

Remand Issue No. 2: Category I Wetlands must be further protected by their exclusion from the “Preconstruction Mitigation” option. Further, the County must clarify the preconstruction mitigation option for the other categories by requiring the wetland developed in the mitigation be functioning prior to allowing any impact to the wetland.

Discussion: Resolution No. 97-1130, Attachment “A” of Critical Areas Ordinance Section 11.20.050(6) states, “Pre-development Replacement Ratios. The following ratios apply when a replacement wetland of the same category is created prior to impact to an existing wetland. The replacement wetland must be of the same category as the wetland being impacted and provide equal or superior wetland functions for at least one complete growing season prior to impacting the existing wetland.” This language existed at the time the September 23, 1997 Order on Compliance was entered. It was missed by the Board.

Category I wetlands have been deleted from this portion of the Ordinance and the section notes Pre-development mitigation is not permitted for Category I wetlands.

Conclusion: Spokane County has complied with the Board’s Order on Compliance on issue #2 and is in compliance with the Act.

Remand Issue No. 4: Spokane County must develop a process for determining what is best available science for Spokane County and a procedure for the county to utilize the best available science as it is developed.

Discussion: RCW 36.70A.172(1) states :

“In designating and protecting critical areas under this chapter, counties and cities shall include the best available science in developing policies and development regulations to protect the functions and values of critical areas. In addition, counties and cities shall give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries.”

Spokane County contends there is a lack of science dealing with the protection of critical areas in Eastern Washington. The Board recognized that the best available science of Eastern Washington might differ from that of Western Washington but believed that Spokane County needed to develop a method to review and determine the best available science for Eastern Washington, particularly Spokane County.

The County was directed to develop a process for determining the best available science for Spokane County and a procedure for the county to utilize it as it is developed. The County adopted the following policy:

The Spokane County Administrative Policy to identify best available science states:

“Spokane County adopts a policy for identification of “best available science”. The purpose of the policy is to facilitate compliance with RCW 36.70A.172, a requirement to include “best available science” in the development of the Critical Areas Ordinance under the Growth Management Act. In the future, Spokane County will use this policy to assist with development of any amendments to the Spokane County Critical Areas Ordinance.

Policy: It will be the responsibility of the Division of Long Range Planning to identify “best available science” and provide a recommendation to decision makers for use in designating and protecting Critical Areas pursuant to RCW 36.70A.172.

At the discretion of the Division of Long Range Planning, the Division may recommend to the Board of County Commissioners or the Board of County Commissioners may direct, for any issue under consideration, that a science team be formed to assist in this task. The science team will be appointed by the Board of County Commissioners at a public meeting and shall consist of 3 to 5 scientists of appropriate background. The Division of Long Range Planning will assist in providing or gathering available scientific information on the issue under consideration to the science team. Supplemental information may be provided by the science team or other interested party. The science team will make a recommendation of “best available science”. The Division of Long Range Planning will forward the science team’s recommendation together with supporting documentation to the appropriate decision making body for their consideration and use.

It should be noted that “best available science” will generally provide a range of options or choices, each of which has advantages and disadvantages. The science team’s purpose is to assess the science used to develop the choices or options and perhaps to develop or assist in developing the options or choices. Their purpose is not to select one option or choice and defend it. It shall be up to decision makes, ultimately elected officials, to use the “best available science” identified by the science team to select the options or choices that they believe best serves the people of Spokane County.”

The Board recognizes this as a good faith effort to comply with the Act. The process, to determine the “best available science”, will not be used only after the amendatory process has begun. It will also be available if new science is discovered or produced which would suggest an amendment to the Plan. The Respondent stated at the compliance hearing that this new science

should be presented to the Division of Long Range Planning. This could trigger the formation of a science team and possible amendment to the Plan.

The final paragraph of the Best Available Science Policy cited above is unnecessary and damaging to the stated purpose of the amendment. The science team would be established to study the available science and determine what or which is the best available science. Whenever possible, this team should arrive at a conclusion indicating what they believe is the “Best Available Science”. If, however, there are various options of similar or equal quality, these can be reported for consideration by the County Commissioners. The County Commissioners make the final decision.

Conclusion: The Board finds the County continues to be out of compliance with the Growth Management Act. The final paragraph of the Administrative Policy to Identify Best Available Science unnecessarily damages the purpose of this policy. This must be corrected.

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After considering the parties briefs, exhibits presented and oral argument, the Board makes the following

ORDER

Remand Issue No. 2: The Board finds Spokane County has complied with the Board’s Order on Compliance on this issue and is in compliance with the Act.

Remand Issue No. 4: The issue is remanded with direction to come into compliance with the Act.

SO ORDERED this 23rd day of January, 1998.

EASTERN WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD

Judy Wall, Presiding Officer

Dennis A. Dellwo, Board Member