

**CENTRAL PUGET SOUND  
GROWTH MANAGEMENT HEARINGS BOARD  
STATE OF WASHINGTON**

	)	
SNO-KING ENVIRONMENTAL	)	<b>Case No. 06-3-0005</b>
ALLIANCE, EMMA DIXON, and	)	
GERALD FARRIS	)	<i>(Sno-King)</i>
	)	
Petitioners,	)	
	)	<b>ORDER ON SNOHOMISH</b>
v.	)	<b>COUNTY’S MOTION FOR</b>
	)	<b>RECONSIDERATION</b>
SNOHOMISH COUNTY,	)	
	)	
Respondent,	)	
	)	
KING COUNTY,	)	
	)	
Intervenor.	)	

**I. BACKGROUND**

On July 24, 2006, the Board issued its Final Decision and Order (**FDO**) in CPSGMHB Case No. 06-3-0005 (*Sno-King*). The FDO, dismissing the case, found Snohomish County (**County**) complied with the applicable public participation procedures and Goal 11 of the GMA and that the Petitioners had not established participation standing nor had they carried their burden of proof in demonstrating the County’s was noncompliant with any of the GMA’s critical area provisions.

On July 28, 2006, the Board received Snohomish County’s Motion for Reconsideration (**Motion to Reconsider**) noting clerical errors within the FDO and what the County believed to be a misinterpretation of law that is material to the County in defending a pending matter before the Board.<sup>1</sup>

The Petitioners did not file a reply to the County’s Motion to Reconsider.

**II. REQUEST FOR RECONSIDERATION**

Applicable Law:

Pursuant to WAC 242-02-832, after the issuance of a final decision by the Board any party may file a Motion for Reconsideration. WAC 242-02-832(1). The motion must be filed within 10

---

<sup>1</sup> The matter referred to by the County is *Sno-King Environmental Alliance v. Snohomish County*, CPSGMHB Case No. 06-3-0025 which pertains to Ordinances 06-024 and 06-025 which re-adopted the provisions of Ordinances 05-121 and 05-122.

1 days of service of the FDO. WAC 242-02-832(2). The non-moving party has five days in which  
2 they may file an answer to the motion. *Id.*  
3

4 A Motion for Reconsideration must be based on at least one of the following grounds:  
5

- 6 1. Errors of procedure or misinterpretation of fact or law, material to the party seeking  
7 reconsideration;
- 8 2. Irregularity in the hearing before the Board by which such party was prevented from  
9 having a fair hearing; or
- 10 3. Clerical mistakes in the FDO.  
11  
12  
13

14 WAC 242-02-832(2)(a)-(c).  
15

16 In response to a party's request for reconsideration, the Board may (1) deny the motion, (2)  
17 modify its decision, or (3) reopen the hearing. WAC 242-02-832(3).<sup>2</sup>  
18

19 Analysis  
20

21 The County asserts two reasons for its Motion to Reconsider. First, the County notes that the  
22 FDO contains clerical mistakes. *Motion to Reconsider at 1-2*. Second, the County argues that  
23 the Board misinterpreted the law and that this misinterpretation is material to the County. *Id.*  
24

25 *Clerical Errors*  
26

27 The Board concurs with the County, that the following clerical mistakes were contained within  
28 the FDO:  
29

- 30 1. Page 2, Line 40, Footnote 2 provides an incorrect citation to *King County IV*. The  
31 correct CPSGMHB case number for that matter is Case No. 05-3-0031.  
32
- 33 2. Page 3, Line 42 incorrectly states Ms. Anderson's first name as being Lisa. Ms.  
34 Anderson's correct first name is Liza.  
35
- 36 3. Page 16, Lines 15-16 incorrectly denotes the County's Seismic Ordinance as Ordinance  
37 No. 05-121. The correct ordinance number is 05-122.  
38  
39

40 The Board appreciates that the County brought these scrivener errors to the Board's attention and  
41 will amend its FDO accordingly.  
42

43 The County also objects that the paragraph header information shown on Page 6, Lines 1-3,  
44 pertaining to Emergency Ordinance 05-122 [Seismic], failed to include references to the  
45 Petitioners' challenge of this Ordinance in regard to public participation and consistency.<sup>3</sup> The  
46  
47

48 <sup>2</sup> WAC 242-02-832(3): A motion is deemed denied unless the board takes action within twenty days of filing the  
49 motion for reconsideration. A board order on a motion for reconsideration is not subject to a motion for  
50 reconsideration.

