

**Jefferson County
Board of County Commissioners**

Agenda Request

To: Board of County Commissioners (BOCC)
County Administrator
Chief Civil Deputy Prosecuting Attorney (DPA)

From: Al Scalf, Director of Community Development
Josh D. Peters, Associate Planner

Date/Time: March 25, 2002; 2:00-3:00 PM

Subject: Options for State Environmental Policy Act (SEPA) review of Planning Commission-recommended Brinnon Subarea Plan (BSP) and associated Unified Development Code (UDC) amendments

Statement of Issue:

On March 12, 2002, Hearing Examiner Irv Berteig issued a decision granting an appeal of the Better Brinnon Coalition to the SEPA threshold determination issued by the Department of Community Development (DCD) in December 2001. The result of the appeal decision is that DCD must withdraw the previously issued threshold determination—Determination of Non-Significance (DNS) and Adoption of Existing Environmental Documents—reissue a threshold determination, and, unless the proposal is significantly modified, prepare a Supplemental Environmental Impact Statement (SEIS) that complements the Draft and Final EIS documents prepared for the adoption of the *Comprehensive Plan* in 1998. Essentially, the Hearing Examiner ruled that more analysis of the probable cumulative environmental impacts of the proposed BSP and associated UDC amendments is needed. Environmental review is required before adoption of a nonproject action, such as a subarea plan. Consult the Chief Civil DPA for counsel relevant to the relationship between the SEPA appeal and the timing of the adoption of a BSP and associated UDC amendments. See UDC 8.10.5.b.¹

Additionally, the State Legislature has passed Senate Bill 5841, which if signed by the Governor would extend the timelines for the 2002 comprehensive plan and development regulations review mandated through the Growth Management Act (GMA). One provision of the bill amending the GMA modifies the ability to adopt a subarea plan outside of the annual amendment cycle. The exceptions to the annual amendment cycle standard are listed at RCW 36.70A.130(2)(a). The subarea plan exception at subsection (i) would now read, “The initial adoption of a subarea plan *that does not modify the comprehensive plan policies and designations applicable to the subarea*” (new language in italics). DCD’s interpretation of this clause is that a Brinnon Subarea Plan that changes the land use map must be adopted through the annual amendment cycle. Alternatively, the Plan could be reworded at particular sections such that all elements that can legally be adopted outside of the annual amendment cycle would be so adopted and those elements that cannot, such as changes to the land use map, would be reserved for adoption through the annual amendment cycle. Consult the Chief Civil DPA for counsel related to the effect of SB 5841 if it is signed into law.

¹ **Limitations on Actions during SEPA Process.** Until the responsible official issues a final DNS or FEIS and the SEPA appeal period has lapsed, the county shall not...take any nonproject action (decisions on policies, plans, programs, etc.) that would have an adverse environmental impact or would limit the choice of reasonable alternatives.

Alternatives:

The Planning Commission has transmitted the proposed BSP and associated UDC amendments to the BOCC and the subject proposal is now before the BOCC for action. As DCD must withdraw and reissue a threshold determination, there is opportunity for the BOCC to modify the current proposal before the pending environmental review. The BOCC could decide to alter the current proposal and subsequently influence the extent of issues that a new threshold determination or SEIS would need to address. The following are a general set of alternatives for consideration, each of which begins with the BOCC establishing a BOCC-sponsored BSP and set of associated UDC amendments:

1. Decide that the current proposal recommended by the Planning Commission is the BOCC-sponsored BSP and associated UDC amendments at this stage of the process. Direct DCD to reissue a threshold determination on the current proposal, which pursuant to the Hearing Examiner appeal decision would be a Determination of Significance (DS) requiring the preparation of an SEIS.
 - a. Direct DCD to make arrangements to contract a consultant for preparation of the SEIS. Instruct DCD as to the budgetary limitation for the contract.
 - b. Direct DCD to prepare the SEIS.
 - c. Direct DCD to prepare the SEIS and arrange for a contracted third-party review of the document.
2. Direct DCD to revise the current proposal in specific ways (e.g., remove the section that supports a Master Planned Resort concept for Black Point) and then reissue a threshold determination on the modified draft BSP and associated UDC amendments, which would become the BOCC-sponsored proposal. If the subsequent threshold determination is a DS requiring an SEIS,
 - a. Direct DCD to make arrangements to contract a consultant for preparation of the SEIS. Instruct DCD as to the budgetary limitation for the contract.
 - b. Direct DCD to prepare the SEIS.
 - c. Direct DCD to prepare the SEIS and arrange for a contracted third-party review of the document.
3. Direct DCD to revise the current proposal per DCD discretion as the SEPA lead agency such that the reissued threshold determination is not a DS requiring the preparation of an SEIS (i.e., the probable significant adverse environmental impacts of the current proposal have been eliminated to a degree that no longer warrants an SEIS).

