

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington**

IN THE MATTER OF }
APPEAL TO DETERMINATION OF }
NON-SIGNIFICANCE SEP2007-12 }
AND DECISION ON HUSUM/BZ CORNER }
SUB-AREA PLAN UPDATE }

Resolution # 11908

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

WHEREAS this matter came before the Board of Klickitat County Commissioners (“BOCC”) on the consolidated review of two matters. The first is a State Environmental Policy Act (“SEPA”) appeal filed by Friends of the White Salmon (“FWS”). FWS appealed the County Planning Department’s determination of non-significance for an area-wide comprehensive plan amendment, rezone and associated legislation in the Husum/BZ Corner community (collectively, “Proposal”). The second matter is consideration of the Planning Commission’s recommendation to approve the Proposal.

WHEREAS having considered the matters fully, the BOCC enters the following findings, conclusions and order:

1. FINDINGS

1.1 For the past several years, the Husum/BZ Corner Community Council (“Community Council”) has considered alternatives for increasing the community’s housing opportunities. The area is experiencing accelerated residential growth and an increase in tourists and recreational users, and the County needs to plan for this growth. This planning is particularly urgent, because the community’s sub-area plan has not been updated since 1995, and it has been 25 years since the zoning map and regulations were last revised. The Community Council worked over a number of years with the community in its planning efforts.

1.2 To accommodate expected growth, the Community Council proposed increasing allowable densities. Roughly 1,000 acres would be rezoned from 20 acres per unit (with clustering requirements) to 1 unit per two acres. The Community Council also proposed implementing regulatory revisions, Comprehensive Plan amendments, and rezones. The Planning Commission recommendation provides additional detail.

1.3 After evaluating the Proposal, the Klickitat County Planning Department issued a Determination of Non-Significance (“DNS”), on March 29, 2007. FWS appealed the DNS. FWS raised numerous concerns, including impacts on water quality and quantity, wildlife habitat, and the White Salmon River.

1.4 The Planning Commission held a public hearing on April 16, 2006. The Commission continued the hearing to May 14, and May 21, 2007, and accepted additional comment. On May 24, 2007, the Planning Commission issued a recommendation to approve the Proposal. The BOCC then held a combined public hearing and SEPA appeal hearing on September 6, 2007 in White Salmon.

1.5 The BOCC heard public testimony and reviewed written comment on the legislative Proposal. To decide the SEPA appeal, the Board considered the entire record, including the DNS and the SEPA Checklist, and appellant's oral and written argument.

2. CONCLUSIONS

2.1 SEPA Appeal

2.1.1 An Environmental Impact Statement "shall be prepared on proposals for legislation and other major actions having a probable significant, adverse environmental impact." RCW 43.21C.031(1). "In making threshold determinations, an agency may consider mitigation measures that the agency or applicant will implement." WAC 197-11-350(1). Environmental Impact Statement preparation is required "if a proposal continues to have a probable significant adverse environmental impact, even with mitigation measures...." WAC 197-11-350(2).

2.1.2 FWS asked the BOCC to consider whether the proposed legislation has environmental impacts which are not mitigated below a level of probable significance. If the BOCC finds this to be the case, FWS requested further analysis through an Environmental Impact Statement. FWS asserts that the County underestimated development potential; did not sufficiently evaluate proposal alternatives; and did not consider development impacts on returning salmon following Condit Dam removal. FWS also claimed mitigation measures were not adequate to address issues such as steep slopes; surface and groundwater; wetlands; transportation; utilities; and wildfire.

2.1.3 Simply because a project is "large and complex" does not mean DNS issuance is precluded. *Anderson v. Pierce County*, 86 Wn. App. 290, 303 and 306, 936 P.2d 432 (1997) (54 mitigation conditions adequately addressed impacts for soil bio-remediation facility which would use bacteria to break down petroleum hydrocarbons). If there is "information sufficient to evaluate the proposal's environmental impact" and the mitigation measures are "reasonable and capable of being accomplished" the DNS decision is not clearly erroneous. *Anderson v. Pierce County*, 86 Wn. App. at 303. However, to make such a determination, there does need to be supporting analysis in the record, and the DNS must identify impacts and mitigation, if any, that may address significant impacts.

2.1.4 The Community Council very likely considered the issues raised by FWS. However, there is not written documentation confirming that this analysis was completed. For example, the City of White Salmon testified that a substantial portion of the Proposal is in that City's service territory, but the City does not have water available for development which may result from the Proposal. There may be alternative service methods, but this should be documented.

2.1.5 Further SEPA review would ensure there is documentation in the record identifying potential environmental impacts. It would also provide an avenue for exploring alternatives for achieving Community Council objectives, including potential mitigation measures.

2.1.6 At this stage, we are responsible for giving deference to the DNS decision of the responsible official. However, in the absence of more detailed information, the record demonstrates that there is "a reasonable likelihood of more than a moderate adverse impact on environmental quality" as a result of the Proposal. See WAC 197-11-794(1). This order does not determine that there are significant adverse impacts associated with the Proposal. This order only determines that the record is inadequate to support the responsible official's determination, and that further environmental review is warranted.

2.2 Legislative Proposal

2.2.1 SEPA requires decision makers to ensure environmental review documents accompany a proposal to the decision maker. As such, the Board should defer its decision on the proposed legislation until further SEPA review is complete.

2.2.2 The County recognizes that "SEPA does not demand any particular result in governmental decisionmaking." *See Norway Hill Preservation and Protection Ass'n. v. King County Council*, 87 Wn.2d 267, 272, 552 P.2d 674 (1976). Similarly, the Washington Supreme Court has said:

SEPA is essentially procedural statute to ensure that environmental impacts and alternatives are properly considered by the decisionmakers. It was not designed to usurp local decisionmaking or to dictate a particular substantive result.

Save Our Rural Env't v. Snohomish County, 99 Wn.2d 363, 371, 662 P.2d 816 (1983). SEPA recognizes that government decisionmaking may be based on non-environmental considerations, so long as they are made with environmental policies and consequences in mind. *See R. Settle, Washington State Environmental Policy Act*, 326.25 (2001). The BOCC will undertake consideration of the Proposal following further SEPA review.

3. ORDER

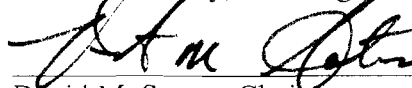
3.1 Any finding that is better characterized as a conclusion is incorporated into part 2 of this decision. Any conclusion that is better characterized as a finding is incorporated into part 1 of this decision.

3.2 The DNS is remanded to the Planning Department for additional SEPA review to include, but not limited to impacts to water resources.

3.3 The Board will delay making a decision on the Proposal and legislative acts until after further environmental review is completed, and the Board has had an opportunity to consider such information.

24th ADOPTED by the Klickitat County Board of County Commissioners this day of June 2008, at a regular open public meeting.

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington



David M. Sauter, Chairman



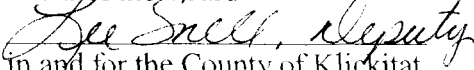
Ray Thayer, Commissioner

ABSTAIN

Rex F. Johnston, Commissioner

ATTEST:

Clerk of the Board



In and for the County of Klickitat,

State of Washington