

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

BETTER BRINNON COALITION,

Petitioner,

v.

JEFFERSON COUNTY,

Respondent.

No. 03-2-0007

**FINAL DECISION  
AND ORDER**

Brinnon is an unincorporated community in southeastern Jefferson County located in a beautiful setting that has attracted tourists and retired residents since the turn of the century. The Brinnon area includes 20 miles of coastline as well as portions of the Dosewalips and Duckabush Rivers. Even though making a living by the traditional occupations of fishing and logging has become economically unreliable, since 1970 the population of Brinnon has grown from 260 to more than 1,200.

Brinnon is one of the areas the County has sought to address as part of its desire to reflect in its current planning what is already present in the way of development. (Others also appealed to this Board are the Tri-Area Urban Growth Area (UGA) and the Glen Cove/Eastview limited areas of more intense rural development or LAMIRDs). In its 1998 comprehensive plan, Jefferson County designated a limited area of more intense rural development in Brinnon and committed to doing additional planning later. In 2002, the Jefferson County commissioners adopted the Brinnon Sub-Area Plan as the outgrowth of that additional planning effort. In this case, the Board is asked to consider the County's compliance with the Growth Management Act ("GMA") requirements as to public participation; the consistency of the sub-area plan with the County's comprehensive plan and development regulations; the propriety of

the boundaries of the LAMIRDS that were expanded in size and use under the plan; and the adequacy of the County's State Environmental Policy Act (SEPA) analysis.

## **I. PROCEDURAL HISTORY**

A draft Brinnon Subarea Plan was prepared and recommended to the Jefferson County Planning Commission and County Commissioners by the Citizens' Advisory Planning Group, Brinnon Subarea Planning Group, on August 28, 2001. On December 10, 2001, the county's department of community development issued an environmental checklist and a determination of non-significance (DNS) under SEPA. Petitioner appealed the determination of non-significance to the County's hearing examiner on January 7, 2002. The hearing examiner found that the County's issuance of the DNS was "neither proper phased review nor valid innovative zoning techniques" and, on March 17, 2002, ordered the County to prepare a proper Environmental Impact Statement (EIS) or a Supplemental Environmental Impact Statement (SEIS). Index 168. Environmental review of the Brinnon Subarea Plan was subsequently incorporated into the County's SEIS for all of the 2002 comprehensive plan amendments. Exs. 3-70 and 3-81. On December 13, 2002, the Jefferson County Board of Commissioners adopted Ordinance 13-1213-02, amending the County's comprehensive plan to adopt the Brinnon Sub-Area Plan. Notice of the amendment was published on December 25, 2002. Petitioner, Better Brinnon Coalition, filed a petition for review of the County's adoption of the Brinnon Sub-Area Plan through Ordinance 13-1213-02 with this Board on February 24, 2003.

After a prehearing conference held with the presiding officer and the representatives of the parties, an Order on Prehearing Conference was entered, specifying the issues to be decided by the Board. The hearing on the merits was held in Port Townsend, Washington, on June 25, 2003. The County was represented by Attorney Mark

Johnsen. Petitioner was represented by Mr. Mark Rose. All three board members were in attendance.

## II. ISSUES PRESENTED<sup>1</sup>

**Issue 1:** Does Ordinance 13-1213-02 violate RCW 36.70A.35(1) by failing to establish and enact “reasonably calculated” public participation policies, and by excluding tribes, government agencies, property owners and other affected and interested individuals from any meaningful involvement in drafting the plan?

**Issue 2:** Does Ordinance 13-1213-02 violate RCW 36.70A.070 by not being internally consistent with the Jefferson County Comprehensive Plan in failing to comply with RCW 36.70A.070(5)(a), (c), and (d) as stipulated in the Land Use and Rural Element of the Comprehensive Plan? Does Ordinance 13-1213-02 violate RCW 36.70A.070 by not being consistent with the county Comprehensive Plan Goals, Policies and Procedures as stipulated in LNG 1.0, LNP 4.3.3, LNP 4.3.4, LNP 4.4, and LNP 4.8 in the Land Use and Rural Element?

**Issue No. 3:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(1) by not considering flooding, drainage, storm water run-off or mitigations in the area, nearby jurisdictions, or Hood Canal?

**Issue No. 4:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(3) by failing to consider a forecast of future capital facilities needs, locations of capital facilities, a six-year plan to finance such capital facilities, or a requirement to reassess the land use element if probable funding falls short of meeting existing needs within the capital facilities plan element?

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<sup>1</sup> Petitioner abandoned Issues 5, 9 and 10 as set out in the Order on Prehearing Conference.

**Issue No. 6:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(5)(d)(iv) by allowing improper expansion of the Brinnon Rural Village Center (RVC) LAMIRD?

**Issue No. 7:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(5)(d)(iv) by allowing improper expansion of the WaWa Point LAMIRD?

**Issue No. 8:** Does Ordinance 13-1213-02 violate RCW 36.70A.140 by failing to establish and broadly disseminate a public participation program and communication programs, and by not broadly disseminating proposals and alternatives, or considering or responding to public comment?

**Issue No. 11:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(1) by failing to consider population forecasts in expanding two LAMIRDs and establishing a new Light Industrial District.?

**Issue No. 12:** Does Ordinance 13-1213-02 violate RCW 43.21C.030 by failing to utilize a systematic, interdisciplinary approach to planning, failing to state the environmental impact of expanding two LAMIRDs, establishing a new Light Industrial Zone, “recommending” a Master Planned Resort, and eliminating many restrictions on home-based and cottage industries, failing to formulate any alternatives to proposed action, failing to recognize the world-wide and long-range character of environmental problems?

### **III. BURDEN OF PROOF**

As the Board reviews the challenges raised in the Petition for Review, the Board is bound to determine compliance under the “clearly erroneous” standard of review. Pursuant to RCW 36.70A.320(3), the Board “shall find compliance unless [it] determine[s] that the action by [the County] is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA].” The

County's actions were clearly erroneous if the Board is "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. Public Util. Distr. 1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Pursuant to RCW 36.70A.320(1), and the 2000 amendments thereto, the County's actions are presumed valid upon adoption. The burden is on Petitioner to demonstrate that the action taken by the County is not in compliance with the requirements of the GMA.

#### **IV. SUMMARY OF DECISION**

The issues in this case fall into three categories: challenges to the County's adoption of the sub-area plan as non-compliant with the public participation requirements of the GMA; challenges to the County's adoption of the new LAMIRD boundaries and uses in Brinnon and WaWa Point; and a challenge to the consideration of environmental factors, including the adequacy of the County's SEPA review.

We find that the County is in compliance with respect to the public participation requirements of the GMA. The County established a lengthy public participation process, including a citizens advisory group, that allowed comment and public input in many ways. Although a segment of the community felt ignored, this was because their view was not adopted. Admirable as consensus is as a goal, the GMA does not require it.

We also find that the boundaries drawn for the Brinnon Flats Rural Village Center and the WaWa Point Rural Village Center are compliant with the GMA. We are very impressed with the way the County investigated the history of the area and used it to inform its view of the village logical outer boundaries. We also acknowledge the moderation used in establishing the boundaries for new recreational and tourist uses

for the overlay created at WaWa Point. While we find that the intensity of uses allowed at the Brinnon Flats Rural Village Center exceeds the historic range in one regard, a minor adjustment would make that designation compliant.

The designation of a Light Industrial LAMIRD on the Brinnon highlands, however, does not comply with the GMA requirements for an industrial LAMIRD. RCW 36.70A.070(5)(d)(i). The prior sawmill on the property and the existing gravel pit on a fourth of the land do not cause the property to meet the logical outer boundaries test for a light industrial LAMIRD designation. While this may be a choice location for future light industrial development, it does not qualify for a LAMIRD designation.

However, the SEPA challenge presents a different situation. The County has made a deliberate judgment to defer meaningful environmental review of its land use decisions until the permitting stage. This is not a choice that comports with SEPA and it undercuts the rationality of the County's planning decisions under the GMA as well. It is also a choice that was reversed by the County's hearing examiner in Petitioner's appeal of the County's original DNS.