<sup>3</sup>The County suggested that the Board should modify this paragraph to read as follows:

1 Board notes that despite this omission, reference and discussion pertaining to this Ordinance was  
2 included within FDO's sections pertaining to Legal Issue 1 and Legal Issue 3, and served as a  
3 basis for the Board's conclusion of these Issues.<sup>4</sup> A Motion for Reconsideration is not an  
4 invitation to *wordsmithing* the Board's FDO.  
5

6 As noted above, the Board concurs with the County that the above-described clerical errors  
7 should be corrected. However, the Board will not amend the paragraph header as requested by  
8 the County due to the fact that the discussion and analysis portion of Legal Issues 1 and 3  
9 explicitly address Ordinance 05-122, either by number or topic (seismic). The Board believes  
10 that future readers of the FDO should easily be able to discern the fact that Petitioners' challenge  
11 to Ordinance 05-122 was not limited to Best Available Science but also included public  
12 participation and consistency.  
13

#### 14 *Misinterpretation of Law*

15  
16  
17 The County asserts that the Board improperly characterized the County's adoption of Ordinances  
18 05-121 (Odor) and 05-122 (Seismic) as a "re-adoption" of Ordinances 05-029 (Odor) and 05-030  
19 (Seismic). *Motion to Reconsider at 2*. The County argues that Ordinances 05-121 and 05-122  
20 contain numerous substantive changes from the previous ordinances and therefore the County  
21 did not "re-adopt" the identical provisions of Ordinances 05-029 and 05-020. *Id.* The County  
22 states that there is an important distinction between characterizing an ordinance which pertains to  
23 the same subject matter but has different provisions as a "re-adopted" ordinance versus a  
24 successive ordinance that maintains identical provisions. *Id. 3-4*.  
25

26 The Board concurs with the County that Ordinance 05-121 and Ordinance 05-122 do not contain  
27 the same *verbatim* language as Ordinances 05-029 and 05-030. The Board notes that substantive  
28 changes (shown in *italic*) include, but are not limited to:  
29

30  
31 Ordinance 05-121 was adopted to provide for the immediate preservation of public  
32 health, safety, *and welfare* and pertains to odor prevention standards for *certain*  
33 *facilities and uses*.  
34

35 Section 30.28.092 specifically applies to *all applications for new and/or the*  
36 *modification or expansion of wastewater treatment facilities, portals, pump stations,*  
37 *and outfalls, which have the potential to generate odor emissions and to any other*  
38  
39  
40

---

41 *'Emergency Ordinance No. 05-122 – Seismic: Petitioners challenge the County's public participation*  
42 *process, consistency with GMA plan provisions, and whether the County used best available science and*  
43 *otherwise complied with the GMA's critical areas provisions for geologically hazardous areas. – Legal*  
44 *Issues 1, 2, and 3.'*

45 <sup>4</sup> Legal Issue 1 (Public Participation): facts and analysis for this issue are contained on pages 7 to 11 of the FDO.  
46 This section of the FDO references Ordinance 05-122 and includes the explicit statement: "...[W]hat remains of  
47 [Legal Issue 1] is just the public participation challenge as it relates to Emergency Ordinances 05-121, 05-122, and  
48 05-126. *Sno-King*, CPSGMHB Case No. 06-3-0005, FDO at 8 (Emphasis added).

49 Legal Issue 3 (Consistency): facts and analysis for this issue are contained on pages 17-18 of the FDO. This section  
50 of the FDO references "the seismic ordinance" and includes the statement: "Legal Issue 3 ... involves the question  
of whether the odor, *seismic*, and EPF ordinances are consistent with the identified Snohomish County Plan  
Policies." *Sno--King*, CPSGMHB Case No. 06-3-0005, FDO at 18 (Emphasis added).

