

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

BETTER BRINNON COALITION,

Petitioner,

v.

JEFFERSON COUNTY,

Respondent.

No. 03-2-0007

**ORDER ON
RECONSIDERATION**

This Matter has come before the Board upon the County's Motion for Reconsideration, filed on September 2, 2003. Petitioner filed its Response to Respondent's Motion for Reconsideration on September 12, 2003. Based upon the County's Motion and the unusual circumstances in which Petitioner's exhibits were provided to the Board, the Board reopened the hearing on the merits on October 14, 2003. Petitioner was represented at the reopened hearing by Mark Rose and the County was represented by attorney Mark Johnsen, planner Josh Peters, and department director Al Scalf. The hearing was held at the Jefferson County Courthouse in Port Townsend, Washington. Board members Holly Gadbow and Margery Hite were present in Port Townsend [\[1\]](#) while board member Nan Henriksen attended telephonically.

I. POSITION OF THE COUNTY

The County raised four major issues in its Motion for Reconsideration:

1. The size and bulk dimensions rules were not changed as a result of the adoption of the Brinnon SubArea Plan and thus were not subject to challenge. (Finding of Fact #23; Conclusions of Law G and I)
2. The County did study the impact of increased impervious surfaces in the FSEIS. (Finding of Fact #17)
3. The County withdrew its original determination of non-significance, made a determination of significance on all the pending comprehensive plan amendments,

including the Better Brinnon Subarea Plan, and therefore did not appeal the hearing examiner's decision. (Findings of Fact #9 and #11)

4. The County did not reject offers of assistance by the Department of Fish and Wildlife and neighboring tribes because the department and the tribes did not make phone or personal contact with the County. (Finding of Fact #8)

II. POSITION OF THE PETITIONER

The Petitioner responds:

1. The size and bulk dimensions rules did not change with the adoption of the Brinnon SubArea Plan and the County is correct in the change it proposes to Finding #23 and Conclusions of Law G and I.

2. The County's discussion of impervious surfaces was only one paragraph and is not sufficient to describe the potential environmental impacts of the Brinnon SubArea Plan.

3. The County did withdraw its original threshold determination but it is important to note that the County failed to perform an adequate non-project review of potential environmental impacts. This was a point made by the hearing examiner in his decision and that point should not be lost.

4. The County did fail to accept the offers of assistance in the letters submitted by the Department of Fish and Wildlife and the tribes. This finding should not be changed. (Finding of Fact #8)

III. DECISION OF THE BOARD

The Board appreciates the efforts of the Petitioner and the County to ensure that the decision in this case is accurate. Because of the unusual posture of the case arising from the late submission of exhibits by the Petitioner, this Board allowed the County to submit exhibits after the reopened hearing. The County's original pleadings had not contained all the exhibits that the County cited to support the changes the County has requested. The Board has now received and reviewed the County's additional exhibits.

1. Both sides agree that the size and bulk dimensions rules did not change with the adoption of the Brinnon SubArea Plan. The Board's Final Decision and Order will be amended to reflect this correction.

2. The County submitted a November 22, 2002 Memorandum from Natural Resources Manager, Dave Christensen, to Planner Josh Peters containing a general discussion of the potential environmental impacts of the proposed zoning changes in terms of impervious surfaces. Finding of Fact #17 will be amended to reflect that discussion.
3. The County did withdraw its original threshold determination regarding the Brinnon Subarea Plan. Because it issued a new determination of significance with respect to all the comprehensive plan amendments pending, the County did not appeal the hearing examiner's decision. However, the decision of the hearing examiner represents guidance given to the County regarding the need to conduct non-project level SEPA review of the significant and cumulative impacts of the Brinnon Subarea Plan and to evaluate appropriate mitigating measures and not to reserve environmental analysis of these impacts and mitigating measures to the project level. The Final Decision and Order will be amended to reflect both points.
4. The exhibits submitted by the County, in particular Ex. 3-27, show that representatives of the Port Gamble S'Klallam Tribe and the Department of Fish and Wildlife attended a meeting regarding the County's environmental review of the Brinnon Subarea Plan. At that time, those representatives orally raised their concerns regarding the need for review of cumulative impacts on fish and wildlife habitat in addition to the written comments they had submitted. Exhibit 3-27 shows that the County, in particular Mr. Scalf who led the discussion, was open to any comments and was respectful of the comments that were offered. It also shows that the County intended to reserve review of environmental impacts of the Brinnon Subarea Plan on fish and wildlife habitat to the project stage. The Final Decision and Order will be amended to reflect these points.

IV. ORDER

The Final Decision and Order dated August 22, 2003 is hereby AMENDED as shown on the attached Amended Final Decision and Order.

Pursuant to WAC 242-02-832(4), this decision constitutes a final decision and order for purposes of judicial review.

So ORDERED this 3rd day of November, 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

Margery Hite, Board Member

Nan Henriksen, Board Member

Holly Gadbow, Board Member

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Due to budget constraints, the Board determined to limit the number of members in physical attendance.