Despite the evidence presented to the County by the Department of Fish and Wildlife and the neighboring tribes, the County failed to analyze the probable significant adverse environmental impacts on fish and wildlife habitat in the Brinnon region. SEPA does not require the County to evaluate a laundry list of unrelated environmental considerations, but it does require that the County evaluate probable significant environmental impacts. WAC 197-11-402(1). The Brinnon Flats Rural Village Center is located in the flood plain, just north of the Dosewallips River and west of the Dosewallips Delta. Brinnon Subarea Plan. The entire Brinnon area contains critical habitat for Chinook and summer run chum salmon, as well as other threatened species. By allowing increased densities and expanded commercial uses,

the Brinnon Subarea Plan creates the potential for significant adverse environmental impacts on the habitat for those species. Simply providing, as Jefferson County has, that any impacts will be addressed on a permit basis fails to assess the cumulative impacts and to fully inform the decision makers of the potential consequences of the designations challenged here.

The unchallenged hearing examiner's decision on the threshold determination is binding on the question of whether there are potential significant adverse environmental impacts arising from the Brinnon Subarea Plan so the question before us is whether those impacts were adequately evaluated in the SEIS. We are sympathetic to financial considerations that lead small counties to feel that they cannot afford to do an environmental review at the nonproject stage and emphasize that only those impacts found to be significant require evaluation. Here, fortunately, the tribes and the Department of Fish and Wildlife offered to provide technical assistance in assessing the impacts on fish and wildlife habitat. Armed with information about the environmental impacts of increased development in the Brinnon region, decision makers might add conditions and mitigation measures that would avoid or minimize adverse impacts. Without that information, decision makers could be surprised at the consequences, both environmental and legal, that follow from their policy choices.

## V. DISCUSSION AND ANALYSIS

We will discuss the related challenges together:

### ***Challenges To Compliance With The Public Participation Requirements Of The GMA***

**Issue 1:** Does Ordinance 13-1213-02 violate RCW 36.70A.35(1) by failing to establish and enact "reasonably calculated" public participation policies, and by

excluding tribes, government agencies, property owners and other affected and interested individuals from any meaningful involvement in drafting the plan?

**Issue No. 8:** Does Ordinance 13-1213-02 violate RCW 36.70A.140 by failing to establish and broadly disseminate a public participation program and communication programs, and by not broadly disseminating proposals and alternatives, or considering or responding to public comment?

### **Applicable Law**

The public participation requirements of this chapter shall include notice procedures that are reasonably calculated to provide notice to property owners and other affected and interested individuals, tribes, government agencies, businesses, school districts, and organizations of proposed amendments to comprehensive plans and development regulations. Examples of reasonable notice provisions include:

- (a) Posting the property for site-specific proposals;
- (b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located or that will be affected by the proposal;
- (c) Notifying public or private groups with known interest in a certain proposal or in the type of proposal being considered;
- (d) Placing notices in appropriate regional, neighborhood, ethnic or trade journals; and
- (e) Publishing notice in agency newsletters or sending notice to agency mailing lists, including general lists or lists for specific proposals or subject areas.

### **RCW 36.70A.035(1)**

Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures for early and continuous public participation in the development and amendment of

comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments. In enacting legislation in response to the board's decision pursuant to RCW 36.70A.300 declaring part or all of a comprehensive plan or development regulation invalid, the county or city shall provide for public participation that is appropriate and effective under the circumstances presented by the board's order. Errors in exact compliance with the established program and procedures shall not render the comprehensive plan or development regulations invalid if the spirit of the program and procedures in observed.

**RCW 36.70A.140**

**Positions of the Parties**

Petitioner argues that the County failed to include tribes and state agencies or even the County's own public works department from the beginning of the Brinnon planning process. Petitioner's Opening Brief at 2-3. "Despite numerous pleas to the Brinnon sub-area planning group, DCD, BOCC, and county Planning Commission to include 'affected and interested individuals, tribes, government agencies...' they were not notified in the formative stages of the planning process, no action was taken to include them in the planning process, and they were rebuffed if they offered comment." Petitioner's Opening Brief at 2.

Petitioner points to a variety of letters and comments in the record from tribes, state agencies, and citizens complaining that the sub-area planning group did not allow input into the development of the plan. Exs. 3-15, 4-20, 8-12, 8-17. Petitioner argues that there was not an opportunity for meaningful input because the citizens' advisory group excluded certain voices.

The County responds that the record shows that there was broad notice, active public participation, extensive meetings and input from all stakeholders. Jefferson County's GMA Hearing Brief at 7. Ordinance No. 13-1213-02 sets out the progress of public participation, which included public meetings twice monthly from December 2, 1999 to August 28, 2001. Ex. 15-1. The Planning Commission held a public hearing on January 16, 2002, the county commissioners held a public hearing on March 12, 2002, and made changes until May 1, 2002, when the final plan was drafted. Jefferson County's GMA Hearing Brief at 10.

### **Discussion and Analysis**

The claim of failure of public participation in this case primarily revolves around the alleged failure of the citizens' advisory group to involve the tribes and state agencies in the planning process. Petitioner does not contend that the public was not notified about the planning process. Indeed, at the hearing on the merits, Petitioner said there were "plenty of meetings". Instead, Petitioner points to the offers of help to address the environmental issues that were offered by the Skokomish and Port Gamble tribes, and by the Department of Fish and Wildlife, that the citizens' advisory group did not follow up on.

The record shows that offers were made by the tribes and the Department of Fish and Wildlife to assist the County in planning in ways that would address concerns for preservation of fish and wildlife habitat. Exs. 4-B and 8-12. The County does not deny that these offers were not accepted.

The GMA public participation requirements address notice to be given (RCW 36.70A.035) and the local jurisdiction's own public participation program (RCW 36.70A.140). Petitioner does not argue that the County failed to follow its public participation program as established pursuant to RCW 36.70A.140. Nor does

Petitioner argue that notice was not given as required by RCW 36.70A.035. At the hearing on the merits, the Petitioner expressly conceded that the requirements for “just giving notice” have been met. Petitioner is instead raising the concern that there was not meaningful inclusion of agencies and tribes such that they would have been able to provide useful information and suggestions regarding environmental issues.

This Board has been asked in the past to find that the public participation requirements in the GMA require a “meaningful” kind of participation. *See, e.g., Ray v. City of Olympia*, 02-2-0012 (the Board declines to find that “meaningful” participation requires the decision maker to agree with a majority of citizens). We have held that the GMA requires that a public participation process must be provided but it does not require that the local decision maker agree with the positions urged by the citizens, *Wells v. Whatcom County*, WWGMHB 97-2-0030 (Final Decision and Order, January 16, 1998), or even with the recommendation of staff, planning commission and citizens’ advisory committee. *Achen v. Clark County*, WWGMHB 95-2-0067 (Final Decision and Order, September 20, 1995). In addition, we have held that the GMA requires an opportunity for early and continuous public participation, but does not dictate that the citizens attend or discuss any particular issue. *TRG v. Oak Harbor*, WWGMHB 96-2-0002 (Final Decision and Order, July 16, 1996).

Here, the claim is that the Department of Fish and Wildlife and the tribes were not meaningfully included in the planning process. There is no claim that the tribes and department were not given notice of the proposed subarea plan or that they were excluded from the public meetings or hearings that were held. In fact, the comments of the tribes and the department were included in the record of what the County considered below. Exs. 4-13, 4-20, 8-7, 8-11, 8-12, and 8-17. Rather, this challenge goes to the failure to substantively include the concerns of the department and the tribes in the planning process.

The GMA public participation requirements include notice provisions and an adequate opportunity for citizens to be heard. RCW 36.70A.035 and 36.70A.140. Here, the County established a citizens' advisory planning group early in the process and invited applications for membership from the public. Ex. 15-1 at 3. All of those who asked to become part of this committee were appointed to it. *Ibid.* The group, in turn, held public meetings twice a month for almost two years. *Ibid.* at 4. After the planning group made its recommendations, the public had the opportunity to comment at the public hearing of the Planning Commission, and again at the public hearing held by the board of county commissioners. *Ibid.* at 7, 11-12.