DCD Recommendation:

DCD recommends that the BOCC consider the Planning Commission-recommended proposal, review the public and agency comments on the proposal, deliberate alternative actions, and establish a BOCC-sponsored proposal. DCD would then reissue a SEPA threshold determination on the BOCC-sponsored BSP and associated UDC amendments.

Of the alternatives and corresponding sub-alternatives listed above, DCD recommends alternative 2.c, which directs DCD to modify the current proposal based on specific BOCC direction regarding particular elements within the current draft BSP and associated UDC amendments, reissue a threshold determination for the modified proposal, and—if the determination is a DS requiring an SEIS—prepare the SEIS and arrange for third-party review.

In the interest of providing discussion points for the BOCC, DCD provides brief statements below describing anticipated consequences of each of the alternatives listed above:

1. *Current proposal.* Establishing the current proposal as the BOCC-sponsored proposal means that an SEIS must be prepared, according to the SEPA appeal decision.
 - a. *Consultant.* An EIS or SEIS is usually a costly work project to be contracted. DCD estimates that the cost range would be \$25,000 to \$100,000, based on the cost of similar Jefferson County and neighboring County projects. A third-party review of the potential environmental impacts of proposal would provide the highest level of public acceptance of the results.
 - b. *DCD.* If DCD prepares an SEIS on the current proposal, other work projects will need to be suspended or de-prioritized based on the workload in comparison to available Long-Range Planning (LRP) staff.
 - c. *DCD with third-party review.* Third-party review of a DCD-prepared SEIS would provide a higher level of public acceptance of the results. DCD estimates the cost of an independent review to be approximately \$10,000.
2. *BOCC-modified proposal.* Reducing the number of elements that must be analyzed will likely decrease the cost and amount of time required for preparing an SEIS. The decrease in cost would be concomitant to the number and breadth of elements removed from the current proposal. The MPR concept in particular has attracted a disproportionate level of attention, especially considering that an applicant may apply for an MPR at Black Point or anywhere else in the county regardless of the BSP.
 - a. *Consultant.* The amount of money required to contract a consultant would likely be less if the BOCC modifies the current proposal by removing particular elements.
 - b. *DCD.* DCD would have a better chance to complete other projects on the 2002 LRP work plan if the SEIS for the BSP were not as comprehensive as would be needed for the current proposal.
 - c. *DCD with third-party review.* DCD suggests this alternative because it may be the most palatable option, in terms of public acceptance and cost effectiveness, to bring the Brinnon subarea planning process to fruition.
3. *DCD-modified proposal.* This option would most likely be the most cost effective option, but also would likely result in a negative reaction from the Brinnon Subarea Planning Group and the Planning Commission, as DCD would potentially modify or eliminate significant elements of the current proposal in order to be able to issue a threshold determination that does not require the preparation of an SEIS.

Fiscal Impacts:

Each of the alternatives presents fiscal impacts. The most costly in terms of County funds is a consultant-prepared SEIS on the current proposal, followed by a consultant-prepared SEIS on a modified proposal. If DCD prepares the SEIS, LRP staff time dedicated to this project will decrease available staff time for other 2002 work plan items. Again, modifying the current proposal may decrease the amount of time required to prepare the SEIS, subject to the nature of the modifications. DCD has \$12,399 available in the 2002 budget for professional services. These funds could be applied to either a consultant-contracted SEIS or a contracted independent review of a DCD-prepared SEIS. The least expensive in terms of county funds and staff time is alternative 3.

Reviewed by: _____, County Administrator