pre-existing sites from the application of criteria 6, 8, and 9 is within the scope of authority of the County.

WRW asserted that “the Board never explained why all other lands in the County prior to being designated as MRL must be subject to the designation criteria 6, 8, and 9, whereas it is acceptable for pre-existing sites to be designated without application of those “safeguard” criteria (Motion at 3).” It is within the County’s discretion to say that all other sites will be designated by applying other additional criteria. This is a valid policy distinction and

complies with the Growth Management Act.

The evidence in the record that some pre-existing sites were not legally permitted is insufficient to lead us to a definite and firm conviction that the County has made a mistake. The County has the discretion to apply criterion 4, and therefore, these sites are appropriately designated “MRL”.

WRW expressed the opinion that the County’s reliance on Policy 8P-4 must be rejected as speculative because the regulations have not yet been adopted. If WRW objects to the implementing development regulations (DRs), as they are adopted, they may file a petition for review challenging those DRs.

Policy 8P-4 directs County staff to allow mining within designated MRLs through the permitting process. It does not require staff to permit in all circumstances.

We hold that the primary purpose of Policy 8P-4 is to conserve mineral lands rather than, as WRW concludes, that the primary purpose is to resolve land use compatibility conflict issues. Specific conflicts are appropriately addressed in a site-by-site permitting and review process.

After reviewing the briefs of WRW, Whatcom Sand and Gravel, and the County regarding wellheads, we do not have a definite and firm conviction that the County has made a mistake. Therefore, the wellhead protection policies are not clearly erroneous.

The County’s MRL designation answers the “basic” compatibility issues. The permit stage review has not been eliminated.

The County asserted, as we pointed out in the FDO, that designation does not constitute a right to mine. We subsequently stated that the record does not support Petitioners’ arguments that residential uses will be impermissibly impacted by mineral lands designations.

We do not have a definite and firm conviction that the County has made a mistake in adopting its MRL designation criteria. WRW's motion for reconsideration is denied.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 17th day of February, 1998.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Les Eldridge
Board Member

Nan A. Henriksen
Board Member