Petitioner implies that the planning group was dominated by a segment of the community. Apparently, also, some of the original members of the group dropped out. Ex.15-1, at 3. However, Petitioner does not claim that the group failed to *allow* dissenting comment; rather that they were not *open* to the opposing point of view.

Petitioner's argument suggests that the GMA requires that the County reach a solution that satisfies all the interested members of the community. This is not the case. It is true that the GMA's public participation requirements are founded in a belief that the best decisions are made with full public knowledge and participation. However, the GMA does not direct the local jurisdiction in how to act upon the comments it receives. However laudable consensus may be as an aim, the GMA does not require it. Local decision makers must allow citizens to make their feelings known but the county commissioners do not have to follow them, let alone must they engage in a particular form of interactive discussion such as Petitioner suggests should have been done here.

This is not to say that it would not be a good idea for the community to reach consensus. Indeed, if it had, there would never have been an appeal to this Board.

However, the GMA public participation requirements do not require the county commissioners to use public opinion to adopt a particular course of action; they just require that the public be given an opportunity to comment throughout the decision-making process. This was done here and we find no violation.

### ***Challenges To The Expansion Of LAMIRDs***

**Issue 2:** Does Ordinance 13-1213-02 violate RCW 36.70A.070 by not being internally consistent with the Jefferson County Comprehensive Plan in failing to comply with RCW 36.70A.070(5)(a), (c), (d) as stipulated in the Land Use and Rural Element of the Comprehensive Plan? Does Ordinance 13-1213-02 violate RCW 36.70A.070 by not being consistent with the county Comprehensive Plan Goals, Policies and Procedures as stipulated in LNG 1.0, LNP 4.3.3, LNP 4.3.4, LNP 4.4, and LNP 4.8 in the Land Use and Rural Element?

**Issue No. 6:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(5)(d)(iv) by allowing improper expansion of the Brinnon RVC LAMIRD?

**Issue No. 7:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(5)(d)(iv) by allowing improper expansion of the WaWa Point LAMIRD?

### **Applicable Law**

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objective, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

#### **RCW 36.70A.070 (in pertinent part)**

Counties shall include a rural element including lands that are not designated for urban growth, agriculture,

forest, or mineral resources. The following provisions shall apply to the rural element:

...

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development including necessary public facilities and public services to serve the limited area as follows:

...

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl.

**RCW 36.70A.070(5)(d)(iv)**

**RCW 36.70A.070(5)(a)**

**RCW 36.70A.070(5)(c)**

### **Positions of the Parties**

Petitioner argues that the subarea plan is not consistent with the county comprehensive plan in three ways: First, Petitioner argues that the Land Use and Rural Element of the comprehensive plan does not permit an increase in commercial area unless the population grows to an extent as to require it. Petitioner's Brief at 4.

Second, Petitioner argues that "other" commercial uses are only allowed in rural areas if they are resource based; the new Light Industrial Zone created in the Brinnon Subarea Plan is not limited to resource based industries, nor is it a major industrial development pursuant to RCW 36.70A.365. Petitioner's Brief at 4.

Third, Petitioner argues that the Brinnon Subarea Plan nearly doubles the size of the Brinnon rural village with no evidence that any infill has taken place since the original Brinnon rural village was created. This, Petitioner argues, is inconsistent with the land use policies in the comprehensive plan. LNG 1.0, LNP 4.3.3, LNP 4.3.4, LNP 4.4, and LNP 4.8. These policies permit infill in the Rural Village Centers, Petitioner argues, but only by containing and concentrating infill in the existing built environment.

The County responds that the comprehensive plan has always indicated that the logical outer boundaries it established for commercial uses were set only on an "interim basis". Jefferson County GMA Hearing Brief at 12. LNP 4.3.3 established a Rural Village Center at Brinnon. When this Board clarified the standards for limited commercial development in rural areas, the County explains, the County used that to set the new LAMIRD locations and boundaries in the subarea plan. *Ibid.* LNP 4.8 specifically provides that the County will assist the Brinnon area in exploring locations for future commercial development in Brinnon. Jefferson County GMA Hearing Brief at 13.

The County argues that the subarea plan is not inconsistent with the County policy to contain the built environment because the new LAMIRD boundaries are consistent with RCW 36.70A.070 and do not weaken any of the county's development regulations. *Ibid.* The County further argues that the subarea plan thoroughly addresses the avoidance of low-density sprawl through the analysis of transportation, proximity to incompatible uses, employment opportunities and supporting the community vision. Jefferson County GMA Hearing Brief at 12.

Petitioner further urges that the LAMIRD boundaries at Brinnon and WaWa Point violate RCW 36.70A.070(5)(d)(i). "Growth management indicators [sic] not justify expansion of the Brinnon RVC LAMIRD. Population growth projections have actually decreased and do not justify expansion of the Brinnon RVC LAMIRD. There is not appreciable built environment to justify expansion of the Brinnon RVC LAMIRD." Petitioner's Brief at 12. Petitioner makes similar arguments with respect to the WaWa Point RVC. *Ibid.* at 13.

Respondent argues that the addition of 32 acres to the Brinnon Flats Rural Village Center LAMIRD and 21.6 acres redesignated as Light Industrial around the Boling property in Brinnon represent logical outer boundaries. Jefferson County GMA Hearing Brief at 21-22. The County argues that the new Brinnon Flats rural village boundaries are appropriate because they follow the roads and reflect historic, pre-1990 uses that might not have been present in 1990 but were present before that time. *Ibid.* at 19-20. The new Light Industrial Zone in Brinnon is the site of a gravel pit and has historically been the location of a sawmill. *Ibid.* at 21.

The WaWa Point LAMIRD, the County points out, is a Type (d)(ii) LAMIRD. County Brief at 22. It is an overlay of Small Scale Recreation and Tourist uses (SRT) over an area of 18.7 acres zoned Rural Residential. *Ibid.* at 25. This type (d)(ii)

LAMIRD is limited to recreational and tourist uses and includes the Cove RV Park (with camping, fishing and scuba diving facilities), the Cove Grocery, the historic Hjelvik's General Store, a boat launch and a camping area. *Ibid.* at 22-26.

### **Discussion and Analysis**

Petitioner challenges the expansion of the boundaries of the two Brinnon area LAMIRDs, (Brinnon Flats Rural Village Center and the Brinnon Light Industrial district) and the WaWa Point LAMIRD (recreation and tourist overlay). We will address the Brinnon Flats Rural Village Center LAMIRD first, then the Light Industrial district LAMIRD at Brinnon, and finally the WaWa Point small-scale recreational and tourist overlay.

#### *Brinnon Flats Rural Village Center (Type (d)(i) LAMIRD)*

As a threshold matter, the County argues that it is not foreclosed from revisiting the logical outer boundaries of the Brinnon and WaWa Point LAMIRDs because the 1998 Comprehensive Plan expressly provided that the County would do so. We agree that there is no absolute bar to the County's redrawing the logical outer boundaries of a LAMIRD, since the comprehensive plan expressly reserved the right to revisit those boundaries. Provided those boundaries comport with the GMA, the County may draw the logical outer boundaries of these LAMIRDs according to the information gleaned from subsequent analysis.

The Brinnon Flats Rural Village Center is a type (5)(d)(i) "mixed use" LAMIRD:

Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements

of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population.

**RCW 36.70A.070(5)(d)(i).**

This Board discussed the GMA provisions regarding LAMIRDs at length in the Final Decision and Order, July 1, 2001 in *Durland v. San Juan County*, WWGMHB No. 00-2-0062c. As this Board stated in *Durland*, “(d)(i) LAMIRDs, being neither rural nor urban, that allow existing areas or existing uses, must always be ‘limited’, i.e., minimized and contained.” *Ibid.* at 14. Type (d)(i) LAMIRDs are expressly exempt from the requirements to assure visual compatibility with the surrounding rural area (RCW36.70A.070(c)(ii)) and to reduce inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area (RCW 36.70A.070(c)(iii)), but they must still be contained under RCW 36.70A.070(c)(i) and the boundaries must be limited under RCW 36.70A.070(5)(iv).

