

STATE OF WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF FERRY
COUNTY,
Petitioner,
v.
FERRY COUNTY,
Respondent

No. 97-1-0018

**THIRD ORDER
ON COMPLIANCE**

I. PROCEDURAL HISTORY

On May 23, 2000, the Board issued its Second Order on Compliance in the above entitled matter. The Board directed Ferry County to (1) designate fish and wildlife habitat and species utilizing best available science, (BAS) within 120 days of the Order, and (2) develop policies for designation of frequently flooded areas and aquifer recharge areas utilizing BAS within 90 days of the Order. A request for a finding of invalidity was denied.

On September 25, 2000, the Board of Ferry County Commissioners adopted Ordinance No. 2000-05 Amending Ordinance 95-06 An Ordinance to Adopt the Ferry County Comprehensive Plan and the Curlew Lake Sub Area Plan with reference to frequently flooded areas and aquifer recharge areas.

On November 13, 2000, the board received copies of the adopted ordinance and established a briefing schedule and compliance hearing date.

On December 6, 2000, Concerned Friends of Ferry County filed Petitioner's Brief for Third Compliance Hearing on Ordinance 2000-05 (9/25/00 Amendments to Ferry County Ordinance 95-06).

On December 22, 2000, Respondent Ferry County filed Respondent's Brief for Third Compliance Hearing.

On December 26, 2000, the Board received Respondent's Index of Record including exhibits One through Seven.

On January 4, 2001, the Board held a telephonic Compliance Hearing. All parties were present and represented.

Respondent voiced concern at this hearing for Mr. Robinson representing Concerned Friends of Ferry County. The Board notes RCW 36.70A.330 (2), which states in part:

A person with standing to challenge the legislation enacted in response to the Board's Final Order may participate in the hearing along with the Petitioner and the State Agency, County, and City.

Under authority of this cited statute, the Board recognizes David L. Robinson as an individual

petitioner in this case.

II.FINDINGS OF FACT

- 1.On July 17, 2000, Ferry County enacted Ordinance 00-01, Flood Damage Prevention, providing regulations to minimize damage from flooding, to comply with applicable State and Federal regulations.
- 2.On Sept. 25, 2000 Ferry County enacted Ordinance 2000-05, amending the Ferry County Comprehensive Plan and Curlew Lake Sub-Area Plan.The amendments made no substantive changes.
- 3.Ferry County requested review and comments from several state agencies concerning the proposed ordinance, 2000-05 one agency responded.No agency provided evidence of substantive review.

ISSUE

Issue 1:Has Ferry County developed policies for designation of frequently flooded areas and aquifer recharge areas utilizing best available science?

Petitioners' position:Petitioners contend the County has ignored BAS including comments submitted by Petitioners as well as guidelines in the Washington Administrative Code.

Respondent's position:Ferry County contends that the subject sections of the Comprehensive Plan were sent to various state agencies for comment.The Department of Ecology responded with suggested word changes, which were incorporated in the Comprehensive Plan.No other agencies or qualified scientists commented.The County contends this action complies with the Board's remand order.

Discussion:In our last order, the Board wrote ...”The Board recommends that Ferry County consult with the Department of Community, Trade and Economic Development, Department of Ecology and other agencies as appropriate to achieve compliance.”

The Board recognizes financial limitations in Ferry County preclude the option of hiring consultants for scientific review.With this in mind, the Board recommended that Ferry County “consult with” appropriate experts within governmental agencies.

Contrary to the contentions of Ferry County, the Board does not believe the County followed this advice.The County has provided no evidence in the record of any scientific review of the issues in this case.Even the one response received does not imply a scientific review.The Board does not accept “no comment” by state agencies as compliance with RCW 36.70A.172.

The Board's recommendation was to consult with appropriate agencies to utilize their expertise. Simply mailing a proposed section of the comprehensive plan, without discussion or collaboration, without substantive response, is not compliance with either our order or with RCW 36.70A.172.The process must be collaborative, with the result being either incorporation of BAS recommendations in the final document, or a justification for not including those

recommendations.

The County leaves the Board with no choice but to find their actions again non-compliant. We cannot accept this response as the standard for utilizing “best available science”.

The Board takes notice of Ferry County Ordinance 00-01, Flood Damage Prevention, a development regulation implementing sections of the Comprehensive Plan addressing flood hazards. No appeals were filed in regard to this Ordinance.

Conclusion:

The Board finds Ferry County in continued noncompliance regarding policies for designation of frequently flooded areas and aquifer recharge areas utilizing best available science.

ORDER

Ferry County is directed to develop policies for designation of frequently flooded areas and aquifer recharge areas utilizing best available science within 90 days of this Order.

SO ORDERED this 26th day of January, 2001.

EASTERN WASHINGTON

GROWTH MANAGEMENT HEARINGS BOARD

D. E. “Skip” Chilberg, Board Member

Judy Wall, Board Member

Dennis A. Dellwo, Board Member