

On September 15, 1997, we issued an order denying petitioners' motion for reconsideration. In that order we rejected petitioners' contention that MP 4.5.8 was, or should have been, considered an amendment to the SMP. We determined it was not an amendment and therefore the procedures of RCW 90.58 did not apply.

The compliance hearing process was completed at a hearing on October 9, 1997. The remaining issues had been established by an order entered in this case on July 25, 1996. Those issues derived from the final order in *Achen v. Clark County*, #95-2-0067, (*Achen*), where we determined that the decision to ban mining within the 100-year floodplain was noncompliant with the GMA because:

“The record reveals that the reasons for the exclusion were ‘the general fragile character of these areas and some concern about how to manage mining over the long-term.’ While the record reveals what was done, it reveals nothing of why. There was no review or analysis of the effect of mining within the 100-year floodplain constrained by the Shoreline Management Act (SMA), SEPA, and/or the Surface Mining Act (RCW 78.44).”

The County hearings and decision whether to maintain MP 4.5.8 took place in 1996. The reasons for the delay in reviewing those actions were at the parties behest, and are set forth in the July 31, 1997, order. This hearing and our decision postdate the effective date of ESB 6094. Therefore, the procedural aspects of ESB 6094 apply. *Clark County Natural Resource Council v. Clark County*, #96-2-0017 (order dated December 2, 1997) (*CCNRC II*).

Thus, the petitioners have the burden of demonstrating, under the clearly erroneous standard, that in light of the policies, goals, and requirements of the Act after a full review of the record, we should have a definite and firm conviction that a mistake was made. In this case, petitioners have not sustained that burden. We note, parenthetically, that even if the County had the burden of showing compliance by a preponderance we would find compliance under this record.

RCW 36.70A.170(1)(c) requires each County to designate mineral resource lands “where appropriate”, that are not characterized by urban growth and which have long-term

significance for extraction of minerals. This record and the initial record contained in *Achen* demonstrated the County's awareness that as to petitioner Woodside's property within the 100-year floodplain, aggregate rock of a very high quality and quantity existed. Because of MP 4.5.8, a formal mineral designation overlay was not made. However, this was not because the area in question was not recognized as being available for designation. Rather, the County determined that other goals and requirements of the Act required preclusion of the 100-year floodplain areas throughout the County from active mining. With the wealth of information developed during the public participation process of the remand we hold that the County reached its decision to retain MP 4.5.8 by appropriate evidence and analysis.

As to the part of the remand that dealt with the "why", Exs. 59 through 94 showed the "battle of experts", staff recommendations, and the position of the Washington State Department of Fisheries and Wildlife (DFW) and the United States Department of Fish and Wildlife (USFW). This record demonstrated that the County was provided with vast, and occasionally conflicting, evidence. The evidence constituted the best available science concerning the impact of mining on the 100-year floodplain, particularly in the east fork of the Lewis River. The conclusions drawn by the two college professors as to the impact issues were occasionally at opposite ends of the spectrum. While petitioners complained that the expert with which they agreed presented the better scientific evidence, our review of this record does not leave us with a firm and definite conviction that a mistake was made by the County. Clark County chose its course of action from the available scientific evidence. We held in the final order of *CCNRC II* (December 6, 1996) that the broader the scientific evidentiary disputes, the greater discretion a local government has in choosing its course of action.

There were also widely disputed contentions concerning the second part of the remand issue, i.e., the use of current regulations instead of an outright ban. Petitioners contended that the analysis conducted by the County was merely conclusionary. Our examination of the record does not support this argument. After reviewing the long history of the Woodside/Storedahl mining experiences and mining experiences generally in the 100-year floodplain throughout the County, staff concluded that existing regulations had not

prevented substantial environmental harm to the floodplain area. Both DFW and USFW concluded that there had been an excessive loss of habitat and substantial impacts to water quality since the early 1970s under essentially the current regulatory schemes. Both agencies supported retaining the ban on the basis that a substantial reduction of future impacts, especially to anadromous fish, would likely result from continuation of MP 4.5.8. Based on the facts presented in this record, the County concluded that current regulations had not, did not, and would not provide sufficient protection from the cumulative adverse environmental impacts of mining within the 100-year floodplain. We do not have a firm and definite conviction that a mistake was made by the County as to this decision.

Petitioners pointed out that a DFW document supported mining within the 100-year floodplain. What petitioners overlooked in the quoted section of the report was that such support was entirely dependent upon a nonmeandering river that would not “capture” the mining pit at a later time. Conclusive evidence in this record showed that the east fork of the Lewis River, has, does, and will continue to meander significantly.

The record demonstrated that sufficient mineral land designation was made to cover even a 50-year supply. Even if we accepted petitioners’ claimed deficiencies in the record about the amount of mineral supply available from the designated areas, the deficiencies would not be significant enough to find a lack of compliance.

Petitioners contended that the County had failed to comply with the Act because of a failure to designate mining sites owned by the Woodsides located outside the 100-year floodplain. The record revealed that the location sites outside the 100-year floodplain were small and generally isolated fringe areas. Petitioners have not sustained their burden.

Petitioners also contended that the SMA provided for “reasonable uses” of shorelines of the state which was contrary to the outright ban decision. We have previously held in this case that the goals and provisions of the SMA are now part of each local government’s CP. Nonetheless, this record demonstrated that with full consideration and analysis, Clark County determined that mining in the 100-year floodplain was not a “reasonable” use of the shorelines.

The County also complied with WAC 365-190-070(2)(c) because it did not preclude future access to this mineral resource. A significant consideration that petitioners have not accepted is that with MP 4.5.8 future use of this area for mining resources, if necessary, is not precluded. The County has committed to review of the mineral resource issue at its five-year CP review period. Since the resource here has been “conserved” by the mining policy, the five-year review commitment complies with the Act. This is a far cry from non-designation where growth ultimately makes use of the resource unattainable.

The record developed during the remand period was extensive, contained a great deal of information, and allowed thorough public participation on the question of whether MP 4.5.8 should be continued. Ultimately, Clark County balanced the requirements of RCW 36.70A.060, .170, .172, .020(8), (9), and (10). This is exactly the action that the GMA directs and expects. Not only does Clark County’s decision comply in every respect with the GMA, it is an example of the thoroughness of analysis of complete information and the balancing of goals and requirements that is the heart and soul of GMA.

Clark County is in compliance with the GMA as to MP 4.5.8.

This is a Final Order under RCW 36.70A.300(5) for purposes of appeal.

So ORDERED this 17th day of December, 1997.

WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

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