In this case, the County and the subarea planning group were very open about the reason that the LAMIRD boundaries were expanded in Brinnon. The expanded boundaries of the Brinnon Rural Village Center (type (d)(i) LAMIRD) were drawn to permit additional opportunities for commercial development. Brinnon Subarea Plan at 27:

Goal G1.0 Ensure that sufficient buildable land is available to support a viable business community and services for the residents and visitors in the Brinnon area.

Goal G2.0 Ensure that commercial development related to the natural resources and recreational opportunities of the area is consistent with the general goals as set forth in this plan and provides opportunity for local employment.

Goal G3.0 Ensure that commercial development is located, designed, constructed and operated in a desirable and well-planned manner.

Petitioner has responded that there is no need for additional commercial lands in Brinnon; since the original LAMIRD boundaries were drawn, because there is no evidence of infill since the county-wide planning policies were adopted. Petitioner's Brief at 5. However, the creation of limited areas of more intensive rural development (LAMIRDs) does not require a showing of need under the statute. Rather, the requirements are that the type (d)(i) LAMIRD comport with the logical outer boundaries provisions of subsection (d)(iv) and the other requirements of the Rural Element set out in RCW 36.70A.070(5) generally.

Drawing the logical outer boundaries of type (d)(i) LAMIRDs is governed by RCW 36.70A.070(5)(d)(iv):

Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection.

The question posed by the expanded Brinnon Rural Village Center is whether the new boundaries properly comply with the GMA requirements for a type (d)(i) LAMIRD.

The Brinnon Rural Village Center is not large in area, whether measured by the first logical outer boundaries (34 acres) or by the expanded logical outer boundaries under review in this appeal (32 additional acres). Ex. 19-1. However, size of the LAMIRD is not a factor for consideration under the GMA. Rural character in type ((d)(i) LAMIRDs must be protected by containing or otherwise controlling rural

development (RCW 36.70A.070(c)(i))<sup>2</sup>. Further, development within type (d)(i) LAMIRDs is limited to infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas. RCW 36.70A.070(5)(d)(i). As we said in *Durland v. San Juan County*, the exemption from the requirements of RCW 36.70A.070(5)(c)(iii) does not allow increased low-density development, but merely removes the reduction requirement (the reduction requirement is described in the GMA as “reducing the inappropriate conversion of undeveloped land to sprawling, low-density development in the rural area”). *Ibid.* at 13.

The Brinnon rural village boundaries originally encompassed an area of 34.05 acres. Ex. 19-1, Jefferson County Comprehensive Plan (1998). Of this acreage, an estimated 11.2 acres, or 33%, were undeveloped acres which have potential for infill development. The Brinnon Subarea Plan challenged here changed the boundaries as well as the make-up of the Brinnon Rural Village Center. It adds approximately 32 acres to the Brinnon Flats Rural Village Center, of which approximately 6 acres are currently vacant or entirely undeveloped. Brinnon Subarea Plan at 30. The avowed reason for adding additional territory to the Brinnon Rural Village Center is to address the problem that “there is almost no significant land available for new commercial development activity in Brinnon.” Brinnon Subarea Plan at 28.

It is not the purpose of a mixed use type (d)(i) LAMIRD to create opportunities for development:

LAMIRDs were never designed to be used as a safety valve for commercial growth and expansion. LAMIRD commercial activity is limited to infill development and redevelopment within a logical outer boundary as predominately delineated by the built environment in 1990. In and of itself, need for

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<sup>2</sup> Other restrictions on the creation of type (d)(i) LAMIRDs include requirements to protect critical areas, RCW 36.70A.070(c)(iv), and to protect against conflicts with resource lands (RCW36.70A.070(c)(v)).

additional acreage is not a justification for expanding LAMIRDs beyond their logical outer boundaries.

***Olympic Environmental Council v. Jefferson County, WWGMHB No. 00-2-0010 (Final Decision and Order, November 22, 2000).***

Type (d)(i) LAMIRDs are not alternative vehicles for channeling urban residential and commercial growth. They are designed to acknowledge existing intensive uses in the rural areas as of July 1990 and to permit limited more intensive development within carefully constrained boundaries. The County appears to approach the creation of LAMIRDs as an intermediate form of density that the GMA has created as an alternative to UGAs. This is not the case. Type (d)(i) LAMIRDs are intended to acknowledge and contain existing areas of more intense development in the rural lands. They are not principally designed for new development; rather, type (d)(i) LAMIRDs permit some infill, development and redevelopment of “existing” areas only. Type (d)(ii) LAMIRDs, on the other hand, permit “new development,” although only of small-scale recreational and tourist uses that rely on a rural location and setting. Type (d)(iii) LAMIRDs also permit “new development,” but only as to isolated cottage industries and small-scale businesses that provide jobs for rural residents. However, the language of RCW 36.70A.070(5)(d)(i) does not include the term “new development” and type (d)(i) LAMIRDs are limited to logical outer boundaries as dictated by existing uses as of July 1, 1990. RCW 36.70A.070(5)(d)(iv) and (v).

Thus, the test for a type (d)(i) LAMIRD is not whether it would be good for the economy of a rural region to have more commercial development there. The test is whether there was a built environment on July 1, 1990 and what the logical outer limits of that built environment should be for the purposes of containment.

Despite the County's focus on economic development in rural lands, the County did do an appropriate analysis of the logical outer boundaries of the Brinnon Rural Village Center. The County analyzed the built environment in this case, not just by looking at what structures and infrastructure were there but also at what type of built environment had been in the village historically. Historical use may not substitute for an analysis of what the built environment was on July 1, 1990. That analysis must be based on the structures and infrastructure in existence on July 1, 1990. However, in determining whether the existing houses should be part of the logical outer boundaries of the village, the County considered the fact that the outer boundaries of the houses included in the village had been the site of commercial uses in the past. In this way, the historical uses in the village could be used to assess residential structures as not merely houses in the area of the village but as replacement structures for earlier commercial development. Thus, the history of uses in the Rural Village Center transformed a somewhat arbitrary delineation of outlying houses as the edge of the "built environment" into a historically grounded village boundary.

The County also looked at the natural landscape surrounding the Brinnon Flats village and determined to use the rivers, the roads, and the bluff to help mark the natural boundaries of the LAMIRD. Brinnon Subarea Plan at 30-32. The statute expressly provides that logical outer boundaries should be established in light of "the need to preserve the character of existing natural neighborhoods and communities" and "physical boundaries such as bodies of water, streets and highways, and land forms and contours". RCW 36.70A.070(5)(d)(iv)(A) and (B).

The structures and infrastructure existing in July of 1990, the historical character of the built environment as part of the Brinnon Village, the physical elements used to draw logical outer boundaries, the regular boundaries drawn, and the consolidation of

public facilities and services, taken together, support the County's choice to redraw the logical outer boundaries as it has done for the Brinnon Flats Rural Village Center.

Our inquiry does not end there, however. Petitioner also points to the uses permitted in the Brinnon Flats Rural Village Center as being inconsistent with the traditional character of the Brinnon community. In particular, Petitioner cites to the letter of Department of Community, Trade and Economic Development stating "The County should be aware that all future land uses within the Brinnon Subarea will need to be rural in scale, and that new uses should only require a rural level of service if it is to remain in its current designation of Rural Village Center." Petitioner's Brief at 10. Petitioner pointed out at argument that 20,000-square-foot commercial buildings would be permitted outright in the Brinnon Flats Rural Village Center, and that this is inconsistent with rural character and the existing uses in the village.