1 use which has the potential to generate emissions of hydrogen sulfide or ammonia,  
2 except if originating from allowed agricultural uses.  
3

4 Section 30.28.092 sets forth a new definition - no detectable odors - meaning *that no*  
5 *more than 0.8 part per billion (ppb) of hydrogen sulfide and more than 2800 ppb of*  
6 *ammonia detectable at the property boundary or beyond.*  
7

8 Section 30.28.092 modifies language pertaining to Design and Operation Standards  
9 including the removal of the requirements for wastewater treatment processes to be  
10 *ventilated under negative pressure, for liquid-phase treatment processes to be*  
11 *provided at the influent pump station; for permanent and redundant odor control*  
12 *scrubbing equipment at certain locations and during certain activities; and the*  
13 *provisions for a carbon system digester.*  
14

15 Section 30.28.092 introduces the term *biosolids and public welfare.*  
16

17 Ordinance 05-122 only amends Section 30.91S.120 and adds two new sections –  
18 *30.51.010 and 30.51.020.*  
19

20 Section 30.91S.120 modifies the definition of Seismic Hazard Areas to remove  
21 reference is *seismic zones.*  
22

23 Section 30.51.010(1)-(5) is *deleted in its entirety and replaced with 30.51.010(1)-(2)*  
24 *which address development applications in Seismic use Groups II, III, and buildings*  
25 *or structures assigned to Seismic Design Categories E or F.*  
26

27 A new section 30.51.020 – *Seismic Hazard Areas – additional information or tests*  
28 *authorized* – was added.  
29

30 Therefore, the Board concurs with the County that the use of the word “re-adoption” within the  
31 Background section of the FDO is a misstatement of fact and, as such, it should either be deleted  
32 or be revised to read “adopted.” However, this mischaracterization does not merit the Board’s  
33 acceptance of the County’s attempt, once again, of *wordsmithing* the Board’s decision by  
34 seeking to relocate Footnote 4 into the body of the FDO.<sup>5</sup>  
35  
36  
37  
38  
39

### 40 **III. ORDER**

41 Based upon review of the FDO issued in CPSGMHB Case No. 06-3-0005 (*Sno-King*) and the  
42 Board’s Rules of Practice and Procedure, the Board enters the following ORDER:  
43

- 44 1. Page 2, Footnote 2: The citation to *King County IV* shall be corrected to read: 05-3-  
45 0031.
- 46 2. Page 3, Line 42: Ms. Anderson’s first name shall be corrected to read: Liza.  
47

48  
49  
50 <sup>5</sup> The County seeks not only the deletion of the words “re-adoption” and “again,” but the County suggested that the Board relocate Footnote 4 into the body of the FDO, inserting it on Page 2 after the word “adoption” in Line 22.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50

3. Page 16. Lines 15-16: The reference to the seismic ordinance shall be corrected to read: 05-122.
4. Page 2, Lines 22-23: The phrase “or *re-adoption*” shall be deleted.
5. Page 2, Footnote 4: The sentence commencing with “On October 17, 2005 ...” shall be deleted in its entirety and replaced with “On October 17, 2005, Snohomish County adopted Emergency Ordinances 05-121 and 05-122 for a six month period.”
6. Page 2, Footnote 4: The phrase “re-adopted again” shall be replaced with the word “adopted.”
7. The Board will not modify its FDO as suggested by Snohomish County in regard to Page 6, Lines 1-3 (Paragraph Header) nor relocate Footnote 4 (Page 2) to the body of the FDO’s text.

So ORDERED this 8th day of August, 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

\_\_\_\_\_  
Edward G. McGuire, AICP  
Presiding Officer

\_\_\_\_\_  
Margaret A. Pageler  
Board Member

\_\_\_\_\_  
Bruce C. Laing, FAICP  
Board Member