

STATE OF WASHINGTON
GROWTH MANAGEMENT HEARINGS BOARD
FOR EASTERN WASHINGTON

CONCERNED FRIENDS OF FERRY
COUNTY,

Petitioner,

v.

FERRY COUNTY,

Respondent

No. 97-1-0018

**FOURTH ORDER ON
COMPLIANCE**

I. PROCEDURAL HISTORY

On May 3, 2002, the Board received a letter from Stephen Graham, Ferry County Prosecuting Attorney requesting the Board hold a compliance hearing in the above-entitled matter.

On June 14, 2002, the Board held a telephonic compliance hearing. Present were Presiding Officer, D. E. "Skip" Chilberg, and Board Members Dennis A. Dellwo and Judy Wall. Present for Petitioners was David Robinson. Present for Respondent was Stephen Graham, Deputy Prosecuting Attorney.

II. INTRODUCTION

On January 26, 2001, the Hearings Board issued the Third Order on Compliance, directing the County to "develop policies for designation of frequently flooded areas and aquifer recharge areas utilizing best available science...."

On April 22, 2002, Ferry County passed Ordinance 2002-05, Amending Ordinance 95-06 Ferry County Comprehensive Plan, Aquifer Recharge Areas. At the same time, they passed Ordinance 2002-06, development regulations for implementing the policies adopted in Ordinance 2002-05. The Comprehensive Plan previously had no policies addressing aquifer recharge areas.

In response to this Board's Order regarding frequently flooded areas, Ferry County submitted a transcript of a phone conversation between Ferry County officials and Ted Olsen, an employee of the Washington State Department of Ecology. Ferry County took

no official action to amend existing policies on frequently flooded areas.

III. STANDARD OF REVIEW

The standard of review as “clearly erroneous”. The petitioner has the burden of proof under WAC 242-02-630 and 242-02-632.

IV. ISSUES

Issue 1: Has Ferry County complied with the Hearings Board’s Order to “develop policies for designation of aquifer recharge areas utilizing best available science (BAS)?

Petitioners’ position:

Petitioners acknowledge the progress made by Ferry County in its efforts to include BAS in its Comprehensive Plan policies to designate aquifer recharge areas. However, Petitioners argue that the Ordinance fails to include certain recommendations from the Washington State Office of Community Development (WSOCD) guidance document, specifically “that landfills, certain types of underground injection wells, mining, and wood treatment facilities be prohibited within aquifer recharge areas susceptible to contamination”, “that conditional permitted activities should employ all known, available, and reasonable treatment (AKART) treatment technology to ensure that the highest degree of protection is afforded to the aquifer(s)” and “that within aquifer recharge areas susceptible to contamination, residences that use on-site septic systems should be limited to “a maximum density of one system per one acre [which] is sufficient to avoid ground water contamination.”

Further, Petitioners argue that the County has failed to document any justification for rejection of these recommendations, which they argue is required by the Washington Administrative Code.

Respondent’s position:

Ferry County contends the Board’s Order is from a “failure to act” challenge and thus, only procedural compliance is under review at this time. Since the County has amended its Comprehensive Plan to include policies addressing aquifer recharge areas, the County has complied with the Board’s Order. Any substantive challenge will be considered only if a petition is timely filed. During oral arguments, Respondent contended Petitioners had failed to carry the burden of proof that the County had not included BAS in its policies.

Discussion:

The Board finds the earlier Compliance Order was a “failure to act” order. Thus, Ferry County, by adopting policies addressing aquifer recharge areas, has complied with the order. Any decision regarding substantive issues in that action can only be made after a new petition is filed and arguments heard.

Conclusion:

Ferry County has complied with the Boards Order to adopt policies for aquifer recharge areas utilizing best available science.

Issue 2: Has Ferry County complied with the Boards Order to develop policies to designate frequently flooded areas utilizing best available science (BAS)?

Petitioner’s position:

Petitioners argue that the County has taken no official action to comply with the Board’s Order; therefore, the County remains out of compliance. The question here is not procedural, but whether the County has included “BAS” in its policies. Petitioners contend nothing in the record demonstrates consideration of “BAS”.

Respondent’s position:

Ferry County acknowledges no official action has been taken in response to the Board’s Order, only that they have now documented consultation with appropriate State agencies regarding their policies. The County provides in their brief a transcript of a phone conversion with the State Department of Ecology. The Department, therein acknowledges Ferry County’s efforts to consult with the Department, and confirms that Ferry County’s policy on frequently flooded areas includes best available science as required by law. Ferry County contends it had failed only to inform the Board of its contacts with Department of Ecology, and the Departments input to its policies, resulting in our Order of non-compliance. With this confirmation, Ferry County argues the Board should now find compliance.

Discussion

The Board finds that Petitioners have failed to carry their burden of proof. While the County admits to adopting only “minimal” requirements, Petitioners have not shown that the policies adopted are in error. The Board also finds that Ferry County has made reasonable efforts to include best available science, with appropriate participation by the State Department of Ecology.

Conclusion:

Ferry County has complied with the Board's Order regarding frequently flooded areas.

ORDER

Ferry County has complied with all compliance issues in Case No. 97-1-0018.

This is a final order for purposes of appeal pursuant to RCW 36.70A.300(5). Pursuant to WAC 242-02-832, a motion for reconsideration may be filed within ten days of service of this final decision and order.

SO ORDERED this 21st day of June 2002.

EASTERN WASHINGTON GROWTH
MANAGEMENT HEARINGS BOARD

D.E. "Skip" Chilberg, Board Member

Dennis Dellwo, Board Member

Judy Wall, Board Member