The statute permitting the creation of type (d)(i) LAMIRDs requires that the county adopt measures to minimize and contain both existing areas *and* uses. RCW 36.70A.070(5)(d)(iv). Development regulations that substantially intensify the uses allowed beyond those in existence in July of 1990 do not comply with the Act. *See Panesko v. Lewis County*, WWGMHB 00-2-0031c (Final Decision and Order, March 5, 2001). The existing uses are all appropriately small in scale for a rural area – a nursery, a trailer park, a liquor store, an automotive store, an auto body and parts shop, a crafts shop, a restaurant, a bed and breakfast, a mini-storage and well-drilling store, a real estate office, a general store, a video and gift store, and a fishing supply shop. Brinnon Subarea Plan at 28. However, under the Brinnon Planning Area – Remote Rural overlay district for home businesses and cottage industries, structures up to 20,000 square feet are allowed in the Brinnon Flats Rural Village Center. Brinnon Subarea Plan at 50-1.; UDC 3.6.12, UDC 4.17, and UDC 4.20. By comparison, the small-scale recreational and tourist uses allowed in the West End

Planning Area Residential Rural overlay are limited in size to no more than 5,000 square feet. §3.6. 12(c), Jefferson County UDC. These are described as “small-scale grocery, convenience, or general stores, and shops or offices that provide basic goods and/or personal and professional services to meet the needs of the local population”. *Ibid.* The regulations applicable to the Brinnon Flats Rural Village Center allow buildings four times that size. Bearing in mind that all the uses in a mixed use LAMIRD such as the Brinnon Flats Rural Village Center must be “principally designed to serve the existing and projected rural population”, this increase in building size is out of scale. We find that the County has not contained and limited the *uses* in the Brinnon Flats Rural Village Center but that the logical outer boundaries have been appropriately drawn.

#### *Brinnon Light Industrial Zone*

In addition to the Brinnon Flats Rural Village Center, the Brinnon Subarea Plan also designates a Light Industrial LAMIRD on the 21.6 acre site of the existing gravel pit and an adjacent upland property. Brinnon Subarea Plan at 29-30. The gravel pit covers approximately five acres. The remaining 17 acres are in a single parcel with an existing house and outbuildings. Historically, but some years prior to 1990, this property had been used as a sawmill. Brinnon Subarea Plan at 31. “This is the only area outside of the existing 100-year floodplain that has both direct access to Highway 101 and historic use for non-residential development.” *Ibid.* The Subarea Plan proposes use of this site for manufacturing or light industrial uses, or for a future wastewater treatment facility and/or public water system to serve the Brinnon Flats area. *Ibid.*

Separate designation of this property from the Brinnon Flats Rural Village Center was presumably made because, unlike the other type (d)(i) LAMIRDs, type (d)(i) industrial

LAMIRDs do not have to be principally designed to serve the existing and projected rural population. RCW 36.70A.070(5)(d)(i).

Petitioner challenges the creation of the Light Industrial district on the basis of, among other things, inconsistency with the county comprehensive plan. Petitioner's Brief at 4-5.

Internal consistency of a comprehensive plan is required by RCW 36.70A.070. "The plan shall be an internally consistent document and all elements shall be consistent with the future land use map." RCW 36.70A.070.

The Washington Administrative Code defines "internal consistency of a comprehensive plan":

Each comprehensive plan shall be an internally consistent document and all elements shall be consistent with the future land use map. This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:

- (1) Ability of physical aspects of the plan to coexist on the available land.
- (2) Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).

Each plan shall provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent.

**WAC 365-195-500**

In making a determination whether there is consistency between various parts of a local jurisdiction's planning policies and regulations, this Board has held that consistency means that no feature of the plan or regulation is incompatible with any

other feature of the plan or regulation. *CMV v. Mount Vernon*, WWGMHB 98-2-0006 (Final Decision and Order, July 23, 1998). Said another way, no feature of one plan may preclude achievement of any other feature of that plan or any other plan. *Carlson v. San Juan County*, WWGMHB 00-2-0016 (Final Decision and Order, September 15, 2000).

The comprehensive plan provisions at issue here are LNG 1.0, LNP 4.3.3, LNP 4.3.4, LNP 4.4, and LNP 4.8 in the Land Use and Rural Element.<sup>3</sup> LNG 1.0 provides that the County will comply with the GMA and county planning policies in all subsequent land-use decisions. LNP 4.3.3, 4.3.4, 4.4 and 4.8 are found in the Land Use and Rural Element of the comprehensive plan.

The Brinnon Subarea Plan is not inconsistent with either LNP 4.3.3 or LNP 4.8; LNP 4.3.3 provides that there will be a Rural Village Center at Brinnon; and LNP 4.8 provides that the County will engage in a community planning process for the Brinnon Subarea Plan. That is precisely what the County did here.

Petitioner emphasizes LNP 4.4, providing that the Rural Village Centers will concentrate and contain the existing built environment by allowing infill development within the Rural Village Center boundaries. However, this policy does not provide where the village center boundaries will be, which is the crux of the Petitioner's complaint.

LNP 4.3.4 articulates the local considerations that will establish and maintain the logical outer boundaries of Rural Village Centers. The County brief argues that the subarea plan thoroughly addresses the avoidance of low-density sprawl through the analysis of transportation, proximity to incompatible uses, employment opportunities

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<sup>3</sup> Citations are to the comprehensive plan provisions submitted as exhibits to the County's brief. We note, however, that LNP 4.3.4 is referred to as LNP 5.2.3 in the Brinnon Subarea Plan (p. 34).

and supporting the community vision (Jefferson County GMA Hearing Brief at 12). However, these are only four of the eight factors listed in the comprehensive plan policy. The remaining four are:

- c. A large parcel that is partially developed for existing uses may not be designated in its entirety, if such a designation would promote sprawl.
- d. Home business/cottage industries should not be used to determine boundaries.
- g. Need for multi-family and special needs housing opportunities.
- h. Avoid creating new nonconforming uses.

#### **LNP 4.3.4**

Less than five acres of the new industrial LAMIRD are currently in use. The remaining parcel of over 17 acres was once the site of a sawmill but it was abandoned before 1990. There is a single house and some outbuildings on the parcel. This parcel is not even partially developed for existing industrial uses and the sole basis of its designation is the suitability of the site for industrial development. This is an improper use of the LAMIRD designation as well as inconsistent with LNP 4.3.4. Type (d)(i) LAMIRDs are not to be used as opportunities to create industrial development; they are to contain and control already existing development. If the county wishes to use the site for wastewater treatment or public water supply, as it suggests, then it should look to the procedures in RCW 36.70A.150 and 36.70A.200. If the County anticipates a major industrial project, the Act addresses planning for major industrial developments in RCW 36.70A.365. Shoehorning an industrial zone into a rural area on the basis of a gravel pit on less than a fourth of the site is simply not compliant with the GMA.

**Conclusion: We find that the Brinnon Light Industrial LAMIRD does not meet the statutory criteria for a LAMIRD and therefore is inconsistent with the County's comprehensive plan and is not compliant with the GMA.**

*The WaWa Point LAMIRD*

Prior to the current amendment to the comprehensive plan, the WaWa Point interim Crossroads Convenience was a four-acre area surrounding the existing Hjelvik's General Store. Brinnon Subarea Plan at 33. This four-acre designation represented the one existing commercial use (the store) and three acres of possible expansion. Brinnon Subarea Plan at 35.

The new designation creates a Small-scale Recreation and Tourist overlay district (SRT) in WaWa Point. The SRT overlay adds the 2.3 acres of the Cove Grocery and RV Park (already designated in the comprehensive plan as an SRT), 3 acres of a former dance hall site (not used since the 1930s), 7 acres of pasture that has never been developed but is described as "a particularly attractive and unique property for small-scale recreation and tourist uses", and 6.5 acres including a boat launch at Right Smart Cove where there is occasional RV camping. Brinnon Subarea Plan at 38.

Unlike in type (d)(i) mixed-use LAMIRDs, in SRT LAMIRDs (type (d)(ii) LAMIRDs), new development is allowed. This means that there can be small-scale recreational and tourist development dependent upon a rural location and setting on property that has not had this kind of development before. However, type (d)(ii) LAMIRDs must still be created in ways that contain and control rural development; assure visual compatibility with the rural area; reduce the inappropriate conversion of undeveloped land into sprawling, low-density development; protect critical areas; and protect against conflicts with resource lands. RCW 36.70A.070(5)(c). Importantly, this kind of LAMIRD (SRT) does not permit residential development. RWC 36.70A.070(5)(d)(ii).

The County acknowledges that over half of the new WaWa Point Small-Scale Recreation and Tourist overlay is undeveloped land. Brinnon Subarea Plan at 39. The

County believes that the boundaries are appropriate because it will allow new development of small scale recreational and tourist uses, as provided in RCW 36.70A.070(5)(d)(ii), and only “appropriate” conversion of undeveloped land in rural areas. Brinnon Subarea Plan at 39. By not re-designating the entire lots in which the tourist and recreational uses would best be located, the County maintains, it is not creating sprawling, low-density development. *Ibid.*

We agree that the County has struck an appropriate balance between creating new development opportunities for small-scale residential and tourist uses and limiting and containing rural development. By not using the entire parcels of land on which the new small-scale recreational and tourist LAMIRD will be located, the County has kept the new development contained. The uses are appropriately limited by the restrictions imposed in Section 4.35 of the Jefferson County UDC, including restrictions on the size, scale, design and function of development; and limits on impacts on traffic, noise, visual or public safety.

**Conclusion: We find the WaWa Point Small-Scale Recreation and Tourist Overlay is compliant with the GMA.**

***Challenges To The County’s Review Of The Land Use Element And The Capital Facilities Plan***

**Issue No. 3:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(1) by not considering flooding, drainage, storm water run-off or mitigations in the area, nearby jurisdictions, or Hood Canal?

**Issue No. 4:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(3) by failing to consider a forecast of future capital facilities needs, locations of capital facilities, a six-year plan to finance such capital facilities, or a requirement to reassess the land use

element if probable funding falls short of meeting existing needs within the capital facilities plan element?

**Issue No. 11:** Does Ordinance 13-1213-02 violate RCW 36.70A.070(1) by failing to consider population forecasts in expanding two LAMIRDs and establishing a new Light Industrial District.?

### **Discussion**

Petitioner's argument with respect to these issues appears to be that the County was required to do a capital facilities analysis and a flooding and storm water review of impacts of the newly created LAMIRDs before proceeding.

The GMA does not require that an analysis of capital facilities for LAMIRD designation, nor does it require that population forecasts be used in establishing LAMIRDs. The provisions cited by Petitioner would be applicable to areas of urban growth, such as non-municipal UGAs, but do not apply generally to LAMIRD designations. The reason for this is that LAMIRD development, even if new, may not necessarily create urban levels of growth which would implicate capital facilities and population allocation. LAMIRDs contain more intensive rural development but the development must still be rural, not urban. RCW 36.70A.070(5). Rural uses may not be characterized by urban growth and must be consistent with rural character. RCW 36.70A.070(b). Urban services are associated with urban growth and are "normally not associated with rural areas." RCW 36.70A.030(19). Public facilities are not necessarily required to serve limited areas of more intensive rural development and, in fact, must be limited in scale if they are provided in (d)(ii) and (d)(iii) LAMIRDs. RCW 36.70A.070(5)(d)(ii) and (iii).

In addition, the GMA does not impose a requirement on the County to show how it has revisited its work on the Land Use Element (flooding and storm water run-off review or population allocation) or the Capital Facilities Plan every time it designates a new LAMIRD. The GMA does not impose a “show your work” requirement to demonstrate that the County has done a new review of consistency with the other elements of the comprehensive plan for each LAMIRD designation. However, that does not mean that the County may create new LAMIRDS without regard to whether the designations will impact the rest of the existing comprehensive plan and regulations. The Rural Element of the comprehensive plan, of which the LAMIRD designations are a part, must still be consistent with the Land Use Element (RCW 36.70A.070(1)), the Housing Element (RCW 36.70A.070(2)), the Capital Facilities Plan Element (RCW 36.70A.070(3)), the Utilities Element (RCW 36.70A.070(4)), and the Transportation Element (RCW 36.70A.070(6)). However, the *burden* is on the Petitioner to show where the inconsistency lies. While it is wise for a County to show that they reviewed the comprehensive plan for inconsistencies with the new designations, the GMA does not impose an active requirement upon the counties to engage in such a review. However, in the absence of such a review, an inconsistency may later be found and render the County’s actions noncompliant .

In this case, the County did review transportation and storm-water issues in the FSEIS. Ex. 3-81. The Brinnon Subarea Plan does contain a review of the Land Use Element (which encompasses the flooding and storm water issues raised by Petitioner) and the Capital Facilities Element. The County did identify a future need for public facilities in the Brinnon Flats Rural Village Center. Fire and school public services are presently provided in the village and public water and sewer facilities have been identified as a potential for the village area. Brinnon Subarea Plan at 32. There is no condition in the Act which would limit a LAMIRD to those that have a plan for public water or sewer. In fact, public water and sewer tend to be hallmarks of urban services,

not appropriate for rural development. *See* RCW 36.70A.070.030(19) (definition of “urban services”). In the WaWa Point SRT LAMIRD, the County concluded that future development will be limited by the need to use on-site septic and wells. Brinnon Subarea Plan at 40.

**Conclusion: The Petitioner has not sustained its burden in proving that the new LAMIRD designations are inconsistent with the County’s Land Use Element (drainage, flooding and storm-water run-off, and population allocation provisions) or the Capital Facilities Plan.**

***Challenges To The Adequacy Of The Environmental Review And SEPA Analysis:***

**Issue No. 12:** Does Ordinance 13-1213-02 violate RCW 43.21C.030 by failing to utilize a systematic, interdisciplinary approach to planning, failing to state the environmental impact of expanding two LAMIRDs, establishing a new Light Industrial Zone, “recommending” a Master Planned Resort, and eliminating many restrictions on home-based and cottage industries, failing to formulate any alternatives to proposed action, and failing to recognize the world-wide and long-range character of environmental problems?

**Applicable Law**

**RCW 43.21C.030**

**RCW 43.21C.031**

**WAC 197-11-440**

**WAC 197-11-442**

**Positions of the Parties**

Although the Petitioner’s original statement of this issue, as set forth above, contains many general allegations, Petitioner’s brief raises only two specific claims: (1) that the EIS is inadequate because it improperly defers an analysis of impacts to the project

stage; and (2) that the EIS is inadequate because it fails to consider the following environmental concerns: possible saltwater intrusion, water demand for potential development, the environmental impact of development, and the significant threatened and endangered species in the Brinnon area. Petitioner's Brief at 18.

The County responds that the County has flexibility on a nonproject action to determine the general level of environmental review that it will choose to perform. Jefferson County's GMA Hearing Brief at 29. The reason for this is that "there is normally less detailed information available on their environmental impacts and any subsequent project proposal." WAC 197-11-442(4). In this case, the County argues, the environmental impact of the creation of small LAMIRDs was determined to be from modest to none. *Ibid.* at 30.

### **Discussion**

An EIS must be prepared on proposals for legislation and other major actions having a probable, significant adverse environmental impact. RCW 43.21C.031. In this case, a hearing examiner overturned the County's DNS and ruled that the creation of the Brinnon Subarea Plan required an EIS. Ex. 4-28. As a result, the County incorporated environmental review of the Brinnon Subarea Plan into the SEIS prepared for the 2002 comprehensive plan amendments, and did not appeal the hearing examiner's decision. Ex. 3-70, FSEIS dated August 21, 2002, Ex. 15-1 at 10. Therefore, the question of whether there were probable significant adverse environmental impacts arising from the Brinnon Subarea Plan requiring an EIS is not before us. Instead, the issue is the adequacy of the EIS prepared for the Brinnon Subarea Plan.

Petitioner alleges that this EIS is inadequate because it defers too much of the analysis of environmental impacts to the project stage when actual development proposals will be presented, and because it fails to address particular environmental concerns. The

County directs our attention to WAC 197-11-442 which provides that the County shall have “more flexibility in preparing EISs on nonproject proposals”. However, the flexibility afforded the County is not unlimited. All environmental documents prepared under SEPA require consideration of environmental impacts, with attention to impacts that are likely, not merely speculative. WAC 197-11-060(4). Phased review is permissible but it is not appropriate if it would “merely divide a larger system into exempted fragments or avoid discussion of cumulative impacts”. WAC 197-11-060(5)(d)(ii). Furthermore, a phased approach may not be used to simply delay SEPA analysis until permitting decisions. *Butler v. Lewis County*, WWGMHB No. 99-2-0027c (Final Decision and Order, June 30, 2000).

Petitioner has not provided much detail on his claim that the SEPA analysis was inadequate. He points to the following absences from the environmental review:

1. Possible saltwater intrusion
2. Demands on the water supply
3. The environmental impact of development
4. A discussion of the significant threatened and endangered species in the planning district.

Unfortunately, Petitioner does not elaborate on these points nor demonstrate why these are at issue in the Brinnon Subarea.

On the other hand, Petitioner does reference letters from the tribes of the region and the Department of Fish and Wildlife. Exs. 4-13, 4-20, 8-7, 8-11, 8-12, 8-17,. The Department of Fish and Wildlife recommended that the EIS detail the likely impacts to the critical habitat of listed species under the Endangered Species Act . Ex. 4-13, at 2. The Department complained of the increase in the size of the Brinnon Flats Rural Village Center, it primarily complained of development along the riverbanks and recommended that future development occur around the economic center of the

Brinnon area and away from marine shorelines, floodplains, wetlands, estuaries and other critical areas. *Ibid.* The Department stated that any increase in zoning within the floodplains of the Dosewallips and Duckabush Rivers will have an impact on fish and wildlife resources. Ex. 4-20, at 5.

The Port Gamble S’Klallam Tribe also raised concerns about development on the floodplains of the Dosewallips and Duckabush Rivers. The tribal biologist specifically recommended that no new development should be allowed which would increase “building footprint”. Ex. 8-11. The Skokomish Tribe also noted concerns about species falling within the protections of the Endangered Species Act. Ex. 8-12. Summer chum salmon, according to their comment, is a “threatened” species under the Endangered Species Act and they utilize the Duckabush and Dosewallips Rivers. The tribal fish habitat biologist points out that efforts to limit flooding from these rivers onto the floodplain where future Brinnon Flats Rural Village Center development will take place has a negative impact on maintaining ecosystem function and quality fish habitat. *Ibid.*

The Point No Point Treaty Council pointed out that the Brinnon area is host to protected species, including Chinook and summer-run chum salmon, bald eagles, trumpeter swans, and harlequin ducks, as well as commercially and culturally significant shellfish tidelands. Ex. 8-17. “The Brinnon area harbors some of the last remaining high-quality Chinook and summer-run chum habitat in Hood Canal”. *Ibid.* The Council also noted that expansion of additional parcels east of Highway 101 in the Brinnon Flats Rural Village Center would intensify land use in the area and contribute to additional storm water runoff to the numerous estuarine sloughs and wetlands of the Dosewallips Delta. *Ibid.*

In any action involving an attack on the adequacy of a “detailed statement”, the decision of the governmental agency is to be given substantial weight. RCW 43.21C.090. Therefore, we accord the County’s decision substantial weight as we examine the adequacy of the County’s environmental review.

The adequacy of an EIS, the Washington Supreme Court has held, is tested under the rule of reason:

In order for an EIS to be adequate under this rule, the EIS must present decision makers with a “reasonably thorough discussion of the significant aspects of the probable environmental consequences” of the agency’s decision. *Cheney*, 87 Wn.2d at 344-45 (quoting *Trout Unlimited v. Morton*, 509 F.2d 1276, 1283 (9<sup>th</sup> Cir. 1974)). The rule of reason is “in large part a broad, flexible cost-effectiveness standard”, in which the adequacy of an EIS is best determined “on a case-by-case basis guided by all of the policy and factual considerations reasonably related to SEPA’s terse directives.” *R. Settle* § 14(a)(i), at 156, 155.

*Citizens v. Klickitat County*, 122 Wn.2d 619, 627, 866 P.2d 1256 (1993).

Given the concerns expressed to the County about the fish and wildlife habitat impacts of more intense development in the Brinnon area, the paucity of discussion of these impacts is quite striking. The prepared EIS (it was actually denominated an SEIS) reviews “plants and animals” by noting the Moderate Growth Alternative has “potential for some countywide loss of habitat due to moderate development” and that in the Brinnon Subarea Plan area 38% of the land is “constrained by wetlands, stream corridors, and habitat”. It notes that the UDC provides fish and wildlife habitat area protections and that the Federal Endangered Species Act may apply to future development. This is hardly “a reasonably thorough discussion of the significant aspects of the probable environmental consequences” of the County’s proposed action. There is no discussion of the current listings or threatened species that rely on Brinnon area habitat. There is no discussion of how the habitat functions currently – spawning

grounds, eagle roosts, what use the trumpeter swans make of the region, etc. There is no analysis of what impacts increased commercial development can be expected to create – cumulative impervious surface impacts on habitat, disruption of fish and wildlife ecosystems by structures and human traffic, etc. There is, in short, no discussion of those environmental issues that the tribes and the Department flagged for the county.

“Water” is similarly discussed by contrasting the Moderate Growth alternative with the Brinnon Subarea Plan. Ex. 3-70, at 2-100. For the Moderate Growth alternative, the EIS states: “Potential increased industrial discharges in the Port Ludlow, Irondale, and Brinnon areas. Potential risk of aquifer contamination in the Glen Cove and Tri-Areas.” This is contrasted with the Brinnon Subarea Plan: “Brinnon mentioned. Only additional industrial land through BSP is proposed LI district north of Dosewallips Road. Point-source industrial discharge regulated through State Department of Ecology and/or County using Ecology Storm Water Management Manual.” *Ibid.* There is absolutely no mention of the concerns raised by the tribes and Department about the impact on fish and wildlife habitat of increasing development intensity in the floodplain.

A separate analysis was done for the WaWa Point SRT overlay district. Ex. 3-70 at 2-101 to 102. As to “plants and animals”, the EIS notes that the area contains bald eagle and spotted owl habitat. The EIS then provides that those issues will be dealt with under the County’s UDC and in consultation with the Department of Fish and Wildlife “depending on exact location of proposal”, i.e., on a project basis. As to “water”, the WaWa Point analysis points out the portions of the area that are subject to the County’s shoreline master program, which are within Frequently Flooded Areas, Susceptible Aquifer Recharge Areas, Wetlands, and the Shoreline Master Program. Again, there is no discussion of how those areas are likely to be impacted by the

change in rural development intensity represented by the designation of the WaWa Point SRT overlay.

All environmental documents required under SEPA must include consideration of environmental impacts. WAC 197-11-060. “Impacts” are the effects or consequences of actions. WAC 197-11-752. Based on the expert opinion of fish and wildlife biologists, intensification of development in the area of the Brinnon Subarea Plan is likely to have an impact on fish and wildlife habitat. An adequate EIS must describe these impacts. We find that the EIS for the Brinnon Subarea Plan is inadequate as to impacts on fish and wildlife habitat.

We note with the County’s hearing examiner that the County essentially chose to defer all environmental review until the permitting stage. Ex. 3-48, at 20-22. This is a pattern that the hearing examiner notes leads to a “dangerous incrementalism” whereby the environmental issues are never really addressed. *Ibid.* This is neither proper phasing nor a proper use of flexibility in setting the detail of analysis. The County must evaluate the environmental impacts that are probable as a result of the change proposed. Those impacts should be measured in terms of the maximum potential development of the property under the changed land use designation. *See Ullock v. Bremerton*, 17 Wn. App. 573, 575, 565 P.2d 1179 (1977). By waiting until each permit application is presented, the County would be unable to assess the cumulative impacts of the increased development in any meaningful way and would thwart the aim of providing future permit applicants with certainty about what is allowed in the Brinnon Rural Village Center and WaWa Point SRT overlay.

**Conclusion: The SEIS prepared for the Brinnon Subarea Plan is inadequate due to failure to evaluate the probable significant adverse environmental impacts on fish and wildlife habitat and is not compliant with SEPA, Ch. 43.21C RCW.**

## **VI. FINDINGS OF FACT**

1. Jefferson County is a county located west of the crest of the Cascade Mountains that has chosen to or is required to plan under RCW 36.70A.040.
  
2. Petitioner is an organization that, through its members and representatives, submitted written and oral comments before the Jefferson County Planning Commission and Board of County Commissioners on all matters raised in the petition for review
  
3. On December 13, 2002, the Jefferson County Board of Commissioners adopted Ordinance 13-1213-02, amending the County's comprehensive plan to adopt the Brinnon Sub-Area Plan. Notice of the amendment was published on December 25, 2002.
  
4. Petitioner, Better Brinnon Coalition, filed a petition for review of the County's adoption of the Brinnon Sub-Area Plan through Ordinance 13-1213-02 with this Board on February 24, 2003.
  
5. A draft Brinnon Sub-Area Plan was prepared and recommended to the Jefferson County planning commission and county commissioners by the citizens' advisory planning group, Brinnon Subarea Planning Group, on August 28, 2001, as an amendment to the County's comprehensive plan.
  
6. The County had established the citizens' advisory planning group early in the process and invited applications for membership from the public. All of those who asked to become part of this committee were appointed to it.
  
7. The citizens' advisory planning group held public meetings twice a month for

almost two years. After the planning group made its recommendations, the public had the opportunity to comment at the public hearings of the planning commission, and also at the public hearing held by the board of county commissioners.

8. During the citizens' advisory planning group process, offers were made by neighboring tribes and the Department of Fish and Wildlife to assist in addressing identified concerns for preservation of fish and wildlife habitat in the Brinnon region. These offers were not accepted.

9. On December 10, 2001, the County's department of community development issued an environmental checklist and a DNS under the SEPA.

10. Petitioner appealed the DNS to the County's hearing examiner on January 7, 2002. The hearing examiner found that the County's issuance of the DNS was "neither proper phased review nor valid innovative zoning techniques" and, on March 17, 2002, ordered the County to prepare a proper EIS or an SEIS.

11. The County did not appeal the hearing examiner's decision.

12. The Department of Fish and Wildlife recommended that the EIS detail the likely impacts to the critical habitat of listed species under the Endangered Species Act. The Department stated that any increase in zoning within the floodplains of the Dosewallips and Duckabush Rivers will have an impact on fish and wildlife resources.

13. The Port Gamble S'Klallam Tribe also raised concerns about development on the floodplains of the Dosewallips and Duckabush Rivers. The tribal biologist specifically recommended that no new development should be allowed which would increase "building footprint"

14. The Point No Point Treaty Council pointed out that the Brinnon area is host to protected species, including Chinook and summer-run chum salmon, bald eagles, trumpeter swans, and harlequin ducks, as well as commercially and culturally significant shellfish tidelands.

15. The Skokomish tribal fish habitat biologist advised the County that efforts to limit flooding from these rivers onto the floodplain where future Brinnon Flats Rural Village Center development will take place has a negative impact on maintaining ecosystem function and quality fish habitat.

16. Despite the information submitted by the Department of Fish and Wildlife and the neighboring tribes, there is no discussion in the SEIS of the Brinnon area habitat upon which species listed or determined to be threatened species under the Endangered Species Act rely. There is also no description of how the habitat functions currently, including spawning grounds, eagle roosts, and uses the trumpeter swans make of the region..

17. The SEIS contains no analysis of what impacts increased commercial development can be expected to create, such as cumulative impervious surface impacts on habitat, and disruption of fish and wildlife ecosystems by structures and human traffic.

18. The SEIS defers analysis of the majority of potential adverse environmental impacts of development in the Brinnon area to the permitting stage.

19. The challenged comprehensive plan amendment expands the boundaries of two LAMIRDs - the Brinnon Rural Village Center and the WaWa Point recreation and

tourist overlay – and the creation of a Light Industrial LAMIRD above the Brinnon Rural Village Center.

20. The new Brinnon Rural Village Center boundaries were drawn to permit additional opportunities for commercial development.

21. The Brinnon Rural Village Center is not large in area, whether measured by the first logical outer boundaries (34 acres) or by the expanded logical outer boundaries under review in this appeal (32 additional acres).

22. The County analyzed the built environment in this case by analyzing the structures and infrastructure present in July of 1990 and also the type of built environment that had been in the village historically. The history of uses in the Rural Village Center informed the County's decision to draw the logical outer boundaries in keeping with the historical community.

23. The existing uses in the Brinnon Rural Village Center are all appropriately small in scale for a rural area – a nursery, a trailer park, a liquor store, an automotive store, an auto body and parts shop, a crafts shop, a restaurant, a bed and breakfast, a mini-storage and well-drilling store, a real estate office, a general store, a video and gift store, and a fishing supply shop. However, the new regulations established with the challenged comprehensive plan amendment exempt this area from size restrictions that would keep new development at a rural small scale.

24. The challenged amendment also creates a Light Industrial LAMIRD in Brinnon. Less than five acres of the new industrial LAMIRD are currently in use. The remaining parcel of over 17 acres was once the site of a sawmill, but it was abandoned before 1990. There is a single house and some outbuildings on the parcel.

This parcel is not even partially developed for existing industrial uses and the sole basis of its designation is the suitability of the site for industrial development.

25. The new designation creates an SRT overlay district in WaWa Point that will allow new development of small scale recreational and tourist uses.

26. The County did not include all of the parcels of land on which the new small-scale recreational and tourist LAMIRD will be located in the new LAMIRD boundaries of the WaWa Point overlay.

27. The uses in the new WaWa Point recreational and tourist LAMIRD are limited by the restrictions imposed in Section 4.35 of the Jefferson County U DC, including restrictions on the size, scale, design and function of development; and limits on impacts on traffic, noise, visual or public safety.

28. The County reviewed transportation and storm-water issues, the Land Use Element (which encompasses the flooding and storm water issues) and the Capital Facilities Element as part of its decision to adopt the Brinnon Subarea Plan.

## **VII. CONCLUSIONS OF LAW**

A. This Board has jurisdiction over the issues raised in the petition for review.

B. Petitioner has standing to file the petition for review based on its oral and written participation before the County in the matters raised in the Petition for Review.

C. The County's complied with the GMA's requirements for public participation in adopting the Brinnon Subarea Plan.

D. The County's expansion of logical outer boundaries for the Brinnon Rural Village Center complies with the GMA, RCW 36.70A.070(5)(d).

E. The County's expansion of logical outer boundaries for the WaWa Point recreation and tourist overlay complies with the GMA, RCW 36.70A.070(5)(d).

F. The County's action to create a Light Industrial LAMIRD in Brinnon does not comply with the GMA, RCW 36.70A.070(5)(d).

G. The County's expansion of uses in the Brinnon Rural Village Center does not comply with the GMA, RCW 36.70A.070(5)(d).

H. The County's SEIS pertaining to the Brinnon Subarea Plan does not comply with SEPA, RCW 43.21C.

I. The Brinnon Subarea Plan is consistent with the County's comprehensive plan and development regulations except with respect to the Light Industrial LAMIRD at Brinnon and the increase in size of buildings allowed.

### **VIII. ORDER OF REMAND**

This matter is hereby REMANDED to Jefferson County to bring the comprehensive plan amendment adopting the Brinnon Subarea Plan (Ordinance 13-1213-02) into compliance with the GMA, ch. 36.70A RCW, and SEPA ch. 43.21C RCW, within 180 days of the date of this Order.

Jefferson County shall submit a report on compliance on this matter to this Board and to Petitioner in this case by February 19, 2004.

A compliance hearing is hereby set for April 14, 2004 at a time and location to be set by subsequent order. Any party wishing to contest the County's compliance with this Board's order must submit written objection and reasons to the Board no later than March 11, 2004. The County's response to any written objections shall be due no later than April 9, 2004.

Pursuant to WAC 242-02-832(1), a motion for reconsideration may be filed within ten days of issuance of this final decision.

So ORDERED this 22nd day of August 2003.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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Margery Hite, Board Member

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Nan Henriksen, Board Member

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Holly Gadbow, Board Member